



WEST BENGAL HUMAN RIGHTS COMMISSION

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Ref. No. 152/WBHRC/COM/98/13-14

Date: 16.7.14.

Recommendations No. 03, 04, 05, 06, 07 & 08/14-15/WBHRC/COM/98/13-14

From: Shri Laima Chozah, IAS
Principal Secretary & CEO

To The Chief Secretary,
Government of West Bengal
"NABANNA",
325, Sarat Chatterjee Road,
P.S. Shibpur, Howrah-711 102.

Sir,

I am directed to enclose herewith an authenticated copy of the recommendations dated 01.07.2014 made by the West Bengal Human Rights Commission in connection with a complaint of Smt. Mina dutta, w/o- Shri Ajit Kr. Dutta, 6, Maydibas Pally, P.S. Belghoria, Kolkata - 700035. 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 within three months from the date of communication.

Enclosure: As stated above.

Yours faithfully

(Laima Chozah)
Principal Secretary & CEO

o/c

WEST BENGAL HUMAN RIGHTS COMMISSION
KOLKATA

File No. - 98/WBHC/Com/2013-14

Present:

1. Mr. Naparajit Mukherjee - Acting Chairperson.
2. Mr. Mani Shanker Dwivedy - Member.

INITIATION

The instant proceeding has been started on the basis of complaint filed by one Smt. Mina Dutta, wife of Shri Ajit Kr. Dutta, aged about 58 years resident of 6, Maydibas Pally, P.S. – Belgharia, Kolkata-700035 on the allegation of atrocities of police of Uttarpara P.S in the district of Hooghly, West Bengal.

THE CASE

The complaint was received from the petitioner Smt. Mina Dutta addressed to the then Chairperson, West Bengal Human Rights Commission Justice A.K.Ganguly on 26-04-2013 with the allegation that Shri Swagato Biswas, who happens to be the son-in-law as well as the husband of her daughter namely Smt. Mahua Biswas had filed a complaint before the court u/s 156(3) Cr.P.C against the petitioner and her daughter and three others with the offence u/s 323/341/380/406/506/120B I.P.C. The court has been pleased to admit it and sent to Uttarpara P.S for starting a case treating the petition as F.I.R. The case has been registered as Uttarpara P.S. case no.89/13 u/s 323/341/380/406/506/120B I.P.C. Uttarpara P.S. arrested the

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petitioner on 27/02/2013 without maintaining any formalities as alleged. She further alleged that she was dragged like a beast during arrest from the apartment and was confined in lock up for several hours. She was produced before the Court on 28.02.13 and was remanded to judicial custody and on 01-03-2013 was released on bail. The other allegation of the petitioner is that the police of Uttarpara P.S did not investigate the case filed by her daughter against Swagato Biswas being no. Uttarpara P.S case no. 125/13 u/s 498(A)/406/420 I.P.C dated 17.3.2013 properly. It has also been alleged that the charge-sheet was filed against the Swagato Biswas showing him as an absconder.

Action Taken

The cognizance of the matter was taken by the then Chairperson, Justice (Retd.) A.K. Ganguly on 30-4-2013 and a report was called for from Supdt. of Police, Hooghly. The enquiry was conducted by S.D.P.O, Serampore as per the order of the S.P. The S.P, Hooghly forwarded the enquiry report of Shri Raj Narayan Mukherjee, S.D.P.O., Serampore, Hooghly which was received by the Commission on 25-11-2013. Relying upon the enquiry report, the commission issued a notice to S.I Sudipta Mukherjee, S.I Nazrul Islam and I.C Priyabrata Bakshi as per the provision of sec. 16 of the Protection of Human Rights Act, 1993 (as amended in the year 2006). The statement of S.I Sudipta Mukherjee, S.I Nazrul Islam and I.C Priyabrata Bakshi was recorded on 31.3.2014.

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Complaint has been examined mainly on two points:

- i) Whether any atrocities have been committed by S.I Sudipta Mukherjee alleged to be in possession of Mahua Biswas and could not secure any injury report relating to Swagato Biswas. Thus, it is presumed that there was no truth in the
- ii) Whether there was any negligence in investigating the case being no. 125/13.

