

Case of Bhola Rai

This proceeding has been initiated on the complaint of Bhola Rai, resident of village Hulasi Tola within Maner P.S. of Patna District.

In his complaint he stated that he is a retired Subedar of the Indian Army. His younger son Rakesh Kumar is serving Army personnel who had come home on vacation. In the night of 16.11.2008 ASI R.K. Das of Maner P.S. along with armed police personnel came to his house and abused them. He brought him and his sons Rakesh and Ravi to the police station and detained them in the hazat until 12 noon next day i.e. 17.11.2008. In the hazat they were beaten. The complainant stated that he or his sons were not accused in any criminal case nor there was any warrant against them. The police officials repeatedly told him as to why they did not recognize the local legislator as the leader. The complainant wanted to contact his advocate Shri Birendra Kr. Singh on his cellphone (9334657294) but he was not allowed to do so. He claimed that the action was taken in collusion with his political opponents. The complainant in the circumstances sought enquiry by an independent agency and compensation.

From the record it appears a similar complaint was made to the Chief Minister through Ex-Servicemen's Board. Rakesh Kumar also sent the complaint through his controlling officer in the Army which was sent to Senior SP Patna for enquiry.

The DGP Bihar was asked to get the complaint inquired into by the Human Rights Cell of the Police Headquarters and submit his report. Shri Jitendra Kumar DIG (Human Rights) sent his report dated 8.7.2009. Senior SP Patna also sent the report (even though there was no direction to him to submit report). The substance of the report is that ASI Ram Kumar Das and ASI Ram Kumar Chaudhary along with a posse of the armed force of the Anchal Guard and the dafadar and chowkidar went to the complainant's house on 16.11.2009 at 10:30 P.M. for arrest of his absconding brother Shatrughan Rai and one Ram Uday Rai against whom permanent warrant had been received from the court of Additional District and Sessions Judge (Fast Track) Patna. In course of raid the complainant and his two sons Rakesh Kumar and Ramesh Kumar @ Ravi got involved with the police party in an attempt to prevent the arrest for which they were brought to the Police Station on 17.11.2008. The raiding party wanted to institute criminal case against them but on request of the complainant that

his absconding brother, Shatrughan Rai, would surrender at the police station, the Officer-in-charge Shri U.P. Singh did not register the case and released them on personal bond. No entry however was made in the Police Station Diary. For the said lapse, explanation has been called from SI U.P. Singh.

It may be mentioned here that the said report of DIG (Human Rights) was based on the enquiry report of Dy.SP II (Headquarters) of the Patna District Police. There being no independent enquiry by the Human Rights Cell of the Police Headquarters as directed by the Commission (supra), by order dated 7.7.2009 Shri A.K. Seth, IGP attached with this Commission was asked to make an enquiry and submit his report. In the light of the said direction, Shri Seth made local enquiry in course of which he took statements of the victims and a few independent witnesses, besides the concerned police officials.

In course of his statement the complainant reiterated his complaint version. He added that when he along with his sons was being assaulted and kept in the hazat, he made a request to at least release Ravi since he had to participate in the tests for recruitment in the Army but the request was turned down. He further stated that the police party had enquired about his brother Shatrughan Rai and when they were told that he did not live in the house, the complainant and his sons were assaulted, brought to the police station and kept in the lock-up (hazat). He also stated that he had performed a yagya in the village and invited an outsider legislator, Shri Birendra, for which the local legislator was annoyed with him. Bringing the thana police in collusion he got the act committed. He repeatedly told the police party that he is an ex-army personnel but he was assaulted in full public view before being brought to the police station and there also he was assaulted. He named ASI R.K. Das and ASI R.K. Chaudhary as the persons who assaulted him. The other victim Rakesh Kumar stated that he had come home on two months annual leave. On the date of the incident the raiding party caught him and despite his remonstrations and telling that he is from the Army, they assaulted him with slaps and lathi. He supported his father's version about the assault at the police station. Ravi also made a similar statement.

Amongst the independent witnesses Dipti Rai stated that he was not present at the time of occurrence but he later learnt that complainant and his sons had been beaten by the police. Similar statement was made by Rajendra Kumar and Sushil Kumar. Sushil Kumar further stated that he saw marks of assault on the complainant

and his son. He further stated that Ram Uday Singh for whose search and arrest the police had come lives at Saguna More, Patna.

ASI Ravi Das stated that when the police party showed the warrant in respect of Ram Uday Singh and Shatrughan Rai, the complainant and his son assaulted the police causing injuries to anchal guard. The complainant and his sons were brought to the police station. However, on surrender of Shatrughan Rai they were released on personal bond. Officer-in-Charge U.P. Singh stated that the occurrence was the result of taking interest in local politics by ASI R.K. Das. He further stated that ASI R.K. Das did not submit any report in respect of the occurrence at the police station. He, however, could not give any satisfactory explanation about not making any entry in the station diary. He denied to have detained the complainant and his son in the hazat or to have released them on personal bond.

