



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. *11/WBHRC/COM/883/16-17*

Date: *4.01.19*

Recommendation No 23,24,25 & 26/WBHRC/2018-19/883/COM/16-17

From: Shri Laima Chozah IAS,
Secretary & CEO.

To: The Chief Secretary
Government of West Bengal
NABANNA
325, Sarat Chatterjee Road
Mandirtala, P.O.- Shibpur,
Howrah-711102

Sir,

I am directed to send herewith an authenticated copy of the Recommendations dated 12.12.2018 made by the West Bengal Human Rights Commission alongwith enclosures for taking necessary action. 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 4(four) months.

Yours faithfully,

Secretary & CEO.

WEST BENGAL HUMAN RIGHTS COMMISSION

File No.883/WBHRC/Com/16-17

Present

1. Mr. Justice G.C. Gupta - Chairperson
2. Mr. N. Mukherjee - Member
3. Mr. M.S. Dwivedy - Member

A petition was received on 5th September, 2016 from one Mofajjel Molla son of Lt.Piar Ali Molla, Vill.Akandaberia, P.O. & P.S.Harua, Dist-North 24 Parganas addressed to Chairman, West Bengal Human Rights Commission alleging that one house wife lady Rina Bibi, wife of Md. Chhiddik Ali, Vill.Basudebpur, P.S.Deganga, Dist-North 24 Parganas was allegedly raped by one Raja Mondal, son of Abu Bokkar Mondal, P.S.Deganga, Dist-North 24 Parganas on 11/6/2014. It was further alleged that one "professional writer", namely, Nemai Das of Deganga P.S. in the F.I.R No.406/14 dt.12/6/2014, instead of writing a case of rape made it a case of attempted rape. As such, a case of attempt to rape was registered against the accused person instead of a case of rape. The victim, an uneducated person signed F.I.R but on 13/6/2014 Rina Bibi while recording her statement u/s 164 Cr.P.C. before the Ld. Magistrate stated that she was raped by the accused person. A photocopy of her

statement u/s 164 Cr.P.C. was enclosed to the petition. It was further alleged that the O.C., namely, Palash Chatterjee did not give sufficient importance to the case.

Therefore, he did not entrust the case for investigation to any Sub Inspector (S.I.) ranking officer. He (petitioner) in the concluding para of the petition demanded that the case be investigated by a Sub Inspector ranking officer and that Nemai Das be punished.

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Assistant Secretary
B. Human Rights Commission

2. The petition was considered by the Commission despite the fact that it was over one year old. Although, not admissible u/s 36(2) of P.H.R Act, due to gravity and sensitivity of the allegations levelled against police authority involving crime against women, a report was called from S.P., North 24 Parganas on the subject by the Commission.

3. The matter was enquired into by Addl. S.P., Barasat, North 24 Parganas which was forwarded by S.P., North 24 Parganas and the report was received on 12/12/2017. The report stated that on 12/6/2014 at about 20.25 hrs. one Rina Bibi wife of Md. Chhiddik Ali, Vill.Basudebpur, P.S.Deganga submitted a complaint that on 11/6/2014 when she went to attend nature's call one Raja Mondal attempted to commit rape in connection of which Deganga P.S. case No.406/14 dt.12/6/14 u/s 341/323/354B/376/511/506/34 IPC was registered. The case was entrusted to ASI, Sunil Biswas for investigation who arrested the accused on 13/6/2014. The victim woman was sent for medical examination but she refused to give her consent. Her statement was recorded u/s 164 Cr.P.C. by Ld. Magistrate and the I.O. collected a copy of the same. The I.O., ASI Sunil Biswas submitted charge sheet no.559 dt.31/8/2014 u/s 341/323/354B/376/511 IPC against Raja Mondal. During enquiry it came to light that in the judicial statement u/s 164 Cr.P.C. the victim had stated that she was raped by F.I.R named accused, namely, Raja Mondal but the I.O. did not take care of the statement and submitted charge sheet u/s 376/511 IPC.

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4. The I.O. conducted perfunctory investigation and he was dealt in the orderly room of the Addl. S.P. for negligent conduct. The enquiring officer further observed that O.C. Deganga P.S. and the C.I. did not perform their duty cautiously and meticulously on forwarding the charge sheet. As a remedial measure prayer was submitted before Ld. Court for causing further investigation u/s 173 (8) Cr.P.C. by a

competent Sub Inspector of Police. S.I. Tapas Ghosh of Deganga P.S. completed the investigation and submitted Deganga P.S. charge sheet no.646 dt.20/11/2016 u/s 341/323/376/506/120B/34 IPC against Raja Mondal, Abu Bakkar Mondal and Nemai Das.

