

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
AURANGABAD BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.8/2014
WITH
CRIMINAL APPLICATION NO.4896/2014

CRIMINAL WRIT PETITION NO.8/2014

PETITIONER : Laxman Dattatraya Dahiphale
Age : 33 years, occu. : Business,
R/o Halam, Tq. Parli, Distt. Beed,
At present R/o C/o Nagorao Kendre,
Back side of Police Station Loha,
Tq. Loha, Distt. Nanded.

...Versus...

RESPONDENTS : 1. The State of Maharashtra,
through Investigation Officer,
Itwara Police Station, Nanded.

2. District Superintendent of Police
Nanded, Distt. Nanded.

(Copy to be served in the office
of Public Prosecutor, Bombay
High Court, Bench at Aurangabad)

3. Madhav s/o Namdeo Kendre,
Age : 37 years, Occ : Service
(Traffic Police Constable)
R/o Police Quarter Nanded,
Distt. Nanded.

Shri Mundhe Subhash V., Advocate for petitioner
Shri B.L. Dhus, APP for respondent - State

WITH

CRIMINAL APPLICATION NO.4896/2014

APPLICANTS:

1. Dinanath Kondaji Shinde
Age : 43 years, Occu. Service.
2. Bhanudas Shivaling Wadje
Age : 43 years, Occu. Service.

All r/o Snehnagar Police Colony,
Nanded, Distt. Nanded.

...Versus...

- RESPONDENTS :**
1. The State of Maharashtra
Copy to be served on G.P. High Court
Bench at Aurangabad.
 2. Laxman Dattatraya Dahifale
Age 28 yrs., Occ. Driver,
R/o At Present c/o Nagorao Kendre
Behind Loha Police Station,
Tq. Loha, Distt. Nanded.

Shri S.S. Jadhav, Advocate for applicants
Shri B.L. Dhus, APP for respondent - State

**CORAM : S.S. SHINDE AND
A.I.S. CHEEMA, JJ.**

Date of reserving the judgment : 11.08.2015

Date of pronouncing the judgment : 22.09.2015

JUDGMENT (PER : A.I.S. CHEEMA, J.)

1. Criminal Writ Petition No.8/2015 has been filed by Laxman Dahiphale (hereinafter referred as petitioner victim) for compensation due to his illegal detention by the police authorities on 9.2.2013 from 12:30 in the afternoon to 3:00 p.m. It is the case of the petitioner that he is the owner and was in possession of truck No. MH -26-7230 which he has purchased from one Sanjay Kendre on 21.11.2011. On 9.2.2013, he was transporting rice in the truck from Ramtek, District Nagpur to deliver the same at Solapur. He reached Nanded at 11:30 a.m. to 12:00 noon. He stopped his truck at Bafna-T-Point at Nanded for getting his truck repaired. At that time, four unknown officials in civil dress came there and claimed that the truck was stolen property and even the goods loaded therein were stolen. They asked the petitioner to show original documents of the truck. They scuffled with the petitioner and forcibly brought him to Anti Dacoity Squad, Nanded. At that place,

the petitioner was informed that one Madhav Kendre had lodged complaint against him. Although the petitioner showed them the documents of the ownership, insurance, fitness certificate, transport licence, goods receipt etc. still he was not released. There was an officer who was also in the office in civil dress. The petitioner was confined in one room from 12:30 p.m. to 3:00 p.m. Said Madhav came to the office. He was in uniform of traffic department. The petitioner was taken to another closed room and abused. One employee in civil dress slapped the petitioner on his cheek and the petitioner was beaten by police. Said Madhav also beat the petitioner and also took away Rs.15,000/- from the pocket of petitioner which was amount of fare charges for diesel. Thereafter, these persons threatened and abused the petitioner that he should not tell these facts to anybody. One of the police officials beat the petitioner and forced him to sign on blank paper. After some time, the petitioner was released. He went to Loha to file the complaint. He was asked to go to Vazirabad. At Vazirabad he was told to go to Itwara police station on the basis that Bafna-T-point was in the jurisdiction of Itwara. The complainant filed the complaint at Itwara police station and he was sent to civil hospital for medical treatment

and examined by Doctor. Still the police did not take any cognizance. The documents of the petitioner were returned to him on 11.2.2013 by the Assistant Police Inspector of Anti Dacoity Squad. In spite of complaints, police did not take action and thus, the petitioner had to take recourse to the Court of JMFC. The Judicial Magistrate First Class, Nanded directed police to register the offence. Later on, said Madhav Kendre filed Regular Criminal Case No.68/2013 on 13.2.2013 claiming that he was cheated but the Magistrate rejected the said complaint.