The fact finding report further states that Mina Dutta was arrested on 27.2.2013

Discussion

The fact finding report of the S.D.P.O. on this incident showed that a complaint was filed by Swagato Biswas u/s 156(3) Cr.P.C. in Court which was subsequently sent to Uttarpara P.S. and on the basis of Court's order and petition Uttarpara P.S. Case No.89/13 was started u/s 323/341/380/406/506/120B I.P.C against Mahua Biswas (wife of Swagato Biswas) and Mina Dutta (mother-in-law of Swagato Biswas) and three others. Swagato Biswas suppressed in his petition u/s 156(3) Cr.P.C. the fact that Mahua Biswas is his wife and Mina Dutta is his mother-in-law. The main allegation was that Swagato Biswas entrusted some valuable documents like bank pass book, cheques, etc. to Mahua Biswas and in spite of several requests she refused to return those documents conspiring with the above noted accused person. Further, Swagato Biswas alleged that he was assaulted leading to bleeding injuries. Further more, Mina Dutta in connivance with three others snatched the complainant's mobile phone and Rs.2000/- in cash and threatened to kill him.

The I.O. ASI Sudipta Mukherjee, Uttarpara P.S. Hooghly recorded statements of three local witnesses Prabir Ghosh, Nilesh Chatterjee and Swapan Roychowdhury

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all of them specifically mentioned that it was a family dispute between Swagato Biswas and his wife Mahua Biswas. I.O. failed to seize any documents which are alleged to be in possession of Mahua Biswas and could not secure any injury report relating to Swagato Biswas. Thus, it is presumed that there was no truth in the allegations of Swagato Biswas.

The fact finding report further states that Mina Dutta was arrested on 27-2-2013 although the witness statement do not refer to Smt. Mina Dutta or Smt. Mahua Biswas supporting the allegations of the complainant. The I.O. only recorded three statements with no seizure and the witnesses denied any knowledge about the allegations i.e. arrest of Mina Dutta done by I.O., ASI Sudipta Mukherjee. The fact finding report suggests that the arrest of Mina Dutta by I.O., ASI Sudipta Mukherjee was not properly made in view of relevant laws. The allegations of criminal breach of trust u/s 406 IPC and intimidation u/s 506 IPC could also not be substantiated although the I.O. Sudipta Mukherjee submitted charge sheet no.103/13 dt.22-3-2013 u/s 406/506 and 120B IPC against Mahua Biswas and Mina Dutta. Further, the I.O. ignored the instruction of I.C. Uttarpara P.S. issued vide I.O.B.(investigation order book) no.60/13 dt.22-2-2013 to examine local witnesses and record their statements and to collect injury report of the complainant. In the complaint of Smt. Mina Dutta, it is mentioned that on 26-2-2013 some unknown persons in civil dress went to her house. The fact finding report further mentioned that ASI, Sudipta Mukherjee of Uttarpara P.S., Hooghly went to the house of Smt. Mina Dutta in civil dress knowing fully well that she was the mother-in-law of Swagato Biswas, the complainant of the F.I.R.

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Regarding Uttarpara P.S. case no.125/13 dt.17-3-2013 u/s 498A/406/420 IPC investigated by SI Nazrul Islam of Uttarpara P.S., Hooghly on complaint of Mahua Biswas against her husband Swagato Biswas, it is mentioned in the S.D.P.O.'s report that he (S.I.) failed to arrest the accused person thereby substantiated the allegation of the petitioner Smt. Mina Dutta. The I.O. submitted charge sheet no.180/13 dt.30-4-2013 showing Swagato Biswas as absconder. The enquiry report concludes by holding ASI Sudipta Mukherjee of gross negligence and also holding SI Nazrul Islam responsible for not securing arrest of the accused though the anticipatory bail prayer was refused by Ld Sessions Judge, Hooghly. The S.D.P.O. further recommended in his fact finding report that departmental action may be taken against ASI, Sudipta Mukherjee.

Further, going through this fact finding report and considering the fact that two officers, namely, SI Sudipta Mukherjee and SI Nazrul Islam have been indicted and there are some negligence on the part of I.C., Uttarpara P.S. all three officers were summoned for hearing before the Commission u/s 16 of the Protection of Human Rights Act.

