



WEST BENGAL HUMAN RIGHTS COMMISSION

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Ref. No.

225/WBHRC/724/25/14/2019

Date: 22.03.2021

Recommendation No 24,25,26 & 27/WBHRC/20-21/724/25/14/2019

From: Shri Suresh Chandra Hira, WBCS(Exe),
Jont Secretary & Addl. Charge of 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 08.03.2021 in connection with a complaint of Smt. Sankari Mondal w/o - Late Narayan Chandra Mondal, Vill - Jamalpur, P.O. - Paglachandi, P.S. - Kaliganj, Dist - Nadia 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.

Yours faithfully,

Joint Secretary &
Addl. Charge of Secretary & CEO.

WEST BENGAL HUMAN RIGHTS COMMISSION
Purta Bhavan, 2nd Floor, Salt Lake, Kolkata-700 091

File number 724/25/14/2019

Present: -

Justice Girish Chandra Gupta

Chairperson.

1. This matter has been listed before the single bench. The facts and circumstances of the case are as follows: -
2. The victim Shankari Mandal aged about 70 years is a resident of village Jamalpur. The accused Padma Singh is her next door neighbour. In spite of repeated requests the accused did not care to control her goat which regularly entered into the house of the victim and grazed upon the plants causing both loss and irritation. On 18 April 2019 at about 10 AM the victim out of irritation threw a pebble at the goat. The accused in retaliation came running to the house of the victim and hit a brick on her forehead. The victim fell unconscious on the floor in a pool of blood. The neighbours rushed in. The accused escaped. The neighbours shifted the victim to the nearby Panighata Hospital. After providing first aid the victim was referred and ultimately admitted to Krishnanagar district hospital. She was discharged on 20 April 2019. From the discharge certificate¹ it appears that the wound was repaired in the OT. The nature of injury appears from a photocopy of the victim²
3. A complaint³ dated 26th April 2019 was lodged with the commission alleging that a written complaint was submitted to the officer in charge of Kaliganj police station by Suresh Mandal, son of the victim, but he did not process the same. He retained the original⁴ and gave a photocopy thereof to the said Suresh Mandal without anything more. The victim prayed for adequate redressal including punishment for the inaction of the police.

Notes :-

1. Discharge Certificate at Page at page 19
2. Photograph of the victim at page 24
3. The written complaint at page 22
4. Photocopy of the original complaint at page 23

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4. Considering the gravity of the matter the honourable member (A) Mr Naparajit Mukherjee passed an order ^{4(a)} dated 29 April 2019 directing "please call for an urgent report from SP Nadia by 25/5/19. Please send by email". No report was however received.

5. On 3 June 2019 a notice was issued calling for the report by 28 June 2019. The time for filing the report was extended till 25 November 2019 and further by an email dated December 11, 2019 the time was extended till January 25, 2020. On 3 January 2020 the commission received a letter dated 16 December 2019 from the SP Nadia alleging that "on scrutiny no such paper in the name of Shankari Mandal was received in this office so far". In the circumstances a copy of the complaint dated 26 April 2019 together with annexures was once again sent under the cover of a letter dated 16 January 2020.

6. By letter⁵ dated 4 February 2020 SP Krishnanagar forwarded a report⁶ dated 29 January 2020 prepared by Mr Maqsood Hasan, Deputy Supt of police which did not contain even a word about the negligent conduct of the OC Kaliganj police station which was the grievance of the petitioner.

7. On 10 December 2020 the matter was considered by the commission and the following order⁷ was passed with a direction to communicate the operative part of the order to the SP.

"A report dated 29th January 2020 prepared by the DSP Nadia Mr. Hassan was received under the cover of the SP's letter dated 4 February 2020 from which it appears that Kaliagunge PS case number 192/19 was started on 7 May 2019 and endorsed to ASI Bikas Kumar Ghosh who submitted the charge sheet being Kaliagunge PS 243/19 dated 30 June 2019 showing the accused absconder. The DSP called the said ASI in the orderly room on 25th January 2020 and censured him for his insincerity in not taking more sincere steps for arrest of the accused person.

