

WEST BENGAL HUMAN RIGHTS COMMISSION  
BHABANI BHAVAN, ALIPORE, KOLKATA-27

File No. 34/WBHRC/COM/2012-13

P r e s e n t

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|-----------------------------------|---------------|
| 1. Mr. Justice Asok Kumar Ganguly | - Chairperson |
| 2. Justice N. C. Sil              | - Member      |
| 3. Shri S. N. Roy                 | - Member      |

On 16.04.2012 this Commission took suo motu cognizance of the manner in which Professor Ambikesh Mahapatra and Shri Subrata Sengupta, a person who is more than 70 years of age were arrested from their residence at the dead of night on certain charges. After taking suo motu cognizance, the Commission also directed the Commissioner of Police, Kolkata to cause an enquiry by a senior responsible officer and furnish the said report with his specific comments within a period of two weeks from the date of communication.

2. Thereafter the enquiry was conducted by Shri Sudhir Mishra, IPS, Addl. Commissioner of Police(1), Kolkata and the said enquiry report dated 22.05.2012 was forwarded to this Commission by the Commissioner of Police, Kolkata vide forwarding letter dated 22.05.2012.

3. The Commission, after considering the said report by its order dated 04.06.2012 directed both the Commissioner of Police, Kolkata and the Addl. Commissioner of Police(1), Kolkata to appear before this Commission on 05.07.2012.

4. On 05.07.2012 Shri R. K. Pachnanda, IPS, Commissioner of Police, Kolkata and Shri Sudhir Mishra, IPS, Addl. Commissioner of Police(1), Kolkata appeared before the Commission and made their statements. On that day the Commission further directed the Addl. O.C., Purba Jadavpur P.S. Shri Milan Kumar Das to appear before the Commission on 17.07.2012.

5. Pursuant thereto Shri Milan Kumar Das, Addl. O.C. Purba Jadavpur PS appeared before the Commission on 17.07.2012. The Commission further directed

Shri Sanjoy Biswas, S.I. of Police who arrested Shri Mahapatra and Shri Sengupta, to appear before the Commission on 31.07.2012. On 31.07.2012 Shri Sanjoy Biswas, S.I. of Police, Purba Jadavpur PS appeared and deposed before the Commission.

6. Shri R.K. Pachnanda, IPS, Commissioner of Police, Kolkata deposed before the Commission that on 12<sup>th</sup> April, 2012 Purba Jadavpur Police Station received some information about a law and order situation at the New Gariahat Housing Co-operative Society( hereinafter, the said society). On receipt of such information S.I. Biswas rushed to the spot and found two persons namely, Professor Ambikesh Mahapatra and Shri Subrata Sengupta were surrounded by several people in an agitated mood, protesting that these two persons had sent an offensive e-mail using the computer of the said society denigrating the Chief Minister of the state. The same e-mail was sent to about 65 other members of the society and a door to door campaign was made to circulate the mail. The Commissioner of Police further deposed that anticipating breach of peace, S.I. Biswas took Professor Mahapatra and Shri Subrata Sengupta to the Police Station at about 11 p.m. The distance between the Police Station and the said Society is about one and a half kilometer. It was admitted that S.I. Biswas rushed to the spot immediately without making any GD entry. The Commissioner deposed that he saw the cartoon and according to him the cartoon showed the Chief Minister in a derogatory manner and he felt that the Addl. O.C. acted according to law. He further deposed that Shri Amit Sardar who lodged the FIR is neither the resident of the said Society nor the recipient of the e-mail in question. The Commissioner of Police, Kolkata also deposed that some bills of contractors were pending and demanding payment some people had gone to the Secretary of the society. In the meantime, the people who had assembled there saw Professor Mahapatra and accosted him and brought him inside the office on the allegation of sending e-mail in question. The attention of the Commissioner of Police, Kolkata was drawn to the subject e-mail and he felt that Section 509 IPC would be attracted and that is why the case was started.

