

WEST BENGAL HUMAN RIGHTS COMMISSION

File No.315/WBHRC/Com/2014-15

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

Brief fact of the Case :

A petition was received from one Smt. Hairani Sow of vill.Ninga, P.O.Rupushpur,P.S.Khayrasole, Dist-Birbhum on 17June, 2014 at the State Human Rights Commission alleging that on 27-5-2014 one Moni Kumar Sow resident of the same village was missing from his house and that his wife Pratima Sow lodged a missing dairy at the P.S. Subsequently, being provoked by Pratima Sow, police officer, namely, S.I. Bahadur Mondal and ASIsChinmoyMondal and PrabhatSinha all of Khayraslolle P.S., Dist-Birbhum arrested petitioner's husband, namely, Raj kumar Sow from the petitioner's residence (on 27.5.2014) and took him to the P.S. At the P.S. these police officers resorted to torture and assault on the person of the petitioner's husband namely Raj Kumar Sow. As a result, of such assault and torture, the petitioner's husband Raj Kumar Sow committed suicide on 06.6.2014 which refers to U.D. case no.15/14 dt.06.6.14 of Khayrasole P.S. The petitioner further alleged that the Police

Station did not register any case on her allegation. Thus, she prayed for justice to the Human Rights Commission.

2. The State Human Rights Commission took due cognizance of the matter and directed S.P. Birbhum to submit a report by 7 July, 2014.

3. S.P. Birhum submitted his report vide his memo no.6571E dt.20.10.2014 which was received by the Commission on 27.10.14.

4. The Commission examined the report of the S.P. and decided to call for the P.M. report on the death of Raj Kumar Sow and the present position regarding whereabouts of Moni Kumar Sow, who was allegedly missing from his residence.

5. The Supdt. of Police, Birbhum vide his memo 4594E dt.04.3.2015 (received by the Commission on 09.3.15) submitted copy of P.M. report and informed the Commission that Moni Kumar Sow returned to his house on 11.7.14 around 10.00 hrs. as he had gone to Tarapith Kali Mandir. A General Diary No.488/14 dt.13.7.14 of Khayrasole P.S. with reference to missing person case no.2/14 was diarised to this effect.

6. The Commission not being satisfied with the report of the S.P. discussed the matter in full Commission on 10.6.2015. It was decided that A.D.G, Investigating Wing of West Bengal State Human Rights Commission should enquire into the matter and submit report by July 20, 2015. Regarding the P.M. report it was decided that clarifications be obtained regarding dimensions of ligature mark and dimensions of abrasion marks as well as possible reasons for such abrasions.

7. The Dy.S.P. of Investigating Wing, WBHRC submitted his enquiry report to the Commission on 23.8.2016 covering all the points in details which are discussed later.

On the basis of this report the matter was again discussed in full Commission on 12.9.2016 and it was decided to examine following police officers, namely, Sk. Mahammad Ali, the then O.C. of Khayrasole P.S., S.I. Bahadur Mondal, the then Second Officer of Khayrasole P.S., ASI Probhas Saha and ASI Chinmoy Mondal both of Khayrasole P.S. under section 16 of the PHR Act as the report of the Dy.S.P. SHRC found them responsible for the act of illegal arrest of deceased Raj Kumar Sow. Subsequently, they were examined on 26.9.2016 and their

statements were recorded u/S 16 of the PHR Act details of which are discussed in later paragraphs.

8. **Report of S.P., Birbhum:**

The S.P., Birbhum in his report dt.20.10.2014 stated that the petitioner Smt.Hairani Sow was examined in details when she stated that she and her husband , Raj Kumar Sow were engaged in a family dispute with Moni Kr. Sow and his family. Following this quarrel Moni Kumar Sow went missing and the matter was diarised vide Khayrsasole P.S. G.D. No.1121 dt.28.5.2014.Smt. Hairani Sow alleged that on 28.5.2014 night ASIsChinmoyMondal and PrabhasSaha, both of Khayrasole P.S. picked up Raj Kumar Sow from his house and took him to the P.S. Thereafter, Raj Kumar Sow was tortured and threatened by this officer in case he failed to produce or state the whereabouts of missing person Moni Kumar Sow. Following morning i.e. 29.5.2014 Raj Kumar Sow was released from the P.S. and handed over to his son Rameswar Sow on P.R. Bond. Raj Kumar Sow suffered trauma and repeatedly said that the police would again pick him up and torture him. On 05.6.2014, as a result of severe trauma he committed suicide by hanging himself from a tree located the east bank of Akalghara pond near Vill. Ninga.

