

File No.1063/WBHRC/Com/2013-14

And

File No.28/WBHRC/IW/2013-14

P r e s e n t

1. Shri N. Mukherjee- Acting Chairperson
2. Shri M.S. Dwivedy- Member

Brief facts of the case :

One Subhankar Das submitted a petition dt.24-10-2013 to West Bengal Human Rights Commission to the effect that he was a constable of West Bengal Police and was posted (on the date of submission of petition) at Airport P.S., Narayanpur Out post under Bidhannagar Police Commissionerate. His wife, Smt. Moumita Das was pregnant and was staying at in-his laws place at Sanapukur Dhar, P.S.Basirhat, Dist – North 24 Parganas. On 13-10-2013 the petitioner went to his in-laws place to see his pregnant wife along with his friend Avijit Das on a motorcycle No.WB 26 V 2661. Later, around 11.30 in the same night, as the petitioner's wife required some medicines and as all chemist shops were closed they went out in search for a chemist shop near Basirhat Hospital when they were around Kadamtala (near Basirhat Bridge) S.I. Liton Rakshit of Basirhat P.S. in a cream colour Tata Sumo along with force intercepted the petitioner's

motorcycle and allegedly demanded Rs.5000/-. As the petitioner refused to pay any money he was physically lifted along with his friend Avijit Das into the police van by S.I. Liton Rakshit and force. They assaulted the petitioner and his friend Avijit Das with lathi and rifle butts as alleged. It was alleged that Rs.2.500/- and a gold chain worn by the petitioner were snatched away by the police men. The petitioners were taken to Basirhat P.S. in the police vehicle and one police personnel brought his motorcycle to the Police Station. On receiving information of this incident maternal uncle Sanjay Das, maternal aunt (of the petitioner) and others arrived at the Police Station and requested the police to release the petitioner since his wife was pregnant but the police did not accede to their request. On the following day (14-10-2013) after taking Rs.550/- from the petitioner and his friend they were released around 8.30 in the morning from the P.S. The motorcycle of the petitioner was returned but Rs.2500/- taken from the petitioner was not returned. The petitioner alleged that he was not allowed to contact his place of posting at Narayanpur O.P. during detention in the Police Station. Following release from Basirhat P.S., the petitioner reported the entire matter to his superior at Narayanpur O.P. and went to Vidyasagar Matri Sadan Hospital for treatment. The petitioner was recommended better treatment by the said hospital and on 16-10-2013 he was admitted to Dum Dum Municipal Hospital where he was treated till 19-10-2013. The petitioner sought relief by way of seeking punishment to S.I. Liton Rakshit and other police force of Basirhat P.S. for this alleged act.

Action taken by the Commission :

2. The matter was placed before the West Bengal Human Commission and on 01-11-2013 the West Bengal Human Rights Commission directed Supdt. of Police, Investigating Wing of W.B.H.R.C. to conduct an enquiry and submit a report to the Commission.

3. The Investigating Wing (S.P.) submitted its report through A.D.G. on 16-6-2016. The Commission decided to discuss the matter and the same was done on 08-7-2016. It was decided to examine Dr. Monimala Das, the examining physician of the petitioner, Subhankar Das at Basirhat Sub Divisional Hospital and S.I. Liton Rakshit, the arresting Sub Inspector of the petitioner u/s 16 of the Protection of Human Rights Act on 18-7-2016.

4. The Investigating Wing conducted a detailed enquiry by Tarak Ch. Pal, Dy.S.P. which was duly examined by S.P./A.D.G. both of W.B.H.R.C. and put up before the Commission. Briefly, investigation report stated as follows : the petitioner Subhankar Das in his petition stated that he was a constable of West Bengal Police posted at Narayanpur O.P. under Airport Police Station and on 13-10-2013 he along with his friend Avijit Das were proceeding towards Basirhat Hospital on a motorcycle to purchase some medicine for his pregnant wife. They were intercepted near Kadamtala, Basirhat Bridge by S.I. Liton Rakshit and police personnel demanded Rs.5000/-. As the petitioner refused to pay he was allegedly assaulted and Rs.2,500/- and the

gold ring were snatched away. They were subsequently detained at Basirhat P.S. and on the following day i.e. 14-10-2013 around 08.30 a.m. were released after obtaining signature on a blank paper and depositing Rs.550/-. On his release, the petitioner went to Narayanpur Out Post, informed his O.C. of the incident and attended Vidyasagar Matri Sadan Hospital for medical treatment and was later admitted to Dum Dum Municipal Hospital between October 16 to October 19, 2013. After examining various witnesses the enquiring officer arrived at the conclusion that constable 499 Subhankar Das and his friend Avijit Das were not medically examined following arrest. No corroborative evidence was found on the night of 13-10-2013. On examination of Dr. Monimala Das of Basirhat Hospital it was ascertained that she had examined Subhankar Das on 14-10-2013 being produced by police and she had found him "physically and mentally fit". The victim Subhankar Das claimed that he never attended Basirhat Hospital for his medical treatment on 14-10-2013. Dr. Monimala Das of that hospital stated that she had not examined the victim Subhankar Das who was placed before her physically during the course of enquiry. On the contrary, Dr. Monimala Das claimed that she medically examined some other person and given the medical report when during enquiry by SHRC officers Subhankar Das was physically produced before Dr. Monimala Das.

