



WEST BENGAL HUMAN RIGHTS COMMISSION

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Ref. No. 436/WBHRC/Gen/1820/17

Date: 1.03.19

Recommendation No 37/WBHRC/2018-19/1820/GEN/2017

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 21.02.2019 in connection with the complaint of Smt. Sipra Sarkar, resident of 194 Bidhan Park, Kolkata -700090 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.1820/WBHRC/Gen/17

P r e s e n t

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

Smt. Sipra Sarkar resident of 194, Bidhan Park, Kolkata – 700090 lodged a complaint alleging that her son, Arjun Sarkar was on 6th August, 2017 arrested from her aforesaid residential house by Shri Tapas Kumar Ghosh, ASI of Police. The said Shri Ghosh seized 247 gmş. gold, consisting of gold bar, wire and plate, in spite of repeatedly pointing out that the aforesaid gold was made over by Radhamani Jewellers for making ornaments. Though, 247 gms. of gold was seized the seizure list prepared by him showed only 225.61 gms. of gold to have been seized. Arjun was compelled to parade on the street of Baranagar with his hands fettered and waist tied by a rope by the said Tapas Kumar Ghosh, ASI of Police on 9th August, 2017. Thereby both injury and insult was inflicted upon him. It was also alleged that the said Arjun was tortured by Tapas Kumar Ghosh while he was in custody.

Authenticated
N. C. Sarkar
Assistant Secretary
W.B. Human Rights Commission
28.2.17

2. It appears that on 7th August, 2017 Arjun Sarkar was produced in Court. An order directing 4 (four) days police custody was passed. On 11th August, 2017 when Arjun was produced before the Court he had shown the Ld. Presiding Officer marks of injury on his limbs.

3. On 22nd September, 2017 the Commission passed an order calling for a report from the Commissioner of Police, Barrackpore.

4. A report dated, 24th March, 2018 prepared by A.C.P-I, Belghoria Zone was furnished from which the following facts transpired :

"in course of investigation ASI, Tapas Kr. Ghosh handcuffed Arjun Sarkar and also used rope at the time of raid, violating NHRC guideline, as well as Hon'ble Supreme Court rulings. Accordingly, a departmental proceeding enquiry had been started against the said IO ASI Tapas Kumar Ghosh vide BKPC proceeding No.10/17 dt.30.08.17.

In this regard the petitioner filed writ petition vide W.P. No.22153 (W) of 2017 against the IO ASI Tapas Kumar Ghosh before the Hon'ble Court, Calcutta which is also pending. As per order of Hon'ble High Court, Calcutta Baranagar P.S. Case No.552/17 dt.01.08.17 u/s 380/381/411 IPC was transferred to Detective Department BKPC for its further investigation. After completion of investigation of the case ACP-I, (DD) Shri Kaustuvdipta Acharya submitted CS vide Baranagar PS CS No.715/17, dated 21.12.17 U/S 380/381 IPC against three accused persons namely (1) Debasish Sardar (24) S/O Lakhikanta Sardar of Vill-Rameswarpur, PO-Mallarhar PS-Shyampur, Dist-Howrah (2) Biswajit Polley (23) S/O Late Rabi Polley of Vill-Rameswarpur, PO-Mallarhar, PS-Shyampur, Dist-Howrah (3) Goutam Polley (33) S/O Jaydev Polley of Vill+PO-Dinga Kholra, PS-Shyampur, Dist-Howrah."

5. It is, thus, amply established that (a) the accused Arjun Sarkar was handcuffed; (b) he was tied by a rope with his waist; (c) the concerned Baranagar P.S. Case No.552/17 was transferred to Detective Department; (d) investigation thereafter was conducted by ACP-I (D.D.) Shri Acharya and (e) charge sheet was filed against Debasish Sardar, Biswajit Polley and Goutam Polley. Evidently, no complicity of Arjun Sarkar was found during the investigation.

6. The de facto complainant challenged the charge sheet and applied for further investigation on the ground that the accused Arjun Sarkar had been discharged. His name was expunged. The de facto complainant alleged that the I.O. had been influenced and the investigation was improper. The Ld. ACJM vide his order dt.17th January, 2018 observed that *"investigation was duly conducted."*

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An order dtd.15th June, 2018 was passed by the Commission seeking some clarifications from the ACP-I, Belghoria Zone. In reply whereof by a report dtd.15th

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August, 2018 it was disclosed that the departmental proceedings initiated against ASI Tapas Kumar Ghosh had culminated in an order stopping one increment of the said Tapas Kumar Ghosh for a period of three months. It also appears that pursuant to an order passed by the Ld. Court the accused Arjun Sarkar was produced for medical examination before Jagadish Chandra Bose General Hospital. The O.C. in his report dated, 21st August, 2017 has alleged that "IO arranged further medical examination of the accd. Arjun Sarkar..... on 11.08.2017 where also found no complaint of injury". He has thus avoided to answer the question of injury and talked about lack of complaint in that regard. The O.C. however, in his report stated as follows :

"As the accused Arjun Sarkar showed some marks of injury before this Ld. Court I informed my superiors the fact in detail as a result departmental enquiry has been started against the I.O. ASI Tapas Kumar Ghosh."