Smt. Hairani Sow produced a photograph of her deceased husband showing dark stains on both limbs, suggesting signs of torture meted out to him at the Police Station during his detention. In conclusion, the report stated that the P.M. report did not touch upon the injury sustained in his body excepting those resulting from hanging. The M.O.'s report was not conclusive as he opined that final report could only be given after chemical examination of viscera of the deceased. The report of S.P. comments on two issues connected with the injuries allegedly sustained at the P.S. by the deceased but it is not known on what basis such observations has been made (in the S.P.s report) as the medical expert has failed to give any opinion on injury sustained on the limbs of the deceased. The report states that the dark stains on limbs are result of Post-Mortem staining as the body was hanging from 17.00 hrs. of 5.6.2014 to 09.00 hrs. of 06.6.2014. He further comments that there was no disproportionate swelling on the limbs in case he was roughed up, on his limbs.

9. The report concluded that Raj Kumar Sow was taken to Khayrasole P.S. in the night of 28.5.2014 and was released on 08.00 hrs on the morning of 29.5.2014. He concludes that there

is no evidence that he was beaten at the P.S. He also mentions in G.D. No.1162 dt.29.5.2014 to the effect that Raj Kumar Sow came to P.S. on request on 29.5.14 at about 08.01 hrs. and was later released. The G.D. further mentions that Raj Kumar Sow could not give any intimation regarding whereabouts of missing person Moni Kumar Sow.

10. The second report of S.P., Birbhum dt.04.3.2015 intimated the fact that Moni Kumar Sow returned to his house on 11.7.2014 at about 10.00 hrs from Tarapith Kali Mandir which was duly diarised at the P.S. vide no.488 /14 dt.13.7.2014.

The post mortem report opined that death was due to effects of hanging, ante-mortem in nature and that further opinion could be given following chemical examiners report of the deceased viscera. It observed that on neck of the deceased there was injury and a ligature mark and abrasions were present in front of the neck just below the ligature mark.

Report of Dy.SP., Investigating Wing of WBSHRC :

In his report, Dy.S.P. WBSHRC stated that the petitioner Smt. Hairani Sow wife of Raj Kumar Sow (deceased) of Vill. Ninga, P.S.Khayrasole, currently P.S.Lokepuri and Rameswar

Sow s/o. Raj Kumar Sow were examined. It was ascertained that Smt. Pratima Sow wife of Moni Kumar Sow of the same village went to Khayrasole P.S. on 28.5.2014 and reported that her husband Moni Kumar Sow was missing from nearby Poultry farm on the night of 27/28.5.14. She requested police to interrogate Raj Kumar Sow of the same village as his movements were suspicious. This refers to Khayrasole P.S. G.D. no.1121 dt.28.5.14. Subsequently, the police of Khayrasole P.S. came to Ninga village, talked to Smt. Pratima Sow and arrested Raj Kumar Sow around 19.00 hrs. on 28.5.2014 and took him to Khayrasole P.S. Raj Kumar Sow was later released from Khayrasol P.S. on the morning of 29.5.2014 between 8 a.m. and 9 a.m. i.e. after a detention in the P.S. for nearly 12 hours. Rameswar Sow son of the deceased Raj Kumar Sow went to the P.S. on 29.5.2014 and met one Partha Sow, a Civic volunteer of Khayrasole P.S. and relative Partha Sow (C.V.) spoke to S.I. Bahadur Mondal of the P.S. when the said S.I. instructed him (Rameswar Sow) to write on a blank sheet of paper that he had received Raj Kumar Sow in "good condition" on which Raj Kumar Sow was released. Raj Kumar Sow stated to his family members that he was assaulted at Khayrasole Police but could not name

the police personnel who allegedly assaulted him. He was not treated by any doctor during police custody. The petitioner could not see any injury marks on his body.