5. Subhankar Das, on his release from Basirhat P.S. (14.10.13) returned to Narayanpur O.P. around 23.25 hrs. Dr. Saradindu Das, Medical Officer, Basirhat Rajarhat Gopalpur Municipality,

Deshbandhu Nagara Vidyasagar Matrisadan Hospital treated him around 23.50 hrs. on 14-10-2013. The doctor detected wounds on Subhankar Das bluish discolour on right thigh, lateral side of left lower thigh, multiple blunt injuries on left side of face and conjunctival haemorrhage in left eye. Possible cause was injury from blunt weapons like bamboo stick as the reason for sustaining such injuries. S.I. Sukhen Mondal of Basirhat P.S. since retired, stated during enquiry that S.I. Liton Rakshit had arrested 6/7 persons including victim Subhankar Das and his friend Avijit Das and had handed over to him (S.I. Sukhen Mondal) to get them examined medically at Basirhat Hospital. However, the victim denied being taken to Basirhat Hospital. The examining physician Dr. Monimala Das denied examining Subhankar Das medically on 14-10-2013 and claimed that some other person was examined medically instead of Subhankar Das and Avijit Das. Subsequent medical report of Dr. Saradindu Das suggested that Basirhat P.S. officer especially S.I. Liton Rakshit had distorted the facts of the medical examination. Shri Prosenjit Das, then then I.C. of Basirhat P.S. at the time of occurrence (currently at Falta P.S.) denied any knowledge of the incident although he was heading the Police Station administration as the Inspector-in-Charge. Therefore, the final conclusion of enquiry was that constable 499 Subhankar Das and his friend Avijit Das on 13-10-2013 went to purchase some medicine for his wife (Subhankar Das's wife); when found quarrelling with other pedestrian whereupon S.I. Liton Rakshit intervened and demanded Rs.5000/- from them. The petitioner refused to pay on

which they were forced into a police vehicle and assaulted with lathi, rifle etc. They were handed over to the duty officer, ASI Ananta Kr. Ghosh but were not medically examined. Both the arrested persons were released on 14-10-2013 around 8 a.m. in the morning. Subhankar Das returned to Narayanpur O.P., his place of posting and diarised the entire fact vide Narayanpur O.P. G.D. Entry No.237 dt.14-10-2013. Dr. Saradindu Das of Vidyasagar Matri Sadan Hospital detected some wounds for which he was admitted to Dum Dum Municipal Hospital from 16-10-13 to 19-10-13. S.I. Liton Rakshit submitted non-FIR Prosecution No.808/13 u/s 34 Police Act against Subhankar Das and Avijit Das on 14-10-2013. The allegation of assault on Subhankar Das by S.I. Liton Rakshit was substantiated. However, the issue of medical examination at Basirhat S.D. Hospital by Dr. Monimala Das on 13-10-2013 itself could not be confirmed as the doctor stated before the enquiring officer that on 14-10-13 some other person was produced before her for medical examination and not Subhankar Das.

6. S.I. Liton Rakshit, currently O.C. Gopalnagar P.S, North 24 Parganas stated before the Commission on 18-7-2106 (while examination u/s 16 of P.H.R. Act was done by the Commission) that he was posted as S.I. in Basirhat P.S. on 13-10-13 and was transferred from Basirhat P.S. on 06-1-2015. On 13-10-2013 between 11.15 p.m. to 11.30 p.m. he was informed by ASI Ananta Ghosh from the Thana Landline on his mobile phone that some problem was going on near Basirhat Bridge. As he was on R.T. mobile duty he went to the place of occurrence and arrested two

persons and put them in his vehicle. On his arrival at the P.O., he found some civic police on duty as it was Austomi day of Durgapuja. The civic police told the S.I. that 7/8 persons were quarrelling amongst themselves. In the meantime, another officer S.I. Sukhen Mondal reached the spot. Around that time, he found that Constable Subhankar Das was passing that area along with his friend Avijit Das on a motorcycle and somehow touched some pedestrians when an altercation broke out. All persons were intoxicated. The arrested persons including Subhankar Das were handed over to S.I. Sukhen Mondal who took them to Basirhat S.D. Hospital. He denied assaulting the victim constable Subhankar Das and stated that SI Sukhen Mondal had got the arrested persons medically checked up in the hospital. At the place of occurrence, Subhankar Das revealed his identity to S.I. Liton Rakshit and requested that he should be released but the S.I. refused to do so on which Subhankar Das threatened him with dire consequences. He (S.I. Liton Rakshit) claimed that he had prepared the arrest memo at the place of occurrence and handed it over to S.I. Sukhen Mondal. He also claimed that the petitioner had threatened the S.I. that he would take adequate action in future against him.

