23rd September 2021

File number 1423/25/6/2019.

A complaint[1] dated 6th of May 2019 was received from Momina Khatoon wife of Tafijul Haque alleging inter alia that on 28th April 2019 she and her children were severely assaulted; even an attempt was made to kill her. The assailants also disfigured the image of Goddess Mansa installed by her father wherein she regularly performed seva puja notwithstanding the fact that she is a Mahommedan by faith. A written complaint in that regard was lodged with the Haldibari police station on 29th April 2019. On the following day in the presence of the local gentry reconciliation was attempted. During the meeting itself the husband of the petitioner was severely assaulted and an attempt was also made to kill him which was foiled by the gentry present in the meeting. A written complaint in that regard was also lodged with the police by her husband. The photo copies[2] of both the complaints were annexed to the complaint submitted to the commission. In spite of repeated complaints the police had remained silent. No step whatsoever was taken against the assailants. Being encouraged they were engaged in constantly threatening the petitioner and her family members of dire consequences including setting the house of the petitioner on fire.

On 16th August 2019 the chairperson passed an order "*call for a report from the S. P. Coochbehar by 31st October 2019*". The notice[3] was however belatedly issued by the office on 6th December 2019 requiring submission of the report within eight weeks from the date of receipt of the notice.

A report dated 3rd July 2020 prepared by Sri Siddharth Dorji, SDPO together with annexures was communicated to the commission by the S.P. Coochbehar under the cover of his letter[4] dated 15th July 2020. From the annexures to the report dated 3rd July 2020 the following fact has transpired.

On 20th June 2019 the petitioner applied[5] before the CJM, Mekhliganj under section 156(3) CRPC which culminated in an order[6] dated 24th June 2019 allowing the prayer. The ldCJM passed an order "*I.C. of Haldibari PS is directed to investigate the matter of incident treating the complaint of the petitioner as F.I.R.*"

Though the police had failed neglected and/or refused to lodge any complaint on the basis of the complaints of the petitioner lodged on 29th April 2019 and subsequently another complaint by her husband following the incident dated 30th April 2019 indicated above, it appears that on the basis of an alleged complaint of the accused persons, no copy thereof has been disclosed by the SDPO, the sub-inspector Lama had on 10th June 2019 submitted non- F.I.R. PR number 656/19 dated 10th June 2019 against the petitioner and her husband amongst others.

On the basis of the order dated 24th June 2019 passed by the learned CJM the Haldibari PS case number 136/19 dated 15.07.2019 under section 341/323/324/506/34 IPC was started and after completion of the investigation charge sheet was submitted against all the persons on 30th November 2019. The SDPO concluded his report by stating "*the petitioner was assured of all necessary assistance in future, if need arise*"

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[1] At page 4
[2] At page 5
[3] At page 7
[4] At page 8
[5] At page 18
[6] At page 19

On 10th December 2020 the chairperson after considering the reports directed "*no explanation has been offered as to why the police remained silent and tacitly encouraged violation of human rights. Belated assurance of assistance in future cannot remove from the human memory the wrong done in the past. Unless a proper report fixing responsibility of each of the delinquents is received by this office by 15 January 2021, the commission may have to take some requisites steps. The matter will be listed before me on 21 January 2021.*"

Sri Dorji, additional Supt of police furnished a report[7] dated 15th January 2021 addressed to the SP who on his turn under the cover of his letter[8] dated 2nd March 2021 communicated the same to the commission. The additional superintendent of police in his aforesaid report stated that "*I also examined the Reserve Officer (RO) Mahendra Nath Roy, Cooch Bihar on 15.01.2021 as to what actions had been taken against the defaulting officer against ASI Kalipada Roy and ASI Bhanu Das. He stated after perusing the documents that on 30.06.2019 officer ASI Kalipada Roy had retired from service. On the other hand ASI Bhanu Das had been censored for handling the complaint in a lackadaisical attitude vide DO number 1647 dated 08.07.2020.*"

The honourable member by his order dated 24th March 2021 passed the following order.

"*Police registered a case number 136/2019 under section 341/323/324/506 IPC which ended in CS number 189/ 2019. Action taken against one defaulting ASI and punishment awarded (Censure). The other has retired. Matter be filed/petitioner be informed.*" Sd N. Mukherjee

The chairperson passed an order dated 6th April 2021 "*we should recommend necessary step as per order of the apex court at page 27 of the judgement[9] annexed hereto. Assistant secretary is directed to ascertain the views of the honourable member*"

The judgement referred to above was in the case of Sahabuddin and another versus State of Assam. The order at page 27 of the judgement is as follows "*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. The ground of limitation, if stated in the relevant rules, will not operate as the enquiry is being conducted under the direction of this Court*".

The honourable member submitted his opinion[10] dated 12th April 2021 backed by photo copies of judgements in the case of Devprakash Tewari by the apex court and in the case of Gour Chandra Sarkar by a division bench of the Calcutta High Court.

His views were required on a question of law. He already had disposed of the matter by his order that dated 24th March 2021. In the garb of giving his opinion on the point of law it was not open to him to reopen the matter what to ask for further enquiry. Even the enquiry suggested by him in paragraph a, b, and c of page 1 of his note are not required because the same may be taken care of if necessary at the time of departmental enquiry unless however the object is to frustrate the endeavour to catch the delinquent. The observation made by him in paragraph (d) reflects lack of perception. It has been amply made clear above that when the police failed to take any step on the basis of complaint of the petitioner she had to apply under section 156(3) CRPC. Only after she obtained an order dated 24th June 2019 that the complaint number 136/2019 was recorded. Therefore any further enquiry on

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[7] At page 20
[8] At page 22
[9] At page 23
[10] At page 51

the facts is not necessary. The judgement in the case of Devprakash Tewari has no manner of application because the service regulations in that case did not authorise "*the respondents for continuing the disciplinary proceeding even for the purpose of imposing any reduction in the retiral benefits payable to the Appelant.*" The judgement in the case of Gour Chandra Sarkar is clearly wrong and based on a misreading and misapplication of the law declared by the Supreme Court. In any case the law laid down by the Supreme Court is law of the land under article 141 of the Constitution of India and is binding until reversed by the Supreme Court itself. The view preferred by the honourable member that "*with the retirement of an employee, the employer-employee relationship snaps. Therefore, unless there is allegation of government suffering financial loss on account of misconduct or negligence of the retired employee, the departmental proceedings after his retirement cannot continue*" is unfortunately not the law of the country which would appear from rule 10of the DCRB rules which the division bench quoted in it's judgement but fell into an error in not realising that the Governor is competent to withhold or withdraw pension or any part of it, if the pensioner is found….. guilty of grave misconduct or negligence, during the period of service…". The only rider is that the Governor has to exercise such power within four years from the date of retirement. Admittedly in this case the delinquent retired on 30 June 2019. The aforesaid views are also supported by subsequent judgementsof the apex court including the case of S Nambi Narayan v. Siby Mathews[11].

In the premises the matter is disposed of by the following recommendations:

a) The Chief Secretary is directed to start departmental proceedings against the delinquent ASI Kalipada Roy since retired on 30th June 2019 following the procedure laid down in Rule 10 of DCRB Rules.
b) A sum of ₹50,000 (Rs. Fifty Thousand) be paid by the State of West Bengal to the complainant Momina Khatoon by way of solatium for omission on the part of police to take steps on the basis of complaints lodged by the petitioner and her husband appearing at pages 5 and 6 hereof.

The Additional Secretary is directed to communicate the recommendation to the Chief Secretary, State of West Bengal for compliance and report within 90 days from the date hereof.

He shall also communicate a copy of the recommendation to the petitioner.

The learned Registrar is directed to upload the recommendation.

Chairperson

[11]CIVIL APPEAL NOS. 6637-6638 of 2018 (at page 55)

1200/04/2019

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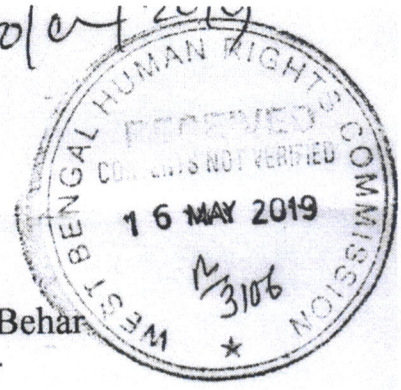

To,

1. The Chairman Human Right's Kolkata Bhabanibhaban- 27
2. The S.P. Cooch Behar, P.O. & Dist. Cooch Behar
3. The S.D.P.O. Mekliganj, P.O. Changrabandha, Dist. Cooch Behar
4. The I/C Haldibari, P.O. & P.S. Haldibari, Dist. Cooch Behar

Date- 6/05/2019

মহাশয়,

অভিযোগকারীনি মোমিনা খাতুন স্বামী তফিজুল হক সাকিন পয়ামারী, পোষ্ট ও থানা হলদিবাড়ী জেলা কোচবিহার।

বিনীত নিবেদন এই যে দীর্ঘদিন হইতে আসামীদের সহিত আমার পৈতৃক সম্পত্তি লইয়া বিবাদ চলিতেছে। এমতাবস্থায় গত ২৮/০৪/২০১৯ ইং বিকাল ৪টা নাগাদ গণ্যমান্য ব্যক্তিদের লইয়া এক বৈঠক বসে। উপস্থিত গণ্যমানা ব্যক্তিদের উপস্থিতে আমর ভাগ্নে মহবুল হক পিতা বুধারু হক সাকিন পয়ামারী আমাকে মারধর করে, আমাকে মাটিতে ফেলে দিয়ে আমার গলায় পাড়া দেয়। তৎসঙ্গে বুধারু হক পিতা মৃত অজ্ঞাত, হাজরা খাতুন স্বামী বুধারু হক উভয়ের সাকিন ঐ, কটুমদ্দিন হক পিতা অজ্ঞাত সাকিন ভোট পাট্টি, থানা ময়নাগুড়ী জেলা জলপাইগুড়ী এইসব ব্যক্তিরাও আমাকে প্রচণ্ডভাবে মারধর করে। আসামীরা আমার ছেলে মেয়েকে মারধর করে। আমি মুসলীম হইলেও মনসা পুজা করি। আমার বাবার জীবদ্দশায় তিনি মনসা মন্দির তৈরী করে দিয়ে যান। আসামীগণ উদ্দেশ্য প্রনোদিত ভাবে মনসা মা এর একটি হাত ভেঙ্গে দেয়, নাগিন প্রতিমারও অঙ্গ হানি করে। আমার ধর্ম বিশ্বাসে আঘাত করে। তাহারা আবারও হুমকি দেন যে মনসা মন্দিরে গরুর রক্ত ঢেলে দিবে। আসামীগণের মধ্যে একজন বাংলাদেশি ভারাটে গুণ্ডা ছিলেন। যাহার নাম মকসেদুল হক পিতা মকবুল হক (বাংলাদেশি)। এই ব্যাপারে আমি ২৯/০৪/২০১৯ ইং হলদিবাড়ী থানায় লিখিত এজাহার দায়ের করি। পরের দিন মিমাংসার জন্য স্থানীয় গ্রামপঞ্চায়েতের উপস্থিতিতে এক সালিশি বসে। এই সালিশিতে এছারুল হক পিতা বুধারু হক সাকিন পয়ামারী আমার স্বামীর গলায় কাচিদা ঠেকায়ে টান দিতে উদ্দত হয়। উপস্থিত ব্যক্তিরা না ধরিলে আমার স্বামীকে খুন করিয়া ফেলিত। জরিফা খাতুন স্বামী এছারুল হক, ফতেমা খাতুন স্বামী মহাবুল হক সকলের সাকিন পয়ামারী, পোষ্ট ও থানা হলদিবাড়ী জেলা কোচবিহার আমাকে ধরে মারে। এই ব্যাপারেও ৩০/০৪/২০১৯ ইং হলদিবাড়ী থানায় আমার স্বামী এজাহার দায়ের করে। অভিযুক্ত ব্যক্তিরা প্রভাবশালী রাজনৈতিক দলের সদস্য। থানা কতৃপক্ষ এযাবৎ তাহাদের বিরুদ্ধে কোন আইনি পদক্ষেপ গ্রহন করেন নাই। আসামীরা হুমকি দেন যে জলপাইগুড়ী হ ইতে ভারাটে গুণ্ডা আনিয়া আবার ও মারধর করিবে ও বাড়ী আগুন দিয়ে জালিয়ে দেবে। মুসলীম হয়ে মনসা পুজা করি জন্য আমার প্রতি সাম্প্রদায়িক হিংসা করে। এমতাবস্থায় আবেদন যে হলদিবাড়ী থানাকে আসামীদের বিরুদ্ধে মামলা শুরুর আদেশ দেওয়া হউক।

বিদায় প্রার্থনা উপরোক্ত আবেদন মঞ্জুর করিতে মহাশয়ের আজ্ঞা হয়। (অভিযোগের সঙ্গে এজাহারের জেরক্স কপি গাথিয়া দেওয়া হইল)

টিপ সই

মমিনা খাতুন

(2)

- 5 -

To,
The I. C. Haldibari Police Station,
Haldibari, Dist-Coochbehar.
Dated- 29th day of April, 2019.

এজাহারকারিনী ঃ- মমিনা খাতুন স্বামী তফিজুল হক, সাকিন-পয়ামারী, পোষ্ট ও থানা-হলদিবাড়ী, জিলা-কোচবিহার, পিন. ৭৩৫১২২, রাজ্য-পশ্চিমবঙ্গ, ফোন নং. 9933724424 (M).

মহাশয়,

বিনীত নিবেদন এই যে, আমি উপরোক্ত এজাহারকারিনী আপনার নিকট এই মর্ম্মে এজাহার দায়ের করিতেছি যে, আমার পিতার নামীয় জমি জমা দীর্ঘ্যদিন যাবত আমাকে আমার প্রাপ্যঅংশ প্রদান করার কথা দিয়ে আসলেও আমাকে ঠিকমত জমিনের ভাগ প্রদান করে না এবং আজ দেব কাল দেব বলে ঘোরাতে থাকে । এমতবস্থায় গতকাল ২৮/০৪/২০১৯ ইংরাজী তারিখ বিকাল আনুমানিক ৪টা নাগাদ গ্রামের গন্য-মান্য ব্যক্তিদের নিয়ে আলোচনা করা হয় সেখানে আমার ভাগ্না ১/ মহবুল হক পিতা বুধারু হক, সাকিন-পয়ামারী, পোষ্ট ও থানা-হলদিবাড়ী, জিলা-কোচবিহার, উক্ত ব্যাক্তি আমার উপর আক্রমন করে বসে । আমাকে ধাক্কা দিয়ে মাটিতে ফেলে এলোপাথারি মারধর করে এবং দুহাত দিয়ে গলা টিপে ধরে, পরে আশেপাশের লোকজন উদ্ধার করে । উক্ত দিনেই সন্ধ্যা আনুমানিক ৭টা নাগাদ উক্ত আসামী এবং তার সহিত থাকা ২/ বুধারু হক পিতা মৃত অজ্ঞাত, ৩/ হাজেরা খাতুন স্বামী বুধারু হক, সাকিন-ঐ, ৫/ কটুমদ্দিন হক পিতা অজ্ঞাত, সাকিন-ধাপড়া, জলপাইগুড়ী, সকলেই একত্রে বাঁশের লাঠি নিয়ে আমাদের প্রাননাশের চেষ্ঠা করলে আমরা কোনক্রমে পালিয়ে প্রানে রক্ষা পাই । পরবর্তীতে ১নং আসামী আমার বাড়ীর মনসা মন্দির সহ ঠাকুরের হাত ভেঙ্গে দেয় । এমতবস্থায় নিরুপায় হয়ে সুবিচারের আশায় আপনার দ্বারস্থ হইলাম ।

অতএব মহাশয় উপরোক্ত বিষয়ে যথাযথ আইনানুগ পদক্ষেপ গ্রহন করিয়া সুবিচার দানে বাধিত করিবেন ।

বিনীতা

মমিনা খাতুন

-6-

To,
The I. C. Haldibari Police Station,
Haldibari, Dist-Coochbehar.
Dated- 30th day of April, 2019.

এজাহারকারিনী ঃ- তফিজুল হক পিতা মৃত অলেক উদ্দিন, সাকিন-পয়ামারী, পোষ্ট ও থানা-হলদিবাড়ী, জিলা-কোচবিহার, পিন. ৭৩৫১২২, রাজ্য-পশ্চিমবঙ্গ, ফোন নং. 9933724424 (M).

