



WEST BENGAL HUMAN RIGHTS COMMISSION

PURTA BHAVAN (2ND FLOOR)
BLOCK-DF, SECTOR-I, SALT LAKE,
KOLKATA-700 091

PHONE: 2337-2655, FAX: 2337-9633

E-mail: wbhrc8@bsnl.in

Ref. No. 1070 / WBHRC / COM / 2084 / 13-14

Date: 19/03/15

Recommendations No. 28,29,30 & 31/14-15/WBHRC/COM/2084/13-14

From: Shri Laima Chozah, IAS
Secretary & CEO

To: The Chief Secretary,
Government of West Bengal
NABANNA
325 Sarat Chatterjee Street
Howrah, PIN- 711 102,

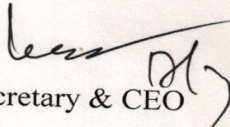
Sir,

I am directed to enclose herewith an authenticated copy of the recommendations dated 16.03.2015 made by the West Bengal Human Rights Commission alongwith the copies of complaint and enquiry report in connection with a complaint of Shri Pradip Karmakar & others. The recommendations are self-explanatory.

Action taken or proposed to be taken by the Government on the recommendations may please be intimated to the Commission.

Enclosure: As stated above.

Yours faithfully


Secretary & CEO

o/c

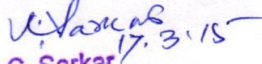
West Bengal Human Rights Commission,
Purta Bhavan, 2nd Floor, Salt Lake, Kolkata – 700 091.

File No. 2084/WBHRC/Com/13-14

Present

- | | |
|-----------------------------|--------------------|
| 1. Shri Naparajit Mukherjee | Acting Chairperson |
| 2. Shri M. S. Dwivedy | Member |

A complaint was received by fax on 19.03.2014 addressed to the Acting Chairperson, West Bengal Human Rights Commission from (1) Pradip Karmakar, son of Prafulla Karmakar of Matigara, (2) Toton Ghosh, son of Netai Ghosh of Matigara and (3) Monoranjan Kabiraj (Paran) son of Jagadish Kabiraj of Matigara stating that the above mentioned three persons on 15.03.2014 went to Alipurduar to stay with their friends. On way back at around 05:30 P.M. while they were travelling in a Maruti Van some Civic Police personnel of Ghoksadanga Police Station prevented their movement and stopped them on the way. They further alleged that these Civic Police personnel in order to search them brought them to the local Police Station. At the Police Station they forcibly conducted search and when nothing discriminating was found these police personnel put them in the lock up. Thereafter, the O.C. came to the lock up and said that these persons will have to pay Rs. 20,000/-. In case they paid the amount no case would be started against the three petitioners. It was further alleged by the petitioners that the O.C. threatened them to book them in a "Ganja case" if they made hue and cry about their detention. The petitioners were detained in the lock up between 7 P.M. till 4 A.M. next morning and after they paid Rs. 20,000/- they were released. The petitioners wanted proper enquiry into the matter.

Authenticated

 N. C. Sarkar 17.3.15
 Assistant Secretary
 W.B. Human Rights Commission

2. The Commission took cognizance of the matter and called for a report from the Superintendent of Police, Cooch Behar within six weeks from the date of communication of the order.

3 The Addl. Superintendent of Police, Cooch Behar, Shri S. Dutta, IPS, submitted his report dated 10.12.2014 to the Superintendent of Police, Cooch Behar who duly forwarded it on the same day and was received by the Commission on December 17, 2014. The Addl. Superintendent of Police, Cooch Behar, during the course of its enquiry examined the three petitioners, namely, Pradip Karmakar, son of Prafulla Karmakar, Pankaj Kumar Ghosh, son of Netai Ghosh and Monoranjan Kabiraj son of Jagadish Kabiraj who corroborated all the allegations made in their petition submitted to the Hon'ble Human Rights Commission. The Addl. Superintendent of Police, in his enquiry report, further stated that he enquired from the petitioners whether they were sent for medical examination by police or not. The petitioners told them that no medical examination was conducted on them. The enquiry report further stated that according to the documents available at the Ghoksadanga Police Station, following facts were ascertained.

