

GAHC010133382021



2024:GAU-AS:9049

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4419/2021

KALYAN KUMAR PATHAK
S/O. SRI ANIRUDDHA PATHAK, R/O. HATIGAON, GUWAHATI, P.O.
HATIGAON, P.S. HATIGAON, DIST. KAMRUP (M), ASSAM, PIN-781032.

VERSUS

STATE POLICE ACCOUNTABILITY COMMISSION AND 2 ORS
REP. BY ITS SECRETARY, 95 AMITABH, (GROUND FLOOR), DR. B. K
KAKATI ROAD, ULUBARI, GUWAHATI, DIST. KAMRUP (M), ASSAM, PIN-
781007.

2:THE DIRECTOR GENERAL OF POLICE ASSAM
ASSAM POLICE HEADQUARTERS ULUBARI
GUWAHATI DIST. KAMRUP (M) ASSAM PIN-781007.

3:KHAYBOR ALI S/O. LT. ABDUL GONI
VILL. JAMLAI CHENIMARA P.S. NAGARBERA DIST. KAMRUP ASSAM

Advocate for the Petitioner : MR. T DEURI, MS T WAPANGLA
Advocate for the Respondent : GA, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 09.09.2024

Date of Judgment: 09.09.2024

Judgment & Order(Oral)

Heard Mr. Tapan Deuri, learned counsel for the petitioner. Also heard Mr. Nabashish Goswami, learned Jr. Government Advocate, appearing on behalf of all the respondents.

2. The petitioner by way of instituting the present proceeding, has presented a challenge to the observations, made by the State Police Accountability Commission, Assam, against him in the order, dated 27.07.2021, passed in Case No. SPAC/C/170/SP(KAM)/2020[Khaybor Ali v. OC, Nagarbera PS].

3. The observations so made against the petitioner, being of relevance, is extracted hereinbelow:

“10. Before parting with the records, the Commission considers it fit and proper to point out the casual nature of making inquiry by the Dy. SP (HQ), Amingaon, who has while submitting his report dated 11.11.2020 to the SP. Kamrup, Amingaon has very tactfully avoided mentioning inordinate, unexplained and impermissible delay caused in registration of the FIR dated 16.09.2020 lodged by the complainant in Nagarbera PS, by simply mentioning that the said FIR was registered as Nagarbera PS Case No.114/2020. The Dy. SP (HQ) before submitting the report either did not verify all the relevant records or tried to withheld the aforementioned information from this Commission. The SP, Kamrup at Amingaon also submitted his even dated report solely based on the aforesaid report dated 11.11.2020 of Dy. SP (HQ). The DGP, Assam, therefore, is requested to issue necessary instructions to the SPs of all the districts to ensure proper inquiry before submitting any report to this Commission.”

4. It is to be noted that Khaybor Ali, the complainant in the proceeding before the State Police Accountability Commission, Assam, in his compliant, dated 13.10.2020, had alleged that on 16.09.2020, he had lodged an First Information Report(FIR) with Nagarbera Police Station about the use of filthy language against him and also threatening him in the matter by the named accused persons. He has also alleged that there was an attempt to torture him by the accused person in a public meeting. It is further alleged that the First Information Report(FIR), dated 16.09.2020, was neither registered, nor, the case was taken up for investigation.

5. The State Police Accountability Commission, Assam, on receipt of the said complaint, proceeded vide communication, dated 20.10.2020, to require the Superintendent of Police, Kamrup, Amingaon, to submit a report in the matter basing on the allegations so levelled by the complainant in the complaint, dated 16.09.2020. The responsibility of preparation of the said report was delegated by the Superintendent of Police, Kamrup, Amingaon, to the petitioner, herein, who was, at the relevant point of time, working as a Dy. Superintendent of Police(HQ), Kamrup, Amingaon.