মহাশয়,

বিনীত নিবেদন এই যে, আমি উপরোক্ত এজাহারকারি আপনার নিকট এই মর্ম্মে এজাহার দায়ের করিতেছি যে, আমার শ্বশুড়ের নামীয় জমি জমা দীর্ঘদিন যাবত আমার স্ত্রীকে প্রাপ্যঅংশ প্রদান করার কথা দিয়ে আসলেও আমার স্ত্রীকে ঠিকমত জমিনের ভাগ প্রদান করে না এবং আজ দেব কাল দেব বলে ঘোরাতে থাকে । এমতবস্থায় গতকাল ২৯/০৪/২০১৯ ইংরাজী তারিখ সোমবার সকাল আনুমানিক ৮টা ৩০মিনিট নাগাদ গ্রামের গন্য-মান্য ব্যক্তিদের নিয়ে আলোচনা করা হয় সেখানে সকলের উপস্থিতিতে ১/ এছারুল হক পিতা বুধারু হক, ২/ জরিপা খাতুন স্বামী এছারুক হক, ৩/ ফতেমা খাতুন স্বামী মহাবুল হক, সকলের সাকিন-ঐ, সকলেই আমাকে অশ্লীল ভাষায় গালিগালাজ করতে থাকে । ১নং আসামী আমাকে প্রানে মেরে ফেলবার জন্য আমার গলা বরাবর ধারালো দা চালাতে থাকলে গ্রাম পঞ্চায়েত সদস্য ও উপস্থিত লোকজন কোনক্রমে রক্ষা করে এবং প্রানে বেঁচে যাই । পরবর্তীতে সকলের উপস্থিতিতে আমাকে হুকি দেয় যে, রাস্তায় একা পেলে প্রানে মেরে ফেলবে । এমতবস্থায় নিরুপাই হয়ে সুবিচারের আশায় আপনার দ্বারস্থ হইলাম ।

অতএব মহাশয় উপরোক্ত বিষয়ে যথাযথ আইনানুগ পদক্ষেপ গ্রহন করিয়া সুবিচার দানে বাধিত করিবেন ।

বিনীত
তফিজুল হক

(3)

WEST BENGAL HUMAN RIGHTS COMMISSION
PURTA BHAVAN, 2ND FLOOR, BLOCK-DF, SECTOR - I, SALT LAKE CITY KOLKATA, Pin Code : 700091
Tel : 033 2337-2655 Fax : 033 2337-9633
Email ID : hrcwb2013@gmail.com ,Website : http://www.wbhrc.nic.in

NOTICE
Case No. **1423/25/6/2019**

To

THE SUPERINTENDENT OF POLICE
COOCH BEHAR, PO+DIST.COOCH BEHAR.

WHEREAS the complaint/intimation dated 06/05/2019 received from MOMINA KHATOON in respect of MOMINA KHATOON was placed before the Commission on 16/08/2019 .

AND WHEREAS upon perusing the complaint the Commission has passed the following order.

CALL FOR A REPORT FROM THE SUPERINTENDENT OF POLICE, COOCH BEHAR.

NOW THEREFORE TAKE NOTICE that you are required to submit the requisite information / Report within 8 weeks from the date of receipt of this notice.

TAKE FURTHER NOTICE that in default the Commission may proceed to take such action as it deems proper.

Given under my hand and seal of the Commission, this the day of 06 December 2019.

(BY ORDER)

~~Registrar/Dy. Registrar~~/Asst. Secretary

Encl: Copy of the complaint.

Note --> 1. The information / report shall be furnished only by the authority which is called upon to do so.

2. Please quote the **Case No.** referred above in all future correspondence / reports.

CC to:

Case No. **1423/25/6/2019**
-
-

Case No. **1423/25/6/2019**
MOMINA KHATOON
PAYMARI PO+PS- HALDIBARI
COOCH BEHAR, WEST BENGAL.

~~Registrar/Dy. Registrar~~/Asst. Secretary

-8-

2465/C/2020

Government of West Bengal
Office of the Superintendent of Police
Cooch Behar

Memo No. 1488 /E/Reader dt. 15 /07/2020

19 AUG 2020
2959

To
The Assistant Secretary
West Bengal Human Rights Commission
Purta Bhavan (2nd Floor)
Block – DF, Sector – I, Salt Lake,
Kolkata - 700091

S.O.
Pl. Put up with relevent file
Asstt. Secy.

Sub : Report on the complaint of Momina Khatoon.

Ref : Case No.1423/25/6/2019 dt.06.12.2019 of WBHRC.

Kindly refer to the above, this is to inform you that in this regard Sub-Divisional Police Officer, Mekhliganj, District Cooch Behar has submitted a report along with its enclosures duly forwarded by Additional Superintendent of Police, Mathabhanga, Cooch Behar which is self explanatory. The above report along with its enclosures is being sent herewith for your kind information.

15/07/2020

Enclo : As stated.

Superintendent of Police
Cooch Behar

Additional Superintendent of Police
R-444/VI/20
Dt 04-07-20

Government of West Bengal
Office of the Sub-Divisional Police Officer
Mekhliganj, Cooch Behar

Memo No. 377 /SDPO MKG/2020 Date: 08.07.2020

To
The Superintendent of Police
Cooch Behar

Through proper channel

Ref: 1) Ref:Case No. 1423/25/6/2019 of WBHRC.
2) Memo No. 37/V/Reader of your Good office Dated. 03.01.2020

Sub: Enquiry report on the complaint of Momina Khatoon w/o- Tafijul Hoque of Payamari, PO+PS Haldibari, Cooch Behar (.)

Sir,

In reference to the above subject, I perused the petition of Momina Khatoon w/o- Tafijul Hoque of Payamari, PO+PS Haldibari, Cooch Behar. It is alleged that the petitioner had dispute since along in c/w her father's properties with the accused persons namely 1. Mohabul Hoque s/o- Budhar Hoque 2. Budharu Hoque s/o- Lt. Ali Mohommad 3. Hajera Khatoon w/o- Budharu Hoque 4. Accharul Hoque s/o- Budhuru Hoque 5. Jarifa Khatoon w/o- Accharul Hoque 6. Fatema Khatoon w/o- Mahabul Hoque all of Payamari, PO+PS- Haldibari, Cooch Behar and 7. Katumoddin Hoque s/o- Unknown of Bhotpatty, PO+PS- Moynaguri, Jalpaiguri.

On 28.04.2019 around 04 pm a amicable settlement with the accused persons were held. At that time her nephew Mohabul Hoque assaults her and pushed her to the ground. Along with him Bhudaru Hoque, Hajera Khatoon, Kutubuddin Hoque s/o- Unknown of Bhotpatty, Moynaguri, Jalpaiguri al so assaults the petitioner. Even being a muslim, she worship maunsa . The maunsa goddess Temple was built by the petitioners father when he was alive. The accused persons disfigured the stature of the goddess it is al so alleged that the accused persons assaulted her husband and threatened them with dire consequences. The petitioner had alleged that Haldibari Police Station did not take any action against the accused persons.

During further enquiry, I consulted the records of Haldibari Police Station and it is learnt that on the information about a quarrel between two parties on 28.04.2019 around 4 pm at Poyamari, Haldibari PS on the issue of previous grudge land dispute. Both the parties threatened each other with dire consequences and also used slang languages against each other .Both the parties where dangerous and desperate in nature. To prevent breach of peace and to maintain tranquility in the area. SI Indra Lama of Haldibari PS submitted Non FIR PR No. 656/19 Dt. 10.06.2019 u/s- 107 Cr.PC against 1st party i) Momina Khatoon ii) Tafijul Hoque of Poyamari, Haldibari and 2nd party i) Mohabul Hoque ii) Bodharu Hoque iii) Hajera Khatoon and iv) Kutubuddin Hoque of Podomoti, Moynaguri, Jalpaiguri. This has a reference to Haldibari PS. GDE No. 236/19 Dt.08.06.2019 u/s- 107 Cr.PC (.)

Further more, in this regard a case has also been recorded vide Haldibari PS Case No. 136/19 Dt. 15.07.2019 u/s- 341/323/324/506/34 IPC on the complaint of Momina Khatoon against all the accused persons namely 1. Mohabul Hoque s/o- Budhar Hoque 2. Budharu Hoque s/o- Lt. Ali Mohommad 3. Hajera Khatoon w/o- Budharu Hoque 4. Accharul Hoque s/o- Budhuru Hoque 5. Jarifa Khatoon w/o- Accharul Hoque 6. Fatema Khatoon w/o- Mahabul Hoque all of Payamari, PO+PS- Haldibari, Cooch Behar and 7. Katumoddin Hoque s/o- Unknown of Bhotpatty, PO+PS- Moynaguri, Jalpaiguri as per (FIR).

After completion of investigation, the IO Submitted charge sheet (C/S) no. 189/19 Dt. 30.11.2019 u/s- 341/323/324/506/34 IPC against all FIR Name accused persons (.)

It may be noted that the petitioner was examined at the office chamber of the undersigned on 18.01.2020 she was communicated all the legal procedures under taken by the Police and that the petitioner was assured of all necessary assistance in future, if need arise (.)

Yours faithfully

03/07/20.

SIDDHARTH DORJI
Sub-Divisional Police Officer
Mekhliganj, Cooch Behar

Sub-Divisional Police Officer
Mekhliganj, Cooch Behar

Enclose: 1) Original Memo.
(2) Copy of FIR

forwarded.
11/7/20

Additional Superintendent of Police
Mathabhanga, Coochbehar

Memo No- 529/20/ASP/MTG/CBR
Dtd- 11-07-20.

W.B.P. Form No. 27

186 SDPO

FIRST INFORMATION REPORT

First information of a congnizable crime reported under section 154 Cr. P. C. at P. S.

1. District Coochbehar Subdivn. Mekhliganj P.S. Haldibari Year 2019 FIR No. 138/19 Date 15/07/19

(i) Act I.P.C. Sections 341/323/329/506/34 IPC (ii) Act Sections

(iii) Act Sections (iv) Other Acts & Sections

3. (a) General Diary Reference Entry No. 480/19 Time at 14.35 hrs.

(b) Occurrence of Offence : Day Sunday Date 28/04/19 Time at 16.00 hrs.

(c) Information received Date 15/07/19 Time 14.35 hrs.

G. D. No. 480/19 at the Police Station.

4. Type of information : Written/Oral Written, Treat FIR u/s 156(3) of Cr.PC.

5. Place of Occurrence : (a) Direction and Distance from P. S. 03 Km South west of P.S.

(b) Address Poyamari PO+PS Haldibari Dist Coochbehar Dakshin Bara Haldibari GP Beat No.

(c) In case outside limit of this Police Station, then the name of District

P. S.

6. Complainant/Informant :

(a) Name Mohuina Khatun

(b) Father's/Husband's Name Tofijul Haque

(c) Date/Year of Birth

(d) Nationality Indian

(e) Address Vill. Poyamari PS Haldibari dist. Coochbehar

7. Details of know/suspected/unknown/accused with full particulars (attach separate sheets, if necessary) 1) Mahabul Haque S/o Budhari Haque 2) Budhari Haque S/o Lt. Ali Md. 3) Hajera Khatun W/o Budhari Haque 4) Achharul Haque S/o Budhari Haque

8. Reasons for delay in reporting by the Complainant/informant 5) Jarifa Khatun W/o Achharul Haque 6) Fatema Khatun W/o Mahabul Haque

9. Particulars of properties stolen/involved : (Attach separate sheets, if required) All – Poyamari PO+PS Haldibari Dist Coochbehar 7) Kalimuddin Haque S/o Lt. ... PO + PS. Mainaguri dist. Jalpaiguri.

10. Total value of properties stolen/involved

11. Inquest report/U. D. Case No. if any The original written complaint is reproduced below –

12. FIR contents : (Attach seperate sheets, if required)

13. Action taken : Since the above report reveals commission of offence(s) u/s 341/323/324/506/34 IPC

I SI Ajay Roy of Haldibari PS Dist. Coochbehar

registrared the case and took up investigation/directed ASI Chanchal Das to take up the investigation/transferred

on point of Jurisdicition FIR read over to the Complainant/informant admitted

to P. S.

to be correctly recorded and a copy given to the Complainant/informant free of cost.

Signature/Thumb Impression of the Complainant/informant.

Signature of the Officer-in-charge, Police Station

Inspector-in-Charge Haldibari P.S. Coochbehar

Name Ajay Roy

Rank SI of Police

Number, if any Haldibari PS

15/07/19

Sub-Divisional Police Office Mekhliganj, Coochbehar R/1096/19 23-07-19

In the Court of the Additional Chief Judicial Magistrate at Mekhliganj,
Dist.- Cooch Behar.

Present :

Sri Mayukh Das, J.M., Mekhliganj
In charge of
Additional Chief Judicial Magistrate,
Mekhliganj, Dist.- Cooch Behar.

Misc. Petition (Treat F.I.R) No. 04 of 2019

Momina Khatun Vs. Mohabul Hoque and 06 others

Order No.- 01
24-06-2019

One complaint namely Momina Khatun, WO-Tafijul Hoque, of-Poyamari, Haldibari PS, Dist.-Cooch Behar has filed a petition of complaint supported by an affidavit along with Vokalatnama and Ejhar Copy against the accused persons praying for causing investigation of the alleged incident by the police of concern P.S. u/s : 156(3) of Cr. P.C. in treating the petition as F.I.R.

Perused the complaint petition

Heard , Considered , The prayer is allowed.

Hence, the I.C. Of Haldibari P.S. is directed to investigate the matter of incident treating the complaint petition as F.I.R.

To 29-07-2019 for compliance report by the I.C. Of Haldibari P.S.

Let a copy of this order along with the complaint and other relevant document be sent to the I.C. Of Haldibari P.S. for compliance.

D/C

Judicial Magistrate, Mekhliganj
in charge of
Additional Chief Judicial Magistrate,
Mekhliganj, Dist.- Cooch Behar.

Judicial Magistrate, Mekhliganj
in charge of
Additional Chief Judicial Magistrate,
Mekhliganj, Dist.- Cooch Behar.

Office of the Addl. Chief Judicial Magistrate, Mekhliganj, Cooch Behar.

No.- 526 /19 Dt.- 25/6/19

Copy forwarded to-

The I/C, Haldibari PS.

Judicial Magistrate, Mekhliganj
in charge of
Additional Chief Judicial Magistrate,
Mekhliganj, Dist.- Cooch Behar.