2. The petitioner claims that on 26.8.2013 offence was registered against respondent no.3 - Madhav Kendre and other police officials for offence punishable under Sections 342, 392, 323, 504 and 506 of Indian Penal Code, 1860. The petitioner was unlawfully detained on the ground that he cheated the complainant and thus, the petitioner in Writ Petition prayed for handing over of Crime No.115/2013, registered at the instance of the petitioner, to the Crime Branch and to punish respondent no.3 – Madhav Kendre and the other police officials for illegal detention of the petitioner. The petitioner claims compensation from respondent no.3 – Madhav Kendre.

Notice of Writ Petition was issued to only respondent Nos.1 & 2 and after developments in the pending Writ Petition, the claim remains only of compensation.

3. On behalf of the State, affidavit-in-reply dated 30.1.2014 and 3.7.2014 have been filed. On behalf of the respondent No.2 District Superintendent of Police affidavit-in-reply dated 3.6.2014, 11.8.2014 and 27.6.2015 have been filed. The Superintendent of Police had also filed report dated 21.7.2015.

4. We have heard the learned Counsel for the petitioner and the learned Additional Government Pleader for the respondents Nos.1 and 2 to whom notice was issued.

5. Criminal Application No.4896/2014 has been filed by the applicants - Dinanath Shinde and Bhanudas Wadje. Dinanath is a driver Police Naik on police jeep and Bhanudas is Head Constable. They have been arrayed as accused nos.4 and 3 respectively in a charge-sheet filed in Crime No.115/2013 registered as SCC No.1284/2015 before the JMFC, Nanded. The charge-sheet has been filed against :-

- (i) Accused no.1 Madhav Namdeo Kendre, police head constable;
- (ii) Accused no.2 – Suresh Subhanji Waghmare, police head

constable;

(iii) Accused no.3 – Bhanudas Shivling Wadje, police head constable;

(iv) Accused no.4 – Dinanath Khandoji Shinde, driver police naik;

(v) Accused no.5 – Mohammad Taher @ Fahed s/o Abdul Zaker @ Khader Khan – police constable; and

(vi) Accused no.6 – Ravindra Singh Rakh Singh Dhunne Assistant Police Inspector. Criminal Application No.4896/2014 has been filed to quash the FIR in Crime No.115/2013.

6. The applicants claim that Madhav Kendre had filed written application to API of Anti Dacoity Squad at Nanded on 21.1.2013, claiming that his brother-in-law had purchased truck and his brother-in-law Sanjay Kendre and Laxman Dahiphale cheated him and registered the truck in the name of Laxman Dahiphale (petitioner in writ petition). Madhav Kendre had sought action against Sanjay Kendre and Laxman Dahiphale. The applicants claim that on 9.2.2013 Anti Dacoity Squad received tip that the said truck bearing truck No.MH-26-H-7230 was in Nanded and the applicants were sent along with two other police personnel to bring the person

who is in possession of the truck. Therefore, the applicants and others brought to the police station one Laxman Dahiphale (petitioner) in whose possession truck was found. Papers of the truck were taken in custody for “investigation”. Statements of Madhav and Sanjay were recorded. After “due investigation” Anti Dacoity Squad concluded that criminal offence was not made out and it was a civil dispute. On 11.2.2013 constable of Anti Dacoity Squad filed report to API and the API of Anti Dacoity Squad communicated to Laxman Dahiphale (Petitioner) and returned the papers in his custody, pertaining to the truck. The applicants claim that respondent no.2 – Laxman Dahiphale filed a private complaint to JMFC and in view of directions under Section 156 (3) of the Code of Criminal Procedure offence has been registered. They claimed that the FIR is by way of counter-blast against the action initiated against the complainant. The said Laxman was not abused, assaulted and confined. The applicants were only following the orders of their superiors and thus FIR should be quashed.