S.I. Bahadur Mondal and the O.C. of the P.S. denied allegation of assault on Raj Kumar Sow at the P.S. on the night of 27/28.5.14. They also denied the fact of arresting Raj Kumar Sow and claimed that he came on his own to the P.S. on 29.5.14 at about 8.a.m. and released after interrogation. Raj Kumar Sow went missing from his house on 05.6.14 evening and his dead body was found hanging from a tree near a pond around 7a.m. of 06.6.2014. On 06.6.2014 morning Rameswar Sow lodged a written complaint at the P.S. that his father, Raj Kumar Sow committed suicide by hanging and S.I., Bahadur Mondal diarised the matter vide G.D. No.197 dt.06.6.2014 which refers to U.D. Case no.15/14 dt.06.6.14. S.I. Susanta Biswas obtained Post-Mortem report. No foul play could be detected on the death of Raj Kumar Sow as the Autopsy Surgeon opined "that death was due to the effect of hanging ante-mortem in nature".

In his finding, the Dy.S.p. Investigating Wing, WBSHRC commented that the Khayrasole P.S. police led by ASI Chinmoy Mondal had indeed arrested Raj Kumar Sow on

28.5.2014 which was substantiated by local witnesses Smt. Hairani Sow, Rameswar Sow, SajalChakraborty, Partha Sow and Pratima Sow. The allegation regarding detaining Raj Kumar Sow atKhayrasole P.S. lockup and his assault by police in Khayrasole P.S. could not be substantiated during enquiry. It was also substantiated that following his release on the morning of 29.5.14 he committed suicide on 5/6.4.14.

The clarifications regarding length and dimensions of abrasions marks on dead body of Raj Kumar Sow was sought from Dr.AtanuSankar Das, M.O., SuriSadar Hospital, Birbhum when the latter informed that dimensions of ligature mark was not recorded in P.M. report and also dimensions of abrasion marks were not recorded and the reasons for abrasion may be due to slip of the ligature below. The Dy.S.P. also commented that ASI ChinmoyMondal of Khayrasloe P.S. had arrested Raj Kumar Sow and brought him to the P.S. when S.I. BahadurMondal was the Duty officer and the O.C was S.I. Sk. Mahammad Ali. He also stated that on the direction of Smt. Pratima Sow, the Khairasole police arrested Raj Kumar Sow to ascertain whereabouts of Moni Kumar Sow, husband of Pratima Sow and subsequently he was released on the following morning.

The missing person, Moni Kumar Sow returned to his residence after a month's time.

Examination of Police Officers u/s 16 of the PHR Act :

S.I. Sk. Mahammad Ali, the then O.C. of Khayrasole P.S. and currently O.C. of Dubrajpur P.S. was examined by the Commission on 26.9.16 when he admitted that S.I. Bahadur Mondal had interrogated Raj Kumar Sow on 29.5.2014 when he was the O.C. Raj Kumar Sow was not arrested by ASI Chinmoy Mondal but was asked by him to report to Khayrasole P.S. but he could not give the details as to how ASI Chinmoy Mondal contacted Raj Kumar Sow and passed on this message. He also claimed that during the interrogation of Raj Kumar Sow he was not present at the P.S.

S.I. Bahadur Mondal, currently posted at Sainthia P.S., was S.I. of Khayrasole on 28.5.2014 and was the duty officer. He left duty at 8 a.m. on 29.5.2014 and that he had interrogated Raj Kumar Sow on 29.5.14 morning. He admitted that he could not remember how long interrogation of Raj Kumar Sow continued at the P.S. He stated that ASI Chinmoy Mondal went

to the house of Raj Kumar Sow on 29.5.14 to call him to the P.S. but he could not say whether ASI Chinmoy Mondal met Raj Kumar Sow and that no notice was served on him for this purpose. He claimed that no police officer was present at P.S. when he interrogated Raj Kumar Sow. He also denied the fact that ASI Chinmoy Mondal had arrested Raj Kumar Sow on 28.5.2014 and detained him in the lockup. S.I. Bahadur Mondal admitted on 29.5.14 Rameswar Sow son of Raj Kumar Sow came to Khayrasole P.S. and wrote on a white sheet of paper that he had received his father, Raj Kumar Sow “in good condition” on which Raj Kumar Sow was released.

