

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 725 OF 2014

Satish s/o. Vasant Salvi,
Age 31 years, Occu. Service,
R/o. Room P/220, Sector-4,
Cidco Colony, Airoli,
Navi Mumbai - 400708.

....Petitioner.

Versus

1. The State of Maharashtra
Through Superintendent of Police,
District Jalna.
2. N.Y. Antarap,
Investigating Officer,
Assistant Sub-Inspector,
Police Station, Ambad.
Taluka Ambad, Dist. Jalna.
3. Vasant Kamble (P.I.),
Incharge Police Station
Police Station Ambad,
Taluka Ambad, Dist. Jalna.
4. S.K. Dabhade,
Police Head Constable Reg. C.R.
Police Station Ambad.
Taluka Ambad, Dist. Jalna.
5. Mrs. Pradnya Satish Salvi,
Age 28 years, Occu. H.H.,
R/o. C/o. Chandrakant Dipak
Balanagar, Ambad, Tq. Ambad,
Dist. Jalna.

....Respondents.

Mr. S.S. Naik, Advocate for petitioner.

Mr. D.R. Kale, Public Prosecutor for State.

Mr. S.M. Vibhute, Advocate for respondent Nos. 2 and 4.

Mr. P.V. Jadhavar, Advocate for respondent No. 3.

Mr. Shambhuraje V. Deshmukh, Advocate for respondent No. 5.
Mr. B.R. Kedar, Advocate for original complainant/wife.

**CORAM : T.V. NALAWADE &
INDIRA JAIN, JJ.**
DATED : 9th June, 2015.

JUDGMENT :

1) Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2) The petitioner has claimed relief of declaration that his detention by police officer, respondent No. 2 from 15.00 hours of 12.4.2014 to 11.00 hours of 14.4.2014 was illegal. The petitioner has claimed the relief of direction to hold departmental inquiry against respondent Nos. 2 to 4 for his illegal detention. He has claimed relief of granting compensation of Rs. ten lakh in respect of his illegal detention.

3) Respondent No. 5 - Mrs. Pradnya is the wife of petitioner. Their marriage took place on 31.5.2013. The father of respondent No. 5 was working as Police Inspector in Ambad Police Station, District Jalna for about five years and he retired there. The marriage of petitioner with respondent No. 5 was solemnized at Ambad and after the marriage, respondent No. 5

cohabited with the petitioner in Airoli, Navi Mumbai where petitioner is staying due to his service. He is working as a Civil Engineer and he is B.E., M.B.A.

4) It is the case of petitioner that respondent No. 5 left the matrimonial house for Ambad on 19.10.2013 for the place of her parents under the pretext that her father was sick. It is his case that respondent No. 5 then came to Airoli on 1.12.2013 with father and she said that the petitioner should live separate from his parents and only after that, she would cohabit with him. It is the case of petitioner that when he refused to live separate from parents, respondent No. 5 returned to Ambad with her father.

5) Respondent No. 5 gave F.I.R. to Ambad Police Station on 23.3.2014 against the petitioner and seven relatives of petitioner and crime at C.R. No. 58/2014 was registered on the basis of this F.I.R. for offences punishable under sections 498-A, 323, 504, 506, 34 of I.P.C. and sections 3 and 4 of Dowry Prohibition Act. Respondent No. 2 was attached to Ambad Police Station as Assistant Sub Inspector at the relevant time and he took over the investigation of this case.

6) It is the case of petitioner that he came to be arrested at Airoli on 12.4.2014 at about 15.00 hours and respondent No. 2 had come there to effect the arrest. It is his case that from Airoli, Navi Mumbai, he was taken to Ambad Police Station in a car hired by petitioner. It is his case that they reached to Ambad at 5.00 a.m. on 13.4.2014.

7) It is the case of petitioner that he was taken to Rural Hospital from Ambad for medical examination by respondent No. 2 on 13.4.2014 at about 12.00 hours. It is his case that he had not consented for such medical examination, but force was used against him. He has contended that respondent No. 2 gave requisition letter to Medical Officer for the medical examination of petitioner on following two points.

- (i) Whether the petitioner is potent ? and
- (ii) Whether the petitioner can perform sexual intercourse ?

