IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1077 of 2016

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Ranjeet Kumar Son of Sri Ram Talika Pandey Resident of Mohalla - Gajrar, Gaura Kashni, Police Station - Modle Thana Sasaram, District - Rohtash at present as Sub Inspector, Industrial Area Police Station, District - Buxar (Bihar)

.... Appellant

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Bihar, Patna
2. The Bihar Human Right Commission through its Secretary, 9 Bailey Road, Patna
3. The Secretary, Bihar Human Right Commission, 9 Bailey Road, Patna
4. The Deputy Secretary, Bihar Human Right Commission, 9 Bailey Road, Patna
5. The Principal Secretary, Home (Police) Government of Bihar, Old Secretariat, Bihar, Patna
6. The Director General of Police, Government of Bihar, Old Secretariat, Bihar, Patna
7. The Senior Superintendent of Police, Patna
8. The City Superintendent of Police, Patna (West), Patna
9. The Sub-divisional Police Officer, Phulwarisharif, Patna
10. The Officer-In-Charge, Naubatpur Police Station, Patna
11. Smt. Nirupama Singh Wife of Santosh Kumar @ Santosh Singh Resident of Village - Dehrigorah, Police Station Naubatpur, District - Patna
12. Santosh Kumar @ Santosh Singh son of Late Ramanand Singh, Village- Dehrigorah, P.S.- Naubatpur, District- Patna

.... Respondents

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Appearance :

For the Appellant : Mr. Sanjay Singh, Advocate
Mr. Kunal Tiwary, Advocate
Mr. Vijay Shankar Upadhyay, Advocate

For the Respondents : Mr. Ashok Kumar Keshari, A.A.G. 11
Mr. Brajesh Kumar, A.C. to AAG-11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA

C.A.V. JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 30-08-2016

The present *intra* Court appeal puts to challenge the order, dated **20.04.2016**, passed in C.W.J.C. No. 7320 of 2013, whereunder a learned single Judge of this Court has disposed of the writ application, filed by the petitioner-

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appellant herein, holding that the writ petition was premature.

2. The order, dated **20.04.2016,** aforementioned, was passed in a writ application, which the appellant, as the petitioner, had filed impugning the order, dated **22.01.2013**, passed by the Bihar Human Rights Commission (hereinafter referred to as 'the BHRC') contending that though the BHRC has no power to review its own order, it (BHRC) had reviewed its order, dated **17.10.2012**, by the impugned order, dated **22.01.2013**, and reopened the case against the petitioner by issuing notice to the petitioner under Section 16 of the Protection of Human Rights Act, 1993 (in short, 'the Act').

3. Having reopened the case, the BHRC, upon hearing the parties concerned, ordered, on **04.03.2013**, the Senior Superintendent of Police, Patna, to recover a sum of Rs.50,000.00 from the salary of the petitioner-appellant herein and make payment of the said amount as compensation to the husband of the complainant-respondent No.11. By the order, dated **04.03.2013**, aforementioned, the BHRC has also directed the petitioner-appellant's employer to consider initiating a disciplinary proceeding against the petitioner-appellant and also lodge criminal case against him.

4. By his writ petition, the appellant sought for quashing of the order, dated **04.03.2013**, whereby the BHRC had directed the Senior Superintendent of Police, Patna, to

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recover a sum of Rs.50,000.00 from the salary of the petitioner-appellant herein so as to make payment of the said amount, as compensation, to the complainant-respondent No.11 and also to consider initiating disciplinary proceeding against the petitioner-appellant herein and lodging criminal case against him.

5. The material facts, which led to the writ petition, may, in brief, be set out as under :

(i) While on patrolling duty, as a Police Officer of Naubatpur Police Station, the writ petitioner claims to have received, on 15.05.2012, at about 8 PM, information from confidential source that one Santosh Kumar @ Santosh Singh was keeping arms without holding licence therefor. Having informed his superior authorities about the information, the petitioner claims to have proceeded, accompanied by the members of his force, for the house of accused Santosh Kumar @ Santosh Singh and raided the said house.

(ii) When the house of the accused was raided, the accused was, according to the writ petitioner, found sleeping and, by conducting a search of the house, the petitioner claims to have recovered a country-made pistol with two live cartridges under the pillow of the accused’s bed and seized the same by making a seizure list in the presence of witnesses. The accused was, then, taken into custody.