A.C.J.M.
I/C Mekhliganj

মাননীয় মুখ্য বিচার বিভাগীয় আদালত
মেখলিগঞ্জ

ক্রিমিনাল কেস নং ০৪ /২০১৯

ফৌজদারি কার্যবিধী আইনের ১৫৬(৩) ধারামতে
এজাহার/অভিযোগ

মোমিনা খাতুন স্বামী তফিজুল হক সাকিন পয়ামারী, পোষ্ট ও থানা হলদিবাড়ী, জেলা কোচবিহার। ..... বাদী

বনাম

০১ মহাবুল হক পিতা বুধার হক
০২ বুধারু হক পিতা অজ্ঞাত ঐ ঐ ঐ
০৩ হাজেরা খাতুন স্বামী বুধারু হক
০৪ এছারুল হক পিতা বুধারু হক
০৫ জরিফা খাতুন স্বামী এছারুল হক
০৬ ফতেমা খাতুন স্বামী মহাবুল হক
সকলের সাকিন পয়ামারী, পোষ্ট ও থানা হলদিবাড়ী, জেলা কোচবিহার
০৭ কটুমদ্দিন হক পিতা অজ্ঞাত সাকিন ভোটপাট্টি, পোষ্ট ও থানা ময়নাগুড়ী, জেলা জলপাইগুড়ী। ..... বিবাদী

ঘটনার তারিখ ২৮/০৪/২০১৯ ইং বিকাল ৪ টা
ভারতীয় দণ্ডবিধী আইনের ৩২৩/৩২৪/২৯৫কে/৩৪ ধারামতে
এজাহার/অভিযোগ

Received on 15/07/19 at 14:35 hrs.
NJ2 Haldibari PS, SDEM - 480/19
Dt. 15/07/19 and started H&B PS.
Case No. 136/19 Dt. 15/07/19 u/s 341/-
323/324/506/34 IPC

15/07/19
Inspector-in-Charge
Haldibari PS.
Coochbehar

অভিযোগের চুম্বক,

আসামীদের সহিত বাদীর পৈতৃক সম্পত্তি লইয়া দীর্ঘ দিনের বিবাদ। গত ২৮/০৪/২০১৯ ইং বিকাল ৪ টা নাগাদ গণ্যমান্য ব্যক্তিদের লইয়া এক বৈঠক বসে। উপস্থিত গণ্যমান্য ব্যক্তিদের উপস্থিতিতে মহাবুল হক বাদীকে মারধর করে। বাদীকে মাটিতে ফেলে দিয়ে তাহার গলায় পা এর পাড়া দেয়। ইতি মধ্যে আসামী বুধারু হক, হাজরা খাতুন, কটুমদ্দিন তাহারাও বাদীকে প্রচণ্ডভাবে মারধর করে। সমস্ত আসামীগণ বাদীর ছেলে হুজুর হক ও মেয়ে লায়লা খাতুন ও রেজিয়া খাতুনকে মারধর করে। বাদী মুসলীম হইলেও মনসাঁ পুঁজা করেন। তিনি মনসাঁর মন্দির ও তৈরী করেন। আসামীরা উদ্দেশ্য প্রনোদিত ভাবে মনসাঁ প্রতিমার একটি হাত ভেঙ্গে দিয়া প্রতিমার অঙ্গ হানি করেন। আসামীরা আবারও হুমকি দেয় যে মনসাঁ মন্দিরে গরুর রক্ত ঢেলে দিবে। আসামীরা পরের দিন ২৯/০৪/২০১৯ ইং সকাল বেলা বাদী ও তাহার পরিবারের লোকদের মারধর করেন। আসামী এছারুল হক বাদীর স্বামীর গলায় কাচি দাঁ ঠেকায়ে টান দিতে উদ্দত হয়। বাদী ৩০/০৪/২০১৯ ইং হলদিবাড়ী থানায় লিখিত এজাহার দায়ের করেন। বাদী তাহার চিকিৎসার কাগজ হলদিবাড়ী থানায় জমা দেন। আসামীরা প্রভাবশালী রাজনৈতিক দলের সদস্য। থানা কতৃপক্ষ আসামীদের বিরুদ্ধে এযাবৎ কোন পদক্ষেপ গ্রহন না করিলে বাদী ডাক যোগে ০৬/০৫/২০১৯ ইং মানব অধিকার কমিশন কোলকাতা, এস,পি কোচবিহার, এস,ডি,পি,ও মেখলিগঞ্জ ও আই,সি হলদিবাড়ী থানাকে এজাহারের কপি পাঠান।

বাদীর গলার অবস্থার অবনতি হইলে আবার ও হলদিবাড়ী হাসপাতালে গলার চিকিৎসা করেন। হলদিবাড়ী হাসপাতাল ডাক্তার বাবু গলার চিকিৎসার জন্য জলপাইগুড়ী গলার ডাক্তারের চিকিৎসার পরামর্শ দেন।

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বাদী গরিব হওয়ায় জলপাইগুড়ী গলার ডাক্তারের চিকিৎসা করিতে পারেন নাই এবং তিনি এখনও গলার অসুখে ভুগিতেছেন।

ডাক যোগে উর্ধ্বতন কর্তৃপক্ষকে এজাহারের কপি ০৬/০৫/২০১৯ ইং পাঠানো সত্ত্বেও হলদিবাড়ী থানা এযাবৎ আসামীদের বিরুদ্ধে কোন পদক্ষেপ গ্রহন করেন নাই। বাদী একজন গরিব মহিলা নিজ ব্যয়ে মামলা পরিচালনা করা সম্ভব নহে তাই ফৌজদারি কার্যবিধী আইনের ১৫৬(৩) ধারামতে এজাহার দায়ের করিতেছেন।

এমতাবস্থায় বাদীর আবেদন যে বাদীর এজাহার গ্রহন করিয়া হলদিবাড়ী থানাকে তদন্ত সাপেক্ষে আসামীদের বিরুদ্ধে মামলা রুজুর আদেশ দেওয়া হউক।

হলফ নামা

আমি মোমিনা খাতুন স্বামী তফিজুল হক সাকিন পয়ারী, পোষ্ট ও থানা হলদিবাড়ী, জেলা কোচবিহার, বয়স ৪৫ বৎসর, পেশা গৃহ কর্ম, ধর্ম ইসলাম। ধর্মত ঘোষণা করিতেছি যে

আমি আসামীদের বিরুদ্ধে ফৌজদারি কার্যবিধী আইনের ১৫৬(৩) ধারামতে এক এজাহার দায়ের করিয়াছি। এজাহারের সমস্ত বক্তব্য সত্য।

হলদিবাড়ী থানা কর্তৃপক্ষ এযাবৎ আসামীদের বিরুদ্ধে কোন মামলা রুজু করেন নাই। যাহা আমি আদালতে খোঁজ খবর নিয়ে জানিতে পারি।

উপরোক্ত সমস্ত বক্তব্য আমার জ্ঞান ও বিশ্বাস মতে সত্য।

অভিযোগের সঙ্গে ডাক্তারি কাগজের জেরক্স, এজাহারের জেরক্স, ডাকযোগে পাঠানো অভিযোগের জেরক্স এবং পোস্টাল রসিদের জেরক্স গাথিয়া দেওয়া হইল।

L.T.I

Momina Khatun.

1910/19
20/6/19

ADVOCATE

20 JUN 2019

মেখলীগ[illegible] [illegible]শন

ওকালতনামা

জেলা ঃ কোচবিহার

লিখিতং শ্রী ঃ .... FIR u/s 156(3) ...

মোকদ্দমা নং ঃ ....

Mosuma Khatun, W/o Tofimul Hoque
[illegible]
[illegible]

ওকালতনামা

কস্য ওকালতনামা পত্র মিদং কার্য্যঞ্চাগে উপরোক্ত মোকদ্দমার আমার পক্ষের নিম্নলিখিত উকিল মহোদয়গণকে উকিল / এ্যাডভোকেট নিযুক্ত করলাম। তাহার সকলে বা যে কেহ উহা অনুগ্রহপূর্ব্বক আমার নাম তাহাদের বকালতে দস্তখত করিয়া আবেদনপত্র বর্ণনা দলিল ইত্যাদি কাগজাত সোলেনামা, দস্তবরনামা, রুজুনামা, খোরাকী, মুলতুবি খরচ খাজনা ও অন্যান্য যে কোন প্রকারের টাকা ইত্যাদি দাখিল করেন বা ফেরৎ লন ও স্বাক্ষী মান্য করেন বা ছাড়িয়া দেন। কি শালিশ মান্য করেন এবং সাওয়াল জবাব তাদ্বর তালাশ আনসাবী। যে কোন কার্য করেন অথবা ডিগ্রী জারির প্রার্থনা করেন ও জারির কার্য চালান ও দাবী দারির কি কায়েম মোকামের কি মহবতের প্রার্থনার অথবা ক্রোক নাজারীর দেওয়ানী দরখাস্ত করেন এবং দায়ীকের দখলীয় সম্পত্তি নিলাম কিংবা নিয়াংশ বাতিল স্ট্যাম্পের মূল্য ফেরৎ প্রভৃতি যে কোন প্রকার টাকা লন কিংবা আমার পক্ষে যে কোন প্রকার চেকের দরখাস্ত দিয়া লন অথবা আমাদের রসিদ দেন টাকা লওয়ার জন্য চেকের কি বয়ানামার কি নিলাম খরিদে মোকদ্দমা উঠাইয়া লওয়া ডিগ্রী জারিতে টাকা দাখিল চেকের দরখাস্ত দ্বারা টাকা ফেরৎ লন অথবা কি দাবীদারির জন্য দরখাস্ত করেন অথবা চেক লইয়া রসিদ দেন কি ঐ টাকা কালেক্টরীর হইতে লন বা ইনকাম ট্যাক্স ইস্টেট ডিউটিডেথ একসেস ফিস ট্যাক্স ইনকাম ট্যাক্স কমার্শিয়াল সেল ট্যাক্স এগ্রিকালচারাল ইনকাম ট্যাক্স ট্রাইবুনাল মোটর অ্যাক্সিডেন্ট ক্লেমস ট্রাইবুন্যালেট ইনকাম ট্যাক্স এ্যাপিলেট ট্রাইবুনাল এগ্রিকালচারাল এপিলেট ট্রাইবুনাল মোটর অ্যাক্সিডেন্ট ক্লেমস ট্রাইবুন্যালেট ইনকাম ট্যাক্স এ্যাপিলেট ট্রাইবুনাল এগ্রিকালচারাল এপিলেট ট্রাইবুনাল রেভিনিউ অফিস রেন কন্ট্রোলার অফিস যে কোন অফিস ল্যান্ড রিকুইজেশন ও একুইজেশন অফিস ও যে কোন রেভিনিউ অফিস রেন কন্ট্রোলার অফিস যে কোন ফৌজদারী আদালত সেসন আদালত ও যে কোন ডিষ্ট্রিক্ট জজ আদালত সেন্ট্রাল এক্সাইজ ও ল্যান্ড কাস্টমস্ অফিসে উপস্থিত হইয়া দরখাস্ত ইত্যাদি দলিলাদি যাবতীয় কার্য করেন এবং তৎসংক্রান্ত যাবতীয় টাকা দাখিল ও উঠাইবার জন্য দরখাস্ত করেন এবং রিফান্ড ভাউচার গ্রহণ এবং উহা উপযুক্ত স্থান অফিস হইতে ভাঙ্গাইয়া লইতে পারিবেন না উল্লেখিত কোন প্রকারের টাকা লওয়ার চেক আমার পক্ষে কেহ লওয়ার জন্য বরাদ দেন অথবা অস্ত্র সম্বন্ধি লাইসেন্সের দরখাস্ত করে অথবা দায়িকে সম্পত্তি নিলামে ডাকিয়া ডিক্রির টাকাতে কর্তন পূর্বক রসিদ দেন কিংবা যে কোন প্রকারের দেনার টাকা দাখিল অথবা পরিশোধ করা প্রভৃতি যাবতীয় কার্য করেন কিংবা উৎখাতের নোটিশ জারীর জন্য দরখাস্ত করেন এবং যে কোন প্রকারের দাখিলী কি আপত্তি মোকদ্দমার নথি দেখেন কি আমার পক্ষে অন্য উকিল নিযুক্ত করেন তাহাই আমায় কর্তৃক কার্যের স্বীকৃতি হইবে আইনত ন্যায় হারে বা আদালত কর্তৃক নির্দিষ্ট হারে উকিল ফিস দিতে বাধ্য থাকিবে। এতদার্থে এই ওকালতনামা লিখিয়া দিলাম।

Mosuma [illegible]

আমি ওকালতনামা দাতা শ্রী..

শ্রী..শ্রী সম্মুখে টিপসহি প্রদান করিলাম।

টিপসহি

আমি অত্র ওকালতনামা দাতা এতদ্বারা আমার আত্মীয় / বন্ধু / কর্মচারী শ্রী..

কে এই ওকালতনামা আমার এ্যাডভোকেট এর নিকট উপস্থিত করিবার জন্য প্রদান করিলাম।

আমি শ্রী

দস্তখত —

অ্যাডভোকেট দিগের

এই ওকালতনামা আদালতে দাখিল করিবার জন্য।

ইতি —

২০১ সনের মাসের তারিখ

অ্যাডভোকেট ঃ-

১।	শ্রী পীযুষ কান্তি সিংহ রায়	এল.এল.বি
২।	শ্রী সন্দীপ কুমার সরকার	ঐ
৩।	শ্রী প্রদীপ বিশ্বাস	ঐ
৪।	শ্রী সুবল পাল	ঐ
৫।	শ্রী সুরেন্দ্র নাথ ভট্টাচার্য	ঐ
৬।	শ্রী [illegible] চন্দ্র রায়	ঐ
৭।	শ্রী মৃন্ময় দত্ত	ঐ
৮।	শ্রী অলোক কুমার রায়	ঐ
৯।	শ্রীমতী আলো ঘোষ	ঐ
১০।	শ্রী প্রদীপ বিশ্বাস	ঐ
১১।	শ্রী [illegible] হক প্রধান	ঐ
১২।	শ্রী প্রদীপ চন্দ্র রায়	ঐ
১৩।	শ্রী [illegible] সিংহ [illegible]	ঐ
১৪।	শ্রী গৌতম রায়	ঐ
১৫।	শ্রী গৌরব ঘোষ	ঐ
১৬।	শ্রী [illegible] রায়	ঐ
১৭।	শ্রী দেবব্রত ঘোষ	ঐ
১৮।	শ্রী [illegible]	ঐ
১৯।	শ্রী [illegible] রায় [illegible]	ঐ
২০।	শ্রী সুশান্ত রায়	ঐ

অ্যাডভোকেট ঃ-

২১।	শ্রী বিনায়ক সিংহ সরকার	এল.এল.বি
২২।	শ্রীমতী সুস্মিতা রায়	ঐ
২৩।	শ্রীমতী সুদীপ্তা পাল	ঐ
২৪।	শ্রীমতী অঞ্জনা রায়	ঐ
২৫।	শ্রী দেবজীৎ সান্যাল	ঐ
২৬।	শ্রী তিতাস রায়	ঐ
২৭।	শ্রী অভিমন্যু প্রামানিক	ঐ
২৮।	শ্রী মৃণাল কান্তি সরকার	ঐ
২৯।	শ্রীমতী অমীরা ভট্টাচার্য	ঐ
৩০।	শ্রী অশোক কুমার ঘোষ	ঐ
৩১।	শ্রী [illegible] কুমার সাহা	ঐ
৩২।	শ্রী [illegible] সিংহ [illegible]	ঐ
৩৩।	শ্রী [illegible] রায় অধিকারী	ঐ
৩৪।	শ্রীমতী [illegible]	ঐ
৩৫।	শ্রী [illegible] সরকার	ঐ
৩৬।	শ্রী [illegible] ভট্টাচার্য	ঐ
৩৭।	শ্রীমতী [illegible]	ঐ
৩৮।	শ্রী [illegible]	ঐ
৩৯।	শ্রী [illegible] সরকার	ঐ
৪০।	শ্রী [illegible]	ঐ
৪১।	শ্রী [illegible] রায়	ঐ

Satisfied as to due execution and accepted

Pranab Kumar Roy
Advocate

Narayan Chandra Roy
Advocate
9002808998
No. F. 409/3F2 of 1989

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মাননীয় মুখ্য বিচার বিভাগীয় আদালত
মেখলিগঞ্জ

ক্রিঃ প্রসিডিউর কেস নং ০৪ /২০১৯

ফৌজদারি কার্যবিধী আইনের ১৫৬(৩) ধারামতে
এজাহার/অভিযোগ

মোমিনা খাতুন স্বামী তফিজুল হক সাকিন পয়ামারী, পোষ্ট ও থানা হলদিবাড়ী, জেলা কোচবিহার। ..... বাদী

বনাম

০১ মহাবুল হক পিতা বুধার হক
০২ বুধারু হক পিতা অজ্ঞাত মৃত ঠিকানা আছে।
০৩ হাজেরা খাতুন স্বামী বুধারু হক
০৪ এছারুল হক পিতা বুধারু হক
০৫ জরিফা খাতুন স্বামী এছারুল হক
০৬ ফতেমা খাতুন স্বামী মহাবুল হক
সকলের সাকিন পয়ামারী, পোষ্ট ও থানা হলদিবাড়ী, জেলা কোচবিহার
০৭ কটুমদ্দিন হক পিতা অজ্ঞাত সাকিন ভোটপাট্টি, পোষ্ট ও থানা ময়নাগুড়ী, জেলা জলপাইগুড়ী। ..... বিবাদী

ঘটনার তারিখ ২৮/০৪/২০১৯ ইং বিকাল ৪ টা
ভারতীয় দন্ডবিধী আইনের ৩২৩/৩২৪/২৯৫ক/৩৪ ধারামতে
এজাহার/অভিযোগ

Received on 15/07/19 at 14:35 hrs.
N.D.& Haldibari PS. G.D.E No. 480/19
Dt. 15/07/19 and started H.D.B PS.
Case No. 136/19 dt. 15/07/19 U/S 341/
323/324/506/34 IPC

Inspector-in-Charge
Haldibari PS.
Coochbehar

বাদী গর্ভিনি হওয়ায় জলপাইগুড়ী গলার ডাক্তারের চিকিৎসা করিতে পারেন নাই এবং তিনি এখনও গলার অসুখে ভুগিতেছেন।

ডাক যোগে উর্দ্ধতন কর্তৃপক্ষকে এজাহারের কপি ০৬/০৫/২০১৯ ইং পাঠানো সত্ত্বেও হলদিবাড়ী থানা এযাবৎ আসামীদের বিরুদ্ধে কোন পদক্ষেপ গ্রহন করেন নাই। বাদী একজন গরিব মহিলা নিজ ব্যয়ে মামলা পরিচালনা করা সম্ভব নহে তাই ফৌজদারি কার্যবিধী আইনের ১৫৬(৩) ধারামতে এজাহার দায়ের করিতেছেন।

এমতাবস্থায় বাদীর আবেদন যে বাদীর এজাহার গ্রহন করিয়া হলদিবাড়ী থানাকে তদন্ত সাপেক্ষে আসামীদের বিরুদ্ধে মামলা রুজুর আদেশ দেওয়া হউক।

<u>হলফ নামা</u>

আমি মোমিনা খাতুন স্বামী তফিজুল হক সাকিন পয়ামারী, পোষ্ট ও থানা হলদিবাড়ী, জেলা কোচবিহার, বয়স ৪৫ বৎসর, পেশা গৃহ কর্ম, ধর্ম ইসলাম। ধর্মত ঘোষণা করিতেছি যে

আমি আসামীদের বিরুদ্ধে ফৌজদারি কার্যবিধী আইনের ১৫৬(৩) ধারামতে এক এজাহার দায়ের করিয়াছি। এজাহারের সমস্ত বক্তব্য সত্য।

হলদিবাড়ী থানা কর্তৃপক্ষ এযাবৎ আসামীদের বিরুদ্ধে কোন মামলা রুজু করেন নাই। যাহা আমি আদালতে খোঁজ খবর নিয়ে জানিতে পারি।

উপরোক্ত সমস্ত বক্তব্য আমার জ্ঞান ও বিশ্বাস মতে সত্য।

অভিযোগের সঙ্গে তাজারি কাগজের জেরক্স, এজাহারের জেরক্স, ডাকযোগে পাঠানো অভিযোগের জেরক্স এবং পোস্টাল রসিদের জেরক্স গাথিয়া দেওয়া হইল।

L.T.I

Momina Khatun.

