

BIHAR HUMAN RIGHTS COMMISSION
9, Bailey Road, Patna – 15

File Nos. **BHRC/COMP. 2672/12**

Case of Bimal Das

The complaint by Sri Ramashray Prasad Singh, President, Begusarai District Unit of PUCL is about false implication of one Bimal Das of village Mirzapur Chand P.S. Barauni district Begusarai in Barauni P.S. Case No.105/12 under sections 302, 201/34 IPC.

The case was supervised by the then SDPO Sadar Begusarai Sri Vivekanand who vide his supervision notes dated 6.6.2012 found the accusations against Bimal Das to be false. The Investigating Officer (I.O.) incorporated the contents of the supervision notes in para 57 of the case diary on 8.6.2012. In para 58 he stated that the instructions of the Supervising Officer were being “carried out”; in para 59 he mentioned about an information received from ‘guptchar’ and closed the diary on the same day i.e. 8.6.2012 vide para 60. On 15.7.2012, without any further investigation, vide para 61, he noted that charge sheet was being submitted against Bimal Das in anticipation of the order of the superior officer “as the investigation was complete” so far as Bimal Das was concerned.

It may be mentioned that the then S.P. Begusarai issued Report-2 on 27.8.2012. There was nothing in the report which could be construed as approval of the charge sheet. He, in fact, gave certain instructions as to the future course of investigation – which means that the investigation was not complete.

In the circumstances, not being able to appreciate the conduct of the Investigating Officer (S.I. Birendra Kumar) in submitting charge sheet in haste disregarding the findings of the Supervising Officer, notice was issued to him in terms of section 16 of the Protection of Human Rights Act.

In his written defence S.I. Birendra Kumar, inter alia, took a stand that:-

“.....in any criminal case IO is the main investigator and he has to submit final form. The supervision note has no/any evidentiary value, that is the domestic affair of the police. In law the IO is not bound to obey the finding of supervision.....”.

At the final hearing on 23.8.2013 S.I. Birendra Kumar filed a supplementary ‘explanation-cum-clarification’ in which he referred to a decision of the Patna High Court in the case of Sri Bhagwan Singh vs. State of Bihar reported in 1994(1) Bihar Law Judgments 360 to substantiate the aforesaid plea. In the said ‘explanation-cum-clarification’ he also stated that if his act constitutes disobedience of order, he may be held guilty in a departmental proceeding but it would nonetheless remain an internal matter of the police department, having no bearing on the legal value of the supervision notes.

The Commission finds that a departmental proceeding was initiated against S.I. Birendra Kumar vide memo no.5010/G.O. of S.P. Begusarai and therefore the Commission would not like to discuss his conduct or misconduct. The Commission however would like to clarify that in the case of Sri Bhagwan Singh vs. State of Bihar (supra) the point for consideration was whether non-production of supervision notes had caused any prejudice to the accused at the trial. The High Court held to the contrary and accordingly rejected the contention/defence of the accused.

The point at issue in the instant matter is totally different. As observed in the order dated 7.8.2013, apart from the outcome of the complaint and the finding on the factual matrix of the case and the defence of the officer, his stand – if accepted – would make the system of supervision in criminal investigation by any officer below the rank of District S.P. superfluous and redundant. The Commission cannot subscribe to that view. Supervision of a case is not only a thing of expediency and convenience, it is part of

the Bihar Police Manual and practice & procedure (see rules 48(d), 49, 48(b) read with appendix 3 etc. of the Police Manual.)

The Commission would not like to make further comments as the (mis)conduct of the officer is subject matter of an on-going departmental proceeding. The Commission does expect that the proceeding will be taken to its logical end and the officer awarded suitable punishment for his acts of omission and commission.

Apart from the question of his misconduct, it is clear that the hasty and tendentious act of S.I. Birendra Kumar has led to a chain of adverse consequences having bearing on the human rights of Bimal Das. The magistrate took cognizance against him on the basis of police report under section 190(1)(b) Cr.P.C. little knowing that the police report had been submitted in utter disregard of the findings and directions of the supervising authority and without waiting for Report-2 and approval of the competent authority viz. the District S.P. Notwithstanding the fact that cognizance had been taken, S.P. Begusarai at the instance of the Commission filed application seeking permission for re-investigation in the case which the court declined as the case had already been committed to the Court of Session.

Although in his written defence S.I. Birendra Kumar denied that charge sheet was submitted to deny the accused (Bimal Das) the opportunity of mandatory bail under proviso to section 167(2) Cr.P.C, at the time of hearing he fairly stated that had he not submitted charge sheet in the case, accused Bimal Das would have been granted bail in terms of section 167(2) to proviso and in that case, departmental proceeding would have been initiated against him. In other words, he submitted charge sheet simply to avoid the departmental proceeding.

The plea is fit to be rejected for more than one reason. Submission of charge sheet cannot be done in haste. At the first instance, an accused should not be arrested at all if there are no prima facie materials/evidence against him to justify the arrest. No doubt, custodial interrogation has a purpose but that is not

required in all the cases. In any view, arrest of the person should not become a reason or ground for submission of charge sheet. If the police is not able to conclude the investigation the person may be released on bail but the submission of charge sheet cannot be justified on the ground that failure to submit charge sheet will result in his release – simply to pre-empt his release on bail. Such a course will be subversive of the ends of justice and liberty of the person concerned. The essence of any criminal case is conviction of the culprit, and grant of bail is hardly of any consequence.

It is clear that S.I. Birendra Kumar not only tried to fiddle with the liberty of accused Bimal Das, his act of submission of charge sheet resulted in serious adverse consequences – landing him (Bimal Das) as an under-trial in a murder case – without there being sufficient evidence against him, and without sanction and approval of the competent authority – all this to save his own skin to avoid a possible departmental proceeding. In the facts and circumstances of the case, the Commission is satisfied that accused Bimal Das should not have been arrested at all much less charge sheet submitted against him. He belongs to the lowest strata of society, and although except hearsay and doubts there is nothing against him, he will have to suffer the agony of a long-drawn trial which he can hardly afford.

All said and done, with the submission of charge sheet the matter is now sub judice in court and the Commission can do precious little in the matter to help Bimal Das. All that the Commission can do at this stage is to express hope that he will get justice from the court. Surely, punishment to S.I. Birendra Kumar in the on-going departmental proceeding will also be a step in the direction of giving justice to him.

With these observations, the file is closed.

Copy of this order may be sent to (i) the applicant, (ii) S.P. Begusarai and (iii) S.I. Birendra Kumar, Barauni P.S. District Begusarai.

Date: 17.09.2013

Justice S.N. Jha
Chairperson