7. We have heard the learned Counsel for the applicants and the learned Additional Public Prosecutor for the State in the matter.

8. The affidavit of the Superintendent of Police, Nanded dated 11.8.2014 shows that the truck concerned was owned and was in possession of the petitioner. It is also admitted that the documents of the vehicle were returned to the petitioner on 11.2.2013 and the affidavit shows that with reference to the investigation concerned, one Mudak Police Inspector, Itwara, Nanded was suspended and departmental enquiry has been initiated. Record shows that after the petitioner was unsuccessful in persuading the police to take action against his unlawful detention and beating in custody, he moved the Magistrate and ultimately the offence was registered vide Crime No.115/2013. During the pendency of the petition, charge-sheet has been filed. Criminal Application No.4896/2014 filed by accused nos.3 and 4 itself shows that there is substance in the writ petition filed by the petitioner that indeed on 9.2.2013 he was picked up from Bafnt-T-Point at Nanded and taken to Anti Dacoity Squad and his documents of the vehicle were taken away. The applicants in Criminal Application No.4896/2014 of course deny that the petitioner was assaulted but do claim that the petitioner was taken to the office of Anti Dacoity Squad. In fact, the petition claims that there was investigation as

such.

Exh.A filed in the criminal application shows that accused Madhav Kendre had filed a complaint on 21.1.2013 to API Anti Dacoity Squad, Nanded, claiming that he had been cheated. He claimed to have entered into partnership with accused Sanjay to do transport business and contributed money and truck was bought in name of accused Sanjay. He claimed that he was cheated when registration was transferred in name of Laxman Dahiphale. He was claiming rights for truck and claimed that he had put money in the truck and his rights have been denied. The criminal application discloses that on 9.2.2013, Exh.B, a notice under Section 149 of the Code of Criminal Procedure was issued to petitioner Laxman and Sanjay Kendre, claiming that the complaint had been filed by Madhav Kendre against them relating to the truck that without taking his permission, they have taken away the truck and sold the same. Exh.B claims that the transaction was money transaction and for such petty matter, police machinery should not be involved and public peace should not be disturbed or else legal action would be taken against them.

9. Now, if on 9.2.2013 itself such notice had been issued, admittedly, the police officials accept that. It was none of their matter to interfere in the case. Then, there is no reason why the documents of the petitioner regarding vehicle were detained till 11.2.2013.

10. The copy of the charge-sheet filed has been put on record by the Superintendent of Police, Nanded with report. The copy of charge-sheet shows that on the private complaint filed by the petitioner, JMFC, Nanded passed detailed order calling for report under Section 156 (3) of the Code of Criminal Procedure. The statements have been recorded in the investigation. The charge-sheet shows that indeed the petitioner was examined by the Doctor on 9.2.2013 as medical legal case brought by Police. The concerned accused police officials were identified in the test identification parade. After the investigation charge-sheet has been filed with allegations that the petitioner – complainant Laxman Dahiphale had loaded the truck at Ramtek Nagpur and came to Bafna-T-Point, Nanded on 9.2.2013 at 12:30 noon at which time the accused nos.2 to 5 mentioned above in civil dress told complainant that his truck

was stolen property as well as the goods stored in the truck were stolen. He was asked to show the documents of the vehicle. He was threatened and forcibly taken to the office of Anti Dacoity Squad and he was informed that accused no.1 Madhav had filed complaint against him of theft of the truck. Madhav was also present in the office. Accused Nos.1 to 5 in presence of accused no.6 threatened, abused, beat the petitioner and thus committed offence punishable under Sections 342, 323, 504, 506 read with 34 of Indian Penal Code.