7. Shri Sudhir Mishra, IPS, Addl. Commissioner of Police(1), Kolkata deposed that as directed by the Commissioner of Police, Kolkata he enquired into the matter and submitted his report to the Commissioner of Police, Kolkata. In his deposition he stated that “protective custody” is not a legal word but he used the same in the report

to show the persons were rescued under protection and brought under the Police Station. He admitted that it takes two to three minutes time to lodge a GD entry. In this case no GD was made by the concerned officer and he rushed to the housing society. Thereafter he repeated what was stated by the Commissioner of Police about the situation of the said society. He said that a large number of people who assembled in the society may be 70 to 80 and out of them 15 to 20 people raised the issue of e-mail. He examined both Shri Sengupta and Professor Mahapatra who were arrested and he also talked to Shri Amit Sardar who lodged the FIR but he found that he is neither a resident of the housing society nor the recipient of the e-mail. He admitted that after sending the e-mail in question on 23<sup>rd</sup> March, 2012, Professor Mahapatra received some objections from the members of the society and later on by sending e-mail on 4<sup>th</sup> April & 6<sup>th</sup> April, 2012 he expressed his regrets stating that he should not have sent such e-mail. He also admitted that FIR in this case was lodged by one Amit Sardar on 12<sup>th</sup> April, 2012 at 11:35 p.m. but prior thereto both Shri Sengupta and Professor Mahapatra were taken to the Police Station and at that point of time no FIR was lodged against them. In the FIR it has been stated by Shri Amit Sardar that these two persons have circulated e-mail against the Hon'ble Chief Minister and the Hon'ble Railway Minister and used offensive language and conducted a door to door campaign and Shri Sardar demanded the police to take strict action against them. However, it is admitted that in the FIR it was not stated that Professor Mahapatra expressed his regrets for his earlier e-mail by sending subsequent e-mails on 4<sup>th</sup> & 6<sup>th</sup> April, 2012 to the members of the society. He also admitted that of the Sections lodged against the arrestees, only Section 509 IPC is about a cognizable offence and others are not. The witness further stated that he would not give his perception whether email comes within the ambit of Section 509 IPC or not as the matter is sub-judice.

8. On 17.07.2012 Shri Milan Kumar Das, Addl. O.C. Purba Jadavpur Police in his deposition admits that it takes not more than one minute for recording a G.D and he admits that he has not received any instruction from anyone to send SI Sanjoy Biswas to the spot. He also reported that on 12<sup>th</sup> April, 2012 Purba Jadavpur Police Station received an anonymous phone call from said Society that there was some disturbance. The said society is about one and a half kilometer away from the Police Station. He also admitted that both Professor Mahapatra and Shri Sengupta were brought to the Police Station at around 11 p.m. by S.I. Sanjoy Biswas till then no FIR was lodged

against them. In this case FIR was lodged by one Amit Sardar, a resident of Nayabad and not a member of the said society. Shri Milan Kumar Das also submitted that he knew that on 23<sup>rd</sup> April, 2012 Professor Ambikesh Mahapatra had sent e-mail to the members of the society and on 4<sup>th</sup> & 6<sup>th</sup> April, 2012 Professor Mahapatra sent further two e-mails to the members of the society expressing his regrets and apology for sending his earlier email. He also admitted that of all the offences under which the case was started only the offence under Section 509 IPC is a cognizable offence. He admitted that in the subject cartoon there is no slang language nor is there any offensive suggestion in the said cartoon. He also admitted that Professor Mahapatra was detained in the lock up along with Shri Subrata Sengupta and they were produced before the Court on the following day. He further admitted that there was every scope to initiate a suo motu case when SI Biswas found a violent and agitated mob at the spot at the time of arresting Professor Ambikesh Mahapatra and Shri Subrata Sengupta. He submitted that police did not start any case as no complaint was received from Professor Mahapatra or Shri Sengupta. He also admitted that he informed the D.C. South Suburban Division about the entire incident around mid night on that day.

9. In his deposition before the Commission Shri Sanjoy Biswas, posted as S.I. of Police at Purba Jadavpur Police Station, submitted that on 12.04.2012 he was the duty officer for the night when an anonymous telephone call was received in the thana about some disturbance in the said Society. Immediately he reported the matter to the Addl. O.C. who instructed him to rush to the place of occurrence. He admitted that he had rushed to the place of occurrence in view of the manner in which he was instructed to do so by the Addl. O.C. and that he rushed to the spot without making any GD Entry. He admitted that the distance between the New Garia Housing Society and the Police Station is about one and a half kilometer. On reaching there he found that two members of the society were surrounded by an agitated mob. He tried to ascertain the position and came to know that some objectionable message had been sent by those two persons through office e-mail. He found that the tension was mounting and he decided to take those two persons to the Police Station for their protection. He did not see any message before taking them to the Police Station. After taking them to the Police Station he handed over those two persons to the Addl. O.C. Purba Jadavpur Police Station. According to him 25 to 30 people assembled in front of