(a) Vide G.D. Entry No. 1034 dated 15.03.2014, it is seen that Radio Telephony(RT) Mobile Officer ASI Gobinda Das and ASI Chandan Barman returned to the Police Station after performing mobile duty and brought with them Pradip Karmakar, son of Prafulla Karmakar, Pankaj Kumar Ghosh son of Late Netai Ghosh and Monoranjan Kabiraj son of Jagadish Kabiraj. They were brought to the Police Station as they were creating nuisance under influence of liquor. So they were arrested under Section 42 Cr.PC with a view to prosecute them under Section 290 IPC. Thereafter, they were taken to Ghoksadanga BPHC for medical examination and copies of the medical examination were enclosed with the enquiry report of the Addl. Superintendent of Police, Cooch Behar.

Authenticated
17.3.15
N. C. Sarkar
Assistant Secretary
W.B. Human Rights Commission

(b) Vide G.D. Entry No. 1035 dated 15.03.2014 they were released on bail after being prosecuted under Section 42 Cr.PC/290 IPC vide Ghoksadanga PS Non-FIR CR No. 261/14 dated 15.03.2014. As per medical reports it was observed that they were intoxicated (Comments- on perusal of the enclosed medical report there is no mention of intoxication or level of alcohol in blood. It is simply mentioned that those three persons were smelling of liquor which did not conclusively prove that they were intoxicated. Thus the observation of the Addl. Superintendent of Police is not accepted) The petitioners stated that they were detained in the lock up and the O.C. demanded money from them and when they agreed to pay, they were let off from the Police Station and they came to collect the money from one Kamal Poddar of Balasundar who is the uncle of Monoranjan Kabiraj. The petitioners further stated that after collecting money, they handed it over to one unknown person in civil clothes, who claimed to be the representative of O.C. Ghoksadanga Police Station. The petitioner claimed that they were brought to the Police Station by Civic Police Volunteers.

(c) The Addl. Superintendent of Police, Cooch Behar brought out two discrepancies as per statements of the petitioners with available documents of the Police Station. The allegation that the petitioners were brought to the Police Station by Civic Police Volunteers could not be substantiated as per G.D. of the Police Station and it was seen that they were brought to the Police Station by evening Mobile Duty Officers.

(d) The petitioners claim that they were not medically examined was not substantiated as copies of medical examination report are enclosed with the report of the Addl. Superintendent of Police

4 The Addl. Superintendent of Police stated in his report that he examined Kamal Poddar son of Late Satya Charan Poddar of Balasundar West,

Authenticated
N. C. Sarkar
Assistant Secretary
W.B. Human Rights Commission
17.3.15

PS- Ghoksadanga who stated that Monoranjan was his nephew and on that night of incident Monoranjan called him up and asked to give him Rs. 20,000/- .After sometime Monoranjan alongwith two of his friends and one unknown man came to his house and took Rs. 20,000/-

5 The Addl. Superintendent stated that he examined ASI Gobinda Das of Ghoksadanga Police Station who claimed that on the evening he was on RT Mobile duty and O.C. asked ASI to go to Balasundar in two separate teams as source information has been received by the O.C. that three persons had come to Balasundar in a vehicle for some clandestine work and subsequently, he went to the Balasundar where he saw a vehicle and three men in Balasundar market area in drunken condition. On search of the vehicle nothing objectionable was found but the men could not give any logical reply as to what they were doing there. ASI Gobinda Das informed the O.C. over phone and as per instruction of the O.C. they brought those three persons to the Police Station and diarised the matter.

The Addl. Superintendent of Police also examined ASI Chandan Barman who stated that he had joined Ghoksadanga Police Station on 03.03.2014 and on 15.03.2014 he was asked by the then O.C. to go to Balasundar as O.C. had some information about "ganja" being smuggled in a vehicle. ASI Chandan Barman reached Balasundar when he saw that R.T. Mobile Officer ASI Gobinda Das had already reached Balasundar and had detained the vehicle. On search, nothing suspicious was found and as the three men were in drunken condition, they were brought to the Police Station.

6 The Addl. Superintendent of Police in his conclusion stated that the petitioners claimed that they were illegally detained and the O.C. Ghoksadanga Police Station asked them to pay Rs. 20,000/- for their release. He concludes that the three petitioners were brought to the Police Station for creating public nuisance under influence of liquor and prosecuted under Section 42

Authenticated
N. C. Sarkar
Assistant Secretary
W.B. Human Rights Commission
3/15

Cr.PC/290 IPC vide Ghoksadanga P.S. Non-FIR CR No. 261/14 dated 15.03.2014.