5. The Commission examined and discussed the matter in detail. On 21/8/2018 it was decided to examine ASI Sunil Kr. Biswas, the initial I.O. of the case and the then O.C., Deganga P.S. u/s 16 of the PHR Act.

6. ASI Sunil Kr. Biswas was examined on 12/09/2018. His statement was recorded. He admitted that Deganga P.S. Case No.406/14 dt.12/6/2014 was assigned to him for investigation. He followed the established procedure for investigation by opening a C.D on 12/06/2014 and going through the complaint. He sent the victim, Rina Bibi to Basirhat BPHC for medical examination on 12/6/2014 but she refused to undergo the same. On 13/6/2014 I.O. submitted a prayer before the Ld. ACJM for recording statement u/s 164 Cr.P.C. which was duly done and he obtained a copy of the statement on 13/6/2014. On the same date he submitted another petition to the Block Medical Officer for medical'y examining the victim to know whether she was raped or not. The victim refused to undergo the medical test. The ASI submitted charge sheet u/s 376/511 IPC read with other sections on 31/8/2014. He further

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stated that he consulted S.I. Deb Dulal Mondal of the same P.S., after perusing the judicial statement of the victim woman recorded u/s 164 Cr.P.C. to ascertain right course of action in the investigation. Further, he did not consult the Officer-in-Charge of the P.S. He arrested Abu Bakkar Mondal on 13/6/2014 but Raja Mondal was not arrested as he was absconding and subsequently, he got anticipatory bail. He admitted that it was a mistake on his part not to submit charge sheet as a case of rape but he submitted charge sheet as an attempt to rape. He also admitted that accused

Raja Mondal might have got anticipatory bail because of his above mentioned mistake in not upgrading the section of law. He also stated that as he was an Assistant Sub Inspector of Police as per Police Regulations of Bengal (P.R.B.) he was not supposed to investigate such cases. This fact he realized after submitting the charge sheet.

7. Statement of S.I. Palash Chatterjee (presently posted at Bagdah P.S.) the then O.C. of Deganga P.S. on 12/6/ 2014 was recorded by the Commission on 12/9/2018. S.I. Palash Chatterjee stated that on 12/6/2014 he was on leave and S.I. Deb Dulal Mondal was in-Charge of the P.S. who entrusted Deganga P.S. Case No.406/16 dt.12/6/2014 to ASI Suni Kr. Biswas for investigation. S.I. Palash Chatterjee rejoined on 16/6/2014 when S.I. Deb Dulal Mondal informed that the case of 376/511 IPC was assigned for investigation to ASI Sunil Kr. Biswas but he did not place the judicial statement of the victim woman recorded u/s 164 Cr.P.C. for his (S.I. Palash Chatterjee) perusal. The I.O., ASI Sunil Kr. Biswas also did not give him the details of victim woman's statement and S.I. Palash Chatterjee felt that the matter was suppressed. S.I. Palash Chatterjee admitted that he forwarded the charge sheet on 31/3/2015 that the C.D. was closed and the charge sheet was signed on 31/8/2014. He had called an explanation for the discrepancy in the dates of submitting charge sheet and he stated that he would produce documentary evidence in this regard during the next hearing on 28/9/2018. S.I. Palash Chatterjee was re-examined by the

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Commission on 28/9/2018 when he was promoted as Inspector. Now Inspector Palash Chatterjee stated that he had questioned ASI Sunil Kr. Biswas whether the victim, Rina Bibi's statement was recorded u/s 164 Cr.P.C. The I.O. replied that the victim corroborated the contents of the F.I.R but the Inspector did not ask him to produce statement of the victim recorded u/s 164 Cr.P.C. Relying on the verbal briefing the Inspector Palash Chatterjee forwarded the charge sheet. He also

produced the original letter addressed to ASI Sunil Kr. Biswas dt.11/1/2015 on the subject matter "order for sending duplicate case diaries of following cases". The memo is signed on 11/01/2015 both by SI Palash Chatterjee and ASI Sunil Kr. Biswas. He submitted a photo copy of order dt.19/8/2014 granting anticipatory bail by Ld. District and Sessions Judge, Barasat Court, North 24 Parganas u/s 438 Cr.P.C. to Raja Mondal.