the Police Station and were demanding action against those two persons. Thereafter a written complaint was submitted to the Police Station. He admitted that the manner in which those 70 to 80 people kept those two persons confined in the office room of the residential complex amounted to wrongful confinement which is a cognizable offence within the ambit of Section 341 IPC. No one was arrested from the said assembly except those two persons who were confined by 70-80 people. He admitted that he did not make any enquiry about the status of those two persons who were arrested. He admitted that after taking those two persons to the Police Station, he did not make any G.D. Entry as he handed over those two persons to the Addl. O.C. as there was no instruction from the Addl. O.C. and also because the Addl. O.C. immediately started a case against those two persons on the complaint of one person.

10. The report which was submitted to this Commission by the Commissioner of Police had a forwarding report by the Commissioner of Police himself. In the said forwarding report, the Commissioner has referred to expressions like “superimposed” “decomposed” and “criminal intent” with reference to the subject cartoon but in his deposition before the Commission he could not explain what it meant by “decomposed” cartoon or cartoon with “criminal intent”.

11. In the main report submitted by Shri Sudhir Mishra, IPS, Addl. Commissioner of Police(1), Kolkata he stated that Professor Mahapatra and Shri Subrata Sengupta were taken in “protective custody” by police but in his deposition before this Commission he failed to explain what is meant by “protective custody”. It is not disputed that those two persons were taken to the police station by S.I. Sanjoy Biswas in a police van at 11 p.m. In his report Shri Mishra stated that both Professor Mahapatra and Sri Sengupta were offered bail but they were not willing to get released on bail. He has however, added in his report immediately that the fact of offering bail to the arrested persons is not recorded in the General Diary of the police station. In his deposition before the Commission he did not refer to the fact that the police offered bail to the arrested persons. In his report he said that both Professor Mahapatra and Sri Sengupta were arrested at 00.30 hrs and 00.40 hrs on 13.04.2012 and Memo of Arrest and the Inspection Memo were drawn by Inspector M. K. Das. Then they were sent to the Baghajatin State General Hospital for check up. In the report, Shri Mishra disclosed the statement of Professor Mahapatra wherefrom it appeared that after they

were examined in the Baghajatin State General Hospital they were taken back to the Police Station and shifted to the lock up of the PS and again on the next morning they were taken to Baghajatin State General hospital and from there to Alipore Court compound where they were granted bail.

12. From the report of Shri Mishra it also appears that after being released on bail Professor Mahapatra came to the Police Station on 13.04.2012 to lodge a written complaint against (1) Arup Mukherjee (2) Amit Sardar (3) Sk. Mustafa and (4) Nishikanta Ghorai about his wrongful confinement and assault by those persons. Thereupon a case under Section 341/323/506/114 IPC was started at 00.30 hrs and the accused persons were arrested at 11:45 hrs and forwarded to the Court and were released on bail by Court. Investigation of that case is pending.

13. It is clear from the manner in which both Professor Mahapatra and Shri Sengupta were taken from the office of the society in a police van to the police station at 11 p.m. on 12.04.2012 that they were arrested by the police. Supreme Court in Directorate of Enforcement Versus Deepak Mahajan<sup>1</sup> explained that the word arrest is derived from the French word 'arrestar' and signifies a restraint of the person. The Court further elaborated the concept by holding "the essential elements to constitute an arrest ..... are that there must be an intent to arrest under the authority, accompanied by a seizure or detention of the person in the manner taken to law, which is understood by the person arrested" (page 459 para-46). Even though the Code of Criminal Procedure Code does not define what is meant by arrest, but in Section 41 thereof enumerates the situations when Police may arrest without an order of a Magistrate or without a Warrant. None of the situations contemplated in Section 41(1) is present in this case. Shri Mishra and other police officers tried to justify by saying that those two persons were taken in "protective custody" by the police but admitted that there is nothing known as "protective custody" in law.

14. Protective custody by the police can be only resorted to in case of a minor or a lady who is trafficked or a person who is insane. The concept of protective custody is wholly misplaced in respect of two adult men. On the other hand Shri Sanjoy Biswas who was present on the spot admitted before the Commission that there was a case of wrongful confinement of the arrestees against the agitated mob and a case under

**1. 1993) 4 S.C.C. 440**

Section 341 IPC, which is a cognizable offence, was made out. Police did not arrest any one from those agitated persons who forcibly confined the arrestees and even though the Police Station one and half kilometer away. On the other hand police arrested those two elderly persons who were peacefully sitting confined in the office of the Society.