Notes :-

4(a) at page 22

5. Letter dated 4/2/2020 addressed by S.P. Krishnanagar - 16

6. Report dated 29/01/2020 at page. - 17

7. Order dated 10/12/2020 passed by the Commission at page - 20

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No step was taken against the inspector in charge, no explanation has been offered why was complaint of the petitioner refused; no explanation is there why was the case started belatedly on 7 May 2019; no indication is there as to subsequent arrest or surrender of the accused in court and grant of bail if any.

There are thus reasons to believe prima facie that human rights were violated. The following order is therefore passed.

SP Naida is directed to furnish legible copies of all documents in connection with the aforesaid case by 11th January 2021. The concerned DSP, inspector in charge and the said ASI are directed to appear for recording their statement by the Commission on 14th January 2021 at 1PM sharp. The SP is further directed to ensure presence of the aforesaid officers in the Commission on the appointed day and time for recording their statement"

8. Photo copies of the documents⁸ were submitted to the commission on 22 January 2021. The date of hearing was fixed on 10 February 2021 as per the convenience of the officers after the matter had been adjourned on the ground that they were busy with law and order duty.

9 The documents submitted to the Commission together with the statements of the officers lead to the conclusion that

(a) the victim was in the Krishnanagar district hospital during the period between 18 April 2019 and 20 April 2019 as would appear from the discharge certificate¹ issued by the said hospital and

(b) the written complaint⁹ which ultimately formed the basis of Kaliganj PS case number 192 dated 7 May 2019 was submitted to the OC Kaliganj PS by Suresh mandal, son of the victim on or about 19th April 2019, while the victim was still in the hospital.

Notes :-

8. Photocopies of the documents submitted on 22nd January 2021 and subsequent there to at page 48 to 85

9. Written complaint at page 58



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10. The investigating officer Bikash Ghosh has recorded in the CD¹⁰ "I examined the complainant who corroborated F I R so I did not further recorded statement". He stated¹¹ before the commission "the complainant told me when I examined him the same thing which he had written in the written complaint". He added "it appears from the complaint that the same was lodged when the victim was in the hospital.

11. The then OC Partha Pratim Roy stated¹² before the commission "I do not recollect that Suresh mandal came to me with a complaint which was not accepted by me or that I kept the complaint and made over a photocopy thereof to him. It is true that at the top of the written complaint there is a seal ^{12(a)} of Kaliganj police station. Though there is a provision for date, no date in fact was inserted. I am unable to tell the reason thereof.

It appears from the written complaint that the same was lodged when the victim was in the hospital. I am unable to contradict this fact. It is possible. It is true that on the basis of this complaint the case was started on 7 May 2019".

12. The OC admitted "the formal F I R was recorded as per my order" but he added that "I am unable to tell the commission why the column number eight has been kept vacant which is meant for indicating the reasons for delay".

13. The DSP Mr Maqsood Hasan admitted in his statement¹³ "it is true that in my report dated 29 January 2020 I did not utter a word about the negligent conduct of the officer in charge as alleged in paragraph 3 of the application received by the commission which was sent for enquiry to the S.P. It is true that I did not make any enquiry as to why was there delay in lodging formal complaint or starting the case.

It is equally true that I did not make any enquiry as to why the complaint lodged while the victim was in the hospital not taken on the record contemporaneously"

Notes :-

- 10. Relevent part of CD at page- 69
- 11 Statement of Investigating officer, Bikash Ghosh at page 12
- 12. Statement of the OC Partha Pratim Roy at page 11
- 12(a) at page 58
- 13. Statement of the DSP Md. Maqsood Hasan at page 10



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14. The evidence discussed above proves the fact that the OC Partha Pratim Roy did not deliberately start a case on 19 April 2019 when the complaint in all probability was submitted to him and he kept the matter pending till 7 May 2019 when the aforesaid Kaliganj PS case was started.