ASI Prabhas Saha currently of Labpur P.S. was posted on 28.5.2014 at Gangaram Chack O.C.P. Camp under Labpur P.S. He denied going to Khayrasole P.S. on 28 /29.5.14 but had heard that Raj Kumar Sow was called to Khayrasloe P.S. He could not remember from whom he heard about this incident. He claimed that it was not fact that he had assaulted Raj Kumar Sow.

ASI Chinmoy Mondal currently of Sainthia P.S. was posted as ASI on 28.5.14 at Khayrasole P.S. He stated that on the morning of 28.5.14 he went to Raj Kumar Sow’s

house but could not find him. He then instructed his family members to direct Raj Kumar Sow to attend Khayrasole P.S. as per orders of S.I. Bahadur Mondal. He could not remember the name of the family member to whom he gave such instruction. He further claimed that he was on mobile duty on 28.5.14 and came back to P.S. around 2 p.m. on the same date. He was on mobile duty from 6 p.m. on 28.5.14 once again and returned to P.S. at about 6 p.m. He admitted that he did not see Raj Kumar Sow at the P.S. on 29.5.14 but had learnt from other that Raj Kumar Sow had come to the P.S. He denied arresting Rajkumar Sow on 28.5.14 from his house and detaining him at the police lockup.

Fact finding by the Commission :

The Commission considered the petition of Smt. Hairani Sow, the reports of S.P., Birbhum dt.20.10.14 and 04.3.15, Post-Mortem report of Asstt. Surgeon Dr.Atanu Sankar Das, report of Dy.S.P., Investigation Wing, WBSHRC and statements u/s 16 of the PHR Act recorded by the Commission of S.I. Sk. Mahamad Ali and S.I.

Bahadur Ali, ASIs Chinmoy Mondal and Probhas Saha. The Commission came to following conclusion :-

A family dispute was existing between Raj Kumar Sow and Moni Kumar Sow both of village-Ninga, P.S.Khayrasole. Moni Kumar Sow went missing on 28.5.14 which was reported to the P.S. by his wife Pratima Sow and that she alleged that Raj Kumar Sow was responsible for disappearance of Moni Kumar Sow. She also requested S.I. Bahadur Mondal to interrogate and arrest Raj Kumar Sow, who would be able to give the whereabouts of Moni Kumar Sow. A G.D.E. No.1121 dt.28.5.14 was made but no specific case under IPC regarding abduction or kidnapping of Moni Kumar Sow was recorded (F.I.R.) in Khayrasole P.S. On the direction of S.I. Bahadur Mondal, ASI Chinmoy Mondal went to the house of Raj Kumar Sow and “picked him up” around 8 p.m. on the night of 28.5.14 and brought him to the P.S. This fact has corroborated by witnesses Smt. Haraini Sow, the petitioner and wife of Raj Kumar Sow, Rameswar Sow, the son of Raj Kumar Sow, Pratima Sow and Sajal Chakraborty, Partha Sow. However, the O.C. of the P.S. Sk. Mahammad Ali denied the arrest of Raj

Kumar Sau and stated that he was interrogated at Khayrasole P.S. on 29.5.14. The same statement was made by S.I. Bahadur Mondal, the Second Officer of the P.S.