1910/19 20/6/19 Momina Khatun

ADVOCATE

20 JUN 2019

In the Court of the Additional Chief Judicial Magistrate at Mekhliganj,
Dist.- Cooch Behar.

-19-

Present :

Sri Mayukh Das, J.M., Mekhliganj
In charge of
Additional Chief Judicial Magistrate,
Mekhliganj, Dist.- Cooch Behar.

Misc. Petition (Treat F.I.R) No. 04 of 2019

Momina Khatun Vs. Mohabul Hoque and 06 others

Order No.- 01
24-06-2019

One complaint namely Momina Khatun, W/O-Tafijul Hoque, of-Poyamari, Haldibari PS, Dist.-Cooch Behar has filed a petition of complaint supported by an affidavit along with Vokalatnama and Ejhar Copy against the accused persons praying for causing investigation of the alleged incident by the police of concern P.S. u/s : 156(3) of Cr. P.C. in treating the petition as F.I.R.

Perused the complaint petition

Heard , Considered , The prayer is allowed.

Hence, the I.C. Of Haldibari P.S. is directed to investigate the matter of incident treating the complaint petition as F.I.R.

To 29-07-2019 for compliance report by the I.C. Of Haldibari P.S.

Let a copy of this order along with the complaint and other relevant document be sent to the I.C. Of Haldibari P.S. for compliance.

D/C

Judicial Magistrate, Mekhliganj
in charge of
Additional Chief Judicial Magistrate,
Mekhliganj, Dist.- Cooch Behar.

Judicial Magistrate, Mekhliganj
in charge of
Additional Chief Judicial Magistrate,
Mekhliganj, Dist.- Cooch Behar.

Office of the Addl. Chief Judicial Magistrate, Mekhliganj, Cooch Behar.

No.- 526/19 Dt.- 25/6/19

Copy forwarded to-
The I/C, Haldibari PS.

Judicial Magistrate, Mekhliganj
in charge of
Additional Chief Judicial Magistrate,
Mekhliganj, Dist.- Cooch Behar.
A.C.J.M.
Mekhliganj

(7)

Government of West Bengal
Office of the Addl. Superintendent of Police
Mathabhanga, Cooch Behar

To
The Superintendent of Police
Cooch Behar

Sub: Enquiry report on the complaint of MominaKhatoon w/o-TafijulHoque of Payamari, PO+PS Haldibari, Cooch Behar regarding fixing responsibility of each of the delinquent officers of Haldibari Ps.

Reference: Memo no.110/V/Reader dated 13.01.2021 of Your Good Office.

Sir,

In reference to the above subject, I perused the matter concerning the petition of MominaKhatoon w/o TafijulHoque of Payamari, PO+PS Haldibari, Cooch Behar. It is alleged that the petitioner had dispute since along in c/w her father's properties with the accused persons namely 1. MohabulHoque s/o BudharHoque 2. BudharuHoque s/o Lt. Ali Mohommad 3. HajeraKhatoon w/o BudharuHoque 4. AccharulHoque s/o BudharuHoque 5. JarifaKhatoon w/o AccharulHoque 6. FatemaKhatoon w/o MahabulHoque all of Payamari, PO+PS Haldibari, Cooch Behar and 7. KatumoddinHoque s/o Unknown of Bhotpatty, PO+PS Moynaguri, Jalpaiguri.

On 28.04.2019 around 04 pm an amicable settlement with the accused persons were held. At that time her nephew MohabulHoque assaults her and pushed her to the ground. Along with him BhudaruHoque, HajeraKhatoon, KutubuddinHoque s/o Unknown of Bhotpatty. Moynaguri. Jalpaiguri also assaults the petitioner. Even being a muslim. She worshipsmaunsa. The maunsa goddess temple was built by the petitioner's father when he was alive. The accused persons disfigured the stature of the goddess it is also alleged that the accused persons assaulted her husband and threatened them with bire consequences. The petitioner had alleged that Haldibari police station did not take any action against the accused persons.

During further enquiry, the records of Haldibari police station were consulted and it was learnt that on information about a quarrel between two parties on 28.04.2019 around 4 pm at Payamari, Haldibari PS on the issue of previous grudge land dispute. Both the parties threatened each other with dire consequences and also used slang languages against each other. Both the parties where dangerous and desperate in nature. To prevent breach of peace and to maintain tranquility in the area. SI Indra Lama of Haldibari PS submitted Non FIR PR No.656/19 Dt. 10.06.2019 u/s-107 Cr.PC against 1st party i) MominaKhatoon ii) TafijulHoque of payamari, Haldibari and 2nd party i) MohabulHoque ii) BudharuHoque iii) HajeraKhatoon and iv) KutubuddinHoque of Podomoti, Moynaguri, Jalpaiguri. This has a reference to Haldibari PS. GDE No.236/19 Dt.08.06.2019 u/s-107 Cr.PC (.)

Furthermore, in this regard a case has also been recorded vide Haldibari PS Case No.136/2019 Dt.15.07.2019 u/s-341/323/324/506/34 IPC on the complaint of MominaKhatoon against all the accused persons namely 1. MahabulHoque s/o BudharHoque 2. Budharu s/o Lt. Ali Mohommad 3. HajeraKhatoon w/o BudharuHoque 4. AccharulHoque s/o BudharuHoque 5. JarifaKhatoon w/o AccharulHoque 6. FatemaKhatoon w/o MahabulHoque all of Payamari, PO+PS Haldibari, Cooch Behar and 7. KatumoddinHoque s/o Unknown of Bhotpatty. PO+PS Moynaguri, Jalpaiguri as per (FIR)

After completion of investigation, the IO submitted charge sheet (C/S) no.189/2019 Dt.30.11.2019 u/s-341/323/324/506/34 IPC against all FIR Name accused persons (.)
Earlier the petitioner was examined at the office chamber of the Sub-Divisional Police Officer, Changrabandha, Mekhliganj, Coochbehar on 18.01.2020.

Inter-alia the petitioner was further re-examined on 14.01.2021 at Haldibari Police Station in presence of one Tafijul Haque (husband) S/o Lt. Alauddin Md of Poyamari, Haldibari Police Station, Coochbehar. The petitioner stated on 30.04.2019 when her husband namely Tafijul Haque s/o Lt. Alauddin Md had been to the police station at that time the duty officer refused to accept the complaint. Further I also consulted the record of the police station and duty roster and it is came to light that on 30.04.2019 ASI Kali Pada Roy was detailed for the duty. however the visiting of the petitioner along with her husband on 30.04.2019 and on duty officer ASI Kalipada has some bearing on the fact of non-acceptance of the complaint. The petitioner have also mentioned name of officer namely one Bhanu Sir who had visited the place of occurrence much later during the enquiry. At that time ASI Bhanu Das was posted at Haldibari police Station.
Further, I also examined the Reserve Officer (RO) Mahendranath Roy, Coochbehar on 15.01.2021 as to what actions had been taken against the defaulting officer against ASI Kalipada Roy and ASI Bhanu Das. He stated after perusing the documents that on 30.06.2019 officer ASI Kali Pada Roy had retired from service. On the other hand ASI Bhanu Das had been censured for handling the complaint in a lackadaisical attitude vide DO no. 1647 dated 08.07.2020.
Furthermore all the officer of Haldibari Police Station has been briefed thoroughly about public dealing with utter politeness and professional attitude. At present the area has been peaceful

This is for favor your kind perusal

Yours Faithfully

15/01/2021

SIDDHARTH DORJI
Addl. Superintendent of Police
Mathabhanga, Coochbehar

Additional Superintendent of Police
Mathabhanga, Coochbehar

Enclo: Original Memo.

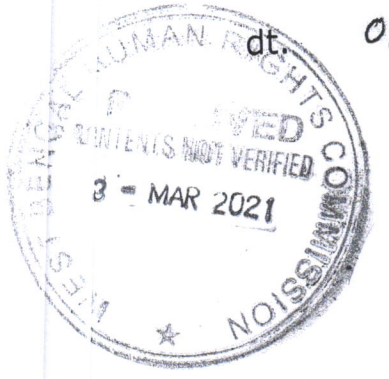
Memo No- 92/21/ASP/MTG/CBR

Scanned

-22- 1877/CR/2021

Government of West Bengal
Office of the Superintendent of Police
Cooch Behar

Memo No. 686 /E/Reader dt. 02/03/2021



To
The Assistant Secretary
West Bengal Human Rights Commission
Purta Bhavan (2nd Floor)
Block – DF, Sector – I, Salt Lake,
Kolkata – 700091

Sub : Report on the complaint of Momina Khatoon of Paymari, P.O. Haldibari under Haldibari P.S., District Cooch Behar.

Ref : Case No.1423/25/6/2019 dt.21.01.2021 of WBHRC.

Kindly refer to the above, this is to inform you that in this regard report of Additional Superintendent of Police, Mathabhanga, District Cooch Behar has already sent to your good office vide this office memo no.158/E/Reader dt.19.01.2021. However, copy of the above report is being sent again for your kind perusal.

02/03/21

Superintendent of Police
Cooch Behar

Enclo : As stated.

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 629 OF 2010

Sahabuddin & Anr. ...
Appellants

Versus

State of Assam ... Respondent

JUDGMENT

Swatanter Kumar, J.

1. It is the case of the prosecution that the accused Sahabuddin was married to one Sajna Begum, the deceased on 17th May, 2001, and they were staying together. She was three months' pregnant. During her last visit to her parental home, she wailed and was not willing to go back to her husband's house, stating that her husband and her brother-in-law would kill her if their demands of dowry were not met. However, the wish of her parents prevailed and she was sent back to her matrimonial home. After lapse of barely a couple of months i.e. on 9th September, 2001, approximately four months after

her marriage, at about 10 p.m., one Sarifuddin, the elder brother-in-law of Sajna Begum, informed her uncle, Taibur Rahman, PW7 that she fell down in the kitchen due to dizziness. Ten minutes later, Sarifuddin came back and informed them that Sajana Begum fell down and froth was coming out of her mouth and thereafter she died. PW7 informed the mother of the deceased, Abejan Bibi, PW3, about the death of her daughter, Sajna Begum. When they reached the place of occurrence, they saw that their daughter was lying dead. Suspecting that it was not a natural death and that there had been some foul play on the part of the accused persons i.e. the husband and the brother-in-law of the deceased, PW3, lodged an FIR.

2. The FIR, Ext. 3, was registered under Section 304(B) of the Indian Penal Code, 1860 (for short "IPC"). However, the Court of competent jurisdiction on the basis of the police report and upon hearing both the parties found that a *prima facie* case under Section 302/34 IPC was made out against the accused Sahabuddin and Sarifuddin. They were charged with the same offence and the case was put to trial. The Investigating Officer, Someshwar Boro, PW11, took over the investigation,

examined a number of witnesses and seized the dead body from the place in question. The body of the deceased was subjected to post mortem. On 10th September, 2001, Dr. Swapan Kumar Sen, PW1 in the post mortem report, Ext. 1 stated that injuries on the body of the deceased were ante-mortem and that there were multiple bruises on the lower abdomen. Also, the neck was swollen and face was congested and swollen. Although, the cause of death could not be ascertained, the visceras were preserved to be sent to the Forensic Science Laboratory, Guwahati, for forensic and chemical analysis. PW2, an Executive Magistrate, who had conducted inquest on the body of the deceased noticed that the hands of the deceased were close fisted and saliva was coming out of her mouth along with a little quantity of foam. Black spots were found on her belly and some spots were also noticed on her back. Ext. 2 is the inquest report.

3. The mother of the deceased, Abejan Bibi, PW3 was another material witness and according to her, assault marks could be seen all over the body of the deceased and that her neck was swollen. PW3 also stated that she saw black marks on the left side of the abdomen of her deceased daughter.

Thus, on being suspicious that her daughter had been killed, PW3 lodged the FIR. PW4 who had accompanied PW3, stated PW3 to be her aunt and the statement of PW 4 was quite similar to that of PW3. PW7, Taibur Rahman was the uncle of the deceased, Sajna Begum who had first been informed of her demise by her brother in law, Sarifuddin.

4. However, PW8 and PW9 were the prosecution witnesses who did not fully support the case of the prosecution and were thus declared hostile by the prosecution. Both these witnesses were the neighbours of the accused persons. Accused in their statements under Section 313 of the Code of Criminal Procedure (for short "the CrPC") denied all the allegations and opted to lead defence. The accused persons had examined as many as three witnesses, who were primarily produced to establish the plea of *alibi,* affirming that the accused were not present in the house, when the incident took place.

5. Disbelieving the defence put forth by the accused, the Trial Court held both the accused guilty of the offence punishable under Section 302 read with Section 34 IPC and having found them guilty, awarded them life imprisonment and

a fine of Rs. 5000/- and in default to undergo simple imprisonment for six months.

6. At this stage, we may also notice that the Trial Court had observed that PW1, Dr. Swapan Kumar Sen, the medical officer needs to be censured as his report was found to be perfunctory in nature.

7. Challenging the legality and correctness of the judgment of the Trial Court, the accused persons preferred an appeal before the High Court. The High Court vide its judgment dated 27th November, 2008 dismissed the appeal, confirming the finding of guilt and order of sentence passed by the Trial Court, giving rise to the filing of the present appeal.

8. The learned counsel appearing for the appellants has raised the following contentions while impugning the judgment under appeal:-

1. The story of the prosecution is improbable and prosecution has not been able to establish its case beyond reasonable doubt.

2. PW3 to PW7 are all interested witnesses. By virtue of them being the relatives of the deceased, these

witnesses wanted to falsely implicate the accused persons. Hence, their statements cannot be relied upon and in any case, there are contradictions in the statements of these witnesses. Thus, the accused is entitled to the benefit of doubt.

3. PW8 and PW9 did not support the case of the prosecution. The Court should have returned a finding in favour of the accused by appreciating the statements of DW1, DW2 and DW3, in its correct perspective and examining them in light of the statements of the PW8 and PW9.

