

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

File No **BHRC/COMP.** 2825/10

Case of **DIBYENDU KUMAR SINGH**

Complaint of applicant Dibyendu Kumar Singh @ Subodh Singh resident of village Sikariya P.S. Bhewar Sikariya, district Jehanabad is about physical assault and torture allegedly meted out to him between 15.1.2010 and 17.1.2010 by the police of Patrakar Nagar Police Station. The case of the applicant is that he was apprehended by a group of persons – who were policemen but in plain clothes – near Rajendra Nagar overbridge in Patna town in the early hours of 15.1.2010, and variously assaulted by them. As a result of assault, his fingers were broken, the ear drum got damaged, and he developed problems in different parts of body, particularly, knees and waist and he has difficulty in walking. He was produced for judicial remand on 17.1.2010 at 5 PM and forwarded to Adarsh Central Jail Beur.

Report was called from IG Prisons and Range DIG Patna. Later, on consideration of the report submitted by them, notice was issued to S.I. Awdhesh Kumar Singh, the then SHO Patrakar Nagar P.S. He submitted his written defence and appeared for oral hearing. The matter was finally heard on 21.3.2013 in presence of the applicant's brother (applicant currently is in jail at Gumla), S.I. Awadhesh Kumar Singh and SDPO Sadar Patna Md. Muttafique Ahmad who appeared on behalf of Sr.S.P. Patna. It may not be out of place to mention that Sr.S.P. Patna was himself present at an earlier hearing.

Sr.S.P. Patna and S.I. Awadhesh Kumar Singh denied the applicant's version about assault on him by the police. They have also denied the applicant's case about arrest on 15.1.2010. According to them the applicant was arrested on 16.1.2010 at 8:30 A.M. and produced before CJM Patna for judicial remand on 17.1.2010 at 7:30 AM i.e. within 24 hours and therefore his detention in police custody was not illegal.

In order to buttress the denial of any assault by the police, strong reliance was placed on the order of CJM Patna dated 17.1.2010 as per which the applicant did not complain of any misbehaviour muchless assault by the police. A statement of fact in a judicial order in the ordinary course should be accepted as true but considering the fact that the order sheets in Magistrate's Courts are written/drawn almost invariably by the Bench Clerk/Court Master of the court concerned on which the Presiding Officer appends his signature, the Commission would find it difficult to accept the statement to be correct on its face value. In fact, statement of the kind is usually found in all remand orders as if written in a

routine manner. In many cases, the accused are not even physically produced and remand orders are signed.

Be that as it may – it is relevant to mention – that at the time of his admission in Adarsh Central Jail, Beur on 18.1.2010, the Medical Officer of the Jail Hospital – where he was produced for health screening – as per the guidelines of the NHRC, injuries were found on the applicant in palm & both hands, left thigh and nose which was bleeding. The Medical Officer noted in the relevant column that the injuries were result of beating by the police. The document 'Proforma for Health Screening Form' is a contemporaneous document prepared in the usual course of business with respect to all prisoners at the time of their admission in jail and therefore it has a great evidentiary value. From what has been mentioned in the documents/proforma, it is clear that the applicant had been beaten by the police while he was in police custody.

S.I. Awadhesh Kumar Singh pointed out that the Medical Officer did not find anything adverse with respect to different parts of the body which is evident from the remark 'NAD'. The Commission would observe that at the time of admission the prisoners are not subjected to any clinical test – the entries are usually made on the basis of visual appearance and therefore the fact that nothing adverse was found on other parts of the body including ear in column 'ENT' does not necessarily suggest that there was no injury to the eardrum or other parts of the body – particularly in view of the findings of the Medical Officer as noted in the column 'injuries', referred to above. The Commission is inclined to hold that the applicant did have injuries marks on his body and as he was admittedly in custody of the police preceding his remand and admission to Beur Jail, the conclusion is irresistible that the injuries were caused while in police custody. The case of the applicant about assault by the police party of Patrakar Nagar Police Station therefore is established.

As regards the legality detention in police custody, it is the admitted position that the applicant was detained for interrogation in the evening of 15.1.2010 – although, technically, the arrest is shown to have been made at 8:30 AM in the morning of 16.1.2010. There is distinction – no doubt – between detention (of a person) for the purpose of interrogation and his arrest – and that is how the arrest is shown to be made later in point of time and it shows that his production for judicial remand was within 24 hours of the arrest – in accordance with the provisions of Cr.P.C. Arrest being a unilateral act – the timing of which can easily be 'fixed' – as it may be suitable to the police, the police version on the point of timing of arrest has to be taken with a pinch of salt.

In the instant case, the applicant's version is that he was apprehended in the early morning hours of 15.1.2010. Even as per the police version he was detained in the evening at 6:30 PM on 15.1.2010, his production before the magistrate on 17.1.2010 therefore was clearly a breach of the mandate of section 57 of the Criminal Procedure Code. The applicant's detention beyond 24 hours – reckoned from 6:30 P.M. on 15.1.2010 as per the police version itself – indeed from morning of 15.1.2010 as per the applicant's version – was illegal amounting to violation of applicant's human rights.

The Commission is of the view that for violation of his human rights on both grounds viz. detention beyond 24 hours and assault in police custody, the applicant is entitled to compensation and S.I. Awadhesh Kumar Singh is liable to pay compensation. In the facts and circumstances, the compensation is quantified at Rs. fifty thousand.

The Commission thus directs Sr.S.P. Patna to deduct sum of Rs. fifty thousand from the salary of S.I. Awadhesh Kumar Singh, the then SHO Patrakar Nagar P.S. and pay the same to the applicant.

Since the official has been transferred to another district, namely, Nalanda and he is presently SHO Islampur P.S, district Nalanda – the direction aforesaid shall be construed as applicable to S.P. Nalanda and as such, he shall carry out the direction.

This should be done within period of six weeks.

Put up in the second week of May 2013 awaiting compliance report.

Copy of this order may be sent to (i) applicant (ii) Sr.S.P. Patna and (iii) S.P. Nalanda (iv) S.I. Awadhesh Kumar Singh, presently SHO Islampur P.S, district Nalanda.

Date: 02.04.2013

Justice S.N. Jha
Chairperson