It is the case of petitioner that the Medical Officer of Ambad Rural Hospital advised to get the petitioner examined from Government Hospital Aurangabad and then respondent No. 2 took the petitioner to Aurangabad Government Hospital by using force. It is the case of petitioner that by using force, he was medically examined in Government Hospital at Aurangabad and

there the samples of (i) blood, (ii) semen and (iii) prepuce swab were taken. It is his case that he had not consented for taking of such samples and for medical examination.

8) It is the case of petitioner that on 13.4.2014 at about 22.00 hours false record of his arrest was prepared in Ambad Police Station by respondent No. 2. It is contended that the petitioner was produced before the Judicial Magistrate, First Class, Ambad by the respondent No. 2 on 14.4.2014 at about 11.30 a.m. He has contended that the J.M.F.C. granted M.C.R. till 28.4.2014 and no police custody remand was requested for. The petitioner was released on bail on 14.4.2014 on the basis of order made by J.M.F.C. in aforesaid crime. It is the case of petitioner that he was illegally detained by respondent No. 2 for the aforesaid period.

9) It is the case of petitioner that when he was taken to Ambad from Navi Mumbai, he was forced to take on hire a private car and threat was given to him that his brother in law may lose the job, if action is taken against brother in law. It is the case of petitioner that he was treated like accused from rape case and he was subjected to medical examination accordingly. It is the case of petitioner that he was humiliated and harassed

due to the conduct of respondent No.2. It is the case of petitioner that ultimately the Government Hospital, Aurangabad gave report in favour of the petitioner that he is potent. It is the case of petitioner that an attempt was made by respondent No. 2 for getting examined the petitioner about his mental condition and requisition letter was given to ascertain the psychological disturbance. It is contended that the Government Hospital refused to do such medical examination as there was no order of J.M.F.C.

10) It is the case of petitioner that respondent No. 2 took the aforesaid steps at the instance of father of respondent No. 5 and respondent No. 2 did not act fairly. It is the case of petitioner that father of respondent No. 5 joined political party after his retirement, he is active in politics and he used his political influence for getting aforesaid acts done through respondent No. 2. It is the case of petitioner that due to the aforesaid acts of respondent No. 2, he was hurt, harassed, humiliated and the acts were against his dignity. It is his case that the guidelines given by the Government and Courts were not followed when the aforesaid actions were taken by respondent No. 2.

11) It is the case of petitioner that by doing the aforesaid acts, respondent No. 2 had kept the petitioner in custody for more than 56 hours and if the period of 24 hours is deducted, the petitioner was kept in illegal detention for remaining period.

12) In reply affidavit, filed by respondent No. 2, he has contended that he was incharge of investigation of C.R. No. 58/2014 and he did everything for the investigation of the case. He has contended that he had taken petitioner from Navi Mumbai to Ambad for the purpose of investigation and only due to insistence of petitioner, he had referred petitioner for such medical examination. He has contended that he had not used force against the petitioner for taking car on hire basis and also for referring him for medical examination.

13) It is the case of respondent No. 2 that they reached Ambad police station on 13.4.2013 at about 11.00 a.m. and not at 5.00 a.m. as contended by the petitioner. It is contended by respondent No. 2 that there were allegations of wife of petitioner that petitioner was not potent and so, he had given requisition letter for such medical examination of the petitioner. He has also contended that the medical examination was taken as the petitioner himself insisted for such medical examination and

there was no intention of humiliation or harassment of the petitioner. It is contended by respondent No. 2 that no complaint was made to J.M.F.C. by petitioner in respect of illtreatment and this fact is sufficient to infer that there was no harassment of petitioner.

14) It is the case of respondent No. 2 that the petitioner was formally arrested on 13.4.2014 at 10.00 p.m. It is contended that if the time required for the medical examination and journey is excluded, the petitioner was produced before the J.M.F.C. within proscribed time. It is contended that false, frivolous and motivated allegations are made against him by the petitioner.

15) Respondent No. 5 has also filed reply and she has contended that false allegations are made by the petitioner. It is contended that only to mislead everyone including the Court such allegations are made by the petitioner.