7. The enquiry report was meticulously examined by the Commission and lots of discrepancies were found in the enquiry report, the medical examination report as supplied by the Addl. Superintendent of Police, G.D. Entry and the complaint. It was decided to hear Sri Dipojjal Bouimick, the then O.C. Ghoksadanga Police Station, ASI Gobinda Das and ASI Chandan Barman, both of Ghoksadanga Police Station under Section 16 of Protection of Human Rights Act.

8. On 09.03.2015 all the above mentioned Officers appeared before the Commission and their statements under their signatures were duly recorded. Sri Dipojjal Bhoumick, currently O.C. POWC, Cooch Behar who was the O.C. Ghoksadanga Police Station on 15.03.2014 stated that on 15.03.2014 at around 07:30 P.M. while he was on duty in the Police Station he received an information over his mobile phone from a member of public that some persons in a vehicle were roaming in Balasundar area suspiciously. He claimed that the information which he had received disclosed that 'ganja' might be in the vehicle for the purpose of transportation and supply. ASI Gobinda Das who was on RT Mobile duty was asked to verify the information which the O.C. had received and the ASI Gobinda Das attended to the information and brought three persons and their vehicle from Balasundar. He informed the O.C. that he has searched the vehicle and three persons, namely, (1) Pradip Karmakar, (2) Pankaj Kumar Ghosh and (3) Monoaranjan Kabiraj. On search, ASI Gobinda Das disclosed that he did not get any contraband article or ganja. He further stated that the three persons in intoxicated condition were creating nuisance

Authenticated
N. C. Sarkar
Assistant Secretary
W.B. Human Rights Commission

and there was also public gathering because of nuisance created by them. On getting this information, the O.C. directed ASI Chandan Barman who was on case investigation duty, to proceed to Balasundar and assist ASI Gobinda Das. The O.C. stated that he did not follow the provision of Section 50 of N.D.P.S. Act for conducting search of the vehicle or the three persons against whom the information was received nor did he ask ASI Gobinda Das or ASI Chandan Barman to follow the procedure laid down under Section 100 of Cr.PC for conducting such search. There is no mention of nomenclature of the vehicle or registration number of the vehicle in which the three persons were travelling. There is no mention as to who was driving the vehicle. Name of another person Chandan Barman, son of Late Promnotho Nath Barman resident of Phulbari which is 2/3 Kilometers away from Balasundar(Place of occurrence) has been mentioned in the report before whom nuisance was being created by the three persons. The O.C. stated that no enquiry was conducted to ascertain the actual name other than whatever the names which was disclosed. All the three arrested persons were medically examined by the doctor and thereafter brought to the Police Station and were taken into custody on account of their being arrested. The O.C. claimed that it was not a fact that the three persons were arrested by Civic Police nor that Rs. 20,000/- was demanded or threat was issued to them that they would be booked in 'ganja' case unless Rs. 20,000/- was given. He also denied that Rs. 20,000/- taken from Kamal Poddar was handed over to an individual who was one of his representatives in civil clothes. He also denied having any knowledge of Kamal Poddar of Balasundar.

Authenticated
N. C. Sarkar
Assistant Secretary
W.B. Human Rights Commission
17.3.15

The witness clarified that ASI Gobinda Das was on RT Mobile duty while ASI Chandan Barman was investigating a case and thus went separately but returned to the Police Station together. The witness further stated that the vehicle in which the three arrested persons were travelling was brought to the Police Station and most probably(guess work) it was driven by one of the member of the raiding party(he was used the word 'force).

9. Statement of ASI Gobinda Das was recorded who stated that he is currently posted in Ghoksadanga Police Station and on 15.03.2014 he was on RT Mobile duty and left the Police Station at 2:10 P.M. which was recorded in the G.D.E. He stated that the O.C. Sri Dipojjal Bhoumick directed him over his mobile phone that three persons were roaming in Balasundar suspiciously in a vehicle and to work out this information. ASI Gobinda Das found Pradip Karmakar, Pankaj Kumar Ghosh and Monoranjan Kabiraj in Balasundar area creating 'hullah' and one Maruti Van was standing beside them. Pradip Karmakar and Pankaj Kumar Ghosh were lifted in the Police vehicle and Monoranjan Kabiraj drove that Maruti Van. Constable Babla Barman and Khiti Roy with arms sat in Maruti Van which was driven by Monoranjan Kabiraj(arrested person). He stated that they allowed Monoranjan Kabiraj to drive the vehicle as none of the police party had any knowledge of driving the vehicle. ASI Gobinda Das stated that they did not search the arrested three accused person but they conducted search of the vehicle and found nothing objectionable. He neither recorded the names of members of public before whom search was made nor nil report of search was prepared by him. The