9. We are unable to find any merit in the contentions raised on behalf of the appellants, which we propose to discuss together as the Court has to refer to the same evidence for appreciation of the contentions raised on behalf of both the appellants. Thus, it will be appropriate to discuss the pleas together.

10. This is a case of circumstantial evidence as there is no eye witness to the occurrence which has been produced by the prosecution.

11. Let us examine the various circumstances by which the prosecution has attempted to establish the guilt of the accused beyond reasonable doubt. PW3 is the mother of the deceased who had been informed by PW7, the uncle of the deceased about her death. PW5 and PW7 are the uncles of the deceased. PW4 is the cousin sister and PW6 is the sister of the deceased. These persons had accompanied PW3 to the house of the accused, when they got the news of death of the deceased.

12. It has been specifically stated by these witnesses that there were marks on the body of the deceased, her neck was congested and swollen and so was the face. The statement of these witnesses and particularly of PW3, finds due corroboration with the post mortem report prepared by PW1 and, therefore, it will be useful to refer to the entire statement of this witness.

> "On 10/9/2001 I was at Karimganj Civil hospital as Senior M & H.O. On that day at 3-30 p.m. I held post mortem examination on the dead body of Sajna Begum aged 18 years, a female Muslim, from Durlabpur under Patharkandi P.S. on police requisition, being identified by Head Constable Rabindra Deb and Md. Khairuddin, a relation of the deceased and found as :-
>
> External Appearance

An average built female aged about 18 years whose rigor mortis was absent, eyes closed, mouth half open, froth in nostrils present which was whitish. Multiple bruises on the lower abdomen. Neck was swollen. Face was congested & swollen.

Cranium & Spinal Canal

All organs pale

Thorax

Heart was pale & chambers contained blood. Vessels contained blood. All other organs were pale.

Abdomen

Stomach & its contents congested and contained ricy food materials. Large intestine etc – pale & empty. Other organs were pale.

Organs of generation etc – pale. Uterus was 3 months pregnancy.

More details

Injuries were ante mortem.

Visaras also preserved for forensic and clinical analysis through FSL, Guwahati.

(1) Stomach and its contents.

(2) Part of heart, lung, liver, spleen, kidney and rib.

Opinion

As the actual cause of death could not be ascertained the visceras preserved for forensic & chemical analysis to FSL, Guwahati.

Ext. 1 is the Report, Ext. 1(1) is my signature.

Bruises and swollen face being congested may be due to some physical assault. Black spots detected by the Executive Magistrate at the time of preparing his inquest report corresponds to bruises on the lower abdomen as described by my in my p.m. report.

XXXXXXXXXXXXXXX

I was not present at the time of holding inquest by the Magistrate.

Bruise resembles to black spot. Normally after death, no black spot is noticed on a dead person. Black spots may be caused due to poisoning or suffocation.

Bruise may be caused due to dashing against piece of bamboo, bamboo fencing etc.

Pale I mean bloodless and it may happen in normal death also.

Definite cause of death could not be detected.

Symptoms as described above may happen due to epilepsy."

13. As is evident from the statement of PW1, the deceased was three months pregnant. He specifically made a note of the fact that her neck was swollen, her face was congested and swollen and there were multiple bruises on her lower abdomen. According to this witness, the actual cause of death could not be ascertained, but he stated that the presence of bruises on the body of the deceased and her face being swollen and congested may be due to some physical assault. In his cross-

examination, he stated that the black spots may be caused due to poisoning or suffocation and also that symptoms described above may also occur due to epilepsy.

14. Certainly, the doctor did not give a concrete opinion as to the cause of death. The report of the chemical analyst and the report of the Forensic Science Laboratory were not placed on record so that the Court could at least come to a definite conclusion on the basis of scientific analysis. FSL Report was not sent, no report was obtained and, in fact according to PW11, the viscera could not be examined by the laboratory as it was not sent in time. It is evident that the investigation conducted by the Investigating Officer, PW11 and the post mortem examination by the doctor was improper in its very nature. Thus, the remarks made by the Trial Court in this behalf are fully justified.

15. Reverting to the evidence, the post mortem report, Ext. 1 clearly corroborates the statement of five witnesses, PW3, PW4, PW5, PW6 and PW7 and there is no reason for the Court to cast a doubt upon their statement. All these witnesses are related to the deceased. Merely because they are all relatives of the deceased will not by itself cause any prejudice to the case of

the prosecution. In such events, it is not the outsiders who would come to the rescue and would stand by the victim/deceased and their family, but it is the members of their family who would go to witness such an unfortunate incident.

16. An interested witness is the one who is desirous of falsely implicating the accused with an intention of ensuring their conviction. Merely being a relative would not make the statement of such witness equivalent to that of an interested witness. The statement of a related witness can safely be relied upon by the Court, as long as it is trustworthy, truthful and duly corroborated by other prosecution evidence. At this stage, we may refer to the judgment of this Court in the case of *Gajoo v. State of Uttarakhand* [JT 2012 (9) SC 10], where the Court while referring to various previous judgments of this Court, held as under:-

> We are not impressed with this argument. The appreciation of evidence of such related witnesses has been discussed by this Court in its various judgments. In the case of *Dalip Singh v. State of Punjab* [(1954 SCR 145], while rejecting the argument that witnesses who are close-relatives of the victim should not be relied upon, the Court held as under:-
>
> > "26. A witness is normally to be considered independent unless he or

> she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

Similar view was taken by this Court in the case of *State of A.P. v. S. Rayappa and Others* [(2006) 4 SCC 512]. The court observed that it is now almost a fashion that public is reluctant to appear and depose before the court especially in criminal cases and the cases for that reason itself are dragged for years and years. The Court also stated the principle that, "by now, it is a well-established principle of law that testimony of a witness otherwise inspiring confidence cannot be discarded on the ground that he being a relation of the deceased is an interested

witness. A close relative who is a very natural witness cannot be termed as interested witness. The term interested postulates that the person concerned must have some direct interest in seeing the accused person being convicted somehow or the other either because of animosity or some other reasons."

This Court has also taken the view that related witness does not necessarily mean or is equivalent to an interested witness. A witness may be called interested only when he or she derives some benefit from the result of litigation; in the decree in a civil case, or in seeing an accused person punished. {Ref. *State of Uttar Pradesh v. Kishanpal and Others* [(2008) 16 SCC 73]}

In the case of *Darya Singh & Ors. v. State of Punjab* [AIR 1965 SC 328], the Court held as under:-

> "6....On principle, however, it is difficult to accept the plea that if a witness is shown to be a relative of the deceased and it is also shown that he shared the hostility of the victim towards the assailant, his evidence can never be accepted unless it is corroborated on material particulars."

Once, the presence of PW2 and PW3 is shown to be natural, then to doubt their statement would not be a correct approach in law. It has unequivocally come on record through various witnesses including PW4 that there was a '*Satyanarayan Katha*' at the house of Chetu Ram which was attended by various villagers. It was on their way back at midnight when PW2 and PW3 had seen the occurrence in dark with the help of the torches that they were carrying. The mere fact that PW2

> happens to be related to PW1 and to the deceased, would not result in doubting the statement of these witnesses which otherwise have credence, are reliable and are duly corroborated by other evidence. In such cases, it is only the members of the family who come forward to depose. Once it is established that their depositions do not suffer from material contradictions, are trustworthy and in consonance with the above-stated principles, the Court would not be justified in overlooking such valuable piece of evidence.

17. In light of the above principles and the evidence noticed supra, we have no doubt in our mind that the statements of PWs were reliable and trustworthy, as they were fully corroborated by other prosecution, documentary and ocular evidence. The learned counsel appearing for the appellants contended that there are material variations and contradictions in the statement of PW3 and PW6 respectively with regard to the time of incident as well as death of the deceased. Therefore, neither these witnesses can be relied upon nor can prosecution be said to have proved its case beyond reasonable doubt. Such a submission can only be noticed to be rejected.

18. PW3 had mentioned that she came to know about the death of her daughter at about 9.30 p.m., however, according

to PW6, it was about 8 or 9 o'clock when she was informed of the death of her sister. This would hardly be a contradiction. It is a plausible fact that there could be some variations in the statements of witnesses with respect to a particular incident. Thus, in the facts and circumstances of the present case, a mere variation in time is not a material contradiction. It was the uncle of the deceased, PW7, who had been informed by the co-accused, the brother-in-law of the deceased, firstly about the sickness of the deceased and then about her death.

19. Every variation or immaterial contradiction cannot provide advantage to the accused. In the facts and circumstances of the present case, variation of 45 minutes or an hour in giving the time of incident will not be considered fatal. It is a settled principle of law that while appreciating the evidence, the Court must examine the evidence in its entirety upon reading the statement of a witness as a whole, and if the Court finds the statement to be truthful and worthy of credence, then every variation or discrepancy particularly which is immaterial and does not affect the root of the case of the prosecution case would be of no consequences. Reference in this regard can be

made to *State represented by Inspector of Police v. Saravanan and Anr.* [(2008) 17 SCC 587].

20. Next, it was contended that PW8 and PW9 had not supported the case of the prosecution and, therefore, the accused should be entitled to benefit of doubt. PW8 had stated that just before the sunset, the deceased fell down while she was fetching water from the river. She got up and ran like a mad man. According to him, the deceased was caught by evil spirits and was an epileptic. PW9, narrated that he heard cries while he was working in the paddy field and when he went to the house of the accused, he saw the deceased struggling for life. He met the mother-in-law of the deceased and stated that none else was present there. According to him, the deceased died of epilepsy.

21. We may notice that both these witnesses are neighbours of the accused and the same has also been confirmed by them. They affirmed the death of the deceased but gave different versions as to the place and the manner in which she died. The statements of such witnesses would hardly carry any weight in face of statements of PW3 to PW7. The possibility of their

turning hostile by virtue of them being neighbours of the accused cannot be ruled out.

22. The prosecution has been able to establish various circumstances which complete the chain of events and such chain of events undoubtedly point towards the guilt of the accused persons. These circumstances are; the victim coming to her parental home and declining to go back to her matrimonial home, she being persuaded to go to her matrimonial home by her parents and within a few days thereafter, she dies at her in laws place. Further that she had various injuries on her lower abdomen and that her neck and face were congested and swollen. The post mortem report completely corroborates the statements of PWs. Ext. 2, the inquest report, also fully substantiates the case of the prosecution. Besides this, PW3 had categorically stated that her daughter was not suffering from epilepsy or any other disease and that she died as a result of torture inflicted on her by the accused persons. In the cross-examination, two suggestions were put forth to her, one that the deceased died of epilepsy and secondly, that supernatural powers had seized her and that she could not be cured by Imam and thus, died,

both of which were denied by her. In any case, this contradiction in the stand taken by the defence itself point towards the untruthfulness and falsity of the defence.

23. If she was sick, as affirmed by her in laws, then why was she not taken to any doctor or a hospital by the accused persons. She admittedly did not die of any heart attack or haemorrhage. She died in the house of the appellants and therefore, it was expected of the appellants to furnish some explanation in their statement under Section 313 CrPC as to the exact cause of her death. Unfortunately, except barely taking the plea of *alibi*, accused persons chose not to bring the truth before the Court i.e. the circumstances leading to the death of the deceased.

24. The plea of *alibi* was taken by the appellants and was sought to be proved by the statement of defence witnesses, DW1, DW2 and DW3 respectively. These witnesses have rightly been disbelieved by the Trial Court as well as by the High Court. We also find no merit in the plea of *alibi* as it is just an excuse which has been put forward by the accused persons to escape the liability in law. There is a complete contradiction in the material facts of the statement of DW1,

DW2 and DW3. According to the statements of DWs that none of the family members were present on the spot is strange in light of the fact that the deceased was so ill that she died after a short while due to her illness. If none of the accused, whom these witnesses knew were present, then it is not only doubtful but even surprising as to how they came in contact with the deceased at the relevant time. The falsity of the evidence of the defence is writ large in the present case. For these reasons, we find the conduct of the accused unnatural and the statement of these witnesses untrustworthy. The plea of *alibi* is nothing but a falsehood.

25. Once, the Court disbelieves the plea of *alibi* and the accused does not give any explanation in his statement under Section 313 CrPC, the Court is entitled to draw adverse inference against the accused. At this stage, we may refer to the judgment of this Court in the case of *Jitender Kumar v. State of Haryana* [(2012) 6 SCC 204], where the Court while disbelieving the plea of alibi had drawn an adverse inference and said that this fact would support the case of the prosecution.

"51. The accused in the present appeal had also taken the plea of *alibi* in addition to the defence that they were living in a village far away from the place of occurrence. This plea of *alibi* was found to be without any substance by the Trial Court and was further concurrently found to be without any merit by the High Court also. In order to establish the plea of *alibi* these accused had examined various witnesses. Some documents had also been adduced to show that the accused Pawan Kumar and Sunil Kumar had gone to New Subzi Mandi near the booth of DW-1 and they had taken mushroom for sale and had paid the charges to the market committee, etc. Referring to all these documents, the trial court held that none of these documents reflected the presence of either of these accused at that place. On the contrary the entire plea of *alibi* falls to the ground in view of the statements of PW-10 and PW-11. The statements of these witnesses have been accepted by the Courts below and also the fact that they have no reason to falsely implicate the accused persons. Once, PW-10 and PW-11 are believed and their statements are found to be trustworthy, as rightly dealt with by the Courts below, then the plea of *abili* raised by the accused loses its significance. The burden of establishing the plea of *alibi* lay upon the appellants and the appellants have failed to bring on record any such evidence which would, even by reasonable probability, establish their plea of *alibi.* The plea of *alibi* in fact is required to be proved with certainty so as to completely exclude the possibility of the presence of the accused at the place of occurrence and in the house which was the home of their relatives. {Ref. *Shaikh Sattar* v. *State of Maharashtra* [(2010) 8 SCC 430]}."

26. For the reasons afore-stated, we find no merit in the contentions raised on behalf of the appellants. Before we part with this file, we cannot help but to observe that the competent authority ought to have taken some action on the basis of the observations made by the Trial Court in its judgment under appeal.

27. 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, PW11 has stated that viscera could not be examined by the laboratory as it was not sent in time. There is a deliberate attempt on the part of the Investigating Officer to misdirect the evidence and to withhold the material evidence from the Court.

28. 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. He is a doctor who is expected to perform a specialized job. His evidence is of great concern and is normally relied upon by the Courts. For reasons best known to him, he made his evidence totally vague, uncertain and indefinite. Given the

expertise and knowledge possessed by a doctor PW1, was expected to state the cause of death with certainty or the most probable cause of death in the least. According to PW1, the black spots noticed on the deceased may be because of poisoning or it could be because of suffocation, although he also mentioned in his report that the symptoms described above may occur due to epilepsy. It is not possible to imagine that there would be no distinction whatsoever, if such injuries were inflicted by assault or suffocation or be the result of an epileptic attack.

29. In our considered view, the doctor has also failed to discharge his professional obligations in terms of the professional standards expected of him. He has attempted to misdirect the evidence before the Court and has intentionally made it so vague that in place of aiding the ends of justice, he has attempted to help the accused.

30. In our considered view, action should be taken against both these witnesses. Before we pass any direction in this regard, we may refer to the judgment of this Court in *Gajoo* (*supra*), where the Court had directed an action against such kind of evidence and witnesses;

"In regard to the defective investigation, this Court in the case of *Dayal Singh and Others. v. State of Uttaranchal* [Criminal Appeal 529 of 2010, decided on 3rd August, 2012] while dealing with the cases of omissions and commissions by the investigating officer, and duty of the Court in such cases held as under:-

> "22. Now, we may advert to the duty of the Court in such cases. In the case of *Sathi Prasad* v. *The State of U.P.* [(1972) 3 SCC 613], this Court stated that it is well settled that if the police records become suspect and investigation perfunctory, it becomes the duty of the Court to see if the evidence given in Court should be relied upon and such lapses ignored. Noticing the possibility of investigation being designedly defective, this Court in the case of *Dhanaj Singh @ Shera & Ors.* v. *State of Punjab* [(2004) 3 SCC 654], held, "in the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective."
>
> (Emphasis supplied)
>
> 23. Dealing with the cases of omission and commission, the Court in the case of *Paras Yadav* v. *State of Bihar* [AIR 1999 SC 644], enunciated the principle, in conformity with the previous judgments, that if the lapse or omission is committed by the investigating agency, negligently or otherwise, the prosecution evidence is required to be examined *de hors* such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts, otherwise the designed mischief

would be perpetuated and justice would be denied to the complainant party. In the case of *Zahira Habibullah Sheikh & Anr. Vs. State of Gujarat & Ors*. [(2006) 3 SCC 374], the Court noticed the importance of the role of witnesses in a criminal trial. The importance and primacy of the quality of trial process can be observed from the words of *Bentham,* who states that witnesses are the eyes and ears of justice. The Court issued a caution that in such situations, there is a greater responsibility of the court on the one hand and on the other the courts must seriously deal with persons who are involved in creating designed investigation. The Court held that legislative measures to emphasize prohibition against tampering with witness, victim or informant have become the imminent and inevitable need of the day. Conducts which illegitimately affect the presentation of evidence in proceedings before the Courts have to be seriously and sternly dealt with. There should not be any undue anxiety to only protect the interest of the accused. That would be unfair, as noted above, to the needs of the society. On the contrary, efforts should be to ensure fair trial where the accused and the prosecution both get a fair deal. Public interest in proper administration of justice must be given as much importance if not more, as the interest of the individual accused. The courts have a vital role to play. (Emphasis supplied)

24. With the passage of time, the law also developed and the dictum of the Court emphasized that in a criminal case, the fate of proceedings cannot always be left entirely in the hands of the parties. Crime is a public wrong, in breach and violation of public rights and duties, which affects the community as a whole and is harmful to the society in general.