On the basis of the statements of the witnesses as aforesaid, Shri Seth concluded that ASI R.K. Das and ASI R.K. Chaudhary of Maner P.S. went to the house of the complainant for arrest of Ram Uday Rai and Shatrughan Rai on 16.11.2008. The police party did not find the warrantees there. They brought the complainants and his sons Rakesh and Ravi instead to the police station on the next day, that is, 17.11.2008. They were released on personal bond after Shatrughan Rai surrendered. Shri Seth noted that there was discrepancy in the version of ASI R.K. Das regarding execution of the alleged bond. ASI R.K. Das did say that he filed report about the occurrence but no action was taken on the report. He, however, did not explain why the complainant or the sons and the members of the police party were not medically examined even though they were allegedly assaulted by the complainant and his sons. Shri Seth also noted the fact that there was no entry in the police diary in respect of the incident. The station diary merely disclosed the time of departure of the police party being entry no. 457 at 22.30 hrs on 16.11.2008 and the time of arrival being entry no. 464 at 5.30 AM on 17.1.2008 showing arrest of one Parma Bhagat and Lal Babu Paswan. There was no mention of the complainant and his sons being brought to the police or being released on personal bond.

Shri Seth rejected the version of the police party being assaulted by the complainant and his sons observing that it is unbelievable that the police party would be assaulted by the public and they would not react and no case would be instituted nor any entry would be made in the station diary. He also disbelieved the defence that case was not formally instituted nor any entry was made in the station diary on

request of the complainant as Shatrughan Rai surrendered at the instance of the complainant.

Shri Seth further questioned the style of functioning of the Maner Police Station. He observed that there was lack of coordination and the Officer-in-charge had no control over ASI R.K. Das who acts according to his whim. He noticed that another enquiry was pending against ASI R.K. Das with respect to false implication and arrest of a handicapped, Sanjay Kumar.

Shri Seth at the end concluded that there was evidence to suggest misbehaviour by ASI R.K. Das with the complainant. In his opinion, there was no reason or justification for the raiding party or ASI R.K. Das to beat the complainant and his two sons or illegally detain them in the lock-up of the police station. Merely because the complainant happens to be brother of a person against whom arrest warrant was pending could not be ground to misbehave with the complainant. Shri Seth thus found ASI R.K. Das guilty of committing excesses on the complainant and his two sons. In his opinion ASI R.K. Chaudhary also lent a helping hand. As regards SI U.P. Singh, he found that he was lacking in control over his subordinates.

The report of Shri A.K. Seth was considered by the Commission and by order dated 3.8.2009 SI U.P. Singh ASI R.K. Das and ASI R.K. Chaudhary were asked to file their response giving them copy of the report each. Copies of the report were also sent to DGP Bihar, Senior SP Patna and the Home Department for their comments. SI U.P. Singh and ASI R.K. Das have filed their response. Senior SP Patna also has sent his comments. No comment/ response has been filed on behalf of the DGP or the State Government.

In his comments Senior SP Patna has informed the Commission that in the light of the findings of the IG, Bihar Human Rights Commission, ASI R.K. Das and ASI R.K. Chaudhary have been placed under suspension and asked to submit explanation against departmental proceeding. Explanation is also being sought from SI U.P. Singh.

The Commission has considered the matter in all its aspects. In the facts and circumstances it is difficult to accept the version given by ASI R.K. Das or, for that matter, ASI R.K. Chaudhary. It is difficult to visualise that merely on being shown the warrant of arrest against Shatrughan Rai, the complainant or his sons would start beating the police party as if the police party at the receiving end and they would not react. It is relevant to mention that the police party consisted of four armed constables

of Maner P.S., one jawan of special auxiliary police (SAP), Dafadar and Chowkidar, besides two ASIs. We are inclined to think that when the police party did not find Shatrughan Singh in the house, they in order to put pressure for his apprehension, physically abused the complainant and his sons and when that did not yield any result, they brought them to the police station. There is evidence to suggest that they were assaulted. One of the witnesses, Sushil Kumar, found the leg of complainant Bhola Rai swollen and he also found marks of assault on his son's face. It is to be kept in mind that out of two warrantees only one, namely, Shatrughan Singh was brother of the complainant. The other one reportedly resides at Saguna More in Patna. In fact, as regards Shatrughan Singh too the case of the complainant is that he does not live in the same house. That may or may not be true. But the fact remains that even if he lives in the same house, the police had no business to abuse the complainant and his son muchless assault them and detain them at the police lock-up. There is no material to show that Shatrughan Singh surrendered at the instance of the complainant. His surrender may have been precipitated by the action of the but there is no evidence or any material on the point.

Article 21 of the Constitution of India mandates that no citizen shall be deprived of his liberty save according to the procedure prescribed by law. It is the admitted position that the complainant and/ or his sons were not accused in any criminal case. They could not have been taken to the police station and detained there. The version of the officers that they were taken to the police station as they had assaulted has to be rejected as no case was registered in respect of alleged assault nor any entry was made in the station diary. The assault and detention of the complainant and his sons clearly amounts to violation of their human rights and the infringement of the constitutional guarantee under Article 21. May be that proceedings have been initiated against the concerned police station but that may be little solace to them. We are of the view that for violation of their human rights they are entitled to compensation. In the facts and circumstances we direct each of the victims namely, complainant Bhola Rai and his sons Rakesh Kumar and Ravi Kumar be paid sum of Rs.25,000 each. The amount shall be paid at the first instance by the State Government. The government, however, shall have the liberty to recover the same from ASI R.K. Das in accordance with law.

As regards departmental action against the officers, disciplinary proceeding have been initiated against them. We direct that the matter be taken to its logical end as per rules.

Compliance report be filed within six weeks.

Justice S.N. Jha
Chairperson

Justice Rajendra Prasad
Member