

File No.2098/12

This matter was taken up in the presence of the applicant, SDPO Gopalganj Sadar and the then SHO Barauli P.S, S.I. Abhinandan Mandal.

The complaint of applicant Shambhu Mishra is about his illegal and unjustified arrest and detention. The defence of SHO Barauli P.S. S.I. Abhinandan Mandal to whom notice was issued under section 16 of the Protection of Human Rights Act and who has filed his written defence – inter alia is that the arrest was in execution of warrant of arrest issued in connection with case no.906/12 of the court of SDM Sadar Gopalganj, under section 107 read with section 113 Cr.P.C.

From perusal of the order sheet of case no.906/12 it appears that proceeding under section 107 Cr.P.C. was initiated against as many as 171 persons on the eve of the Nagar Panchayat elections in the year 2012 on 27.4.2012. The case of the applicant is that he appeared in the proceeding on the date fixed i.e. 2.5.2012 but on account of lawyers' strike in Gopalganj courts the matter was not taken up. He appeared on the adjourned date i.e. 4.5.2012 and he was granted bail.

It is not disputed by S.I. Abhinandan Mandal that the applicant did appear on 4.5.2012. His Advocate however submitted that warrant of arrest having been issued by SDM Sadar Gopalganj, the SHO was duty bound to arrest the applicant and that is how he came to be arrested.

From the order sheet of case no.906/12 it appears that ten members of the opposite party appeared before the magistrate and they filed their PR bonds on 2.5.2012. On the next date i.e. 4.5.2012, all 171 persons appeared out of whom 156 persons also filed PR bonds. Thus in all 166 persons filed PR bonds while all of them had entered appearance. Curiously, on the same day, the magistrate proceeded to pass further order issuing warrant of arrest on the report of the SHO for issuance of warrant in terms of section 113 Cr.P.C. alleging that they had refused to receive summons.

The Commission fails to understand as to how all 171 persons having entered appearance on 4.5.2012 – out of whom 166 persons had also filed PR bonds (including the applicant – which S.I. Abhinandan Mandal does not dispute); the Sub Divisional Magistrate on the same very day issued warrant of arrest purporting to act on the report of SHO under section 113 Cr.P.C. The result of the issuance of warrant of arrest was that the applicant was taken into custody on 16.5.2012. He was kept in the hazat at the police station for the whole night. The allegation is that he was taken around the streets of Gopalganj town in handcuffs for four hours on the next day i.e. 17.5.2012 as if he was a notorious criminal. He was finally released only in the evening.

Shorn of all controversies it is clear that the issuance of warrant of arrest against the applicant was totally uncalled for and unwarranted. The arrest of the applicant – purportedly in good faith by S.I. Abhinandan Mandal – clearly resulted in violation of applicant's human rights. In the circumstances, it becomes necessary to issue notice to the magistrate concerned, namely, Sri Rajiv Ranjan Singh in terms of section 16 of the Protection of Human Rights Act.

As a matter of fact, the Commission is inclined to think, having regard to the nature of the proceeding, issuance of warrant of arrest was totally unjustified.

In course of hearing, attention of the Commission was drawn to entry no.393 dated 16.5.2012 of the Station Diary of the Barauli P.S. which makes reference to some order of the S.P. Gopalganj. As per the station diary entry, an

order was "received" from S.P. Gopalganj about the applicant giving threats to the voters of village Mohanpur within Brauli P.S. and distributing money for securing votes. The Commission wanted to see the order of the S.P. referred to in the station diary entry. Sri Vijay Shankar Shrivastava Advocate who appeared on behalf of S.I. Abhinandan Mandal took the plea that it was 'oral' order of the S.P. Gopalganj Ms. Natasha Guria. In the circumstances, it becomes necessary to interact with her personally on the next date.

Let, accordingly, notice issue to Shri Rajiv Ranjan Singh SDM Gopalganj Sadar to appear and file his written defence, if any, on the next date which is fixed on 26.2.2013.

Notice will be accompanied by copy of the original complaint (pages 3-1/c) and copy of this order.

Notice may also issue to S.P. Gopalganj to personally appear on the next date, as indicated above.

As the order has been dictated in presence of the applicant and S.I. Abhinandan Mandal, the next date need not be formally communicated to them.

Date: 5.2.2013

Justice S.N. Jha
Chairperson

File No.2098/12

This order may be read with in continuation of the order dated 26.2.2013.

Sri Rajiv Ranjan SDO Gopalganj Sadar appeared pursuant to notice along with Advocate and filed his written defence. In course of hearing he admitted that issuance of warrant of arrest by order dated 4.5.2012 was a mistake for which he tendered unqualified apology. In course of hearing the Commission was not inclined to accept the apology because of the cavalier manner in which he issued warrant of arrest which led to the arrest of the applicant resulting in gross violation of his human rights, and it appeared to the Commission that he is not fit to hold the post of Sub-Divisional Magistrate which involves exercise of judicial powers and functions. The apology however seemed to be sincere and honest; in fact, the officer gave assurance that he would never commit such mistake in future. The Commission in the circumstances decided not to pursue the matter so far as he is concerned. It need hardly be emphasised that sensitising an officer is more important than punishing him and therefore, the Commission will allow the matter to rest.

It may not be out-of-place to mention that at the resumed hearing on 26.2.2013 the applicant filed an application stating among other things that the issuance of arrest by the SDM and his consequential arrest by the then SHO was the result of "human error" and they had no ill motive against him. The Commission is inclined to think that the application may be the result of some extraneous consideration like coercion or inducement or even monetary considerations. The Commission laments the manner in which the applicant has made the 'u-turn'; it is because of persons like the applicant that the cases fail and the guilty persons escape punishment. Having observed thus, the Commission would not like to pursue the matter further.

As regards S.I. Abhinandan Mandal – the then SHO Barauli P.S. now posted at the Gopalganj Police Lines his plea that he arrested the applicant in execution of warrant of arrest on first blush appears specious and the Commission would have perhaps closed the matter. But there is one thing which

warrants suitable action against him. In entry no.393 dated 16.5.2012 of the Station Diary of Barauli P.S. he stated about "receiving" the order of S.P. Gopalganj for the applicant's arrest. As mentioned in the order dated 5.2.2013, on being confronted, S.I. Abhinandan Mandal took a stand that the order referred to in the Station Diary Entry was oral, and there was no written order to that effect. Not satisfied with the explanation, the Commission issued notice to S.P. Gopalganj to verify the claim, in course of hearing on 26.2.2013 Ms. Natasha Guria categorically stated that she had given no such order as referred to in the station diary entry. The Advocate on behalf of S.I. Abhinandan Mandal however reiterated his earlier stand. It is relevant to mention that in his written defence filed on 5.2.2013 vide para-I also, S.I. Abhinandan Mandal has stated "that on 16.5.2012 at about 22:45 hours I received direction from the S.P. Gopalganj to arrest him" (Shambhu Mishra).

The Commission is of the view that the conduct of the officer (S.I. Abhinandan Mandal) contradicting no less than the District S.P. is a grave matter for which S.P. Gopalganj will be well advised to take suitable action. In any case – the Commission would observe – he is not fit to given charge of any police station. Having said thus the Commission would leave the rest to the wisdom of the District S.P.

File is closed in terms of the observations and directions as above.

Copy of this order may be sent to (i) applicant, (ii) S.P. Gopalganj, (iii) Sri Rajiv Ranjan, SDO Sadar Gopalganj and (iv) S.I. Abhinandan Mandal, the then SHO, Barauli P.S. now Police Lines Gopalganj.

Date: 27.02.2013

Justice S.N. Jha
Chairperson