7. Dr. Monimala Das, Medical Officer of Basirhat Hospital was examined by the Commission on 02-8-2016, as she had failed to appear before the Commission on 18-7-2016. She stated that on 14-10-13 she was posted at Basirhat hospital and when shown a copy of medical certificate no.21700 dt.14-10-13 Dr. Das admitted to have issued this certificate. She also stated that she

had examined one male Subhankar Das aged about 25 years on 14-10-13 and issued this certificate. She claimed that Subhankar Das was produced before her for medical examination by some police personnel and that she had not recorded the identification marks of the person who was examined by her nor have obtained Subhankar Das's signature on the medical certificate. There was no circular from the Health Department when injuries are not found on person during medical examination that his mark of identification will not be recorded or his signature obtained.

8. Retired S.I. Sukhen Mondal was examined by the Commission on 02-8-2016 who informed that he was posted at Basirhat P.S. on 13.10.2013. At around 11.45 p.m. while performing R.T. mobile duty, he received some information of chaos near Basirhat Bridge when he reached there and found S.I. Liton Rakshit with his R.T. mobile vehicle. S.I. Liton Rakshit had arrested 6/7 persons from Basirhat Bridge without preparing any arrest memo and asked him i.e. S.I. Sukhen Mondal to take them to the Police Station after medical examination at Basirhat Hospital. S.I. Liton Rakshit did not tell him anything about identity of constable Subhankar Das nor was the same disclosed by the petitioner. Subhankar Das was produced before Dr. Monimala Das but at that time S.I. Sukhen Mondal was outside the emergency and did not go in person to the doctor along with Subhankar Das. The constable accompanying S.I. Sukhen Mondal collected medical certificate and handed them over to Sukhen Mondal outside the emergency. He denied that Subhankar Das was assaulted inside his police vehicle.

Fact finding by the Commission :

9. The Commission went through the petition, detailed enquiry report submitted by Investigation Wing, examined S.I. Liton Rakshit, retired S.I. Sukhen Mondal and Dr. Monimala Das u/s 16 of the Protection of Human Rights Act and came to the conclusion that the petitioner constable 499 Subhankar Das and his friend Avijit Das were going in a motorcycle in search of some medicine for Das's pregnant wife/or any other purpose around Basirhat Bridge area. The claim that his wife was pregnant and needed medication was accepted by the Commission in view of the fact that it was not a contested issue. There was some altercation with the petitioner and passer byes that had triggered of a commotion and led to intervention of S.I. Liton Rakshit. At that point of time in all probabilities Subhankar Das disclosed his identity which was not accepted by the arresting S.I. Liton Rakshit. On the contrary, Avijit Das his friend and 5/6 others were apprehended/arrested and put inside police vehicle and in the process were assaulted by lathi and revolver butts for which he received injuries on thighs and caused conjunctival haemorrhage in his eyes. This was revealed by the medical certificate and statement given by the Dr. Saradindu Das of Dum Dum Municipal Hospital. The arrest memo refers to Basirhat G.D. Entry No.677 dt.14-10-13 u/s 34 Police Act in which names of Subhankar Das, s/o. Mukul Das of Labanya, P.S.Baduria and Avijit Das, s/o. Naren Das of the same place are mentioned. The date and time is given as 14-10-13 at 02.40 hrs. from Chowmatha (Po) the name of arresting officer is mentioned as S.I.

Liton Rakshit and it mentions that there was no injury prior to his arrest. The arrest memo does not have names of persons before whom the arrest was made and there is not signature of any relative or any local person before whom the arrest was made. The Commission felt that this was a total violation of the statutory provisions regarding arrest for which the arresting officer is entirely responsible. Although arresting officer was S.I. Liton Rakshit yet it is not known why he handed over the arrested persons to S.I. Sukhen Mondal and asked him to take them to the hospital for medical examination. It is the duty of the arresting officer to produce the arrested persons immediately for medical examination which S.I. Liton Rakshit violated. It is also not clear when S.I. Sukhen Mondal (now retired) actually produced the victim Subhankar Das before Dr. Monimala Das as the medical certificate issued shows the date as 14-10-13 without mentioning any time. The medical certificate issued by Dr. Monimala Das is totally flawed as she mentions "the person is examined by her and found physically and mentally fit". The statement is in her own handwriting but the name of the person examined and the age as well as date of examination are in somebody else's handwriting. Therefore, it raises considerable doubt whether Subhankar Das was actually produced before Dr. Monimala Das for medical examination on the night of 13/14 October, 2013 immediately following his arrest. This was further confirmed when Dr. Monimala Das could not recognise the victim Subhankar Das when produced before her during enquiry by W.B.H.R.C. officers. The Commission tends to believe from the

