

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

File No. **BHRC/COMP.** 1071/12

Case of **SUNITA DEVI**

Complaint in this matter was made to the National Human Rights Commission (NHRC), and transferred to this Commission for disposal. The complaint is about the arrest and detention of applicant Sunita Devi wife of Pawan Singh @ Braj Mohan Singh – resident of village Lodipur within Sahar P.S. of Bhojpur district.

The applicant was arrested in connection with Sahar P.S. Case No.74/11 under section 364 IPC with respect to the alleged kidnapping of one Bimal Chaudhary – a co-villager. Fardbeyan with respect to the alleged occurrence was lodged by Jeera Devi wife of the alleged victim at 7 A.M. on 4.10.2011. At 7:30 AM the applicant was apprehended from her house situate 5/6 houses away from Jeera Devi's house. During this period of half an hour, further statement of the informant as also statements of a few witnesses were purportedly taken which means that the applicant was apprehended no sooner than the fardbeyan was made. It is another matter that formal arrest – as per the case diary – was shown to have been made at 5:30 PM.

Interestingly, Bimal Chaudhary, the alleged victim, himself appeared on 15.10.2011 and denied to have been kidnapped. He stated that he got a false case instituted by his wife out of fear of Yadavs of the same village. Notwithstanding the fact that the very case stood falsified by none else than the alleged victim himself, the applicant remained in judicial custody till 18.11.2011, that is, for 45 days.

In her complaint the applicant claimed that no female constable was present at the time of arrest. The police party was led by the then SHO Sahar P.S, S.I. Ram Naresh Singh – also the Investigating Officer of the case, and the then SHO Chauri P.S, S.I. Rana Ran Vijay Kumar. It is also her complaint that she was shabbily treated and physically abused by the police prior to her production before the magistrate and judicial custody.

S.P. Bhojpur vide his report dated 8.6.2012 supported the complaint version about the applicant's arrest in a fake case. The report stated that in view of the statement of Bimal Chaudhary, application was filed in the court of CJM for release of the applicant on 16.10.2011. The report also stated that instructions had been given to the I.O. to file case against the informant (of Sahar P.S. Case No.74/11), the so-called victim Bimal Chaudhary and others under sections

182/211 IPC. The report however denied the applicant's case about absence of female personnel at the time of her arrest. Relying on the case diary and the station diary it claimed that a female chowkidar was member of the police party which raided the applicant's house and arrested her at 5:30 PM on 4.10.2011. The female chowkidar, as per the report, remained with the applicant until her production before the magistrate for judicial remand.

In the facts of the case, notice in terms of section 16 of the Protection of Human Rights Act was issued to S.I. Ram Naresh Prasad Singh and S.I. Rana Ran Vijay Kumar. They filed their written defence and appeared for hearing along with advocates. The matter was finally heard on 22.1.2013.

The defence of S.I. Ram Naresh Prasad Singh is that the applicant's house was raided and she was taken into custody on the direction of SDPO Piro. Arrest was made to facilitate recovery of the person said to have been kidnapped, which in the prevailing circumstances was considered necessary. The allegation of kidnapping was supported by witnesses. It is also his defence that arrest was made in accordance with the laid down procedure. However, the alleged victim, Bimal Chaudhary, on 15.10.2011 personally appeared at Piro Police Station. On receipt of information, he (S.I. Ram Naresh Prasad Singh) reached there and interrogated him. His statement revealed that the case was concocted and false. Without losing time, on 16.10.2011 application was filed in the court of CJM Ara for release of the applicant. CJM however orally observed that the question of release will be considered after submission of final form. Submission of final form took time as this required the approval of S.P./Dy.S.P. Finally, S.P.'s orders were received on 30.10.2011. On the next day final report 'false' was submitted. On 10.11.2011 the applicant filed application for bail and by order dated 17.11.2011 bail was granted to her. She was released on the next day. The officer has denied the allegation about manhandling and physical abuse in police custody.

The defence of S.I. Rana Ran Vijay Kumar is that he was posted as SHO Sahar P.S. earlier between 29.1.2008 and 30.5.2010. As he performed his duties honestly he made enemies and for political and caste reasons he has been falsely implicated in this case. He does not deny his presence in village Lodipur at the time of arrest; as regards the fact that Lodipur is situate within another police station not under his jurisdiction, his explanation is that he had gone there to control law and order on the direction of senior officers. It is also his defence that the applicant has filed court complaint (Case No.2114C/11) in the court of CJM Bhojpur which is pending in the court of Ms. Namita Singh, Judicial Magistrate, First Class, Ara in the stage of enquiry.

There is dispute about the timing of arrest of the applicant. Whereas according to the applicant she was arrested from her house in the morning of 4.10.2011 itself; according to the officers' version, she was arrested at 5:30 PM – and they place reliance on the case diary to buttress their stand.