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(iii) Having returned to Naubatpur Police Station, the petitioner, on 15.05.2012 itself, handed over the accused, along with the seizure list, to the Office-in-Charge of the said Police Station, who, on the basis of the written report so lodged by the petitioner, registered Naubatpur Police Station Case No.120 of 2012, under Sections 25(1-h)a/26 Arms Act, 1959, against accused Santosh Kumar @ Santosh Singh and handed over the investigation to one Arun Kumar Singh, Sub Inspector of Police. The accused was, thereafter, forwarded to the Court of learned Additional Chief Judicial Magistrate, Danapur. On 16.05.2012, the accused was remanded to judicial custody.

(iv) On 06.06.2012, respondent No. 11 herein, Smt. Nirupama Singh, wife of accused Santosh Kumar @ Santosh Singh, presented a complaint before BHRC. On 16.06.2012, accused Santosh Kumar @ Santosh Singh was granted bail in Naubatpur Police Station Case No. 120 of 2012 aforementioned by the learned Additional Sessions Judge II, Patna. On 27.06.2012, the City Superintendent of Police (West), Patna, supervised the case and issued necessary directions to the Investigating Officer. On 08.08.2012, BHRC, vide its letter, dated 08.08.2012, directed the Senior Superintendent of Police, Patna, to enquire into the complaint of Smt. Nirupama Singh, respondent No.11, who, in turn,

directed the Sub-divisional Police Officer, Phulwarisharif, to enquire into the matter and submit his enquiry report.

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(v) After enquiry, Sub-divisional Police Officer, Phulwarisharif, submitted his report, dated 06.09.2012, on the complaint of respondent No.11. The said report was forwarded, on 12.09.2012, to the BHRC by the Senior Superintendent of Police, Patna.

(vi) Respondent No.11, as a complainant, made yet another complaint, on 28.09.2012, alleging that the petitioner was responsible for falsely implicating her husband, accused Santosh Kumar @ Santosh Singh, and sending him to jail and that the superior authorities and the writ petitioner are trying to cover up the misdeeds of the petitioner.

(vii) On **17.10.2012**, BHRC, upon consideration of the report, dated 12.09.2012, which the Senior Superintendent of Police, Patna, had sent to the BHRC, closed the file, by observing as follows:

> *"From the report of SDPO Phulwarisharif passed on to this Commission by Senior S.P., Patna it appears that the involvement of the applicant's husband in Naubatpur P.S. Case No. 120/12 was not established. The case has been found true against non FIR accused Prashant Satyam @ Ranu. The Commission is not inclined to pursue this matter.*
> *File is closed. Inform."*

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(viii) Thereafter, respondent No. 11, namely, Smt. Nirupama Singh, on receipt of a letter, dated 07.11.2012, communicated to her the order, dated 07.11.2012, passed by the BHRC, made yet another complaint to the BHRC, on 05.12.2012, seeking review of the order, dated **17.10.2012**.

(ix) By its order, dated **22.01.2013**, the BHRC reviewed its order, dated **17.10.2012**, and re-opened the case against the petitioner issuing a notice under Section 16 of the Act.

(x) Having received the notice and the copy of the order sheet, the petitioner submitted, on 28.02.2013, his written statement.

(xi) Thereafter, the BHRC passed the impugned order, dated **04.03.2013**, whereby it has directed, as already indicated above, the Senior Superintendent of Police, Patna, to recover a sum of Rs.50,000.00 from the salary of the petitioner so as to make payment of the said amount, as compensation, to the complainant for his act of omission and commission by entering into a conspiracy with Prashant Satyam @ Ranu in lodging the false/fake case against the complainant's husband, to consider initiating a disciplinary proceeding against the petitioner and also to lodge criminal case against him.

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(xii) The petitioner received the BHRC's order, dated **04.03.2013**, by Memo No.3199, dated 06.03.2013, on 11.03.2013, and put to challenge the order, dated **04.03.2013,** aforementioned by means of his writ petition.

6. As the learned single Judge has dismissed the writ petition by holding that the writ petition is premature, the writ petitioner is in appeal before us.

7. We have heard Mr. Sanjay Singh, learned counsel for the petitioner, and Mr. Ashok Kumar Keshri, learned Additional Advocate General No. 11, appearing for the State respondents.

8. The main thrust of the argument of Sri Sanjay Singh, learned Senior Counsel for the Appellant, is that the BHRC does not have the power to review its own order inasmuch as no such power has been bestowed on the BHRC by the State, which has created the BHRC.

