

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3973 of 2014

Sanjay Kumar son of Sri Ramswarup Prasad, resident of Flat No. 102/A, Prince Apartment, Ashiyana Nagar, Magistrate Colony, P.S.- Rajiv Nagar, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna
2. The Bihar State Human Right Commission, Bailey Road, Patna, through its Secretary.
3. Mr. R.K. Mishra, the then Inspector General of Police, Darbhanga Zone, Darbhanga (Presently on Central Deputation)
4. The Inspector General of Police, Darbhanga Zone, Darbhanga
5. The Deputy Inspector General of Police, Darbhanga Range, Darbhanga
6. The Superintendent of Police, Madhubani
7. The Sub-Divisional Police Officer, Jaynagar

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 7072 of 2014

Shiva Pujan Singh son of Late Saheb Prasad Singh, resident of Mohalla - Malighat, Chunabhatti Road, P.S. - Mithanpura, District - Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Bihar State Human Right Commission, Bailey Road, Patna, through its Secretary.
3. Mr. R.K. Mishra, the then Inspector General of Police, Darbhanga.
4. The Inspector General of Police, Darbhanga Zone, Darbhanga.
5. The Deputy Inspector General of Police, Darbhanga Range, Darbhanga.
6. The Superintendent of Police, Madhubani.
7. The Special Secretary Home (Police) Department, Govt. of Bihar.

.... Respondent/s

Appearance :

(In CWJC No. 3973 of 2014)

For the Petitioner/s : Mr. AJAY KUMAR THAKUR
Mr. VINAY RANJAN
Mr. SHASHANK SHEKHAR

For the Respondent/s : Mr. KUMAR PRIYA RANJAN, SC 23

(In CWJC No. 7072 of 2014)

For the Petitioner/s : Mr. VINAY RANJAN

For the Respondent/s : Mr. ASHOK KUMAR KESHRI, AAG 11

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 25-02-2016

There are two petitioners. Both are aggrieved by an identical kind of order, passed by a Member, Bihar Human Rights Commission, dated 17.12.2013. Since the order under challenge is identical in nature, both the writ applications have been heard together and are being disposed of together.

2. Sri Sanjay Kumar was the Station House Officer of Jaynagar Police Station, in the district of Madhubani, at the relevant time and Sri Shiva Pujan Singh was the SDPO posted in that area, again at the relevant time.

3. The story relates back to 18th July, 2009 when Sri Sanjay Kumar, SHO, is supposed to have detained one Ram Narayan Mahto alias Manager Mahto from a tea shop in Jaynagar village. Mr. Mahto was handed over to Nepal police in an illegal manner as alleged. Nepal Police thereafter eliminated the said person.

4. The brother of Ram Narayan Mahto namely, Sri Prem Lal Mahto, who is said to be the resident of Nepal, i.e. district Sirha, decided to file a complaint petition before the Bihar Human Rights Commission some time in December, 2011, alleging violation of human rights by the SHO as well as by the SDPO because he is supposed to have tried to protect the SHO and camouflage his guilt.

5. The Member, Bihar Human Rights Commission has not



only issued a direction for initiation of a departmental proceeding but also awarded compensation of Rs.1 Lac to be paid to the family of the deceased within a period of three months. Such a direction and decision naturally has a fall-out upon both the petitioners and, therefore, they decided to move the High Court under Article 226 of the Constitution of India.

6. It may be noted that Sri Shiva Pujan Singh has superannuated in the meantime.

7. At the very outset learned counsels representing the two petitioners challenged the impugned order on the ground of jurisdiction and powers of the Human Rights Commission not only to take cognizance but also pass orders on the grievance so raised, keeping in mind the statutory provision which creates an embargo. The relevant provision pointed out to the Court is Section 36(2) of the Protection of Human Rights Act, 1993, which is reproduced herein below:

“36. Matters not subject to jurisdiction of the Commission—

(1).....

(2) The commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed.”



8. The arguments of behalf of the petitioners are further buttressed on the basis of a decision which has been rendered by the Hon`ble Apex Court on the same said provision quoted above in the case of **N. C. Dhoundial Vs. Union of India and others**, reported in **(2004) 2SCC 579**. The Bench of the Hon`ble Apex Court delved into the issue, took notice of the provision and laid down the ratio in para 16 to 18. Since what the Hon`ble Apex Court has had to say on the issue is of vital significance, therefore, these paragraphs are reproduced herein below:

“16. In fact, Section 36(2) does not mince the words and the language used is clear and categorical. The marginal note to the section is being referred to only to consider whether the bar created by Section 36(2) has a bearing on the power or jurisdiction of the Commission.

