

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

File No **BHRC/COMP.** 2754/11

Case of **SHIV CHARAN PRASAD**

The complaint of applicant Shiv Charan Prasad, resident of village Pachlakh Chainpura, P.S. Parsa District Saran is that he is not accused in any criminal case nor is he a witness in any case; SHO of Parsa P.S. nevertheless arrested him from his house in the midnight of 9/10.8.2011 and kept him in hazat for the night where he was abused and subjected to atrocities. On the next day he was produced in court but the court released him as verification of record revealed that there was no case against him.

The applicant is a teacher, and he claims that by reason of the action of the SHO Parsa P.S. he suffered loss of prestige and physical & mental torture.

It may be mentioned here that the impugned action, namely, arrest of the applicant was in purported execution of warrant of arrest in Sessions Trial No.759/94 (State vs. Tapeswar Singh) of the court of Addl. Sessions Judge (Fast Track Court–III) Chapra. The person involved in the case and for whom warrant of arrest was meant for one Sri Charan Sah and not applicant Shiv Charan Prasad. In other words, the applicant was apprehended as if he was Sri Charan Sah.

Report was called from Sr.S.P. Saran and finally notice was issued to SHO Parsa P.S, S.I. Md Khalil, in terms of section 16 of the Protection of Human Rights Act. He appeared and filed his written defence and the matter was finally heard in his presence on 15.4.2013. SDPO Sonapur (Saran) Sri Lal Babu Yadav was present on behalf of S.P. Saran.

S.I. Md. Khalil did not deny to have taken the applicant into custody. His simple defence is that he made the arrest in execution of the warrant of arrest. However, he did not give any clear answer to the observation of the Commission that the applicant is a different person, by name, Shiv Charan Prasad. In course of hearing, Md. Khalil sought time to produce the relevant warrant (of arrest). It transpired that photocopy of the warrant is available in the file as part of the complaint at page 1/c. The warrant clearly mentions the name of the warrantee as 'Sri Charan Sah'. Even SDPO Lal Babu Yadav agreed that in view of the clear mention of the name of the accused in the warrant, there was no scope for confusion about the identity of the person who was supposed to be arrested.

There thus does not appear to be an iota of dispute that the applicant was arrested without any warrant against him and therefore his arrest and detention was void and illegal. Article 21 of the Constitution of India provides that no person shall be deprived of his personal liberty save in accordance with law. There being no warrant of any court for the arrest, the detention of the applicant was in clear violation of the Constitutional guarantee. It is not the case of S.I. Md. Khalil that he was wanted in any other case.

The Commission is therefore satisfied that the applicant suffered violation of his human rights at the hands of S.I. Md. Khalil SHO Parsa P.S. for which he deserves to be awarded monetary compensation at latter's cost. The Commission accordingly directs S.P. Saran to deduct sum of Rs. fifty thousand from the salary of S.I. Md. Khalil – SHO Parsa P.S, and pay the amount to the applicant within a period of six weeks.

The Commission is also of the view that for his acts of omission and commission departmental proceeding should be initiated against the officer i.e. S.I. Md. Khalil and he be awarded suitable punishment for his highhanded and arbitrary acts.

Put up on 4.6.2013 awaiting compliance report.

Copy of this order may be sent to (i) applicant (ii) S.P. Saran Chapra and (iii) S.I. Md. Khalil SHO Parsa P.S. district Saran.

Date: 17.04.2013

Justice S.N. Jha
Chairperson