9. It is contended that the only power, which the BHRC has, is to make recommendation and when the complaint, made to the BHRC, had been closed by order dated, **17.10.2012**, the BHRC could not have re-opened the same on the basis of fresh complaint and there was no justifiable reason in entertaining the complaint afresh and directing the respondents to recover the sum of Rs.50,000/- from the salary of the appellant and pay the same to the

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complainant's husband, as compensation, within a period of six weeks. This apart, the Senior Superintendent of Police, Patna, was illegally directed by the BHRC to consider initiating disciplinary proceeding and lodging criminal case against Sub-Inspector Ranjeet Kumar for his act of omission and commission by entering into a conspiracy with Prashant Satyam @ Ranu in lodging the false/fake case against the complainant's husband.

10. While considering the present appeal, one needs to take note of the contents of the complaint, which was lodged by the respondent No.11 with BHRC, the first complaint being of 06.06.2012 and the second one being of 05.12.2012.

11. In her first complaint, respondent No.11 claimed that after the death of her father, Krishna Prasad Singh, her cousin, Abhay Kumar Singh, his wife, Jai Mani Devi, along with their son, Prashant Satyam @ Ranu, had adopted various means, in collusion with the local police, to capture her ancestral property and it was in this direction that when her husband came to visit her, at village Ajaba, on coming to learn about her poor health, Prashant Satyam @ Ranu, in collusion with the present appellant, Sub-Inspector, Ranjeet Kumar, got her husband sent to judicial custody after getting a false case registered against him, the case being

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Naubatpur P.S. Case No.120 of 2012, allegedly on the ground of possessing a fire-arm and cartridges, whereas, according to respondent No.11, on the date of occurrence, at about 8.00 PM, while her husband was sitting, in the verandah having tea, along with local residents, which included retired Sub-Inspector, Up Pramukh, Ex-Mukhiya, Sub-Inspector Ranjeet Kumar along with some other police personnel and Prashant Satyam @ Ranu came there and told her husband that he (Ranjeet Kumar), i.e., Sub Inspector, had received information that the complainant's husband was keeping arms in his possession. While her husband denied the allegation so made by the Sub-Inspector, Prashant Satyam @ Ranu illegally entered into the house and brought out a polythene bag and handed over the same to the Sub-Inspector Ranjeet Kumar and though the local residents, who were present there, protested to such humiliation, Sub-Inspector Ranjeet Kumar warned that he would fire at them and, at the reaction of the Sub-Inspector Ranjeet Kumar, local persons, present there, became frightened and, thereafter, Sub-Inspector Ranjeet Kumar, misusing his official position, took her husband to Police Station and, thereafter, got Naubatpur P.S. Case No.120 of 2012 registered against her husband.

12. In her complaint, the complainant raised the question as to how Sub-Inspector Ranjeet Kumar had reached

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her house along with Prashant Satyam @ Ranu and it was Prashant Satyam @ Ranu, who had handed over the polythene bag to the Sub-Inspector and that no local persons, residing within the radius of 100 meters, was made witness, rather, the Sub-Inspector Ranjeet Kumar made those persons, as witnesses of the alleged seizure, who stay at a distance of 2 kilometer from the place of occurrence and, therefore, the complainant raised the question as to what those witnesses were doing, at the place of occurrence, at 8' O clock at night. The complainant sought for an enquiry to be made and appropriate action to be taken against the guilty person so that the police authorities never misuse the power, especially, persons like Sub-Inspector Ranjeet Kumar.

13. On receiving from the Senior Superintendent of Police, Patna, the report of the Sub-divisional Police Officer, Phulwarisharif, on conducting enquiry into the complaint of the respondent No.11, the BHRC merely recorded, as already indicated above, in its order, dated **17.10.2012**, thus, *"From the report of the Sub-divisional Police Officer, Phulwarisharif, passed on to this Commission by Senior S.P., Patna, it appears that the involvement of the applicant's husband in Naubatpur P.S. Case No.120 of 2012 was not established. The case has been found true against non-FIR accused Prashant Satyam @ Ranu. The Commission is not inclined to pursue*

this matter".

14. However, the complainant, then, filed second complaint, dated 05.12.2012, where she submitted that her complaint was closed pursuant to the report of the police, though, the report, dated 06.09.2012, submitted by the Sub-divisional Police Officer, Phulwarisharif, made it clear that the case, lodged against the complainant's husband, Santosh Kumar @ Santosh Singh, was false and sending him to jail was against the natural justice and her husband had been harassed by her relative, Prashant Satyam @ Ranu, with intent to capture her ancestral property in collusion with Sub-Inspector Ranjeet Kumar. In this regard, the complainant pointed out that Sub-Inspector Ranjeet Kumar had admitted before the Sub-divisional Police Officer, Phuwlarisharif, that it was Prashant Satyam @ Ranu, who had informed him and asked him to come to the place of occurrence and, so far as Prashant Satyam @ Ranu is concerned, *charge-sheet* had been filed against him, but the fact remains that her husband, though innocent, was harassed by trapping him in a false case and was sent to jail and, in this whole episode, it was the present appellant, Sub-Inspector Ranjeet Kumar, who was involved and, therefore, the complainant sought for an enquiry to be made into the role of Sub-Inspector Ranjeet Kumar, who had harassed her, her husband and their

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daughter.