27. In *Ram Bali v. State of Uttar Pradesh* [(2004) 10 SCC 598], the judgment in *Karnel*

Singh v. State of M.P. [(1995) 5 SCC 518] was reiterated and this Court had observed that 'in case of defective investigation the court has to be circumspect while evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigation officer if the investigation is designedly defective'.

28. Where our criminal justice system provides safeguards of fair trial and innocent till proven guilty to an accused, there it also contemplates that a criminal trial is meant for doing justice to all, the accused, the society and a fair chance to prove to the prosecution. Then alone can law and order be maintained. The Courts do not merely discharge the function to ensure that no innocent man is punished, but also that a guilty man does not escape. Both are public duties of the judge. During the course of the trial, the learned Presiding Judge is expected to work objectively and in a correct perspective. Where the prosecution attempts to misdirect the trial on the basis of a perfunctory or designedly defective investigation, there the Court is to be deeply cautious and ensure that despite such an attempt, the determinative process is not sub-served. For truly attaining this object of a 'fair trial', the Court should leave no stone unturned to do justice and protect the interest of the society as well.

29. This brings us to an ancillary issue as to how the Court would appreciate the evidence in such cases. The possibility of some variations in the exhibits, medical and ocular evidence cannot be ruled out. But it is not that every minor variation or inconsistency would tilt the balance of justice in favour the accused. Of course, where contradictions and variations are of a serious nature, which apparently or

impliedly are destructive of the substantive case sought to be proved by the prosecution, they may provide an advantage to the accused. The Courts, normally, look at expert evidence with a greater sense of acceptability, but it is equally true that the courts are not absolutely guided by the report of the experts, especially if such reports are perfunctory, unsustainable and are the result of a deliberate attempt to misdirect the prosecution. In *Kamaljit Singh* v. *State of Punjab* [2004 Cri.LJ 28], the Court, while dealing with discrepancies between ocular and medical evidence, held, "It is trite law that minor variations between medical evidence and ocular evidence do not take away the primacy of the latter. Unless medical evidence in its term goes so far as to completely rule out all possibilities whatsoever of injuries taking place in the manner stated by the eyewitnesses, the testimony of the eyewitnesses cannot be thrown out."

30. Where the eye witness account is found credible and trustworthy, medical opinion pointing to alternative possibilities may not be accepted as conclusive. The expert witness is expected to put before the Court all materials inclusive of the data which induced him to come to the conclusion and enlighten the court on the technical aspect of the case by examining the terms of science, so that the court, although not an expert, may form its own judgment on those materials after giving due regard to the expert's opinion, because once the expert opinion is accepted, it is not the opinion of the medical officer but that of the Court. {Plz. See *Madan Gopal Kakad* v. *Naval Dubey & Anr.* [(1992) 2 SCR 921: (1992) 3 SCC 204]}."

"The present case, when examined in light of the above principles, makes it clear that the defect in the investigation or omission on the part of the investigation officer cannot prove to be of any advantage to the accused. No doubt the investigating officer ought to have obtained serologist's report both in respect of Ext. 2 and Ext. 5 and matched it with the blood group of the deceased. This is a definite lapse on the part of the investigating officer which cannot be overlooked by the Court, despite the fact that it finds no merit in the contention of the accused.

For the reasons afore-recorded, we dismiss this appeal being without any merit. However, we direct the Director General of Police, Uttarakhand 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 action shall be taken with regard to deduction/stoppage of his pension in accordance with the service rules. The ground of limitation, if stated in the relevant rules, will not operate as the inquiry is being conducted under the direction of this Court."

31. In view of the above settled position of law, we hereby direct the Director General of Police, State of Assam and Director General of Health Services, State of Assam to take disciplinary action against PW1 and PW11, whether they are in service or have since retired. If not in service, action shall be taken against them for deduction/stoppage of pension in accordance with the service rules. However, the plea of

limitation, if any under the relevant rules would not operate, as the departmental inquiry shall be conducted in furtherance to the order of this Court.

32. The appeal is dismissed, however with the above directions.

.....J.
(Swatanter Kumar)

.....J.
(Gyan Sudha Misra)

New Delhi,
December 13, 2012

NOTE SHEET

File No.1423/25/6/2019

Reference orders of Hon'ble Chairman dt.06/4/2021.

The matter was re-examined at my end and I have following observations. The report submitted by Addl. S.P., Cooch Behar, namely, Siddharth Dorji, has following laches which needs clarification before we take any further decision on the matter.

i. Date of retirement of ASI Kali Pada Roy. Whether his full pension has been released along with gratuity and the date of release.

ii. In the report of Addl.S.P., Cooch Behar (reference page 2, portion marked 'A') the culpability of ASI, Kali Pada Roy so far as violating the Human Rights of the petitioner has not been projected factually i.e. all the facts relating to H.R. violation has not been reported. In the report "*further I also consulted the record of the police station and duty roster and it is came to light that on 30.04.2019 ASI Kali Pada Roy was detailed for the duty. However the visiting of the petitioner along with her husband on 30.04.2019 and on duty officer ASI Kali Pada has some bearing on the fact of non-acceptance of the complaint.*"

Herein, following facts are required :

(a) The duty hours of ASI Kali Pada Roy on 30/4/2019.

(b) When did the petitioner and her husband visit the P.S. along with time and date.

(c) What actually happened between the petitioner and the ASI when the petitioner went to lodge FIR, as in the petition itself

the petitioner has nowhere mentioned any names of police officer, far less ASI Kali Pada Roy.

(d) In the petition dt.06/5/2019 submitted by the petitioner with her L.T.I. (LTI not verified by anybody). It is mentioned that on 30/4/2019 she and her husband lodged an FIR at Haldibari Thana. She has nowhere complained that the police had refused to lodge complaint, on the contrary her allegation was regarding delay in investigation. In view of above these points need clarification.

iii. Reference the judgement of Hon'ble Supreme Court in Criminal Appeal No.629 of 2010 passed by Hon'ble Judges Swatanter Kumar and Gyan Sudha Misra. I humbly submit that in the case of Dev Prakash Tewari versus U.P. Co-operative Institutional, Civil Appeal No.(s) 5848-49 of 2014 arising out of SLP(c) No.s29550 - 29551 of 2010. The Hon'be Judges T.S. Thakur and C. Nagappan have passed the order "*once the appellant had retired from service on 31/3/2009, there was no authority vested with the respondents for continuing the disciplinary proceeding even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority it must be held that the enquiry had lapsed and the appellant was entitled to get full retiral benefits.*" (Copy enclosed).

iv. Para 7 of the judgement it has been held by the Hon'ble Judges that "*In view of the absence of such a provision in*

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the above said regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30/6/95 there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement." (Dev Prakash Tewari Vs. U.P. Co-operative Institutional). Emphasis has, therefore, been laid to follow the regulations of the government organization with regard to the disciplinary enquiry after retirement.

In a West Bengal specific case, Gour Chandra Sarkar Vs. The State of West Bengal & others W.P.S.T. 185 of 2010 Hon'ble Judges, Pranab Kumar Deb and Pranab Kumar Chattopadhyay have held "*In the present case, even in absence of any charge of causing pecuniary loss to the Government, continuation of the disciplinary proceedings after retirement is not at all permissible.*"

"With the retirement of an employee, the employer employee relationship snaps. Therefore, unless there is allegation of Government suffering financial loss on account of the misconduct or negligence of the retired employee, the departmental proceedings after his retirement cannot continue." (Copies of judgement are enclosed.)

Therefore, I am of humble opinion that subsequent judgements have laid emphasis on Regulations / Rules framed by Govt. in regard to service / retiral/ disciplinary proceeding matters and to act according to the frame-work of such Rule [In respect of WB; DCRB Rules 10(1)].

(N. Mukherjee)
Member
12/4/2021

Hon'ble Chairman

Supreme Court of India
S. Nambi Narayanan vs Siby Mathews & Others Etc. on 14 September, 2018
Author: D Misra

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 6637-6638 of 2018

S. Nambi Narayanan — Appellant(s)

VERSUS

Siby Mathews & Others Etc. — Respondent(s)

JUDGMENT

Dipak Misra, CJI The appellant, a septuagenarian, a former Scientist of the Indian Space Research Organisation (ISRO), has assailed the judgment and order passed by the Division Bench of the High Court of Kerala whereby it has overturned the decision of the learned single Judge who had lancinated the order of the State Government declining to take appropriate action against the police officers on the grounds of delay and further remitted the matter to the Government. To say the least, the delineation by the Division Bench is too simplistic.

2. The exposé of facts very succinctly put is that on 20.01.1994, Signature Not Verified Digitally signed by DEEPAK GUGLANI Date: 2018.09.14 12:51:07 IST Crime No.225/94 was registered at Vanchiyoor Police Station against Reason:

one Mariam Rasheeda, a Maldivian National, under Section 14 of the Foreigners Act, 1946 and paragraph 7 of the Foreigners Order. The investigation of the case was conducted by one S. Vijayan, the respondent no. 6 herein, who was the then Inspector, Special Branch, Thiruvananthapuram.

3. Mariam Rasheeda was arrested and sent to judicial custody on 21.10.1994. Her custody was obtained by the Police on 03.11.1994 and she was interrogated by Kerala Police and Intelligence Bureau (IB) officials. Allegedly, during interrogation, she made certain confessions which led to the registration of Crime No. 246/1994, Vanchiyoor Police Station on 13.11.1994 under Sections 3 and 4 of the Indian Official Secrets Acts, 1923, alleging that certain official secrets and documents of Indian Space Research Organisation (ISRO) had been leaked out by scientists of ISRO.

4. Another Maldivian National Fousiya Hasan along with Mariam Rasheeda was arrested in Crime No. 246/1994. On 15.11.1994, investigation of both the cases was taken over by the Special Investigation Team (SIT) headed by one Mr. Siby Mathews, respondent no. 1 herein, who was the then D.I.G. Crime of Kerala Police. On 21.11.1994, Sri D. Sasikumaran, a scientist at ISRO, was arrested and on 30.11.1994, S. Nambi Narayanan, the appellant herein, was arrested along with two other persons. Later, on 04.12.1994, consequent to the request of the Government of Kerala and the decision of the Government of India, the investigation was transferred to the Central Bureau of Investigation (CBI), the respondent no. 4 herein.

5. After the investigation, the CBI submitted a report before the Chief Judicial Magistrate (CJM), Ernakulam, under Section 173(2) of Cr.P.C. stating that the evidence collected indicated that the allegations of espionage against the scientists at ISRO, including the appellant herein, were not proved and were found to be false. This report was accepted vide courts order dated 02.05.1996 and all the accused were discharged.

6. That apart, in the said report, addressed to the Chief Secretary, Government of Kerala, the CBI, the respondent no. 4 herein, had categorically mentioned:-

> Notwithstanding the denial of the accused persons of their complicity, meticulous, sustain and painstaking investigations were launched by the CBI and every bit of information allegedly given by the accused in their earlier statement to Kerala Police/IB about the places of meetings for purposes of espionage activities, the possibility of passing on the drawing/documents of various technologies, receipt of money as a consideration thereof etc., were gone into, but none of the information could be substantiated.

7. The CBI in its report, as regards the role of the respondent no.1 herein, went on to state:-

> I, Sh. Siby Mathew was heading the Special Investigation Team and was, therefore, fully responsible for the conduct of investigation in the aforesaid two cases. Investigation conducted by the CBI has revealed that he did not take adequate steps either in regard to the thorough interrogations of the accused persons by Kerala Police or the verification of the so called disclosure made by the accused persons. In fact, he left the entire investigation to IB surrendering his duties. He ordered indiscriminate arrest of the ISRO scientist and others without adequate evidence being on record. It stressed that neither Sh. Siby Mathew and his team recovered any incriminating ISRO documents from the accused persons nor any monies alleged to have been paid to the accused persons by their foreign masters. It was unprofessional on his part to have ordered indiscriminate arrest to top ISRO scientists who played a key role in successful launching of satellite in the space and thereby caused avoidable mental and physical agony to them. It is surprising that he did not take any steps at his own level to conduct investigation on the points suggested by him. Since Sh. Mathew was based at Trivandrum, there was no justification for not having the searches conducted in the officials residential premises of the accused Nambi

Narayanan was arrested by the Kerala Police on 30.11.1994.

Vi. Shri Siby Mathew and his team miserably failed even in conducting verification of the records of Hotels viz., Hotel foret Manor, Hotel Pankaj, Hotel Luciya, etc., which were located at Trivandrum to ascertain the veracity of the statement of accused persons.

The above facts are being brought to the notice of the competent authority for their kind consideration and for such action as deemed fit.

[Emphasis added]

8. On 27.06.1996, the State Government of Kerala, being dissatisfied with the CBI report, issued a notification withdrawing the earlier notification issued to entrust the matter to CBI and decided to conduct re-investigation of the case by the State Police. This notification for re-investigation was challenged by the appellant herein, before the High Court of Kerala, in O.P. No. 14248/1996-U but the notification was upheld by the High Court of Kerala vide order dated 27.11.1996.

9. Aggrieved by the aforesaid order of the Kerala High Court, the appellant herein, moved this Court by filing a special leave petition. This Court in K. Chandrasekhar v. State of Kerala and others 1 quashed the notification of the State of Kerala for re-investigation holding that the said notification was against good governance and consequently, all accused were freed of charges. The observations of this Court read thus:-

> Even if we were to hold that State Government had the requisite power and authority to issue the impugned notification, still the same would be liable to be quashed on the ground of malafide exercise of power. Eloquent proof thereof is furnished by the following facts and circumstances as appearing on the record. [Emphasis added]

10. Even after disposal of the case by this Court, the State of Kerala did not take any action against the erring police officers. In the year 1 (1998) 5 SCC 223 2001, the National Human Rights Commission ordered a compensation of Rs.10,00,000/- (Rupees ten lakhs only) as interim relief to the appellant, who had sought Rs.1,00,00,000/- (Rupees one crore only) as damages. A division bench of the Kerala High Court, vide order dated 07.09.2012, asked the Government to pay the interim relief of Rs. 10,00,000/- (Rupees ten lakhs only) within three weeks of the said order.

11. Thereafter, one Rajasekharan Nair filed a writ petition, being W.P. (C) No. 8080 of 2010, before the Kerala High Court on the basis of the report filed by the CBI seeking directions for the State of Kerala to pass appropriate orders and take necessary action against the erring police officers for conducting a malicious investigation. In the meantime, the Government, by order dated 29.06.2011, decided not to take any disciplinary action against the members of the SIT (erring police officers). The relevant portion of the order of the State of Kerala dated 29.06.2011 reads as follows:-

5) Both the CBI and the accused-discharged persons approached the Honble High Court against the action of Government of Kerala. However, the High Court upheld the action of the Government. Against this the CBI and the accused discharged persons approached the Supreme Court through SLPs against the action of Government of Kerala.

6) In the meantime Government examined the case with reference to the views obtained form the State Police Chief on the observation of the CBI along with the explanation of the officers concerned. After examination it was decided to await the decision of the Honble Supreme Court. The Honble Supreme Court allowed the prayer of the CBI and the accused discharged persons questioning the notification issued by the Government withdrawing the consent given to the CBI to investigate into the espionage case and also to further investigate the ISRO espionage case and also directed to give Rs. 1 Lakh each to the accused appellants as cost.