6. The petitioner, herein, on examining the issue and also conducting an inquiry into the matter, proceeded vide communication, dated 11.11.2020, to submit his report before the jurisdictional Superintendent of Police. In the said report; the petitioner, basing on the materials so coming on record in the inquiry held by him, had contended that Nagarbera Police Station Case No. 114/2020 u/s. 294/506/341/34 of the Indian Penal Code, was registered on the basis of the First Information Report(FIR) lodged by the complainant. The petitioner further proceeded to hold that in the said case, on conclusion of the investigation; final report vide F.R. No. 57/2020, dated 13.10.2020, was already submitted before the competent criminal Court. The petitioner also proceeded to draw a conclusion that the allegation of non-registration of the First Information Report (FIR) lodged by the complainant, was not substantiated.

7. The petitioner, in his report, further highlighted the fact that Nagarbera Police Station Case No. 115/2020 u/s. 420/294/506/34 of the Indian Penal Code; was pending against the complainant Khaybor Ali and accordingly, the visit by the police to his house in the process of the investigation into the matter, was not an illegal act. The petitioner on the basis of the said findings;

proceeded to conclude that the allegations so levelled against the Officer-in-Charge of Nagarbera Police Station, to be not substantiated and the complaint of Khaybor Ali to be bereft of any merit.

8. The said inquiry report as submitted by the petitioner was forwarded by the jurisdictional Superintendent of Police, to the authorities of the State Police Accountability Commission, Assam. On receipt of the said inquiry report; the State Police Accountability Commission, Assam, vide order, dated 27.07.2021, proceeded to consider the complaint as lodged in the matter before it by the complainant Khaybor Ali. On a consideration of the matter; the State Police Accountability Commission, Assam, proceeded to examine the inquiry report submitted in the matter by the petitioner in his capacity as the Dy. Superintendent of Police (HQ), Kamrup, Amingaon. The State Police Accountability Commission, Assam, thereafter, proceeded to hold that the petitioner in his said inquiry report, had tactfully avoided mentioning inordinate, unexplained and impermissible delay caused in registration of the First Information Report(FIR), dated 16.09.2020, lodged by the complainant before the Nagarbera Police Station, by simply mentioning that the said First Information Report(FIR) was registered as Nagarbera PS Case No. 114/2020 u/s. 294/506/341/34 of the Indian Penal Code. It was further alleged that the petitioner, herein, before submission of the inquiry report, did not verify all relevant records or tried to withhold the aforesaid information from the State Police Accountability Commission, Assam. The said observations as made by the State Police Accountability Commission, Assam, against the petitioner, is presently under challenge before this Court by way of institution of this proceeding.

9. It is the contention of Mr. Deuri, learned counsel for the petitioner, that

the said observation as made against the petitioner, herein, has the effect of undermining the services being rendered by the petitioner in the force, and such observations having been so made without affording to him an opportunity of hearing; the said observations as contained in the order, dated 27.07.2021, would require to be expunged.

10. The State respondents have filed an affidavit-in-opposition through the Superintendent of Police, Kamrup, Amingaon, and therein, have contended that the said Superintendent of Police, basing on the inquiry report submitted by the petitioner, herein, had submitted categorical findings on the queries so made. However, the aspect of delay in registration of the First Information Report(FIR), in question, having not been highlighted in the notice so issued; the said aspect was not inquired into.

11. I have heard the learned counsels appearing for the parties and also perused the materials available on record.

12. The facts involved in the matter, are not in dispute. It is also not in dispute that the complaint, on being lodged by one Shri Khaybor Ali before the Chairman, State Police Accountability Commission, Assam, highlighting the delay so occasioning in registration of the First Information Report(FIR), dated 16.09.2020, lodged by him before the Officer-in-Charge of the Nagarbera Police Station; the State Police Accountability Commission, Assam, vide order, dated 14.10.2020, had called for a report in this connection from the Superintendent of Police, Kamrup, Amingaon. The Secretary, State Police Accountability Commission, Assam, vide his notice, dated 20.10.2020, required the Superintendent of Police, Kamrup, Amingaon, to submit a detail report in terms of the directions passed by the State Police Accountability

Commission, Assam, dated 14.10.2020, on the complaint so lodged by Khaybor Ali.

