

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

CRIMINAL WRIT PETITION NO. 215 OF 2017

Somnath s/o Gorakh Jadhav
Age: 31 years, Occu.: Labour
R/o: Sant Nagar, Paithan
Taluka - Paithan, District - Aurangabad.

...PETITIONER

V/s.

1. The State of Maharashtra
Through The Secretary
Home Department
Mantralaya, Mumbai – 400 032.
2. C. P. Kakade
Police Inspector, Police Station,
Paithan, District – Aurangabad.
(now transferred at Chikalthana
Police Station, Aurangabad.)
3. The Commissioner of Police
Aurangabad.
4. The Superintendent of Police (Rural)
Aurangabad.
5. The S.D.O.P, Paithan
District - Aurangabad.

... RESPONDENTS

Ms. Monica Dahat, Advocate h/f. Mr. R. B. Ade, Advocate for the Petitioner.
Mrs. V.N. Patil Jadhav, APP for Respondents/State.
Mr. S. B. Rajebhosale, Advocate for Respondent No.2.

**CORAM : R.M. BORDE &
MANGESH S. PATIL, JJ.
RESERVED ON : 01.10.2018
PRONOUNCED ON : 08.10.2018**

JUDGMENT: *(Per Mangesh S. Patil, J.)*

Heard. Rule. The Rule is made returnable forthwith. The learned A.P.P. and the learned advocate for the respondent no.2 waive service. In this Writ Petition under Article 226 of the Constitution of India the petitioner is claiming compensation for custodial violence, police atrocities and illegal detention by the respondent no.2 and has also prayed for initiation of appropriate action against the respondent no.2 for the alleged atrocities.

2. According to the learned advocate for the petitioner, Crime No. I-117 of 2015 was registered at Paithan Police Station for the offence punishable under Section 379 of the Indian Penal Code on 14.06.2015 regarding theft of an amount of Rs. 33,000/- from the pockets of the informant in a Temple. The petitioner was arrested at about 08.15 pm on the same day. He was produced before the Magistrate and was remanded to police custody till 17.06.2015. The money was planted and his relatives were made to shell of an amount of Rs. 30,000/- by fabricating a bogus panchnama and the amount was shown to have been discovered by him. Without any further reason for his detention, the police custody was got extended up to 20.06.2015. However, on 19.06.2015 the respondent no.2 who was then the

Police Inspector posted at the concerned police station paraded the petitioner in a half naked condition along the streets by garlanding him with footwear and currency notes. She then pointed out that on 20.06.2015 when the petitioner was produced before the Magistrate he was remanded to Magisterial Custody and was granted bail in the afternoon, still, he was not allowed to let go till 08.00 p.m. and thus was wrongfully confined by the respondent no.2.

3. She would further submit that the persecution of the petitioner did not stop there. He attended the concerned police station regularly pursuant to the condition subject to which the bail was granted, for a period of three months. At the fag end of the period he was again falsely implicated in another crime. When his sister approached the respondent no.2 he abused the petitioner on caste lines. The incident was video-graphed by couple of persons but even the respondent no.2 snatched the mobile phones and deleted the videos and thus the respondent no.2 had brazenly violated the personal rights and liberty of the petitioner and therefore appropriate action should be initiated against the respondent no.2 and besides the petitioner may be awarded compensation of Rs. 5,00,000/-

4. The learned advocate lastly placed reliance on the decision of the Supreme Court in the case of **D.K. Basu Vs. State of W.B.; AIR 1997**

Supreme Court 610 and in the case of Sube Singh Vs. State of Haryana and Ors.; (2006) 3 Supreme Court Cases 178.

5. The learned advocate for the respondent no.2 referring to his affidavit in reply denied the allegations but admitted that the petitioner was arrested in connection with Crime No. 117 of 2015 and was remanded to police custody. He flatly denied that the respondent no.2 having paraded the petitioner in half naked condition in a public street or to have abused him on caste lines. He would submit that in fact the petitioner discovered the money stolen in the first crime which was recovered in presence of the panchas and even in the subsequent offence he was directly involved and was arrested for commission of robbery when the informant specifically named him in the F.I.R. Therefore, there was no false implication but there was a strong basis for his implication in the second crime.

6. The learned advocate further submitted that the inquiry was conducted by the Sub-Divisional Police Officer Mr. Chandrakant Alsatwar pursuant to the complaint lodged by the petitioner's sister. The findings were recorded against him merely because the relations between the respondent no.2 and Mr. Chandrakant Alsatwar were strained. The latter was having grudge against the former. The inquiry was not conducted fairly.

7. The learned advocate also submitted that no grievance was made by the petitioner when he was produced before the Magistrate on 20.06.2015. He has lodged a false complaint and the petition is also prompted by ill motives since while discharging his official duties the respondent no.2 has caused arrest of the petitioner and also implicated him in the second crime. The learned advocate would therefore submit that the respondent no.2 has not flouted any directions of the Supreme Court in the case of **D.K. Basu** (supra) nor has he committed any illegality. He had acted bona fide in discharge of his official duties. He would further submit that the alleged incident has taken place on 19.06.2015 or thereabout while the present petition has been filed belatedly on 03.02.2017 and by virtue of provisions of Section 161 of the Maharashtra Police Act, 1951 the respondent no.2 is entitled to be protected.