The statement of Sudipta Mukherjee, the then ASI of Uttarpara P.S. (since promoted and now attached to Bhadreswar P.S., Hooghly as S.I.) was recorded. He admitted that he went to Smt. Mina Dutta's house in civil dress without putting uniform though he was aware that Smt. Mahua Biswas was the wife of Swagato Biswas and Smt. Mina Dutta was the mother-in-law. He further stated that Smt. Mina Dutta abused him and asked him to leave the place as her son-in-law (Swagato Biswas) on several earlier occasions sent different types of people and

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harassed her. ASI Sudipta Mukherjee returned to P.S. and reported the matter to I.C. The I.C. instructed him to arrest Smt. Mina Dutta which was done on 27-2-2013. Regarding the I.O.B. issued by I.C., Uttarpara P.S., he (Sudipta Mukherjee) stated that that I.O.B related to collection of injury report. He stated that on instruction of I.C., Uttarpara P.S., he submitted charge sheet on 22-3-2013. He also stated that S.P., Hooghly has not started departmental proceedings though censured him. has been submitted by S.I. Nazrul Islam showing the accused as

absconder. The statement of S.I. Nazrul Islam of Uttarpara P.S., Hooghly who is the I.O. of Uttarpara P.S. case no.125/13 dt.17-3-2013 registered on complaint of Smt. Mahua Biswas against Swagato Biswas was recorded. He stated that he submitted charge sheet on 30.04.2013 u/s 498A/406/420 IPC by the orders of I.C., Uttarpara P.S. showing the principal accused Swagato Biswas as absconder. He had not added Section 174A IPC which relates to punishment for an absconding accused. He stated that he submitted a prayer for issuing warrant of arrest but he was unaware whether such warrant of arrest was at all issued. He admitted that accused prayed for anticipatory bail before the Hon'ble High Court, Calcutta prior to submission of charge sheet. He was well aware about the rejection of bail prayer by the Ld. Sessions Judge, Hooghly and filing of bail prayer before the Hon'ble Court. The accused was yet to be arrested by him. arrested by Ld. Sessions Judge.

The statement of Shri Priyabrata Baksi I.C., Serampore P.S., Hooghly earlier I.C., Uttarpara P.S., Hooghly was recorded in which he stated that the Case No.89/13 dt.20.02.2013 was recorded at Uttarpara P.S. on the basis of Court complaint filed u/s 156(3) Cr.P.C by Swagato Biswas against Mahua Biswas, Mina Dutta and

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three others. He issued one I.O.B. to I.O. ASI Sudipta Mukherjee to examine local witness, record their statements and also collect injury report. He further said "perhaps I told him verbally to arrest the accused". Subsequently, a charge sheet was submitted u/s 406/506/120B IPC but he did not pass any order for submitting charge sheet. Regarding other case i.e. 125/13 dt.17.03.2013 u/s 498A/406/420 IPC on complaint of Smt. Mahua Biswas against her husband Swagato Biswas, charge sheet has been submitted by S.I. Nazrul Islam showing the accused as absconder and has prayed for warrant of arrest. He admitted that the accused submitted prayer for anticipatory bail in the Court of Ld. Session Judge, Hooghly which has since been rejected. He has no knowledge of similar petition being filed in Hon'ble High Court, Calcutta.

8. From the above, it is analysed that the S.I. Sudipta Mukherjee and S.I. Nazrul Islam are both responsible for gross negligence in discharging their official duties and violating Human Rights of the petitioner. This is especially true in the case of Smt. Mina Dutta who was arrested and a charge sheet was submitted despite the fact that there was no evidence to substantiate the allegations. S.I. Nazrul Islam failed to arrest the accused person although it was a serious case of cruelty against the wife (498A IPC) and did not take proper steps. This is despite the fact that anticipatory bail petitions was rejected by Ld. Sessions Judge, Hooghly. Also there was lax supervision on the part of I.C. Priyabrata Bakshi.

The moot question arises out in this proceeding is that whether any violation of human rights has been caused in terms of arrest of the petitioner in c/w case no. 89/13. The arrest of the petitioner is admitted and the negligence of S.I Sudipta

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Mukherjee has well been established in forwarding the accused/petitioner before the court. The forwarding report in terms of sec. 157 Cr.P.C shows that the I.O has concealed the relationship of the accused with the complainant. There is no doubt that the intrusion of police in a house for arrest may cause degradation of a person and affects the dignity. It also revealed that the petitioner was confined in P.S custody for several hours.