15. At the time police arrested those two persons no FIR was lodged against them and the subject cartoon, allegedly circulated which was filed with the FIR was not even seen by the police. At the time of their arrest only allegations against those persons were that they circulated by e-mail a cartoon which was derogatory to Hon'ble Chief Minister and they carried a door to door derogatory campaign within the said Society.

16. India is a Sovereign socialist, secular, democratic republic. Our Constitution protects every citizen's fundamental right of free speech and expression under Article 19(1)(a). This freedom is of course not unfettered and is only subject to reasonable restrictions to be imposed by law on certain specified heads under Article 19(2). No law in our country prevents criticism against Ministers or Chief Minister however popular they may be or even a door to door critical campaign against Ministers unless the campaign offends any prohibition in law. At the time of their arrest from the office of the Society the police did not even know the nature of the campaign or contents of the e-mail. Police did not arrest any one from the group of people who were forcibly confining those two arrestees in the office of the Society even though Shri Sanjoy Biswas, S.I. of Police admitted that a cognizable case under Section 341 IPC was made out.

17. Even after filing of FIR of all the Sections alleged against the arrestees, Section 509 IPC is the only cognizable Section. This has been admitted by police officers who deposed before the Commission.

18. If the provisions of Sections 509 IPC are analyzed, it would be clear that they are in two parts. The first part mandates that whoever, utters a word, makes any sound or gesture or exhibits any object intending that such word or sound shall be heard or that gesture or exhibit shall be seen by a woman whose modesty is intended to be insulted, the person commits an offence under Section 509 IPC. The second part

stipulates that whoever, intending to insult the modesty of any woman, intrudes upon the privacy of such a woman commits an offence under Section 509 IPC.

19. In the instant case there is no whisper of any allegation of intrusion upon the privacy of any woman. Therefore, the application of the second part is ruled out.

20. In so far as the application of the first part is concerned, in this case there is no allegation of making any sound or gesture or uttering any word. The allegations taken in their entirety can come under the category of exhibiting an object. In the instant case, the allegation is one of circulation by way of e-mail, a cartoon by the persons concerned. But, mere circulation of a cartoon cannot bring the case within the purview of Section 509 IPC, unless there is prima facie evidence that this was intended to insult the modesty of a woman.

21. Insulting the modesty of a woman would certainly mean that the picture or the object exhibited suggests some lewd thoughts or there is some obscenity or indecent proposal attached to it showing depravity of mind of the person concerned. We have also seen the cartoon in question.

22. In this case, the cartoon is based on the story line in a feature film meant for children called "Sonar Kella" directed by Late Satyajit Roy. The film was very popular and enjoyed by children and the adults alike.

23. In the film a part of the story is that one Professor was pushed down the mountain by the villain and when the professor was not visible, the villain told Mukul, the child-hero in the film, that he had vanished. Following that story sequence, here the cartoon depicts that the Hon'ble Chief Minister of West Bengal tells Mr. Mukul Roy, the newly appointed Railway Minister that the previous Railway Minister had "vanished" and Indian Railway is depicted as Sonar Kella – the golden fort. This cartoon obviously referred to the recent political events in the aftermath of removal of Mr. Dinesh Trivedi, the previous Railway Minister and the appointment of Mr. Mukul Roy, the new Railway Minister in his place.

24. No one can attribute even remotely any suggestion which is lewd or indecent and slang in connection with the said film or even in respect of the subject cartoon. Shri Milan Kumar Das, Addl. O.C. Purba Jadavpur Police Station, Kolkata admitted in



his deposition before this Commission that in the subject cartoon there is no slang language nor is there any offensive indication.

Therefore the case against those persons under Section 509 IPC prima facie does not lie.

25. The rest of the allegations are all about non-cognizable offences in respect of which no investigation can be done by the police without the order of the Magistrate (S 155(2) Cr.PC) and the police officers cannot arrest without a warrant (2(b) Cr.PC). Here police arrested those two persons even before lodging of any FIR on the allegation of circulating a cartoon on 23.03.2012. Thereafter Professor Mahapatra circulated two e-mails on 4<sup>th</sup> & 6<sup>th</sup> April, 2012 expressing his regrets and offering apology for circulating the subject e-mail on 23.03.2012.

26. Thus those two persons were arrested by the police a fortnight after the subject cartoon was circulated and that too on the complaint of a person who did not even receive the e-mail and police arrested those persons, without even seeing the cartoon, from their residential complex when they were peaceful and that too at the dead of night.