Authenticated
N. C. Sarkar
Assistant Secretary
W.B. Human Rights Commission
17.3.15

witness further stated that it was his sheer guess work that the three persons gave false name but from verification by surety he got names disclosed to him correct. Under instruction of the O.C. Dipojjal Bhoumick, P.R. under Section 290 IPC read with Section 42 Cr.PC was issued. ASI Gobinda Das claimed that he has never conducted search for "ganja" independently. He claimed that the O.C. had instructed him that in case 'ganja' was not found then he (O.C.) should be informed. The witness further claimed that the vehicle was searched within duration of 2/3 minutes while it took 10 minutes for interrogation of three persons. The witness also claimed that the three persons were kept in Thana Lock up for 45 minutes and that no Civic Police Volunteers arrested them. He denied any knowledge whether the O.C. demanded Rs. 20,000/- or that sum was paid. He claimed that Dr. Dipankar Das had examined three arrested persons, namely, Pradip Karmakar, Pankaj Kumar Ghosh and Monoranjan Kabiraj at Ghoksadanga Block Primary Health Centre on 15.03.2014 at 10:05 P.M.

10. Statement of ASI Chandan Barman of Ghoksadanga Police Station was recorded. He stated that on 15.03.2014 he was posted at Ghoksadanga Police Station. Between 5:00 to 5:15 P.M. the O.C. of Ghoksadanga Sri Dipojjal Bhoumick informed him over mobile phone that in Phulbari area 'ganja' might be smuggled secretly in one vehicle. Immediately he left Ghoksadanga alongwith two Constable in a Police vehicle for Phulbari. He stated that he was asked to stand near "Moranga side bifurcated road". About 6:45 P.M. O.C. informed him that vehicle had just passed and he should move at Balasundar

Authenticated
N. C. Sarkar
Assistant Secretary
W.B. Human Rights Commission
17.3.15

where ASI Gobinda Das was present. Accordingly, the witness went to Balasundar and he found that ASI Gobinda Babu detaining one Maruti Van along with three persons who were using abusive languages to Police for wrongly detaining them. He did not search the detained persons. Among the three arrested persons one of them drove the Maruti Van whose name he could not remember. One Constable sat in the vehicle. They were examined medically at Balasundar B.P.H.C. at 8:30 to 9:00 P.M. On arrival at the Police Station along with the arrested persons he left the Police Station immediately after informing the O.C. Thus, he does not have any further knowledge.

Findings:

After perusing the petition, enquiry report of Addl. Superintendent of Police submitted through the Superintendent of Police Cooch Behar and the statements of S.I. Dipojjal Bhoumick, the then O.C. Ghoksadanga Police Station, ASI Gobinda Das and ASI Chandan Barman both of Ghoksadanga Police Station, the Commission is of the opinion that the three persons namely, (1) Pradip Karmakar, (2) Pankaj Kumar Ghosh and (3) Monoranjan Kabiraj were detained by the Police at Balasundar for search and subsequently they along with their vehicle were taken to the Police Station where they were put inside the lock up and a case under Section 290 IPC (for public nuisance) was started while the arrest was made under Section 42 Cr.PC which basically is a provision for arrest of an accused person in a non-cognizable offence for giving false name and address to the Police.

Authenticated
N. C. Sarkar
Assistant Secretary
W.B. Human Rights Commission
17.3.15

There are a number of discrepancies in the report of Addl. Superintendent of Police and the statements of witnesses as recorded in the Human Rights Commission under their signatures. SI Dipojjal Bhoumick, the then O.C. Ghoksadanga Police Station stated that he received information about smuggling of 'ganja' which is a narcotic substance and its search, seizure etc are guided under provisions of Section 50 of N.D.P.S. Act. The O.C. being a senior officer failed to follow the procedure laid down under Section 50 of N.D.P.S. Act. Instead without diarizing the fact of receipt of information by him he chose to send ASI Gobinda Das to work out the information along with some Constables to Balasundar. No Gazetted Officer or Magistrate was informed about this serious information for taking appropriate action. ASI Gobinda Das also did not follow the provision of 100 Cr.PC which is an alternative to Section 50 of N.D.P.S. Act to be used under specific circumstances. ASI Gobinda Das did not prepare any 'nil report' of seizure as on search he found nothing objectionable in the vehicle. He did not search the body of the persons.