15. Even after starting the case no seriousness was shown in the matter of investigation. To start with, investigation of the case under section 447/326 IPC was entrusted to a novice like Sri Bikash Ghosh an ASI who admitted during his statement that "this was my first case. This was the first case investigated by me"^{13(a)}

16. From the demeanour of Sri Ghosh the commission suspected that the CD might not have been written by him and the same might have been copied by him after someone else wrote the same or dictated to him. When he was interrogated about that he admitted "I took assistance for recording the CD". To be further satisfied about the suspicion the commission dictated one sentence from the CD which he wrote out on a piece of paper¹⁴ and submitted to the commission.. He was found unable even to write out one sentence which he supposedly had earlier written in the CD¹⁵. That writing goes a long way to probalilise the suspicion .

17. The accused according to Mr Ghosh "is the next-door neighbour of the victim". It is alleged in the CD that the IO attempted to arrest the accused and for that purpose raided the house of the accused on four occasions. The alleged raid allegedly held by the I O on the first three occasions is without any particulars whatsoever. It is alleged in the CD that on the fourth occasion the house of the accused was found under lock and key¹⁶. When this was pointed out to the IO he came up with a new story alleging "every time I found only the ailing father of the accused who was not even able to speak. The father of the accused was in a different room which did not have any door.

Notes :-

13(a) at [age 12

14. The paper containing the writing at page 14

15. The relevant part of CD at page 69

16. The relevant part of CD at page 80



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The main house was always under lock and key though these facts have not been recorded in the CD." The victim or her son the complainant could have been asked to provide information as regards availability of the accused in her house but the IO allegedly chose to engage a source which proved futile. He in his statement admitted "there is nothing to show that I requested the victim or the complainant to inform me availability of the accused in her house. There is no such recording in the CD"

18. Custodial interrogation of the accused would have led to discovery of further facts which in this case was deliberately prevented though the IO admitted that "it would have been beneficial if the accused could have been examined before filing the charge-sheet". Similarly the OC admitted "arrest of the accused in this case would have been beneficial for the prosecution".

19. The DSP in his report omitted to disclose that the prayer of the accused for anticipatory bail had been rejected¹⁷. When this was pointed out to the DSP he admitted that "it is true that I did not indicate in my report that the prayer of the accused for anticipatory bail was rejected by the learned court on or about 28 June 2019.

20. After the prayer for anticipatory bail had been rejected, the police in fairness should have vigorously attempted to secure arrest of the accused. But the OC in this case was interested in protecting the accused. He advised the IO which he admitted in his statement, to immediately file the chargesheet. The chargesheet¹⁸ accordingly was filed on June 30, 2019 with a prayer for WPA¹⁹ though the same was never pressed as admitted¹¹ by the IO "the prayer for WPA was never made to the court".²⁰

Notes :-

17. Order rejecting prayer of the accused for anticipatory bail at page 86

18. Chargesheet at page. 83

19. At page 82

20 At page 13

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The OC avoided¹² to own the liability by saying "I am unable to tell the commission whether prayer for WPA was in fact made to the court".

21. The OC however admitted that "it is true that as per my advice the chargesheet was filed on 30 June 2019."

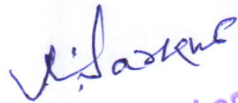
22. By filing the charge sheet ground was made ready by the OC for grant of regular bail²⁰ to the accused. The I.O. admitted¹¹ "the accused surrendered before the court on 17 July 2019 and obtained bail. No objection was raised by us". When this was pointed out to the OC he stated¹² unable to say whether filing of the chargesheet facilitated grant of bail to the accused in this case."Surprisingly the DSP" stated "it is equally true that after the chargesheet was filed on 30 June 2019 the accused obtained bail on 17 July 2019. This fact was known to me but the same was not reflected in my report."¹³