27. Now what is a cartoon and what is its place in our democratic polity ? We find that along with cricket, cartooning came to India with the British. The coming of the Britishers in India coincided with the invention of the printing press. During the colonial days, cartooning by Indian journalists became a vehicle of protest. Some of the Viceroys and Governor were keen collectors of such cartoons depicting their follies showing that they had a sense of humour. As with cricket, so with cartoons, both remained in India even after Britishers left. Rather they flourished in Independent India.

28. Our first Prime Minister Nehru and even Mrs. Indira Gandhi enjoyed cartoon and considered them a useful institution in an otherwise pompous and self centered world of politics. Nehru once said "it is good to have the veil of our conceit torn occasionally". Referring to Shankar, the veteran Cartoonist, Nehru said "Don't spare me".

29. Even during emergency (1975-77) when pre censorship of the press was imposed, pre-censorship on cartoons was lifted after the first three months<sup>2</sup>. About what is a cartoon has been succinctly clarified in Encyclopedia Britannica<sup>3</sup> and which is excerpted below :

**Cartoon-** A cartoon originally was and still is a drawing, a full-size pattern for execution in painting, tapestry, mosaic, or other form. The cartoon was the final stage in the series of drawn preparations for painting in traditional Renaissance studio practice. In the early 1840s, when that studio practice was rapidly decaying, cartoon rather suddenly acquired a new meaning: that of pictorial parody, almost invariably a multiple-reproduced drawing, which by the devices of caricature, analogy, and ludicrous juxtaposition sharpens the public view of a contemporary event, folkway, or political or social trend. It is normally humorous but may be positively savage. Just as the personal caricature was for an audience which knew the original, so the cartoon was and is based on wide acquaintance with the subject. It serves as a capsule version of editorial opinion when it makes political satire, and it is a running commentary on social change, sometimes intended as a corrective to social inertia.

30. It is thus clear that the evolution of cartoon as a tradition of political satire is part of our democratic ethos. A cartoon can be humorous, critical and can be even positively savage.

31. The way the police officers of Purba Jadavpur Police Station arrested Professor Ambikesh Mahapatra and Shri Subrata Sengupta on 12.04.2012 at 11 p.m. for circulation, a fortnight ago, the subject cartoon by e-mail and for which twice regret was expressed by them and did not arrest any one of the agitating mob who wrongfully confined those two persons in the presence of the police in office of their residential complex makes out a case of police excess and highhandedness especially when those two persons are otherwise respectable citizen and without any criminal record.

32. Citizens who are expressing or airing a critical opinion about the ruling party cannot be picked up from their residence by the police at the instance of an agitated mob whose members are unhappy with the critical views of those two persons. If this is allowed to continue then not only the human rights of the dissenters will perish, free speech which is the life blood of our democracy will be gagged. Constitutional

**2. The Penguin Book of Indian Cartoons – Abraham, XIII; 3. Macropaedia: 3.909**

provisions will be reduced to parchment promises and we will be heading towards a totalitarian regime in complete negation of democratic values in the largest democracy of the world. This Commission cannot be a mute spectator to such a sordid situation in the name of maintaining the rule of law.

33. For the reasons discussed above, the Commission recommends:

(i) State Government shall initiate departmental proceedings against Shri Milan Kumar Das, Addl. O.C., Purba Jadavpur Police Station and against Shri Sanjoy Biswas, S.I. of Police, Purba Jadavpur Police Station within a period of six weeks from the date.

(ii) The State Government must compensate both Professor Ambikesh Mahapatra and Sri Subrata Sengupta, the two arrestees for the manner in which they were arrested from their residential complex and detained in the thana in a case which is about non-cognizable offence. Their compensation is assessed at fifty thousand to be paid to each of them by the State Government within a period of six weeks from the date.

The Commission makes it very clear that nothing said in this order will affect police investigation in the connected cases.

34. The State Government is requested to inform this Commission about the action taken on the basis of the recommendations within a period of two months from the date of communication.

Sd/-  
(Shri S. N. Roy)  
Member

sd/-  
( Justice N. C. Sil )  
Member

sd/-  
(Justice Asok Kumar Ganguly)  
Chairperson

Dated Kolkata, the 13th August, 2012.

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Comments of the State Government will be uploaded as and when received.

Sd/- (13/08/2012)

(J.Sundara Sekhar)

Secretary & CEO