ASI. Gobinda Das claimed that the three persons gave false names and addresses for which they were arrested under Section 42 Cr.PC and brought to the Police Station. However, in the General Diary or Arrest Memo or any other documents there is not an iota of information that the names and addresses given by the three arrested persons were false or that the arresting Officer made any effort to ascertain the real names and addresses. On the contrary, he accepted whatever names and addresses were given duly diarised, issued

Authenticated
N. C. Sarkar
Assistant Secretary
W.B. Human Rights Commission
17.3.15

arrest memo, issued PR and also the three persons furnished bail bond as per names disclosed to arresting Officer. Thus the very fact that he arrested the three persons under Section 42 Cr.PC was illegal and wrong on the part of ASI Gobinda Das.

ASI Gobinda Das claimed that they were in intoxicated condition and had created nuisance in public. However, the medical report suggests that there was only smell of alcohol. The medical examination report of only Manoranjan Kabiraj is available with enquiry report of Addl. Superintendent of Police. Further no blood level alcohol test was done to show that they were intoxicated.

There is no available witness or any instance quoted in the PR or the G.D. about the nature of nuisance they were creating in a public place. It is simply mentioned that they were creating nuisance which is not enough to prosecute those persons under Section 290 IPC which is basically a non-cognizable offence.

Furthermore, ASI Gobinda Das stated that the vehicle was seized and brought to the Police Station which was driven by Monoranjan Kabiraj who was one of the arrested accused in an intoxicated condition. It is not understood why seizure memo was not made of the seized vehicle and its release order was not obtained from the Court. Besides, the Commission is at a loss to understand how an intoxicated person was allowed to drive a vehicle from Balasundar to Ghoksadanga Police Station by an accused person which is not only illegal but is fraught with danger and against the provisions of Section 185 of Motor Vehicle Act, 1988.

Authenticated
N. C. Sarkar
Assistant Secretary
W.B. Human Rights Commission
17.3.15

It was again highly illegal to detain the three accused persons in the lock up which was admitted by ASI Gobinda Das in his statement before the Commission. There are a lot of discrepancies in the statements of the O.C. Dipojjal Bhoumick and that of ASI Gobinda Das as well as ASI Chandan Barman and the enquiry report of Addl. Superintendent of Police.

The O.C. Dipojjal Bhoumick Claimed that as ASI Gobinda Das from the place of occurrence informed him that he found three persons in intoxicated condition creating nuisance, he instructed ASI Chandan Barman, who was on investigation duty to assist ASI Gobinda Das. ASI Chandan Barman stated that he with two Constables went out from the Police Station being instructed by O.C. at about 5:00 to 5:15 P.M. On 15.03.2014 as per order of the O.C. he was at Moranga side near Phulbari to intercept a vehicle which might be smuggling ganja. Around 6:45 P.M. as per statement of Chandan Barman he was informed that the vehicle already passed. So he had to move to Balasundar where ASI Gobinda Das was. This statement indicates the falsity of the statement of O.C. Dipojjal Bhoumick who stated getting information of alleged public nuisance created by three accused persons from ASI Gobinda Das, he sent ASI Chandan Barman to assist ASI Gobinda Das Thus there appears to be a major discrepancy in the statement of O.C. and that of ASI Chandan Barman on this score.

ASI Chandan Barman also stated that on going to the spot he found three persons, one Maruti van and those three persons were using abusive languages against the Police for wrongly detaining them. ASI Chandan Barman

Authenticated
N. C. Sarkar
Assistant Secretary
W.B. Human Rights Commission
17.3.15

is not corroborating the statement of ASI Gobinda Das and that of the O.C. that the three persons in intoxicated condition were creating 'hulla' at Balasundar for which they were arrested. ASI Chandan Barman corroborated the fact that one of the three accused persons drove the Maruti van to the Police Station and that they were medically examined at B.P.H.C. between 8:30 to 9:00 P.M. on the same date.

Unfortunately, the medical report submitted along with the enquiry report of Addl. Superintendent of Police is very sketchy and the name of the doctor is illegible. Time of examination is not mentioned nor examination of blood alcohol level to substantiate the charge that the three accused persons were intoxicated.