7) Government examined the matter with reference to the entire records of the case and in proper application of mind. It has been found that neither the Honble Chief Judicial Magistrate Court who accepted the Final Report nor the Honble Supreme Court had issued any direction to take action against the investigating officers viz :- Shri S. Vijayan, the then Inspector, Special Branch, Thiruvananthapuram City, Shri K.K. Joshwa, the then Dy. SP, CB CID, Thiruvananthapuram, Shri Siby Methews, the then DIG (Crimes) of the Special Investigation Team who investigated in to the ISRO Espionage case.

8) In the circumstances, Government are of the view that it is not proper or legal to take disciplinary action against the officials for the alleged lapses pointed out in the investigation report of the CBI at this juncture, after the lapse of 15 years and therefore Government decide that no disciplinary action need be taken against the above officials for their alleged lapses in the investigation of the ISRO Espionage case and it is ordered accordingly.

12. W.P. (C) No. 8080 of 2010 was disposed of by the High Court having been rendered infructuous as the petitioner therein, Rajesekharan Nair, wanted to reserve his right to challenge the order issued by the Government. Despite insurmountable difficulties, the indomitable spirit of the appellant impelled him to file another writ petition, W.P. (C) No. 30918 of 2012, before the Kerala High Court. The learned Judge of the High Court of Kerala, considering the pleadings of the parties and thereafter elaborately considering the matter, allowed the writ petition and quashed the order dated 29.06.2011 passed by the State of Kerala whereby the Kerala Government had decided not to take any disciplinary action against the members of the SIT (erring police officers) and consequently remitted the matter to the State of Kerala, the respondent no. 2 herein, for reconsideration and passing further orders within three months. Though the learned single Judge left it open to the State of Kerala to decide on the course of action to be taken in the matter, yet it was categorically mentioned that the reconsideration of the matter should not just be a namesake which will make the administration of justice a mockery.

13. Though the said decision of the learned single Judge was not challenged by the State of Kerala, yet two private persons, being the respondent nos. 1 and 5 herein, assailed the judgment before the Division Bench in WA Nos. 1863 and 1959 of 2014. The Division Bench of the High Court, vide impugned judgment and order dated 04.03.2015, observed that the only question before the Government was whether any disciplinary action was to be initiated against the officers who were members of the SIT which conducted investigation for some days and thereafter reported that the matter required to be investigated by the CBI. The Division Bench opined that the factual finding or report submitted by the CBI on 03.06.1996 in the matter could only be treated as an opinion expressed by the CBI which may be considered by the Government. Further, the Division Bench left it to the Government to consider or not to consider the opinion expressed by the CBI in its aforesaid report for the purpose of taking disciplinary action.

14. The Division Bench also held that the Kerala Governments decision of not taking action against the erring police officers of the SIT was based on three specific findings, namely (i) the Governments examination of the case with reference to the views obtained from the State Police Chief with respect to the observations of the CBI alongwith the explanation of the erring police officers concerned, (ii) the absence of any direction by the Chief Judicial Magistrate who had accepted the final report, and (iii) absence of any direction from the Supreme Court to take action against the investigating officers. That apart, the Government opined that it is not proper or legal to take disciplinary action against the officers on the basis of CBI report after a lapse of fifteen years.

15. Be it noted, the Division Bench concluded by observing thus:

> Therefore the three reasons mentioned in Ext.P2 clearly indicate that the Government has examined the relevant matters for arriving at the said decision. When a decision has been taken not to proceed further with any disciplinary action, after considering such relevant matters, the decision cannot be considered as unreasonable, unfair or arbitrary. And again:-
>
> In fact, whether the accused were tortured or not is a disputed question of fact. Further no such complaint was raised by the accused. When the fact being so and since the petitioner having already approached the National Human Rights Commission and the Civil Court, it is for the said agencies to arrive at a proper finding regarding such disputed facts. The said order is the subject matter of assail before this Court in these appeals.

16. It is urged by the appellant that the prosecution launched against him by the Kerala police was malicious on account of two reasons, the first being that the said prosecution had a catastrophic effect on his service career as a leading and renowned scientist at ISRO thereby smothering his career, life span, savings, honour, academic work as well as self-esteem and consequently resulting in total devastation of the peace of his entire family which is an ineffaceable individual loss, and the second, the irreparable and irremediable loss and setback caused to the technological advancement in Space Research in India.

17. It has also been contended that the CBI, to whom the investigation of the case against the appellant was transferred, after a thorough investigation for about eighteen months, filed a comprehensive and exhaustive report wherein it had recommended that the case against the appellant be closed as the allegations against the appellant are totally unsubstantiated.

18. The appellant has also drawn the attention of this Court to the fact that the CBI in the said report had also highlighted several omissions and commissions on the part of the Kerala Police Officers while investigating the case against the appellant. That apart, the CBI, in its report submitted to the Kerala Government, had recommended that action be taken against the erring police officers for serious lapses in the discharge of their duties. The appellant has, in his submissions, expressed his agony over the fact that the State Government, instead of acting upon the recommendations made by the CBI and taking appropriate action against the erring police officers, focused its entire attention on taking further action on the investigation against the appellant and hastened to constitute a Special Investigation Team (SIT) through a notification which was challenged before the High Court.

19. The appellant has further highlighted that this Court had earlier opined about the malicious prosecution launched against him. Reliance has been placed on the criticism advanced by the NHRC against the State Government. Learned senior counsel has urged with anguish that the High Court has fallen into grave error by sustaining the order of the Government and remaining oblivious to the plight of the appellant. It is his further submission that the appellant should be granted compensation by taking recourse to the principle of constitutional tort and a committee be constituted to take appropriate action against the officers who had played with the life and liberty of a man of great reputation.

20. Learned counsel for the respondent no. 1 has submitted that the contention of the appellant that if he had not been falsely implicated, he would have made a huge difference in the cryogenic technology and thereby contributed immensely to the Nation is untenable as it is an admitted fact that he had submitted his VRS on 01.11.1994 immediately after the arrest of Mariam Rasheeda, and on the very same day, his resignation was accepted by the Superior Officer. It is pointed out that the claim of significant contribution to the Nation is being put forth by appellant only to gain the sympathy of the Court.

21. It is further canvassed that the entire investigation of the case against the appellant was carried out under close supervision of the then Director General of Police (Intelligence) & Director General of Police (Law and Order) and daily reports were sent to them during the course of the investigation. It has also been highlighted that on the day of arrest of the appellant, the respondent no. 1 had submitted a report to the DGP requesting entrusting of the matter to the CBI which is a clear indication of the fact that there was no mala fide on the part of the said respondent no. 1 and other officials of the Kerala Police. The respondent no. 1 has contended that the entire gamut of facts reveals that he and other officials had performed their duties with full responsibility and the evidence on record and the statements of other accused had clearly shown the involvement of the accused persons in the activities of espionage.

22. The respondent no. 1, in order to substantiate his claim that the appellant and the other accused persons were never subjected to any torture by the respondent no. 1 or other police officers, seeks to draw the attention of the Court to the findings of a Division Bench of the High Court which had dealt with a writ petition filed when the investigation was pending before the CBI. It is put forth on behalf of the respondent no. 1 that he himself did not take any steps for thorough interrogation of the accused and sent the same to the CBI and, hence, the argument that he was tortured by the State police was far from the truth. As per the notification dated 20.01.1987 issued by the Government of India, Ministry of Home Affairs, the Central Government conferred the powers of Superintendent of Police on officers of the rank of Assistant Director of the Intelligence Bureau and in the instant case, the IB had come into the picture long before the constitution of a Special Investigation Team (SIT) by the State Government.

23. It is highlighted by the respondent no. 1 that there was sufficient evidence indicating the involvement of the appellant and it had also come to the notice of the respondent no. 1 that the appellant, who had submitted his VRS, was intending to leave the country and in the light of the said facts, the arrest of the appellant and other accused persons had become necessary. Learned counsel would contend that the stand of the CBI that no incriminating records had been recovered is unacceptable inasmuch as the final report reveals that 235 documents were recovered from the house of the accused persons and the reason for the same was an issue which required investigation.

24. Further, it is contended that the case had been investigated by the respondent no. 1 only for 17 days and thereafter, it was the CBI that carried out the investigation and, hence, the responsibility to apprise the media fell on the CBI and not on the respondent no. 1. Various other aspects have been controverted to show the non-involvement of the said respondent and the bona fide act on his part to transfer the case to the CBI. To make allegations against the SIT after transfer of the case to the CBI is unwarranted.

25. Learned counsel for the respondent no. 1 submits that the whole thrust of the argument of the appellant that he was subjected to torture falls to the ground as the IB officials against whom the major charges of torture had been levelled had not been made accountable for the said action and, therefore, it would be discriminatory to hold the respondent no. 1 and other police officers of Kerala accountable for the alleged torture. That apart, it is urged that the learned single Judge of the High Court had only remanded the matter to the State Government for fresh consideration and had not given any finding on the allegation of torture and the respondent no. 1 had also contended that the appellant never raised any allegations of torture before the CJM Court. Further, it is argued that the appellant was in custody of Kerala police only for 5 days, while the CBI had taken remand of the accused on three occasions and had kept in custody for forty five days.

26. On behalf of the CBI, the fourth respondent, it is submitted that inspite of highlighting several lapses and faults on the part of the police officials while carrying out investigation against the appellant and other accused persons, the Kerala Government has failed to take any action against the erring officials. It has been submitted that the reasons given by the Kerala Government for not initiating any action against the erring police officers, who had not only inflicted inhuman custodial torture to the scientists of ISRO but also arrested them while they were working on a crucial space

programme, was an unpardonable lapse. It is pointed out that if the action of the Government of Kerala is not interfered with on the ground of delay, it would tantamount to taking advantage of ones own wrong doing and further adding a premium to an unpardonable fault.

27. Learned counsel for the respondent no. 4 has submitted that the conduct of the police officials is criminal in nature as per the investigation and report submitted by the CBI and the investigation of the CBI had clearly established that the investigation carried out by the State police was full of lapses and also involved employment of illegal means such as criminal torture. The stand of the respondents is that the report is recommendatory but it was incumbent upon the State of Kerala to act upon the same as that would have reflected an apposite facet of constitutional governance and respect for individual liberty and dignity. Relying upon the judgment of this Court in Japani Sahoo v. Chandra Sekhar Mohanty2, it is submitted that the State of Kerala could not take shelter of the doctrine of delay and laches. The erring conduct of the police officers is of criminal nature and justice can be meted out to the appellant only by taking appropriate action against the said officers along with payment of compensation for the humiliation and disgrace suffered by the victim.

2 (2007) 7 SCC 394

28. It is further contended by the learned counsel for the respondent no. 4 that investigation can be initiated to instill confidence in the public mind. To buttress his stand, the decision in Punjab and Haryana High Court Bar Association v. State of Punjab and others 3 has been pressed into service.

29. First, we shall advert to the aspect of grant of compensation. From the analysis above, we are of the view that the appellant was arrested and he has suffered custody for almost fifty days. His arrest has been seriously criticized in the closure report of the CBI. The comments contained in the report read as follows:-

> 2. Consequent upon the request of Govt. of Kerala, the investigation of Crime No 225/95 and No. 246/94 was entrusted to the .CHI for investigation vide DP&T Notification No. 228/59/94-AVD.II (i) & (ii) dated 2/12/94. Accordingly, case RC. 10(S) 94 lis. 14 of Foreigners Act and Para 7 of Foreigners Act, 1948 (corresponding to Crime No. 225/95) and case RC 11 (S)/94 U/s. I20-B r/w See. 3, 4 & 5 of official Secrets Act r/w Sec. 34 IPC (corresponding to Crime No. 246/94). were registered on 3/12/94 in SIU. V Branch of CBl/SIC.II/New Delhi.
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> 3. Immediately after the registration of the case, the investigation was taken upon 4/12/94 and the police case files of both the cases were taken over. After investigation, a Chargesheet in Case Crime no. 225.94 was filed on 17/12/94 against Mariam Fasheeda. This case has ended in acquittal of accused Mariyam Rasheeda vide Judgment dated 14.11.1995, passed by the Honble Chief Judicial Magistrate, Cochin.

3 (1994) 1 SCC 616

4. The local police during the course of investigation of case crime No. 225/94 had seized a Diary written in Dwivegi script from accused Mariyam Rasheeda, the contents of which indicated that she was collecting informations about certain Maldivian nationals based in Bangalore who were allegedly planning a coup against the Govt. of Maldives. It was further revealed that accused Mariyam Rasheeda along with Fauziya Hassan had stayed in Room No. 205 of Hotel Smart, Trivandrum from 17/9/94 to 20/10/94 and during this period a number of telephone calls were found to have been made from Room No. 205 to Tel. No. of D. Sasikumaran, a senior Scientist of Indian Space Research Organisation, Valiamala. Accused Mariyam Rasheeda while in Kerala Police custody in this case was interrogated by Kerala Police and officials of Intelligence Bureau. Accused Mariyam Rasheeda allegedly made a statement revealing the contacts of Fauziya Hassan and of one Zuheira, a Maldivian national settled in Colombo with Mohiyuddin state to be Pakistani national working as Assistant Manager, Habib Bank in Male and Mazhar Khan, another Pak National. She also allegedly disclosed that according to Fauziya Hassan, D. Sasikumaran was friend of Zuheria. Based on the disclosures allegedly made by accused Mariyam Rasheeda coupled with the contents of her diary and the telephone contacts with D.

Sasikumaran, the instant case was registered on the suspicion that she and Fauziya Hassan along with others were taking part in activities prejudicial to the sovereignty and integrity of India.

5. The investigation of crime No. 246/94 remained with Special Branch only for two days and on 15.11.94, the investigation was taken over by Special Investigation was taken over by Special Investigation Team headed by Shri Siby Mathews, DIG (Crime), Trivandrum. During the course of investigation, the Kerala Police/Crime branch arrested 6 accused persons on the dates as shown below:-

i. Fauziya Hassan - 13.11:94
ii. Mariyam Fasheeda- 14.11.94
iii. D. Sasikumaran - 21.11.94

iv. K. Chandrasekhar - 23.11.94
v. Nambi Narayanan - 30.11.94
vi. Sudhir Kumar Sharma - 01.12.94

5. The search of the office room as well as residence of D. Sasikumaran at Space Application Centre, Ahemedabad, was conducted on 21.11.94 and that of his office and residence at Trivandrum on 30.11.94. The search of office as well as residence of accused Chandrasekhar and S.K. Sharma, were conducted on 21.11.94 at Bangalore. The house search of Ms Sara Palani of Bangalore where accused Fauziya Hassan was residing, was also conducted on 21.11.94. In addition, the house seach of Shri. M.K. Govinadan Nair and Shri Mohana Prasad, both senior Scientists of LPSC Valiamala, was also conducted but nothing incriminating was recovered. The Crime Branch also exdamined 27 witnesses but none of the witnesses stated anything which could throw any light about the alleged espionage activities of the accused persons. The 7 witnesses of Hotel Samrat, Tridandrum, proved the stay of accused Mariyam Rahseeda and Fauziya Hassan in Room No. 205 in Hotel Samrat from 19.9.94 to

20.10.94 and the visit of Sasikumaran to Hotel Samarat to meet Mariyam Rasheeda. The witnesses of Hotel Geeth, Trivandrum and that of Hotel Rock Holm, Trivandrum, proved the visit of accused Sasikumaran alongwith Mariyam Rasheeda to the said hotel on 10.10.94 and witjiMariyam Rasheeda to the said hotel on 10.10.94 and 28.9.94, respectively. And again:-

> 10. Though no independent evidence has come on record during the course of local Police/Crime branch investigation about the alleged espionage activities of the accused persons, yet based on the revelations allegedly made by the accused, the module that emerged regarding the espionage activities was that accused Nambi Narayanan and Sasikumaran used to pass on documents drawings of ISRO relating to Viking/Vikas Engine technology, Cryogenic Engine technology and PSLV Flight Data/Drawings and accused Chandersekhar, S.K.