Notes :-

20. Copy of the order granting bail at page 15

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The Supreme Court of India in the case of Ram Bihari Yadav versus State of Bihar and others²¹ reported in (1998)4 Supreme Court cases 517 reminded that the cause of justice may be defeated by such deliberate acts of the investigating officers unless the courts are on their guard to eliminate such deliberate lapses while observing in paragraph 13 "Before parting with this case we consider it appropriate to observe..... any act or omission on the part of the prosecution giving rise to any reasonable doubt would go in favour of the accused..... where the record shows that investigating officers created a mess..... deliberately omitted to do what they ought to have done to bail out the appellant..... or for any extraneous reason, the interest of justice demands that such acts or omissions of the officers of the prosecution should not be taken in favour of the accused, for that would amount to giving premium for the wrongs of the prosecution designedly committed to favour the appellant..... the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake Administration of Justice."

A similar situation came up before the apex court in the case of Sahabuddin and another versus State of Assam²² reported in (2012)13 Supreme Court cases 213 and their Lordships observed in paragraph 29 of the judgement "The investigating officer has conducted investigation in a suspicious manner and did not even care to send the viscera to the laboratory for its appropriate examination. As already noticed, in his statement PW 11 has stated that viscera could not be examined by the laboratory as it was not sent in time There is deliberate attempt on the part of the investigating officer to misdirect the evidence and to withhold the material evidence from the court". In paragraph 30 Their Lordships found similar latches on the part of the autopsy surgeon and observed "similarly, PW1, the doctor who conducted the post-mortem of the corpse of the deceased was expected to categorically state the cause of death in which he miserably failed..... " Their Lordships in the circumstances followed an earlier judgement in the case of Madan Gopal Kakkad versus Naval Duvey reported in

Notes:-

21. Ram Bihari Yadav Vs State of Bihar at page 41

22. Sahabuddin & Another Vs State of Assam at page 25

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(1992) three SCC 204 wherein the following direction was issued "we direct the director-general of police, Uttarakhanda, to take disciplinary action against sub-inspector Brahma Singh, PW6, whether he is in service or has since retired, for such serious lapse in conducting investigation. The director-general of police shall take (a) disciplinary action against the said officer and if he has since retired, the actions shall be taken with regard to deduction/stoppage of his pension in accordance with the service rules."

Following the aforesaid decision in the aforesaid case of Sahabuddin in paragraph 33 of the judgement the following direction was issued "The director-general of police, State of Assam and the director-general of health services, state of Assam to take disciplinary action against PW1 and PW 11, whether they are in service or have since retired."

For the misconduct of the officer in charge Sri Partha Pratim Roy aided and abetted by the investigating officer and the DSP as discussed above the commission makes the following recommendations following the law laid down by the Supreme Court of India discussed above: –

(A) disciplinary proceedings be started against the said Sri Partha Pratim Roy;

(B) the DSP Maqsood Hasan be cautioned to be more careful in making investigation directed by the West Bengal human rights commission and that he should follow the directions issued by the director-general of police by his memo number 1686(29) Adm/HRC dated 25.03.2013;

Adm/HRC 501-2012

(C) no step against the investigating officer is recommended because he has already been punished and

(D) an action taken report be furnished to the commission within three months.

23. Joint Secretary and In-charge of Secretary & CEO, WBHRC to communicate the recommendation to the Chief Secretary, Govt. of West Bengal.

The Recommendation be uploaded in the website by the Ld. Registrar. A copy of the recommendation be also sent to the petitioner.

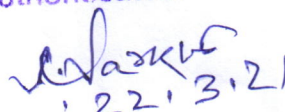


(Justice Girish Chandra Gupta)
Chairperson

Dated, the 18th March, 2021

Encl: As indicated in the notes above.

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