earlier statement given to the investigating officers of the Commission that Subhankar Das was not produced before her physically and it was some other person whom she had examined, although during her examination u/s 16 of the Protection of Human Rights Act she claimed to have examined Subhankar Das but have not recorded marks of identification and taken the signature of the victim. Thus, considerable doubt is raised about Subhankar Das being actually examined by Dr. Monimala Das at Basirhat Hospital. The subsequent injuries detected at Vidyasagar Matrisadan & Hospital and Dum Dum Municipal Hospital corroborates these points. The Commission is strongly of the view that Dr. Monimala Das failed to perform her duty as an examining physician at Basirhat Hospital by giving an incomplete and meaningless medical certificate without recording identification of the arrested person. Thus, she has failed to perform her duty as a medical examiner and had not done justice as an expert. Regarding retired S.I. Sukhen Mondal, the Commission is of the view that he was not giving out facts correctly regarding medical examination of the arrested persons on 13-10-13 at Basirhat Hospital. He was not the arresting officer and should not have taken the arrested accused to the hospital for medical examination. However, once he had taken them to hospital he should have ensured that the medical examination was carried in his presence. On the contrary he was standing outside the emergency and some constables were accompanying the accused during medical examination as per his statement.

However, as he has since retired the Commission feels there is no need to proceed against him.

The then Inspector-in-Charge of Basirhat P.S. Shri Prosenjit Das currently I.C., Falta P.S. avoided his responsibility by feigning ignorance of this incident totally. When a police personnel was arrested following a fracas in his jurisdiction he should have got himself abreast of the developments in his P.S. area rather he chose to wash his hands of and leave it to his subordinate officer. This shows his total incompetence and lack of administrative skills as well as lack of taking responsibility and bad leadership.

10. The Commission holds S.I. Liton Rakshit squarely responsible for the incident of arresting constable Subhankar Das, assaulting him, not producing him on the same time at the hospital for medical examination, handing him over to some other officer although, the arrest memo was written by him and that the arrest memo does not have signature of the arrested person's relative or any other independent person of that area as witness of arrest which is a statutory requirement.

As stated earlier, the Commission also holds Dr. Monimala Das responsible for failing to carry out her duties as a examining doctor, not recording all injuries correctly, giving an incomplete medical certificate in her own hand without recording name of the arrested persons whom she has examined as well as the statement of examining person.

11. The Commission recommends as follows :

- i. S.I. Liton Rakshit should be proceeded against departmentally for preparing a defective arrest memo and not producing the arrested persons for medical examination thereby violating the statute. He should also be proceeded for assaulting constable Subhankar Das during arrest.
- ii. Departmental proceeding should be launched against Dr. Monimala Das of Basirhat Hospital for giving an incomplete medical certificate without recording names of the arrested persons in her own handwriting and not recording the injuries as well as statement and identity of the person.
- iii. The then I.C. Prosenjit Das should be warned for being completely ignorant of such an important development in the Police Station in which one constable was arrested and assaulted by his own Sub Inspector. This shows lack of taking responsibility and bad leadership and incompetence on his part of I.C. of a Police Station.
- iv. The Health Department, Govt. of West Bengal may be directed to issue a firm circular regarding procedure for recording of medical certificates of all arrested persons while they are produced before them by the police which should include :
 - Name, father's name, age, place of arrested persons and his marks of identification.
 - Statement of the arrested persons as to how he/she received any injuries.

- Following examination and the injuries were found on the body of the person and what course of treatment recommended.
- Signature and identification marks of the person medically examined should be recorded in the medical certificate.

v. The Commission recommends a compensation of Rs.40,000/- (forty thousand) only to be paid to constable 499 Subhankar Das for sustaining injuries during arrest by S.I. Liton Rakshit. The Commission gives the liberty to the concerned department to recover this amount from the salary of the S.I. Liton Rakshit.

12. Principal Secretary, W.B.H.R.C. is directed to send the copy to the Chief Secretary to the Govt. of West Bengal for appropriate action and request that an action taken report be sent to the Commission in four months time.

Sd/-

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

sd/-

**(N. Mukherjee)
Acting Chairperson**

Date: 17th August, 2016