Sharma and Raman Srivastava, the then IGP South Zone, Kerala passed on secrets of Aeronautical Defence Establishments, Bangalore. The documents/drawings were allegedly passed on to Mohd. Aslam, a Pak nuclear scientist and Mohd. Pasha/ahmed Pasha for monetory considerations and that the amount running into lacs of US dollars was received andshared by accused Sasikumaran, Chandrasekhar, Nambi Narayanan and Shri Raman Srivastava and that Mohiyuddin, Asstt. Manager of Habib Bank, Male, was one of the persons who was financing the accused. Accused Fauziya Hassan, zuheria, a Maldivian national settled in Colomobo, Mr. Alexi Vassive of Glovkosmos, Russia, and Shri Raman srivastava, worked as conduits. Some of the important meetings which were held for espionage activities and in which the documents were allegedly passed on for a consideration, were held at International Hotel Madras on 24.5.1994, m Bangalore in the mid September and on 23.9.94 at Hotel Luciya, Trivandrum, in which some of the accused as well as said Zuheira and Shri Raman Srivastava, IGP, took part.

11. Immediately after taking over the investigation , by CBI, all the 6 accused persons are thoroughly interrogated, taking the statements purported to have been made by the accused before the Kerala Police/IB, to be true, but all of them denied having indulged in any espionage activity. On being confronted with the statements made by them before Kerala Police as well as IB officials, the accused took the plea that the statements were made on the suggested lines under duress. Though there was no complaint either from ISRO or fromDE Bangalore about the loss of any documents, the alleged revelations of the accused made before local Police/Intelligence officials were taken at their face value and focused investigation was carried out to find out the details and purposes of various visits of accused Mariyam Rasheeda and Fauziya Hassan to India, their places of stay were verified, the persons, including accused,, with whom they came in contact were examined and efforts are made to gather oral as well as documentary evidence to find out whether the accused have committed any acts which were prejudicial to the sovereignty, integrity and security of the State and violative of the Official Secrets Act, 1923 x x x x x Accused Nambi Narayanan jointed Thumba Equotarial Launching System on 12.9.1996 as Technical Assistant (Design) and then from time to time he was promoted and was working as Scientist-II since January 93. In system Project, Associates Project Director GSLV and Project Director PS-II and PS-LV and was responsible for the organization and management of launch vehicle system projects in LPSC.

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32. During the investigation neither any evidence came on record indicating that the accused indulged in espionage activities by way of passing on of secret documents of ISRO of any Defence establishments nor any incriminating documents could be recovered. Accused Mariyam Rasheeda has taken the stand that she was to return to Male on 29.9.94 but could reach Trivandrum Airport as she did not get any transport on account of the 'bandh'. Subsequently, the Indian Airlines (lights were suspended on account of plague scare and thus, she could not go. Since she was going to complete stay of 90 days on 14.10.94, and to enable her to stay beyond 90 days she required the permission of the police authorities, she alongwith Fauziya Hassan visited office of the Commissioner of Police and contacted Inspector Vijayan. She was advised by Inspector Vijayan to first obtain a confirmed ticket for her return and then to approach for the extension of her stay. Accordingly, she got one Indian Airlines ticket and one Air Lanka ticket confirmed for her departure of 17.10.94 and approached Inspector Vijayan. However, Inspector vijayan took ticket as well as her Passport and ultimately she was arrested on 20.10.94.

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38. As per the statement of accused Nambi Narayanan allegedly made before Kerala Police, a deal for sale Viking/Vikas Engine drawings was struck with Habibullah Khan for Rs. 1.5 crores. Two installments of the drawings were given to Rauziya at Thampanoor 'Bus Stand and Luciya Hotel and the third installment was scheduled to be given on 5,12.94. Another deal for transfer for Rocket Launch details of LPSC was finalized with Fauziya Hassan and Ahemd Pash at hotel Fort Manor during February, 1993 for a consideration of USS 1.00 lakh and that on 11.10.94 he and Sasikumaran took Fauziya from Hotel Samrat to a nearby dam and engaged in transfer of packets containing Cryogenic technology.

The investigation revealed:-

> (xiv) Investigation has established that the accused persons including Rasheeda, Nambi Narayanan and Chandrasekhar were harassed and physically abused. It is curious that while the IB had all the six accused persons in their custody, they recorded the statements of only Sasikumaran, Chandrashekar, Fauziya and Rasheeda and not of Nambi Narayanan and S.K.. Shanna. There is reason to believe that the interrogators forced the accused persons to make statements on suggested lines. The CBI seized the personal diary of Chandrasekhar on 9.12.94. which contained the details of his activities almost on day to day basis. If Chandrasekhar had made truthful disclosures to the Kerala Police/IB interrogators, certainly they would have also discovered the existence of his diary which did not support case against him. He made disclosures before the CBI regarding the existence of his diary which on analysis corroborates his version regarding his movements ex. Bangalore.
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> (xv) On the request of CBI, Director, LPSC had constituted a Committee of experts of determine whether any documents were found to be missing. The Committee gave a

report to say that only 254 documents were found to be missing which were random in nature and did not pertain to a particular system or sub system. The Committee also noted that Vikas Engine was released on the basis of the in-house drawings which were prepared after modifying the SEP drawings and all the in-house drawings were available and there was likely to be no impact of some small number of missing documents. Similarly, all the 16.800 sheets in the Fabrication Divn. where Sasikumaran was working were found to be intact.

(xvi) Neither any incriminating documents of any money- Indian or foreign have been recovered form the accused persons during searches conducted by the Kerala Police and later by the CBI. The scrutiny of bank accounts also do not indicate anything suspicious in this regard.

(xvii) It is reasonable to believe that if Rasheeda was involved in any espionage activity regarding ISRO, she should have made a mention thereof in her diary which is not the case.

114. During course of investigation, certain lapses were found on the part of earlier investigations/interrogators. The report is being submitted that Government of Kerala/Govt. of India, separately on these aspects.

115. So sum up, in view of the evidence on record, oral as well as documentary, as discussed above, the allegations of espionage are not proved and have been found to be false. It is, therefore, prayed that the report may kindly be accepted and the accused discharged and permission be accorded to return the seized documents to the concerned. From the aforesaid report, the harassment and mental torture faced by the appellant is obvious.

30. The report submitted by the CBI has been accepted by this Court in K. Chandrasekhar (supra). Dealing with the conclusion of the report, this Court stated:-

(iii) Though the investigation of the case centered round espionage activities in ISRO no complaint was made by it to that effect nor did it raise any grievance on that score. On the contrary, from the police report submitted by the CBI we find that several scientists of this organisation were examined and from the statements made by those officers the CBI drew the following conclusion:

The sum and substance of the aforesaid statements is that ISRO does not have a system of classifying drawings/documents. In other words, the documents/drawings are not marked as Top Secret, Secret, Confidential or Classified etc. Further, ISRO follows an open-door policy in regard to the issue of documents to the scientists. Since ISRO is a research-oriented organisation, any scientist wanting to study any document is free to go to the Documentation Cell/Library and study the documents. As regards the issue of documents to various Divisions, the procedure was that only the copies used to be issued to the various divisions on indent after duly entering the same in the Documentation Issue Registers. During investigation, it has been revealed that various drawings

running into 16,800 sheets were issued to the Fabrication Division where accused Sasi Kumaran was working, and after his transfer to SAP, Ahmedabad on 7-11-1994, all the copies of the drawings were found to be intact. Nambi Narayanan being a senior scientist, though had access to the drawings, but at no stage any drawings/documents were found to have been issued to him. They have also stated that it was usual for scientists to take the documents/drawings required for any meetings/discussions to their houses for study purposes. In these circumstances, the allegation that Nambi Narayanan and Sasi Kumaran might have passed on the documents to a third party, is found to be false. It further appears that at the instance of CBI, a Committee of senior scientists was constituted to ascertain whether any classified documents of the organisation were stolen or found missing and their report shows that there were no such missing documents. There cannot, therefore, be any scope for further investigation in respect of purported espionage activities in that organisation in respect of which only the Kerala Police would have jurisdiction to investigate;

31. As stated earlier, the entire prosecution initiated by the State police was malicious and it has caused tremendous harassment and immeasurable anguish to the appellant. It is not a case where the accused is kept under custody and, eventually, after trial, he is found not guilty. The State police was dealing with an extremely sensitive case and after arresting the appellant and some others, the State, on its own, transferred the case to the Central Bureau of Investigation. After comprehensive enquiry, the closure report was filed. An argument has been advanced by the learned counsel for the State of Kerala as well as by the other respondents that the fault should be found with the CBI but not with the State police, for it had transferred the case to the CBI. The said submission is to be noted only to be rejected. The criminal law was set in motion without any basis. It was initiated, if one is allowed to say, on some kind of fancy or notion. The liberty and dignity of the appellant which are basic to his human rights were jeopardized as he was taken into custody and, eventually, despite all the glory of the past, he was compelled to face cynical abhorrence. This situation invites the public law remedy for grant of compensation for violation of the fundamental right envisaged under Article 21 of the Constitution. In such a situation, it springs to life with immediacy. It is because life commands self-respect and dignity.

32. There has been some argument that there has been no complaint with regard to custodial torture. When such an argument is advanced, the concept of torture is viewed from a narrow perspective. What really matters is what has been stated in D.K. Basu v. State of W.B. 4. The Court in the said case, while dealing with the aspect of torture, held:-

> 10. Torture has not been defined in the Constitution or in other penal laws. Torture of a human being by another human being is essentially an instrument to impose the will of the strong over the weak by suffering. The word torture today has become synonymous with the darker side of human civilisation.
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> Torture is a wound in the soul so painful that sometimes you can almost touch it, but it is also so intangible that there is no way to heal it. Torture is anguish squeezing in your chest, cold as ice and heavy as a stone, paralysing as sleep and dark as the abyss. Torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself. Adriana P. Bartow

> 11. No violation of any one of the human rights has been the subject of so many conventions and declarations as torture all aiming at total banning of it in all forms, but in spite of the commitments made to eliminate torture, the fact remains that torture is more widespread now than ever before. Custodial torture is a naked violation of human dignity and degradation which destroys, to a very large extent, the individual personality. It is a calculated assault on human dignity and whenever human dignity is wounded, civilisation takes a step backward flag of humanity must on each such occasion fly half-mast.

4 (1997) 1 SCC 416

12. In all custodial crimes what is of real concern is not only infliction of body pain but the mental agony which a person undergoes within the four walls of police station or lock-up. Whether it is physical assault or rape in police custody, the extent of trauma, a person experiences is beyond the purview of law.

33. From the aforesaid, it is quite vivid that emphasis has been laid on mental agony when a person is confined within the four walls of a police station or lock up. There may not be infliction of physical pain but definitely there is mental torment. In Joginder Kumar v. State of U.P. and others5, the Court ruled:-

> 8. The horizon of human rights is expanding. At the same time, the crime rate is also increasing. Of late, this Court has been receiving complaints about violation of human rights because of indiscriminate arrests. How are we to strike a balance between the two?
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> 9. A realistic approach should be made in this direction. The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first the criminal or society, the law violator or the law abider.

34. In Kiran Bedi v. Committee of Inquiry and another 6, this Court reproduced an observation from the decision in D.F. Marion v. Davis7:- 5 (1994) 4 SCC 260 6 (1989) 1 SCC 494 7 217 Ala. 16 (Ala. 1927) 25. The right to the enjoyment of a private reputation, unassailed by malicious slander is of ancient origin, and is necessary to human society. A good reputation is an element of personal security, and is protected by the Constitution equally with the right to the enjoyment of life, liberty, and property.

35. Reputation of an individual is an insegregable facet of his right to life with dignity. In a different context, a two Judge Bench of this Court in Vishwanath Agrawal v. Sarla Vishwanath Agrawal8 has observed:-

> 55. reputation which is not only the salt of life, but also the purest treasure and the most precious perfume of life. It is extremely delicate and a cherished value this side of the grave. It is a revenue generator for the present as well as for the posterity.

36. From the aforesaid analysis, it can be stated with certitude that the fundamental right of the appellant under Article 21 has been gravely affected. In this context, we may refer with profit how this Court had condemned the excessive use of force by the police. In Delhi Judicial Service Association v. State of Gujarat and others 9, it said:-

> 39. The main objective of police is to apprehend offenders, to investigate crimes and to prosecute them before the courts and also to prevent commission of crime and above all to ensure law and order to protect the citizens life and property. The law enjoins the police to be scrupulously fair to the offender and the Magistracy is to ensure fair investigation and fair trial to an offender.

The purpose and object of Magistracy and police are complementary to each other. It is unfortunate that these objectives have remained unfulfilled even after 40 years of our Constitution. Aberrations of police 8 (2012) 7 SCC 288 9 (1991) 4 SCC 406 officers and police excesses in dealing with the law and order situation have been subject of adverse comments from this Court as well as from other courts but it has failed to have any corrective effect on it. The police has power to arrest a person even without obtaining a warrant of arrest from a court. The amplitude of this power casts an obligation on the police [and it] must bear in mind, as held by this Court that if a person is arrested for a crime, his constitutional and fundamental rights must not be violated.

37. If the obtaining factual matrix is adjudged on the aforesaid principles and parameters, there can be no scintilla of doubt that the appellant, a successful scientist having national reputation, has been compelled to undergo immense humiliation. The lackadaisical attitude of the State police to arrest anyone and put him in police custody has made the appellant to suffer the ignominy. The dignity of a person gets shocked when psycho-pathological treatment is meted out to him. A human being cries for justice when he feels that the insensible act has crucified his self-respect. That warrants grant of compensation under the public law remedy. We are absolutely conscious that a civil suit has been filed for grant of compensation. That will not debar the constitutional court to grant compensation taking recourse to public law. The Court cannot lose sight of the wrongful imprisonment, malicious prosecution, the humiliation and the defamation faced by the appellant. In Sube Singh v. State of Haryana and others 10, the three-Judge Bench, after referring to the earlier decisions, has opined:-

> 38. It is thus now well settled that the award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in the enforcement of the private law remedy in tort, nor come in the way of the criminal

court ordering compensation under Section 357 of the Code of Criminal Procedure.

38. In Hardeep Singh v. State of Madhya Pradesh 11, the Court was dealing with the issue of delayed trial and the humiliation faced by the appellant therein. A Division Bench of the High Court in intra-court appeal had granted compensation of Rs. 70,000/-. This Court, while dealing with the quantum of compensation, highlighted the suffering and humiliation caused to the appellant and enhanced the compensation.

39. In the instant case, keeping in view the report of the CBI and the judgment rendered by this Court in K. Chandrasekhar (supra), suitable compensation has to be awarded, without any trace of doubt, to compensate the suffering, anxiety and the treatment by which the quintessence of life and liberty under Article 21 of the Constitution withers away. We think it appropriate to direct the State of Kerala to pay 10 (2006) 3 SCC 178 11 (2012) 1 SCC 748 a sum of Rs. 50 lakhs towards compensation to the appellant and, accordingly, it is so ordered. The said amount shall be paid within eight weeks by the State. We hasten to clarify that the appellant, if so advised, may proceed with the civil suit wherein he has claimed more compensation. We have not expressed any opinion on the merits of the suit.

40. Mr. Giri, learned senior counsel for the appellant and the appellant who also appeared in person on certain occasions have submitted that the grant of compensation is not the solution in a case of the present nature. It is urged by them that the authorities who have been responsible to cause such kind of harrowing effect on the mind of the appellant should face the legal consequences. It is suggested that a Committee should be constituted to take appropriate steps against the erring officials. Though the suggestion has been strenuously opposed, yet we really remain unimpressed by the said oppugnation. We think that the obtaining factual scenario calls for constitution of a Committee to find out ways and means to take appropriate steps against the erring officials. For the said purpose, we constitute a Committee which shall be headed by Justice D.K. Jain, a former Judge of this Court. The Central Government and the State Government are directed to nominate one officer each so that apposite action can be taken. The Committee shall meet at Delhi and function from Delhi. However, it has option to hold meetings at appropriate place in the State of Kerala. Justice D.K. Jain shall be the Chairman of the Committee and the Central Government is directed to bear the costs and provide perquisites as provided to a retired Judge when he heads a committee. The Committee shall be provided with all logistical facilities for the conduct of its business including the secretarial staff by the Central Government.

41. Resultantly, the appeals stand allowed to the extent indicated hereinabove. There shall be no order as to costs.

...CJI.

(Dipak Misra) ...J.

(A. M. Khanwilkar) .....J.

(Dr. D.Y. Chandrachud) New Delhi;

September 14, 2018