15. On receipt of the second complaint, dated 05.12.2012, a notice was issued to the present petitioner for filing his written statement. On receiving the written statement, hearing was accorded to the present appellant on 28.02.2013. The BHRC, then, made the impugned order, dated 04.03.2013, wherein it was pointed out that though the file was closed by order, dated 17.12.2012, aforementioned, on the basis of the report of the Sub-divisional Police Officer, Phulwarisharif, brought on record by the Senior Superintendent of Police, Patna, giving clean chit to the complainant's husband as regards Naubatpur Police Station Case No.120 of 2012, and that the report further revealed that rather than complainant's husband, it was Prashant Satyam @ Ranu, on whose information the complainant's house was raided and her husband was taken into custody, but no action had been taken against Sub Inspector, Ranjeet Kumar, who was responsible for getting the false case registered.

16. In its order, dated 04.03.2013, the BHRC has pointed out that the supervision note of the case reveals that there was enmity between Santosh Kumar @ Santosh Singh and Prashant Satyam @ Ranu on account of land dispute and he, therefore, hatched conspiracy and gave false

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information to the police as regards arms being possessed by the complainant's husband and that the place of occurrence, on investigation, had also revealed that both, Prashant Satyam @ Ranu and Santosh Kumar @ Santosh Singh, lived in the same room side by side and it was possible to move from one side to the other side and that the supervising officer had not only disbelieved the recovery of fire-arms from under the pillow, but had also come to the conclusion that the entire incident was concocted and was a result of conspiracy.

17. The BHRC has further observed, in its order, dated **04.03.2013**, that the record, now, reveals that it was pursuant to the information given by Prashant Satyam @ Ranu that unlicenced fire-arm was being held by the complainant's husband that the Sub Inspector, Ranjeet Kumar, arrived as a part of the conspiracy and seized the fire-arm on being produced by Prashant Satyam @ Ranu.

18. It was in the circumstances, indicated above, that the BHRC directed the Senior Superintendent of Police, Patna, to recover a sum of Rs.50,000.00 from the salary of the petitioner-appellant herein so as to make payment of the said amount, as compensation, to the complainant-respondent No.11 herein and also consider if disciplinary proceeding needed to be initiated and a criminal case needed to be instituted against the Sub Inspector, Ranjeet Kumar, for his

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acts of omission and commission in lodging, in collusion with Prashant Satyam @ Ranu, a false case against the complainant's husband on a fake recovery of fire-arm.

19. While considering the appeal, what needs to be noted is that the complainant's case was closed by the BHRC merely on the ground that her husband, Santosh Kumar @ Santosh Singh, had been found not involved contrary to the allegations made in Naubatpur Police Station Case No.120 of 2012. As against the complainant's allegation that her husband had been falsely implicated by the Sub-Inspector, Ranjeet Kumar, in collusion with Prashant Satyam @ Ranu, no observation had been made by the BHRC in its order, dated **17.10.2012**; whereas the complainant-respondent No.11, in her subsequent complaint, dated 05.12.2012, brought to the notice of the BHRC that the investigation had revealed that her husband was innocent and that he had falsely been implicated in the case aforementioned at the instance of Prashant Satyam @ Ranu, in collusion with Sub Inspector, Ranjeet Kumar, and sent to jail. It must, therefore, be held that the allegation, so made, in the subsequent complaint, was a little different from the earlier one.

20. While the complaint, dated 06.06.2012, did not make any allegation that Sub Inspector, Ranjeet Kumar, had admitted before the Sub-divisional Police Officer,

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Phulwarisharif, during the course of enquiry, that it was Prashant Satyam @ Ranu, who had informed him that the complainant's husband had kept with him unlicenced fire-arm, the complainant, in her second complaint, further brought it to the notice of BHRC that while her husband had been exonerated by the Investigating Officer, *charge-sheet* has been filed against Prashant Satyam @ Ranu and, therefore, an enquiry into the role of Sub Inspector, Ranjeet Kumar, was warranted.