16) One Superior Officer of respondent No. 2 has filed affidavit to the effect that the aforesaid incident is already reported to District Superintendent of Police. It is contended that the preliminary inquiry is proposed in the report and after the preliminary inquiry, further action will be taken by the

department.

17) The F.I.R. was given on 23.3.2014 and the crime at C.R. No. 58/14 was registered for offences punishable under sections 498-A, 323, 504, 506, 34 of I.P.C. and for the offence punishable under sections 3 and 4 of Dowry Prohibition Act. As per the record, respondent No. 2 had taken the permission of Superior Officer (S.P.) on 23.3.2014 for going to Navi Mumbai for effecting the arrest of petitioner for the purpose of investigation of this crime. On 2.4.2014 similar letter was given by respondent No. 2. Requisition was given for issuing motor warrant for incurring expenses in respect of conveyance and such letters were given on 11.4.2014 and 13.4.2014. The sanction in respect of the amount which was required to be spent on conveyance of two constables and respondent No. 2 was obtained.

18) The record shows that on 12.4.2014 respondent No. 2 informed to Khale Police Station from Navi Mumbai that he had taken petitioner in custody within their jurisdiction and he was taking the petitioner to Ambad for the purpose of investigation. The entry of this intimation was taken in the station diary of Khale Police Station at about 15.35 hours of 12.4.2014. This circumstance shows that on that day, prior to 15.35 hours the

petitioner was taken in custody by respondent No. 2. The station diary entry of this police station further shows that intimation of incident of taking the petitioner in custody was given to one Sachin Pakhare, a relative of petitioner.

19) A copy of station diary entry of Ambad Police Station produced on record shows that petitioner was taken to Rural Government Hospital Ambad on 13.4.2014 at about 12.00 hours. As per the record, the petitioner was shown to be formally arrested at 22.00 hours on 13.4.2014 in Ambad Police Station. The petitioner was produced before J.M.F.C., Ambad on 14.4.2014 after 11.00 a.m.

20) As per the aforesaid record, the petitioner was taken in custody by respondent No. 2 on 12.4.2014 prior to 15.35 hours, he was taken to Government Hospital from Ambad at about 12.00 hours of 13.4.2014 and he was produced before J.M.F.C., Ambad on 14.4.2014 after 11.00 a.m. Thus, the petitioner was not produced within 24 hours from the time when he was taken in custody, before J.M.F.C., Ambad. The burden was on respondent No. 2 to explain the circumstances. There is specific allegations that respondent No. 2 was acting under the influence of father of respondent No. 5.

21) The affidavit of respondent No. 2 and the record show that respondent No. 2 had the intention to effect the arrest of petitioner at Navi Mumbai and for that, respondent No. 2 had left for Navi Mumbai. On 12.4.2014 prior to 15.35 hours petitioner was taken in custody by respondent No. 2, but he showed the formal arrest in Ambad Police Station on 13.4.2014 at about 22.00 hours. In view of the wording of the provision of section 46 of Cr.P.C. and the facts and circumstances of the present case, it needs to be presumed that the petitioner was arrested on 12.4.2014 itself prior to 15.35 hours in Navi Mumbai. When admittedly, petitioner was reached to Ambad Police Station at about 11.00 a.m. of 13.4.2014, it was necessary for respondent No. 2 to produce the petitioner before J.M.F.C., Ambad on 13th itself. The record and the conduct of the respondent No. 2 are sufficient to infer that he avoided to produce petitioner before J.M.F.C. on 13th.

22) It is not disputed by respondent No. 2 that he got petitioner examined to ascertain as to whether the petitioner is potent or not. As per the record, respondent No. 2 attempted to get the petitioner medically examined also to ascertain as to whether there was psychological disturbance. Though the

respondent No. 2 has contended that petitioner himself had requested for medical examination to ascertain as to whether he is potent or not, there is no record like application given by the petitioner in that regard or even the record of consent of petitioner in that regard. There is specific allegation of petitioner against respondent No. 2 that force was used and the respondent No. 2 got such medical examination done at the instance of father of respondent No. 5. The copies of letters of requisition given by respondent No. 2 to Medical Officer are on the record and they show that respondent No. 2 was acting on his own and there was no consent or application of petitioner in that regard.