13. The jurisdictional Superintendent of Police, vide his communication, dated 06.11.2020, required the petitioner, herein, who, at the relevant point of time, was serving as a Dy. Superintendent of Police(HQ), Kamrup, Amingaon, to carry-out an inquiry into the matter and submit his report thereon. Accordingly, the petitioner carried-out the requisite inquiry so mandated in terms of the allegations as contained in the complaint, dated 13.10.2020, as preferred by said Khaybor Ali before the State Police Accountability Commission, Assam, and thereafter, submitted his report in the matter on 11.11.2020.

14. Before dealing with the report, dated 11.11.2020, it would be required to deal with the contentions raised in the complaint, dated 13.10.2020. On a perusal of the same, it is seen that the complainant had levelled certain allegations against the accused persons named therein, of having ill-treated him with usage of filthy language and also of an attempt made to torture him at a public meeting held on 15.09.2020. In the said complaint, it is further highlighted that the complainant had lodged an First Information Report (FIR) on 16.09.2020 and the same was neither, registered, nor, any investigation was made into the matter by the Officer-in-Charge of Nagarbera Police Station.

15. It was also alleged in the said complaint that on 10.10.2020, at about 10AM, an ASI of Police, Nagarbera Police Station, had come to the residence of the complainant and directed him to appear at the Police Station showing cause that a case was pending against him. However, it was alleged that no

notice, in this connection, came to be issued.

16. Basing on the projections so made in the complaint, dated 13.10.2020; the petitioner carried-out his inquiry and submitted his report in the matter on 11.11.2020. With regard to the allegations of the First Information Report(FIR) being lodged on 16.09.2020 and the same not being registered; the petitioner, on inquiry, having found that the said First Information Report(FIR) was duly registered as Nagarbera Police Station Case No. 114/2020 under the relevant provisions of the Indian Penal Code; proceeded to highlight the said aspect of the matter in his report along with the fact coming on record that on conclusion of the investigation in the said case; a final report being F.R. No. 57/2020, dated 30.10.2020, came to be so submitted by the police of Nagarbera Police Station before the competent criminal Court.

17. The complaint having not alleged any *mala fide* against anyone with regard to the delay so occasioning in registration of the First Information Report(FIR) so lodged by the complainant; the petitioner, herein, had no occasion to render any opinion with regard to the said aspect of the matter.

18. Accordingly, it not being required from the petitioner to also investigate as regards the delay so occasioning in registration of the said case; the observations as made by the State Police Accountability Commission, Assam, in its order, dated 27.07.2021, against the petitioner, herein (extracted hereinabove); was not mandated. Further, the said observations came to be so recorded without affording to the petitioner, herein, an opportunity to place his stand in the matter.

19. Accordingly, in view of the conclusions reached by this Court hereinabove; the observations as made in paragraph No. 10 of the order, dated 27.07.2021, by the State Police Accountability Commission, Assam, in Case No. SPAC/C/170/ SP(KAM)/2020[Khaybor Ali v. OC, Nagarbera PS], with regard to the petitioner, herein, to the effect that:- ***“Before parting with the records, the Commission considers it fit and proper to point out the casual nature of making inquiry by the Dy. SP (HQ), Amingaon, who has while submitting his report dated 11.11.2020 to the SP. Kamrup, Amingaon has very tactfully avoided mentioning inordinate, unexplained and impermissible delay caused in registration of the FIR dated 16.09.2020 lodged by the complainant in Nagarbera PS, by simply mentioning that the said FIR was registered as Nagarbera PS Case No.114/2020. The Dy. SP (HQ) before submitting the report either did not verify all the relevant records or tried to withheld the aforementioned information from this Commission”***; stands expunged.

20. The petitioner, herein, shall not be subjected to any proceeding basing on the said observations and the same would also not be reflected in his ACRs by the authorities concerned.

21. With the above directions and observations, this writ petition stands disposed of.

JUDGE

Comparing Assistant