8. Statement of Sub Inspector Deb Dulal Mondal currently O.C., Hasnabad P.S. was recorded by the Commission on 27/11/2018. He stated that on 12/6/2014 he was posted in Deganga P.S. as Sub Inspector and on the basis of complaint Deganga P.S. Case No.406/14 dt.12/06/2014 u/s 376/511 IPC was started. He assigned the investigation to ASI Suni Kr. Biswas . He admitted that it was improper on his part to assign the investigation of such an important case to an ASI. He also admitted that the mistake was not corrected subsequently, when the regular O.C. joined the Thana after enjoying leave.

a. The Commission examined the petition, the report submitted by Addl. S.P. to the Commission and the statements given by ASI Sunil Kr. Biswas, Inspector Palash Chatterjee and ASI Deb Dulal Mondal to entrust a case of rape/attempt to rape to an ASI level officer for an investigation. In this connection, the Commission examined the Rule 207 of Police Regulations of Bengal (P.R.B) which has sub heading of duty of Assistant Sub Inspector of Police (12, Act V, 1861). A plain reading of this Rule mentions that ASIs will not be used for investigation and are mainly responsible for clerical and routine duties. Under Rule 207 (b) the ASIs will not handle F.I.R., Case Diary, General Diary and Village Crime Note-Book. The commentary to this Rule states that the object of posting of ASI to a Police Station is to relieve the investigating Sub Inspector of all clerical and routine duties.

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In the case of Momim Talukdar v. Emperor 30 Cr LJ 803 : AIR 1928 Cal 771 following observation was made by the Ld. Court "A question arose for consideration of the court was whether or not an A.S.I. while in charge of an out post was competent to take up investigation in view of presence of the officer-in-charge of the P.S. at the out post within his jurisdiction. The court came to the conclusion that the A.S.I. cannot take up investigation of the case in particular when the officer-in-charge of the police station within his jurisdiction is present". Further in the case of Naginlal Nandlal v. State of Gujrat, (1962)1 Cr LJ 142 following observations were made "Section 36 of the Code of Criminal Procedure deals with permanent police officer-in-charge of the police station and not to the officer-in-charge temporarily for a short period and next in rank to the permanent officer-in-charge of the police station as meant by the definition."

b. The Commission also examined the enquiry report of Addl. S.P. and further came to conclusion that while S.I. Deb Dulal Mondal committed a gross illegal act by entrusting case of rape for investigation to an ASI. No effort was made by the S.I./O.C. Palash Chatterjee to correct the situation. The C.I., who is responsible for crime control in his Police Station area as per Rule 189 of P.R.B also conveniently failed in his duty. The proviso to Section 157 Cr.P.C. as amended in 2008 states as follows :

"Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality."

As such, it is highly illegal to entrust cases of rape to a male officer in the rank of ASI which tantamount to violation of Section 157 Cr.P.C.

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Both the O.C. and C.I. without studying the contents of the statement of victim woman recorded u/s 164 Cr.P.C. submitted charge sheet as a case of attempt to rape to the Ld. Court. Had they been a bit careful and had done their job properly such a gross mistake would not have occurred.

d. On the intervention of the Commission, after two years, the situation could be set right and a supplementary charge sheet was submitted under proper Sections of law i.e, rape.

In view of above the Commission makes following recommendations in this case :

- (i) A strict guideline be issued by the Director General and Inspector General of Police to all S.P.s and O.C.s/C.I.s/SDPOs that ASIs should not be entrusted with cases of serious nature for investigation (as per Rule 207 of P.R.B). Also, cases of rape should be recorded by women police officers as mandated u/s 157 Cr.P.C.
- (ii) This guideline should be widely circulated and published in West Bengal Police Gazette.
- (iii) A guideline be also issued to C.I.s and Officer-in-Charge of Police Stations to thoroughly examine cases of crime against women and other important (special report cases) cases before submitting charge sheet so that such gross mistakes do not occur in future.
- (iv) Inspector Palash Chatterjee and S.I. Deb Dulal Mondal both be cautioned for failing to perform their duties and be asked to be careful in future.

The Principal Secretary, W.B.H.R.C. is directed to send a copy of recommendations to the Chief Secretary, Govt. of West Bengal for appropriate action at his end and action taken report be sent to the Commission within four months time.

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N. C. Sarkar
Assistant Secretary
W.B. Human Rights Commission
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Dt : 12-12-2018

Encl : Copies of complaint and police report.

Ld. Registrar, W.B.H.R.C. to upload the recommendation in Commission's website.

(Justice G.C. Gupta)
Chairperson

(N. Mukherjee)
Member

(M.S. Dwivedy)
Member