The Commission would observe that the contents of the case diary have to be read with a pinch of salt. Where a document is written by the very person against whom the complaint is made, its contents cannot be taken on face value. In response to the Commission's observation about the circumstances justifying the applicant's arrest in a case under section 364 IPC – almost immediately after the alleged victim was supposedly kidnapped – without making any serious attempt to trace his whereabouts – the officers stated that there was tension in the village and the applicant was taken into custody, to avoid any untoward incident. If that was the reason and the situation was really such – the Commission is inclined to think – the police must have taken away the applicant in the morning itself, and the Commission is therefore inclined to accept the applicant's version. As per the diary, the police party returned to the P.S. at 12:30 PM and if that was so, it is unlikely that he would go to the village at 5 PM just to arrest her.

The Commission is unable to appreciate the haste with which the applicant – a young woman – and wife of a serving engineer – was arrested. She certainly was victim of some petty village politics. The officers should have seen through the situation rather than taken sides. It was really unusual that the police accepted the informant's version about her husband being kidnapped to be true – and without any investigation made the arrest.

The presence of S.I. Rana Ran Vijay Kumar strengthens the conclusion about the officers taking sides. Admittedly, he had served as SHO of Sahar P.S. until a year ago between 2008 and 2010 and he apparently intervened in the matter for extraneous considerations – as alleged by the applicant.

May be that application was filed in the court of CJM Bhojpur to release the applicant on the next day after Bimal Chaudhary appeared at Piro P.S. and denied the entire occurrence. It however took the applicant a month to walk out of prison. S.I. Ram Naresh Prasad Singh has given an explanation. According to him, the CJM orally observed that the question of release will be considered after submission of final form. On his own case, the final form was submitted on 31.10.2011 after a fortnight. The Commission is at a loss to appreciate the subsequent delay. Clearly, in view of the statement of Bimal Chaudhary, nothing remained for investigation and therefore police could have submitted final form on the very next day. S.I. Ram Naresh Prasad Singh has sought to pass on the

blame on the Dy.S.P./S.P. According to him, final form could not be submitted without their approval. If this indeed was the requirement, the Dy.S.P./S.P. should have shown greater awareness and promptly done their part. Even if Ram Naresh Singh is not guilty for the subsequent delay after 16.10.2011, it is clear that month long detention of the applicant after 16.10.2011 was the result of a systemic failure which does not in any way affect the applicant's case for compensation.

There is dispute as to whether the applicant was arrested in presence of a female personnel. According to the applicant no female staff was present; according to the officers on the other hand, a female chowkidar no.2/1 Chandrawati Kunwar was member of the police party which raided the house. On behalf of the applicant, attention was drawn to the interpolations in the station diary in this regard.

As indicated above, the Commission has found the applicant's version of being arrested in the morning of 4.10.2011 to be more plausible, and if that is so, the entry about female chowkidar Chandrawati Kunwar being member of the police party which went to the applicant's house for raid and arrest in the evening becomes doubtful. Having recorded the statement of the witnesses after recording the fardbeyan and further statement of the informant, and returned to the police station at about 12:30 PM, it is unlikely that they would go back to the village at 5 PM for raid – especially when the applicant's house is situate only 5-6 houses away from the informant's house. The Commission would accordingly hold – agreeing with the applicant – that there was no female constable (or chowkidar) present at the time of her arrest.

The plea that court complaint is pending with respect to the applicant's arrest does not cut any ice. The criminal case may, or may not, end in conviction, whereas the scope of the present proceeding before the Commission is different – involving the question of violation of human rights and therefore the Commission is not inclined to close the matter in view of the pendency of the criminal case.

In the light of the discussions made above the Commission holds that the applicant came to suffer violation of her human rights at the hands of the two officers for which she is entitled to monetary compensation. The Commission also holds that the burden of compensation should be borne by these officers and that they should be subjected to disciplinary proceedings.

In the result, the Commission holds that S.I. Ram Naresh Prasad Singh the then SHO Sahar P.S. (now SHO Charpokhari P.S.) and S.I. Rana Ran Vijay Kumar – the then SHO Chauri P.S. (now SHO Jagdishpur P.S.) – guilty of violating the human rights of the applicant, and upon consideration of their

respective role, directs that they do pay compensation of rupees fifty thousand and twenty-five thousand respectively to the applicant.

S.I. Bhojpur is directed to deduct said amounts from their salaries and pay the same to the applicant. This should be done within six weeks.

S.P. Bhojpur is also directed to initiate disciplinary proceedings against them and take the matter to its logical end.

Put up in the last week of April 2013 awaiting compliance report.

Copy of this order may be sent to (i) applicant (ii) S.P. Bhojpur, Ara (iii) S.I. Ram Naresh Prasad Singh, S.H.O. Charphokhar P.S. district Bhojpur and (iv) S.I. Rana Ran Vijay Kumar S.H.O. Jagdishpur P.S. district Bhojpur for information and compliance as the case may be.

Date: 06.03.2013

Justice S.N. Jha
Chairperson