11. With reference to the chargesheet as mentioned above the report of Superintendent of Police mentions that as per the charge-sheet *prima facie* unlawful confinement was done by the accused persons. Thus, the State accepts that at least *prima facie* its officials did wrongful confine and assaulted the petitioner forcibly taking him to the Anti Dacoity Squad Office. If no offence had been registered on the complaint dated 21.1.2013, (Exh.A, of Criminal Application No.4896/2014) the police had no authority to forcibly take the petitioner and confine him in the office of Anti Dacoity Squad and seize his documents, only to be released much later, although issued notice purportedly on 9.2.2013 under Section 149

of the Code of Criminal Procedure (as appearing from Exh.B in the criminal application) which admittedly claims that it was not a transaction where police was concerned. The record apparently shows that Madhav who was in the police department instead of filing FIR in the police station concerned, filed a complaint to Anti Dacoity Squad. It is not clear how Anti Dacoity Squad would be concerned with the matter of cheating. The respondent no.3 – Madhav Kendre later appears to have filed a private complaint before JMFC which has been registered as RCC No.55/2013, seeking action under Section 156 (3) of the Code of Criminal Procedure. The Judicial Magistrate First Class appears to have refused to take recourse to Section 156 (3) of the Code of Criminal Procedure on 24.4.2013 on the basis that offence of cheating was not made out directed the complainant to come forward for verification. This can be seen from Exh.D in the writ petition.

12. For the above reasons, it is quite clear that the petitioner has made out a *prima facie* case that without there being an offence registered against him, he was forcibly taken from Bafna-T-Point to the office of Anti Dacoity Squad by police officials and his documents of vehicle were taken away and that he was confined.

13. The learned Counsel for the petitioner has claimed that the petitioner was unlawfully detained and assaulted only because Madhav Kendre happened to be a police official so as to force the petitioner to settle the claim being made by Madhav Kendre. According to the learned Counsel, this was abuse of the powers vested with the police officials and for unlawful detention and assault the petitioner was liable to be compensated.

14. According to the learned Additional Public Prosecutor the charge-sheet is pending and offence is yet to be proved and if the petitioner desires he can move the civil Court for compensation.

15. In the matter of **D.K. Basu...Versus...State of West Bengal**, reported in **AIR 1997 SC 610** the Hon'ble Supreme Court passed a landmark judgment relating to the unlawful detention and custodial torture. In paragraph no.36 of the judgment, the Hon'ble Supreme Court recorded following guidelines to be followed by the authorities in case of arrest or detention :

“36. We, therefore, consider it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures :

(1) *The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.*

(2) *That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by atleast one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.*

(3) *A person who has been arrested or detained and is being held in custody in a police station or interrogation center or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.*

(4) *The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.*

(5) *The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.*

(6) *An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.*

(7) *The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.*

(8) *The arrestee should be subjected to medical examination by a trained doctor every 48*

hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a penal for all Tehsils and Districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and state headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.”

16. Now, if the facts *prima facie* appearing from the present matter are perused, it is clear that although there was no offence registered as such against the petitioner, he was forcibly taken from Bafnt-T-Point and detained at the Anti Dacoity Squad office by police personnel who were in civil dress. If police was yet not clear

on complaint of (accused No.1) Madhav Kendre as can be seen from notice under Section 149 of the Civil Procedure Code (Exh. B of Criminal Application) there is no reason not to first send letter/notice to call for questioning. There is no justification to forcibly pick up the person and manhandle him and then say "Sorry! matter is not of our concern." When petitioner was forcibly taken, clearly there were no identification and name tags displayed as required by guideline no.1 mentioned above. Had it been so, subsequently there would not have been need to get the test identification parade done. It can also be seen that no memo of arrest was prepared and the petitioner was not given opportunity to phone call to his relatives and have relatives or friends present. Police cannot hide behind the plea that petitioner was taken for questioning when what was done was arrest, as element of force was involved. The perusal of the guidelines read with the present facts show that officials of the State did not follow the guidelines and it is *prima facie* clear from the record that the fundamental rights under Article 21 of the petitioner were violated. When offence was not registered, forcibly taking the petitioner to Anti Dacoity Squad and detaining him and assaulting him as claimed by the

petitioner would be unlawfully. The incident appears to have occurred just to help brother police official Madhav Kendre.

17. In the matter of Kalpana d/o Nilaram Harinkhede...Versus...State of Maharashtra and others, reported in 1999 (3) Mh.L.J. 483, Single Judge of this Court found that in view of the judgment in the matter of common cause a criminal case under Section 354 of Indian Penal Code was disposed of and the accused had got discharged because of the fault of the prosecutor. Although, the accused had been discharged, it was observed in paragraph no.17 of that judgment that the charge-sheet made out a strong *prima facie* case and although because of the judgment in the matter of common cause the accused was discharged, this Court directed the payment of compensation to the victim invoking powers under Article 226 of the Constitution of India.