Raj Kumar Sow was detained at the P.S. from 8 p.m. of 28.5.14 to 8 a.m. of 29.5.14. On 29.5.2014 morning his son Rameswar Sow came to the P.S. and approached his relative a Civic Police volunteer, namely, Partha Sow of the P.s who in turn requested S.I. Bahadur Mondal to release Raj Kumar Sow. Thereafter, S.I. Bahadur Mondal gave a blank sheet of paper to the victim's son, Rameswar Sow, who wrote that "he has received his father in good condition" and obtained the signature of his son, Rameswar Sow. On this Raj Kumar Sow was released from the P.S. on 29.5.14 morning. Thereafter, Raj Kumar Sow suffered from trauma and committed suicide on 06.6.2014. In the interim period, at his home in a traumatic condition he repeated several times to his wife that the police would re-arrest him and assault him at the lockup. A U.D. Case was registered and a post mortem was conducted by Dr.Atanu Kumar Sarkar, M.O., Suri Sadar Hospital. The post mortem report was incomplete in nature as it has mentioned that "death

was due to hanging ante mortem in nature”. Matter was kept open due non receipt of chemical examiner’s report of the viscera of the victim. The Post-Mortem report was incomplete and unprofessionally conducted as no dimensions of abrasion marks and likely causes or likely instruments used for causing such abrasion were absent. The Post-Mortem report failed to notice any other injuries or stains although the petitioner Smt. Hairani Sow produced photographs showing stains on the limbs of the deceased. There is no explanation for reasons of such stains in the p.m. report. No videography was done during Post-Mortem and there is no record of the Post-Mortem being conducted in presence of the victim’s family when there are allegations of his recent arrest and torture in police custody.

The police officers including O.C. Sk. Mahammad Ali vehemently denied that the victim was arrested by police on 28.5.14. The statement of Sk. Mahammad Ali is not acceptable since he admitted that he was out of Police Station and had hearsay knowledge of the entire incident. S.I. Bahadur Mondal admitted that he was duty officer of

the P.S. and ASI Chinmoy Mondal called Raj Kumar Sow on 29.5.14 from his house to Khayrasole P.S. No notice was served to Raj Kumar Sow for purpose of interrogation at the P.S. No police officer was present when S.I. Bahadur Mondal interrogated Raj Kumar Sow. He denied the fact that Raj Kumar Sow was kept inside the Thana lockup and assaulted but admitted that on 29.5.14 Raj Kumar Sow was handed over to his son Rsmeswar Sow when the latter wrote on a white sheet of paper that “he has received Raj Kumar Sow in good condition”. ASI Probhas Saha denied his involvement in the entire episode while ASI Chinmoy Mondal accepted the fact that he went to the house of Raj Kumar Sow on 28.5.14 morning but finding him absent directed his family members to ask him to come to P.S. He, however, denied arresting Raj Kumar Sow and keeping him police lockup.

Considering the entire catena of evidence the Commission concluded that it was fact that on the prodding of Pratima Sow regarding missing of her husband Moni Kumar Sow and alleged involvement of Rajkumar Sow in the incident S.I. Bahadur Mondal of Khayrasole P.S.

without making any preliminary enquiries directed ASI Chinmoy Mondal to arrest Raj Kumar Sow from his residence and bring him to the Khairasole P.S. Accordingly, ASI Chinmoy Mondal arrested Raj Kumar Sow on 28.5.14 around 8 p.m. and brought him to the P.S. which was corroborated by number of local witnesses including disinterested witness like Sajal Chakrbaorty and Pratima Sow herself. At the P.S., it appears that Raj Kumar Sow denied all allegations about his involvement in disappearance of Mani Kumar Sow. However, it could not be substantiated that Raj Kumar Sow was assaulted and kept in Police Station lockup as there is no CCTV footage and there is non-availability of independent witnesses excepting police officers who all denied. However, the needle of suspicion points towards police assault from the photographs supplied and allegations made by the wife of the deceased. On the following morning i.e. 29.5.14 the son of the victim, Rameswar Sow approached S.I. Bahdur Mondal through a Thana Civic volunteer and secured release of his father by submitting an undertaking to the effect that “he has got his father in good condition”. It is