8. The Commission examined the ASI, Tapas Kumar Ghosh on 3rd January, 2019 u/s 16 of the PHR Act. During examination he admitted as follows :

- (a) It is true that allegation was made against me that I have beaten Arjun Sarkar; handcuffed him and also used rope for tying him by the waist.
- (b) Departmental proceedings no.10/17 dated 30.08.17 was drawn up against me in this matter. Departmental proceedings against me ended with an order stopping one increment from my pay for a period of three months without cumulative effect w.e.f. the next date of increment vide CO No.294 dated 31.01.2018.
- (c) On completion of investigation Detective Department filed charge sheet against Debasish Sardar, Biswajit Polley and Goutam Polley. Accused Arjun Sarkar was not named in the charge sheet.

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Assistant Secretary

W.B. Human Rights Commission

(d) It is true that in the complaint lodged by Mantu Ghosh on the basis whereof Arjun Sarkar amongst others was arrested did not indicate as to the items of gold which had been stolen.

(e) I did not arrange for any TI parade of the gold seized from the possession of Arjun Sarkar.

(f) It is true that I had handcuffed him and tied him by a rope by his waist.

9. The ASI Tapas Kr. Ghosh sought to avoid the said confession by alleging that he had handcuffed Arjun and tied him with a rope by his waist "in order to prevent escape from the police custody." He also stated that he had prayed for prosecution u/s 186 IPC which was allowed. The inclusion of prosecution u/s 186 IPC is inconsequential when no charge sheet has been filed against the said Arjun Sarkar. The allegation that Arjun Sarkar was physically tortured while he was in the police custody after his remand on 7th August, 2018 has been probalised by a report dt.14th August, 2017 appearing to have been filed by the said Tapas Kumar Ghosh wherein he alleged as follows :

"During investigation one accused namely Arjun Sarkar (34 yrs.Sourav @Bhakta, S/O Chandra Sarkar of 194, Bidhan Park, Kolkata – 90, PS-Baranagar was arrested and we could manage to recover 225.610gms. of Gold from his exclusive possession at the time of arrest. On interrogation he confessed his guilt and as per our submission you Honours Court granted 03 days of Police custody on 07.082017. After completion of P.C. period the said accd. was produced before Ld. Court on 11.08.2017 with a prayer for further Police custody."

10. On the touch stone of probability it appears highly probable that for the purpose of extorting the alleged confession the accused Arjun Sarkar was physically tortured while he was in police custody. The authenticity of alleged confession was belied by the fact that the accused was not even charge sheeted.

11. The act of handcuffing and tying him by a rope by his waist was seriously demeaning and was intended to violate his dignity. The judgements of the Supreme Court

in the case of (a) Prem Shankar Sukhla vs. Delhi Administration, (b) Sunil Batra vs.

Delhi Administration and (c) Citizens for Democracy vs. State of Assam may be referred

to. In the case of Citizens for Democracy vs. State of Assam the Supreme Court opined as

follows :

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Assistant Secretary

V.B. Human Rights Commission

"We declare, direct and lay down as a rule that handcuffs or other fetters shall not be forced on a prisoner – convicted or under-trial-while lodged in a jail anywhere in the country or while transporting or in transit from one jail to another or from jail to court and back. The police and the jail authorities, on their own, shall have no authority to direct the handcuffing of any inmate of a jail in the country or during transport from one jail to another or from jail to court and back.

In all the cases where a person arrested by police, is produced before the Magistrate and remand – judicial or non-judicial – is given by the Magistrate the person concerned shall not be handcuffed unless special orders in that respect are obtained from the Magistrate at the time of the grant of the remand."

12. In view of the aforesaid the Commission recommends as follows :-

A sum of Rs.50,000/- (Rupees fifty thousand) only be paid by way of compensation to Shri Arjun Sarkar of 194, Bidhan Park, Kolkata – 700090.

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 by Government to the Commission within four months time.

Authenticated

N. C. Sarkar
28.2.19

N. C. Sarkar
Assistant Secretary

W.B. Human Rights Commission

Date : 21-02-2019

G. C. Gupta
(Justice G.C. Gupta)
Chairperson

N. Mukherjee 21/2/2019
(N. Mukherjee)
Member

M. S. Dwivedy
(M.S. Dwivedy)
Member

Encl : Copies of complaint and police report.

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