8. The learned A.P.P. referring to the affidavit in reply of the respondent no.4 who is the Superintendent of Police, Aurangabad Rural at the relevant time submitted that the petitioner's sister and brother had filed a complaint before the National Human Rights Commission for the same allegations regarding the atrocities. Action was initiated against the petitioner by directing an inquiry by Sub-Divisional Police Officer Mr. Chandrakant Alsatwar. He has conducted the inquiry and the respondent no.2 has been

found guilty of committing the atrocities about having paraded the petitioner and having illegally detained him in spite of grant of bail. The inquiry report has been duly submitted to the Special Inspector General of Police, Aurangabad range. A show cause notice was served to the respondent no.2 before inflicting punishment and ultimately he has been punished with Reprimand (सक्त ताकीद). However, as far as the other allegations are concerned regarding alleged ill-treatment and demand for money, it is pointed out by the learned A.P.P. that no grievance was made by the petitioner when he was produced before the Magistrate on 20.06.2015.

9. It is necessary to mention at this juncture that we do not feel it appropriate to make any comment or to scrutinize the material which is likely to have some impact on the trial of petitioner in the two crimes.

10. The petitioner has been seeking that a departmental action should be taken against the respondent no.2 and since such a departmental proceeding was initiated against him and he has been also awarded with a punishment as is pointed out by the learned A.P.P., this prayer becomes infructuous.

11. Needless to state that the rights inherent in a person under Article 21 and 22 (1) of the Constitution of India need to be protected jealously and

scrupulously. No civilized nation can permit this to happen and such a precious right guaranteed by Article 21 cannot be denied except according to the procedure established by law. In the case of **D. K. Basu** (supra) the Supreme Court had an occasion to lay down the guidelines with a view to avoid such persecution at the hands of functionaries of the Government. In the case of **Sube Singh** (supra) even it has been laid down by the Supreme Court that the Courts in an appropriate case may award compensation by invoking the powers under Article 226 of the Constitution of India for violation of Article 21. There can be no escape from such a consequence in an appropriate case.

12. In our considered view, this case presents yet another instance which requires us to invoke the power under Article 226 of the Constitution. Suffice for the purpose to observe that pursuant to the complaint lodged by the petitioner and at his instance already a disciplinary proceeding was initiated against the respondent no.2 and he has been meted out with the punishment of Reprimand (सकत ताकीद). In our considered view, the question of quantum of punishment imposed need not be gone into in this proceeding. It is sufficient for us to proceed on the premise that the respondent no.4 and his superiors have taken cognizance of the alleged misconduct and have followed the law by initiating departmental inquiry and taking it to a logical

conclusion. The matter should end at that. The respondent no.2 has been meted out with the punishment and that should be the end of the matter.

13. Simultaneously one cannot lose sight of the fact that this is a conclusive finding against the respondent no.2 about he having paraded the petitioner in a street by garlanding him with footwear and currency notes and the petitioner deserves to be awarded compensation for the atrocities meted out to him. It is admitted that the National Human Rights Commission having taken cognizance of the self same allegations has awarded a compensation of Rs.25,000/- to the petitioner. In our considered view, taking into account the aforementioned aspects, the respondent no.2 who was personally involved in the atrocities should also be made to pay additional compensation to the petitioner from his own pockets. In our considered view, it could be quantified at Rs. 75,000/-, which would meet the ends of justice and would work not only to ameliorate the suffering to which the petitioner was subjected to but would work as a deterrent against the law enforcing persons who are likely to involve in such persecution. Therefore, in addition to an amount of Rs. 25,000/- awarded by the National Human Rights Commission the respondent no.2 can be made to pay an amount of Rs. 75,000/- to the petitioner from his own pockets.

14. Now coming to the prayer for initiating prosecution against the

respondent no.2, we are of the considered view that already he has been meted out with a punishment in a departmental inquiry. In view of the provision of Section 161 of the Maharashtra Police Act, a Police Officer is protected from any prosecution belatedly. The alleged incident has taken place in the month of June-2015, whereas the present petition has been filed in the month of February-2017 which is clearly beyond the period of six months contemplated under that act. Apparently the alleged act by the respondent no.2 who was then officiating as a Police Inspector in the concerned police station was acting under the colour of his office and therefore it would not be appropriate to direct his prosecution belatedly, beyond the period of six months after occurrence of the act complained. Therefore, this prayer of the petitioner cannot be accepted.

15. The Writ Petition is accordingly partly allowed. The respondent no.2 shall pay Rs. 75,000/- to the petitioner within four weeks. The Rule is accordingly made absolute in above terms.

[MANGESH S. PATIL, J.]

[R.M. BORDE , J.]