very surprising that the entire action was taken by the police without registering an F.I.R. Subsequently, the missing person came back to his house in hail and hearty condition after a period of 35 days and stated that he went on visit to Tarapith Mondir. Therefore, the entire action of the police was very deplorable as it violated all provision of Cr.P.C. i.e. not recording any FIR, arresting a person against whom no case has been registered, arresting him in late evening hours, detaining him in the P.S. for over twelve hours, not conducting any medical examination which is mandatory, not issuing any arrest memo, and releasing him on the following morning to his son by obtaining an under taking 'that he has obtained his father in good condition'. This type of undertaking is unheard of and is totally in violation of provisions of Cr.P.C. There is false claim by police that by G.D. No.1162 which states that Raj Kumar Sow came to the P.S. on request on 29.5.14 and following interrogation he was released. There is no mention of time when he was released or the date when he was released. Details of interrogation as to what he said and the case reference in which he was interrogated is not

mentioned. This is again a violation of the standard legal procedure. The Commission, therefore, holds S.I Bahadur Mondal responsible for not registering a case on complaint of missing of Moni Kumar Sow, directing ASI Chinmoy Mondal to produce Raj Kumar Sow to the P.S. following his arrest, detaining him in the P.S. from 8 p.m. of 28.5.14 to 8 a.m. of 29.5.14 releasing him after obtaining an undertaking from his son that he has received his father in good condition. The Commission holds ASI Chinmoy Mondal responsible for arresting Raj Kumar Sow without any case against him and bring him to the Police Station in violation of Cr.P.C. No arrest Memo or medical examination was conducted on him. The Commission also holds S.I. Sk. Mahammad Ali, the then O.C. of Khayrasole P.s for extreme slack supervision and his attempt to extricate himself from the incident by claiming that he was not in the P.S. when the entire incident took place in his P.S. This shows bad management, indifferent control over his subordinates and lack of supervision.

The Commission finds fault with Dr.Atanu Kr. Sarker, the Autopsy Surgeon who conducted post mortem

of Raj Kumar Sow following his suicide in a very indifferent and unprofessional manner. He failed to videograph or photograph the p.m. and conduct it in presence of family of the deceased when there allegation of arrest and assault of police. He failed to record dimensions of injury and notice any other body injuries. It shows lack of professionalism and expertise by him.

Recommendations of the Commission :

The Commission makes following recommendations in this case :

- i. A compensation to the tune of Rs.50,000/- be awarded to the widow of the victim Smt. Hairani Sow for illegal arrest of her husband and his detention in P.S. for 12 hours between 8 p.m. to 8 a.m. on 28.5.2014 to 29.5.2014 despite the fact that no case was registered against him at the P.S.
- ii. Departmental proceeding be drawn up against S.I. Sk. Mahammad Ali for slack supervision, bad leadership and bad management of the Police Station on account of which a totally illegal arrest was made without registering any case and subsequently the missing person Moni Kumar Sow came back to his house hail and

hearty and innocent person Raj Kumar Sow lost his life.

- iii. Departmental proceedings be drawn up against S.I. Bahadur Mondal for ordering illegal arrest of Raj Kumar Sow and detaining him in the P.S. without any specific case. No medical examination was conducted on the victim and no arrest memo issued. He was released to his son by obtaining an undertaking that his father was found in good condition which his violation of existing laws.
- iv. Departmental proceeding be drawn up against ASI Chinmoy Mondal of Khayrasole P.S. for arresting illegally Raj Kumar Sow without registering any case against him and bringing him to the Police Station.
- v. An explanation be called from Dr. Atanu Kumar Sarker for conducting post mortem indifferently without recording specific details and failing to videograph the entire incident as well as not conducting the p.m. in presence family members of the deceased specially when there were allegations of arrest and torture by police.
- vi. The S.P., Birbhum be directed to caution Dy.S.P. Shri Partha Ghosh (who conducted the initial enquiry into the incident) not to speculate about Post Mortem injuries especially when he

was not an expert and the P.M. report is silent about alleged injuries sustained by Raj Kumar Sow on his limbs as claimed in photograph submitted by his wife Smt. Hairani Sow.

- vii. The Principal Secretary, WBHRC is directed to communicate the recommendations to the Chief Secretary to the Govt. of West Bengal with the request to communicate the action taken by the Government on such recommendations to the Commission in four months time.

Sd/-
(M.S. Dwivedy)
Member
05-10-16

sd/-
(N. Mukherjee)
Acting Chairperson
05-10-16