18. In the matter of Sheela S. Yerpude...Versus...Home Department, Mumbai and others, reported in 2005 Cri.L.J. 2224, there was a custodial death and the concerned officers were facing trial for the offence of murder and other offences. This Court observed in paragraph no.20 of the judgment that looking to the facts of that matter, it was not necessary for the Court to wait for the

result of the criminal trial, which was pending against the police officers found responsible for causing custodial death of the deceased.

19. Keeping in view these judgments and considering the facts of the present matter, considering the admitted facts mentioned above as well as *prima facie* case discussed above, although the charge-sheet is still pending, there is a case made out by the petitioner for grant of compensation by the State for violation of his fundamental rights. The State failed to ensure that the police officials acted within the confines of law. The fundamental rights of the petitioner were violated when without there being an offence registered against the petitioner he was forcibly taken to the Anti Dacoity Squad office and confined there for some hours and the documents of the truck were forcibly taken away. As per the petitioner, he was also assaulted. The Superintendent of Police in his affidavit dated 3.7.2014 has filed copy of the medical certificate at Exh.R-2. The Superintendent of Police mentioned that the Doctor had mentioned in his certificate that there was only one blunt injury on wrist of left hand. How many injuries were there is not material. The material is that the petitioner has *prima facie* made out a case of

unlawful detention and assault.

20. In the matter of Smt. Nilabati Behera alias Lalita Behera...Versus...State of Orissa and others, reported in AIR 1993 SC 1960, in paragraph no.19, the Hon'ble Supreme Court observed as under :

“19. It follows that 'a claim in public law for compensation' for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the

purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution, This is what was indicated in Rudul Sah and is the basis of the subsequent decision in which compensation was awarded Under Article 32 and 226 of the Constitution, for contravention of fundamental rights.”

The Hon'ble Supreme Court referred to the age of the deceased in the concerned matter and his income and awarded compensation of Rs.1,50,000/-. That was in the year 1993.

21. Coming back to the present matter looking to the fact that the petitioner was forcibly taken, unlawfully detained for some hours and assaulted is *prima facie* clearly brought on record. Although the offence is yet to be established, there is a *prima facie* case made out for compensation to be paid by the State which failed to ensure that its police officials acted within the confines of law.

22. Looking to the fact that the petitioner was confined on 9.2.2013 and the documents of the loaded truck were returned only on 11.2.2013, it is clear that the loaded truck got detained.

23. For the reasons discussed above, it is apparent that the FIR as sought to be quashed by the applicants in Criminal Application No.4896/2014 cannot be quashed. The FIR makes out a *prima facie* case for action. Thereafter, the chargesheet has also been filed. Thus, there is no substance in the criminal application which would be required to be rejected.

24. We keep in view of the incident and age and occupation of petitioner. We pass the following order :

ORDER

(A) The State is liable to pay compensation which is fixed at Rs.1,25,000/-. Respondent no.2 shall ensure that the compensation of Rs.1,25,000/- is deposited with the Principal District and Sessions Judge, Nanded within a period of two months. The petitioner is entitled to withdraw the same after it is deposited. The petitioner would be at liberty to pursue his civil remedies for the claim of further compensation, if any, and the amount of Rs.1,25,000/- so directed to be paid will be adjusted in the further compensation, if any.

(B) The State would be at liberty to initiate suitable enquiry against the concerned employees and fix responsibility, in which case, the State would be at liberty to recover the amount of compensation, as directed above from the concerned employees, who are at fault.

(C) Criminal Writ Petition No.8/2014 is disposed of accordingly.

(D) The observations made by us in this judgment regarding the facts of the matter shall be treated as *prima facie* for the purposes of deciding the present writ petition and the trial Court shall not be influenced by the same while conducting the trial.

(E) Criminal Application No.4896/2014, seeking quashing of the FIR is rejected.

(A.I.S. CHEEMA, J.)

(S.S. SHINDE, J.)