Also the Enquiring Officer failed to bring out the fact that the Maruti van was seized by the Police and brought to the Police Station being driven by an arrested person in intoxicated condition and there is no mention of the release of Maruti van.

The General Diary of the Police Station does not carry this fact as well as the registration and nomenclature of the Maruti van which is a serious lapse on the part of the local Police.

Sub Inspector Dipojjal Bhoumick, the then O.C. Ghoksadanga Police Station has admitted in his statement that no enquiry was conducted to ascertain the actual names/addresses other than the names disclosed to the Police while conducting the arrest and later names were recorded in all relevant Thana forms and registers.

Authenticated
N. C. Sarkar
Assistant Secretary
W.B. Human Rights Commission
17.3.15

He also admitted that the provisions of Section 50 N.D.P.S. Act or alternatively that of 100 Cr.PC were not followed by the Arresting Officer. ASI Gobinda Das or ASI Chandan Barman and that he did not ask the two ASIs to follow the provision of 100 Cr.PC as no Gazetted Officer was available at that point of time.

As per SI Dipojjal Bhoumick, the then O.C. name of only one public witness, Chanchal Barman, son of Late Promoto Nath Barman, resident of Phulbari (which is 2/3 K.M. away from Balasundar place of occurrence) has been mentioned in the report before whom search was conducted who witnessed nuisance being created by the three persons.

The report of Addl. Superintendent of Police indicates that Monoranjan Kabiraj, one of the accused persons called Kamal Poddar, son of Late Satya Charan Poddar of Balasundar West, PS-Ghoksadanga who is the nephew and asked him to give Rs. 20,000/- Later, this amount was delivered to Monoranjan Kabiraj who came to Kamal Poddar's house at night along with his two friends and one unknown person. Although the fact that sum of Rs. 20,000/- was given by Kamal Poddar to one of the three arrested persons yet it could not be clearly substantiated whether the same amount was given to the O.C. as per his alleged demand. However, there is a needle of suspicion pointing towards Ghoksadanga Police on this score though not substantiated.

After analyzing all the facts as well as result of enquiry by Addl. Superintendent of Police, Cooch Behar, Thana Medical records and statements of three witnesses examined by the Human Rights Commission, the

Authenticated
N. C. Sarkar
Assistant Secretary
W.B. Human Rights Commission
7.3.15

Commission is of the view that ASI Gobinda Das is primarily responsible for illegal detention of the three persons under Section 290 IPC read with Section 42 Cr.PC. Plain reading of Section 290 IPC "whoever commits a public nuisance in any case not otherwise punishable by this code shall be punished with fine which may extend to Rs. 200/=" This is non-cognizable Section. The word public nuisance is defined in Section 268 IPC which necessarily means that it should cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

Section 42 Cr.PC lays down procedure for arrest of a person in a non-cognizable offence for refusal to give name/address or the police officer who has reason to believe that he has given a false name/address he may be arrested to ascertain correct name /address. When such true name/address is ascertained he may be released with or without surety. There is no iota of evidence in hand of the ASI Gobinda Das to substantiate the charge that they gave false names and addresses to the police.

Also claim by the police that they were creating nuisance in public is not substantiated in the GD, PR as well as the statement of the Police Officers itself rather ASI Chandan Barman stated that they were protesting against Police for their wrongful detention.

Further, the order sheet of Ld. Magistrate, Matabhanga Court reference NGR 321/14 dated 15.03.2014 states that the arrested persons were released from bail and case dropped or they were discharged. This goes to show that Ld. Magistrate was convinced that police case was wrong.

Authenticated
N. C. Sarkar 17.3.15
Assistant Secretary
W.B. Human Rights Commission

The police thus wrongly arrested them under Section 42 Cr.PC and should have released them on personal recognizance (without surety) but did not do so.

There is no public witness available with police to substantiate their charge. The medical examination report is very sketchy as it does not indicate the time of medical examination & the blood level alcohol although, the police are claiming that they were intoxicated. This leads to presumption by the Commission that probably the medical reports were fabricated subsequently on complaints being made to the Commission by petitioners. This suspicion is furthermore strengthened by the fact that an "intoxicated person" was allowed to drive the Maruti vehicle from Balasundar to Ghoksadanga Police Station by the arresting Officer despite knowing that they were intoxicated condition and violating Section 185 of Motor Vehicle Act.