21. In the circumstances, indicated above, new facts having come on record, an enquiry was warranted and, therefore, the BHRC did not, to our mind, act contrary to law in taking up the second complaint or in considering necessary action thereon. As the findings, recorded by the BHRC in its order, dated 04.03.2013, are based on the materials on record, upon giving notice to the present appellant, we do not find that the findings, so recorded by the BHRC, can be said to be perverse or without any basis or contrary to law.

22. Coming to the question as to what power BHRC can exercise, it is necessary to point out that it is Section 18 of the Act, which governs the power of the Human Rights Commission. In this regard, Section 18 of the Act is, therefore, reproduced below:

> *"18. Steps during and after inquiry1 [The Commission may take any of the following steps*

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during or upon the completion of an inquiry held under this Act, namely:-

(a) where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights or abetment thereof by a public servant, it may recommend to the concerned Government or authority –

(i) to make payment of compensation or damages to the complainant or to the victim or the members of his family as the Commission may consider necessary;

(ii) to initiate proceedings for prosecution or such other suitable action as the Commission may deem fit against the concerned person or persons;

(iii) to take such further action as it may think fit;

(b) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;

(c) recommend to the concerned Government or authority at any stage of the inquiry for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;

(d) subject to the provisions of clause (e), provide a copy of the inquiry report to the petitioner or his representative;

(e) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall,

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within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission;

(f) the Commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.]

23. From a bare reading of Section 18 of the Act, it clearly transpires that Section 18 of the Act empowers the Human Rights Commission to make recommendation to the appropriate Government authority to make payment of compensation or damages to the complainant or the victim for violation of human rights and also initiate proceedings or prosecution or take such further action as it may think fit. If the enquiry conducted by the Human Rights Commission discloses commission of violation of human rights or negligence in the prevention of violation of human rights or abatement thereof by a public servant, it may recommend to the concerned Government or authority (i) to make payment of compensation or damages to the complainant or to the victim or the members of his family as the Commission may consider necessary; (ii) to initiate proceedings for prosecution or such other suitable action as the Commission may deem fit

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against the concerned person or persons; and (iii) to take such further action as it may think fit.

24. Situated thus, it becomes transparent that a State Human Rights Commission, such as, the BHRC, does not have the power to direct payment of compensation to a victim or direct any penal or disciplinary action against a public servant. It can, however, make recommendation to the concerned government or authority to make payment of compensation or damages to the complainant or to the victim or the members of his family as the Commission may consider necessary; to initiate proceedings for prosecution or such other suitable action as the Commission may deem fit against the concerned person or persons; and to take such further action as it may think fit.

25. Mr. Sanjay Singh, learned Counsel, appearing for the appellant, is, therefore, in the light of the provisions embodied in Section 18 of the Act, correct, when he contends that the BHRC could not have directed by its order, dated **04.03.2013**, to pay compensation of Rs.50,000.00 nor could it have validly directed the Senior Superintendent of Police, Patna, to recover a sum or Rs.50,000.00 from the salary of Sub Inspector, Ranjeet Kumar. The directions, which had been so given to pay compensation and to recover the said amount, shall, therefore, in our considered view, need to be treated as

recommendatory in nature.

26. In other words, the directions, so given by the BHRC, shall be read by the authorities concerned as recommendations including the direction to initiate a departmental proceeding or prosecution against Sub Inspector, Ranjeet Kumar.

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27. This Court, therefore, directs the Senior Superintendent of Police, Patna, to make in the light of the observations made hereinabove, a speaking order on the recommendations, which have been made by the BHRC against Sub Inspector, Ranjeet Kumar, the recommendations being that of a quantified sum of Rs.50,000.00 to be paid, as compensation, to the complainant's husband and, apart from initiating disciplinary proceeding against Sub Inspector, Ranjeet Kumar, lodging of a criminal prosecution against him.

28. The necessary order(s) shall be made by the Senior Superintendent of Police, Patna, within a period of three weeks from the date of receipt of this order. If any of the parties to the writ petition feels aggrieved by the order, which may be passed by the Senior Superintendent of Police, Patna, it would remain open to such party to take recourse to appropriate provisions of law.

29. To the extent, as indicated above, the order, dated 04.03.2013, passed by the BHRC, as well as the order,

dated **20.04.2016**, passed by the learned single Judge, in C.W.J.C. No. 7320 of 2013, shall stand modified.

30. With the above observations and directions, this appeal shall stand disposed of.

31. However, there shall be no order as to costs.

(I. A. Ansari, CJ)

Anjana Mishra, J: I agree.

(Anjana Mishra, J)

Saif/-

AFR/NAFR	A.F.R.
CAV DATE	13.07.2016
Uploading Date	31.08.2016
Transmission Date	N/A

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