23) The learned counsel for respondent No. 2 has placed reliance on the case reported as **2006 AIR SCW 779 [Sube Singh Vs. State of Haryana & Ors.]**. The learned counsel submitted that false allegations are made by the petitioner to give counter blast to the case. In the case on which reliance is placed, the Apex Court has observed that the Court has to stand guard against false motivated and frivolous claims in the interest of the society and to enable the police to discharge their duties fearlessly and effectively. There cannot be dispute over this proposition. In the same case, the Apex Court has observed that

if the violation of fundamental right is gross and of a magnitude to shock the conscience of the Court, the public law remedy is available. It is further observed that every illegal detention irrespective of its duration and every custodial violence, irrespective of its degree of magnitude, is outright condemnable and per se actionable.

24) The learned counsel for respondent No. 2 placed reliance on one more case reported as **(2012) 12 Supreme Court Cases 554 [Narayan Dutt Tiwari Vs. Rohit Shekhar and Anr.]**. In this case when the putative son had requested for D.N.A. test, such test was allowed. The matter was filed for relief of declaration and for perpetual injunction as there was denial of paternity. Thus, the facts were altogether different. In the present case, we are considering the action taken by the police and there are provisions of Cr.P.C. controlling the powers of police and giving duties of police. They are in accordance with the provisions of Articles 21 and 22 of Constitution of India.

25) The learned counsel for petitioner placed reliance on the following cases :-

(i) AIR 1997 SC 610 [D.K. Basu Vs. State of West Bengal],

(ii) AIR 1994 SC 1349 [Joginder Kumar Vs. State of U.P. & Ors.],

(iii) 2013 ALL MR (CRI) 1 [Niraj Ramesh Jariwala & Ors. Vs. Mahadeo Pandurang Nikam & Ors.],

(iv) 2014 ALL MR (CRI) 31 [Dattatraya s/o. Mahadu Tikkal Vs. State of Maharashtra & Ors.],

(v) 2014 (3) AIR BOM R (CRI) 402 [Balasaheb s/o. Sadanand Bhagat @ Bhakta Vs. State of Maharashtra through the Secretary, Home Department & Ors.],

(vi) 2014 (4) LJSOFT 40 [State of Maharashtra through Commissioner of Police & anr. Vs. Sagar Balu Ubhe].

26) In the present matter, the provisions of Articles 21 and 22 (2) of Constitution of India are relevant and they are as under :-

"21. Protection of life and personal liberty .-

No person shall be deprived of his life or personal liberty except according to procedure established by law.

22. Protection against arrest and detention in certain cases.-

(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in

custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

27) In the cases reported as **(1994) 3 Supreme Court Cases 569 [Kartar Singh Vs. State of Punjab] and AIR (37) 1950 Supreme Court 27 [A.K. Gopalan Vs. State of Madras]**, the Apex Court has laid down as follows :-

"The term 'personal liberty' used in Article 21 means freedom from physical restraint of a person by incarceration or otherwise. The deprivation of personal liberty is prohibited except in accordance with the procedure established by law. Personal liberty is to be construed strictly against the State and in favour of the person whose rights are affected".

28) In the aforesaid regard and for giving powers to police and also to show their duties, there are provisions in Cr.P.C. Section 41 (1) (a) to (e) of Cr.P.C. read as under :-

"41. When police may arrest without warrant.-

(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person-

(a) who commits, in the presence of a police officer, a cognizable offence;

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely :-

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary-

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence;
or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner;
or

(d) to prevent such person from making any inducement, threat or promise to any

person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured,

and the police officer shall record while making such arrest, his reasons in writing :

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.

(ba) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence;

(c) who has been proclaimed as an offender either under this Code or by order of the State Government; or

(d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of

having committed an offence with reference to such thing; or

(e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or"

29) The material produced does not show that the conditions laid down in the aforesaid provisions were satisfied and complied. On the contrary, respondent No. 2 showed formal arrest after more than 24 hours of the taking of petitioner in custody at Navi Mumbai. If there was no urgency of arrest, respondent No. 2 ought to have used the provision of section 41 (A) of Cr.P.C. From the facts of the case, this Court has no hesitation to observe that it was not the case of urgency. In the case reported as **AIR 2014 SC 2756 [Arnesh Kumar Vs. State of Bihar]**, the Apex Court has discussed provision of section 41 (1) of Cr.P.C. and few more directions are given for protection of the rights given under Article 21 and 22 of Constitution of India. The directions are summed up as under :-

"Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give following directions :

(1) All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498 A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.P.C.;

(2) All police officers be provided with a check list containing specified sub-clauses under Section 41 (1) (b) (ii);

(3) The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

(4) The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

(5) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;

(6) Notice of appearance in terms of Section 41A of Cr.P.C. be served on the accused within two

weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;

(7) Failure to comply with the directions aforesaid shall apart from rendering the police officer concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction;

(8) Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498 A of the I.P.C. or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine."

30) The provisions of sections 56 and 57 of Cr.P.C. also need to be seen in the present regard. They run as follows :-

"56. Person arrested to be taken before Magistrate of officer in charge of police

station.- A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station.

57. Person arrested not to be detained more than twenty-four hours.- No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court."

31) In the present matter, the petitioner was taken in custody in Navi Mumbai prior to 15.35 hours of 12.4.2014. It is admitted that in a car, the petitioner was taken to Ambad from Navi Mumbai. It is the case of petitioner that they reached Ambad at 5.00 a.m. of 13.4.2014 and it is the case of respondent No. 2 that they reached there at 11.00 a.m. of 13.4.2014. During submissions one more submission was made that respondent No. 2 had some work of investigation at Thane also and so, some time was spent there. No such record was produced and in view

of the aforesaid provisions of law, such excuse is not available. It is already observed that the petitioner could have been easily produced before J.M.F.C., Ambad on 13th itself, but respondent No. 2 avoided to produce the petitioner before J.M.F.C. on 13th. Thus, even if the best possible case for respondent No. 2 is considered and accepted, it needs to be held that the detention of petitioner by respondent No. 2 after 3.00 p.m. of 13th till 11.00 a.m. of 14th was illegal.

32) For medical examination of accused, there are specific provisions in Cr.P.C. Sections 53 and 54 (as amended in 2009) of Cr.P.C. run as under :-

"53. Examination of accused by medical practitioner at the request of police officer.-

(1) When a person is arrested on a charge of committing an offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting at the request of a police officer not below the rank of sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such all examination of the person arrested as is reasonably necessary

in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably necessary for that purpose.

(2) Whenever the person of a female is to be examined under this section, the examination shall be made only by, or under the supervision of, a female registered medical practitioner.

Explanation. – In this section and in sections 53A and 54,-

(a) “examination” shall include the examination of blood, blood stains, semen, swabs in case of sexual offences, sputum and sweat, hair samples and finger nail clippings by the use of modern and scientific techniques including DNA profiling and such other tests which the registered medical practitioner thinks necessary in a particular case;

(b) “registered medical practitioner” means a medical practitioner who possess any medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956 (102 of 1956) and whose name has been entered in a State Medical Register.

54. Examination of arrested person by medical officer.-(1) When any person is arrested, he shall be examined by a medical officer in the service of Central or State

Governments and in case the medical officer is not available by a registered medical practitioner soon after the arrest is made:

Provided that where the arrested person is a female, the examination of the body shall be made only by or under the supervision of a female medical officer, and in case the female medical officer is not available, by a female registered medical practitioner.

(2) The medical officer or a registered medical practitioner so examining the arrested person shall prepare the record of such examination, mentioning therein any injuries or marks of violence upon the person arrested, and the approximate time when such injuries or marks may have been inflicted.

(3) Where an examination is made under subsection (1), a copy of the report of such examination shall be furnished by the medical officer or registered medical practitioner, as the case may be, to the arrested person or the person nominated by such arrested person."

There is one more provision like section 53 (A), but this provision is applicable only when there is allegation of rape or attempt of rape against the accused.