The charge that they were arrested by Civic Police Volunteers was not substantiated during enquiry. Also the allegation about the demand of Rs. 20,000/- by the O.C. for their release could not be fully substantiated though during enquiry it came to light that one Kamal Poddar, the uncle of Monoranjan Kabiraj had given Rs. 20,000/- to the three arrested persons who came to his house along with one unknown person.

The Commission is constrained to observe that the three persons namely, (1) Pradip Karmakar, (2) Pankaj Kumar Ghosh and (3) Monoranjan Kabiraj were illegally arrested by the Police in a non-cognizable offence punishable under Section 290 IPC for alleged public nuisance though no

Authenticated
N. C. Sarkar
Assistant Secretary
W.B. Human Rights Commission
17.3.15

public witnesses are available, kept in the lock up for quite sometime and were subsequently released. Police also seized their vehicle (Maruti Van) without preparing any seizure/memo and there is no record whatsoever done about their vehicle.

Further, the police (ASI Gobinda Das) allowed an intoxicated arrested person" to drive the seized vehicle from place of occurrence to Police Station. Unfortunately, the Addl. Superintendent of Police, being a senior officer failed to bring out such important facts during his enquiry.

Recommendation

In view of the above, the Commission makes the following recommendations:-

- (a) Departmental Proceedings be drawn up against SI Dipojjal Bhoumick, the then O.C. Ghoksadanga Poilice Station and ASI Gobinda Das of Ghoksadanga Police Station for illegal arrest of (1) Pradip Karmakar, (2) Pankaj Kumar Ghosh and (3) Monoranjan Kabiraj and detention of their vehicle and allowing an intoxicated accused person to drive the seized vehicle from place of occurrence to Ghoksadanga Police Station violating the Section 185 of Motor Vehicle Act.

Also, despite getting information about possibility of narcotic substance provision of 50 N.D.P.S. Act was not followed priorating the order of search by SI Dipojjal Bhoumick, the then O.C. Ghoksadanga Police Station.

Authenticated
N. C. Sarkar
Assistant Secretary
W.B. Human Rights Commission
17.3.15

(b) A compensation to the tune of Rs. 24,000/- (Rupees Twenty four thousand) only be given to the three arrested persons, namely, (1) Pradip Karmakar, son of Prafulla Karmakar (2) Pankaj Kumar Ghosh, son of Late Netai Ghosh and (3) Monoranjan Kabiraj, son of Jagadish Kabiraj all of Matigara district Darjeeling @ Rs. 8,000/-. Further Rs. 24,000/- be deducted from the salary of SI Dipojjal Bhoumick and ASI Gobinda Das of Ghoksadanga Police Station @ of Rs. 14,000/- from the salary of SI Dipojjal Bhoumick and Rs. 10,000/- from the salary of ASI Gobinda Das for asforesaid payment of compensation.

The Commission does not hold guilty ASI Chandan Barman as he came to the Police Station at a later stage and was not involved in the entire processes.

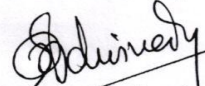
(c) The Commission requests the DGP, WB, to circulate and hold Training Classes for OC and Sub Inspector of the Police Stations regarding procedure to be followed for arrest under N.D.P.S. Act. and also not to make frivolous arrest in connection with Section 290 IPC read with Section 42 Cr.PC which are basically non-cognizable in nature.

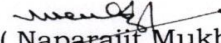
(d) Addl. Superintendent of Police, Cooch Behar, the Enquiring Officer did not conduct a thorough probe which left lots of gaps in the enquiry report. He should be properly advised by the DGP. Also instructions contained in DGP, WB, Memo 1686(29) Adm/HRC dated 25.03.2013 which is the SOP for conducting enquiring on complaints from

Authenticated
N. C. Sarkar
Assistant Secretary
W.B. Human Rights Commission
7.3.15

NHRC/SHRC should be strictly adhered to. A suitable directions to this effect be issued by DGP, WB.

11. The action taken report may kindly be communicated to the Commission.


(M. S. Dwivedy)
Member


(Napanarajit Mukherjee)
Acting Chairperson

Dated: March, 2015

Encl: A) Copy of petition submitted by 1) Pradip Karmakar
2) Toton Ghosh and 3) Monoranjan Kabiraj.

B) Enquiry Report of the Addl. Superintendent of Police, Cooch Behar
Along with all enclosures including copy of G.D. Entry and
Medical examination report/order sheet of Ld. Magistrate.

Authenticated


N. C. Sarkar
Assistant Secretary
W.B. Human Rights Commission

SDB