Considering all facts and circumstances and relying on the documents as well as discussion

That ASI (now S.I) namely Sudipta Mukherjee has caused gross negligence as well as violation of the right of the petitioner by not complying with express provision of sec. 41(ii)(b) and 41A Cr.p.c.

The commission further holds the view that other two officers namely Priyabrata Bakshi and Nazrul Islam abetted perfunctory investigation.

Conclusion

The Commission, therefore, recommends

- i. A departmental proceeding be immediately be started against S.I. Sudipta Mukherjee for submitting false charge sheet and wrongfully arresting Smt. Mina Dutta , who was remanded to Jail Custody deliberately flouted the express legal provisions of Section 41(ii)(b) & 41A Cr.P.C. as recently amended regarding arrest of accused persons charged of offence having prescribed punishment upto 7 years.
- ii. S.I. Sudipta Mukherjee who has recently been promoted from the rank of ASI admitted that he has no experience or training in investigation

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since he has worked in armed battalion. It is, therefore, also recommended that he be sent on special training and not given a post relating to investigation for the next two years.


iii. It is recommended that ASI, Sudipta Mukherjee now Sub Inspector posted in Serampore P.S., Hooghly may pay a compensation to the tune of Rs.10,000/- (Rupees ten thousand) considering the mental agony and humiliation suffered by Smt. Mina Dutta following departmental proceedings from his salary.

iv. I.C. Priyabrata Baksi of Serampore P.S., S.I Nazrul Islam of Uttarpara P.S in the district of Hooghly be cautioned to work in a conscientious manner and perform their duty and supervision properly. Further, it is suggested that in those Police Stations which are handled by Inspector level officers orders for submitting charge sheet/orders should be given by the controlling SDPO/Dy.S.P.

v. The Commission wants to place on record its deep sense of appreciation for Shri Raj Narayan Mukherjee, Sub Divisional Police Officer for submitting a truthful and excellent fact- finding report. It is recommended that this appreciation be recorded in his P.A.R. and also the appreciation may be circulated through West Bengal and Kolkata Police Gazettes.

vii. Government may consider issuing a circular to all CPs/SPs/O.Cs/DIG Range/IG Zone regarding express provisions of arrests (for offences having punishment upto 7 years) as per Section 41(b)(i)(ii) (a to e), Section 41A, Section

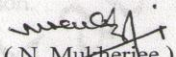
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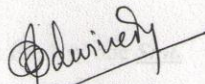
41B, Section 41C of Cr.P.C. Also similar circular may be issued to Director of Prosecution, West Bengal for sensitizing all Public Prosecutors / Assistant Public Prosecutors of Sessions, district/Subdivisional level Court.

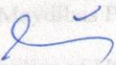
The Government may intimate the Commission about the action taken or proposed to be taken on the recommendations within a period of three months from the date of communication.

- 1. Mr. Napanajit Mukherjee Acting Chairperson
 - 2. Mr. Mani Shanker Dwivedy Member
- 
 (N. Mukherjee)
 Acting Chairperson

Date : 01-07-2014.

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 (M.S. Dwivedy)
 Member


Lajma Chozah, I.A.S.
 Secretary & C.E.O.
 West Bengal Human Rights Commission
 Principal Secretary to the Government of West Bengal

The instant proceeding has been started on the basis of complaint filed by Mina Dutta, wife of Shri Ajit K. Dutta, aged about 58 years, residing at Pally, P.S. Debargharia, Kolkata, 700015 on the allegation of atrocities of Swagata Biswas, P.S. in the district of Hooghly, West Bengal.

The complaint was received from the petitioner Smt. Mina Dutta addressed to the then Chairperson West Bengal Human Rights Commission Justice A.K. Ganguly on 22-04-2013 with the allegation that Shri Swagata Biswas, who happens to be the son-in-law as well as the husband of her daughter namely Smt. Mahua Biswas had filed a complaint before the court u/s 136(C) Cr.P.C against the petitioner and her daughter and three others with the offence u/s 323/341/380/406/506/20B I.P.C. The court has been pleased to admit it and sent to Uttarpara P.S for starting a case treating the petition as F.I.R. The case has been registered as Uttarpara P.S. case no.89/13 u/s 323/341/380/406/506/20B I.P.C. Uttarpara P.S. arrested the