33) In the present matter, the crime was registered for aforesaid offences and at the end chargesheet was filed for offences punishable under sections 498-A, 323, 504, 506, 34 of I.P.C. and sections 3 and 4 of Dowry Prohibition Act. If the ingredients of these offences are seen and considered, it is not difficult to say that there was no reason for medical examination of the petitioner/accused to ascertain as to whether he is potent. There was certainly no need of medical examination of the petitioner to ascertain as to whether there was psychological disorder as there was no such allegation in the F.I.R. For both the purposes, respondent No.2 made an attempt to get the petitioner medically examined. The provisions of Cr.P.C. show that there was no power to respondent No. 2 to get such medical examination done and there is no record to show that petitioner himself had applied for getting such examination done. Thus, the medical examination for these two purposes was illegal and it needs to be presumed that such medical examination caused harassment and humiliation to the petitioner.

34) In the cases reported as **(2011) 7 SCC 547 [Nandini Sundar and Ors. Vs. State of Chhattisgarh]**,

(1994) 6 SCC 260 [Khedat Mazdoor Chetna Sangath Vs. State of M.P and Ors.] and AIR 1984 SUPREME COURT 802 [Bandhua Mukti Morcha Vs. Union of India and Ors.] the Apex Court has discussed and interpreted the provision of Article 21 of Constitution of India. The sum and substance of law laid down by the Hon'ble Apex Court is as follows :-

"Right to live with dignity is included in right to life and personal liberty. The limits and faculties by which life is enjoyed are included in life. Within the ambit of limits of faculties by which life is enjoyed, lies respect for dignity of human being. It is the duty of State and its machinery to respect the dignity of human being."

This Court has no hesitation to hold that the medical examination of the petitioner which was actually done, to which he was to be subjected was unnecessary and it was not permitted by law. The medical examination of the petitioner in the present case has contravened the provisions of Article 21 of Constitution of India and this act was unlawful intrusion on the right of privacy of the petitioner and by doing such act, respondent No. 2 has shown disrespect to the dignity.

35) In cases reported as **1997 AIR SCW 233 [D.K. Basu Vs. State of West Bengal]** and **1993 (2) SCC 746 [Nilabati Bahera alias Lautah Bahera Vs. State of Orissa]**, the Apex Court has laid down that when infringement of the rights guaranteed under Article 21 of Constitution of India is established, the remedy is available in public law. It is laid down that the payment of compensation is strict liability when there is such contravention.

36) There is no statutory formula and so, there is no uniform criteria for fixing the compensation for violation of the rights given under Article 21 and 22 (2) of Constitution of India. The quantum of compensation depends upon the facts and circumstances of the case. Though the aggrieved person has right to go to Civil Court for compensation in tort and he can go to Criminal Court under section 357 of Cr.P.C., such person can be awarded compensation under Article 226 of Constitution of India. The compensation under this Article cannot be only nominal and compensation needs to be something more than the nominal amount. In the present case, the violation of right is of two kinds already noted. This Court holds that compensation needs to be granted for violation in both ways to the petitioner.

For each contravention, the petitioner is entitled to get Rs. one lakh as compensation. In the result, following order.

ORDER

- (i) The petition is allowed with cost of Rs. 20,000/- (Rupees twenty thousand).
- (ii) The respondent, State is to pay this cost to the petitioner within eight weeks from today.
- (iii) The detention of the petitioner from 3.00 p.m. of 13.4.2014 to 11.00 a.m. of 14.4.2014 in the custody of respondent No. 2 is held to be illegal, the medical examination of petitioner was also illegal and it was in violation of Articles 21 and 22 (2) of Constitution of India.
- (iv) The respondent, State do pay the compensation of Rs. 2,00,000/- (Rupees two lakh) to the petitioner within eight weeks from the date of this decision. If the amount is not paid within the time fixed, the amount shall carry interest at the rate of 12% p.a.
- (v) It is necessary for the State to hold an inquiry of respondent No. 2 for the aforesaid illegal detention of the petitioner and for medical examination of petitioner and such inquiry needs to be held for imposing major penalty

and for the recovery of the amount which the State is made to pay in the present proceeding.

(vi) This decision will not come in the way of petitioner to claim compensation in tort in Civil Court and also to claim compensation in Criminal Court under section 357 of Cr.P.C.

(vii) It is open to the petitioner to institute the proceeding in this Court for contempt of Court as laid down in the case of **Arnesh Kumar** cited supra.

Rule is made absolute in aforesaid terms.

[**INDIRA JAIN, J.**]

[**T.V. NALAWADE, J.**]