17. The bar under Section 36(2) is sought to be got over by the Commission by invoking the theory of continuing wrong and the recurring cause of action. According to the Commission, every violation of human right is a continuing wrong until and unless due reparation is made. We find it difficult to accept this proposition propounded by the Commission. The short answer to this viewpoint is that such a view, if accepted, makes Section 36(2) practically a dead letter. Moreover, going by the language



employed in Section 36(2), we do not think that the concept of continuing wrong could at all be pressed into service in the instant case. The time-limit prescribed is referable to the alleged “act” constituting the violation of human rights. In a case like illegal detention, the offensive act must be deemed to have been committed when a person is placed under detention and it continues so long as the affected person remains under illegal detention. The commission of offensive act is complete at a particular point of time and it does not continue to be so even after the unauthorized detention ends. It is not in dispute that the complainant was produced before the Special Judge on 3-4-1994 and remand was obtained in accordance with the procedure prescribed by law. The alleged act of unauthorized detention which gives rise to violation of human rights ceased on 3-4-1994 and it does not perpetuate thereafter. It is not the effect of illegal detention which is contemplated by Section 36(2) but it is the illegal act itself. It would be a contradiction in terms to say that the arrest or detention beyond 3-4-1994 was in accordance with law and at the same time the arrest/detention continued to be wrongful. It cannot, therefore, be brought under the category of continuing wrong which is analogous to the expression “continuing



offence” in the field of criminal law. It cannot be said that the alleged wrongful act of detention repeats itself everyday even after the complainant was produced before the Magistrate and remand was obtained in accordance with law. Beyond 3-4-1994, there was no breach of obligation imposed by law either by means of positive or passive conduct of the alleged wrongdoers. To characterize it as a continuing wrong is, therefore, inappropriate. One-year period for taking up the enquiry into the complaint, therefore, comes to an end by 3-4-1995. Just as in the case of Section 473 CrPC, there is no provision in the Act to extend the period of limitation of one year. However, in the procedural Regulations framed by the Commission certain amount of discretion is reserved to the Commission. Regulation 8(1)(a) *inter alia* lays down that “ordinarily” a complaint in regard to events which happened more than one year before the making of the complaint is not entertainable.

18. Irrespective of the validity of the prefacing expression “ordinarily” let us examine the issue from the point of view of the regulation itself. The regulation implies that if extraordinary circumstances exist, the complaint can be enquired into even after the expiry of one year. Are there any extraordinary circumstances



made out in this case? We find none in the impugned order of the Commission. As already noticed, the petition filed by the complainant was received by the Commission a day after the charge-sheet was filed though it bears an earlier date. For nearly 4 ¹/₂ years the complainant kept quiet. The explanation given in the complaint for this long silence was that he was under the impression that by reporting the matter to NHRC he might be antagonizing the CBI officials, but, after realizing that they were not acting fairly and objectively and they continued to harass him, he thought of filing the petition before NHRC. The Commission, on its part, did not advert to this explanation which is really no explanation at all, nor did it advert to any extraordinary circumstances justifying interference after a long lapse of time prescribed by Section 36(2). The Commission, thus, tried to clutch at the jurisdiction by invoking the theory of continuing wrong which, as we held earlier, cannot be invoked at all. In this view of the matter, the direction given by the Commission to the Director of CBI, which has an undoubted effect on the service career of the writ petitioner, is violative of Article 14 of the Constitution.”

9. If this is what the Hon`ble Supreme Court has said with regard to the power of the State or National Human Rights



Commission to take cognizance and the limit and the time-frame which comes in the way then, obviously, in the present case there is no dispute about the cause of action having arisen in July, 2009 and the grievance brought by the brother of the deceased in December, 2011. The Member, Human Rights Commission seems to have committed an error of law by not only entertaining a stale, time-barred complaint but even passing an order directing payment of compensation to the extent of Rs.1 Lac and holding of a departmental enquiry.

10. Counsel for the State supports the decision of the State Human Rights Commission on the ground that it is a kind of continuing offence and violation. Therefore, the Commission had the necessary power and jurisdiction in terms of Section 36(1).

11. I wish, learned counsel for the State had gone through the judgment of the Apex Court and the implication of the provision contained in Section 36(2) and what the Apex Court had to say in para 18 of the case of **N C Dhoundial** (supra).

12. Obviously, the Member, Bihar Human Rights Commission seems to have gone overboard in his enthusiasm to uphold human rights of a complainant even though there was some kind of statutory bar created in entertaining such complaint.

13. Another aspect of significance is that the role played by

the two petitioners has nothing to do with the elimination of the victim. The SHO was charged with illegal detention and handing over the victim to the Nepal police and SDPO has been charged with giving a misleading enquiry report to defend the SHO. How has the Commission reached a conclusion that there was meeting of minds between the two petitioners as well as Nepal Police and the whole game was played out to eliminate the victim is not understood and appreciated by this Court in absence of evidence. That there was no proper application of mind even to the allegation is evident. If there was any serious human right violation it was committed by Nepal Police.

14. However, since the question of jurisdiction is the basic issue and the Court is satisfied that the State Human Rights Commission did not have the basic powers to exercise on the date the complaint was filed, the impugned order dated 17.12.2013 stands quashed and both the writ applications allowed.

(Ajay Kumar Tripathi, J)

R.K.Pathak/-

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