

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.234 OF 2016

1 Ninad Deulkar **...Petitioner**
Son of Ganesh Deulkar,
Residing at Madhlawada, Sal, Post Assonora,
Bicholim, Goa – 403 503.

Versus

1 The Goa Human Rights Commission through
its Member Secretary Having their address at
Panaji, Goa (Deleted)
(Amendment carried out as per order dated
22/11/2016)

1 Babi Suresh Gaonkar,
House No.6/1, Vadacha Wada, Sirgaon,
Bicholim, Goa.

2 The State of Goa,
Through Chief Secretary, Government of Goa,
Secretariat, Porvorim, Goa.

3 The Superintendent of Police,
North Goa, Porvorim, Goa.

4 M/s. Rajaram Bandekar (Sirigao) Mines **... Respondents**
Pvt.Ltd.
Having their registered address at
601, 6th floor, Dr. Ozler Forum, Near St.
Andrew's Church, P.O. Box No.31, Vasco Da
Gama, Goa – 403 802.

Mr Nikhil Pai, Advocate for the petitioner.

Mr V.A. Lawande with Mr P. Redkar, Advocates for respondent

No.1.

Mr. Devidas Pangam, Advocate General with Mr S.P. Munj,
Additional Government Advocate for respondent Nos.2 and 3.

Mr A.D. Bhobe, Advocate for respondent No.4.

CORAM: M.S. SONAK &
BHARAT P. DESHPANDE,JJ.

RESERVED ON : 26th JUNE, 2023

PRONOUNCED ON : 28th JUNE,2023

JUDGMENT: (Per BHARAT P. DESHPANDE, J.)

1. The petitioner, a Police Officer serving with Goa Police is challenging the impugned order dated 07/01/2016 passed by the Goa Human Rights Commission, Panaji in proceedings No.13/2013.

2. On 05/01/2017, Rule was issued and the impugned order dated 07/01/2016 qua the petitioner was stayed subject to the petitioner depositing in this Court an amount of Rs.10,000/- within two weeks. After completing the pleadings, the matter was to be taken up for final disposal.

3. We have heard Mr Nikhil Pai, learned Counsel for the petitioner, Mr V.A. Lawande with Mr P. Redkar, learned Counsel appearing for respondent No.1, learned Advocate General with Mr S.P. Munj, learned Additional Government Advocate for the respondent Nos.2 and 3 and Mr A.D. Bhobe, learned Counsel appearing for respondent No.4.

4. Mr Nikhil Pai, learned Counsel for the petitioner vehemently submitted that the impugned order passed by the Human Rights Commission is perverse and illegal. He would submit that a Commission has placed reliance only on the sole testimony of respondent No.1/complainant whereas failed to take into account other evidence including the medical case papers. He then submitted that antecedent of respondent No.1 clearly goes to show that he was involved in other offences, which has been completely ignored by the Commission. He then submitted that recommendations of the Commission are unwarranted including directions to the Director General of Police to issue censure to the petitioner and to pay compensation of Rs.10,000/- which required to be recovered from the petitioner.

5. Mr Pai would submit that while conducting their duty, the petitioner and other Police Officers acted within their powers, however, the respondent No.1 created ruckus in the police station and even in the hospital and levelled false allegations against the Police Officers. He submitted that the case diary and other papers were completely ignored by the Commission and, therefore, such an enquiry report together with recommendations needs to be quashed and set aside.

6. *Per contra*, Mr Lawande, learned Counsel appearing for the respondent No.1 supported the findings of the Commission and claimed that the petitioner along with other officers acted in high handed manner and arrested respondent No.1 which was unwarranted, tortured him physically and mentally which resulted in taking him to the hospital. The

respondent No.1 remained in the hospital for 24 hours under observation as his blood pressure was found very high.

7. Mr Bhobe, learned Counsel appearing for respondent No.4/original complainant would submit that the complaints were filed against the respondent No.1 since he was found indulging in blocking of the road in front of M/s. Rajaram Bandekar Mines Pvt. Ltd.

8. Rival contentions fall for our consideration.

9. The petitioner was admittedly the in-charge of Bicholim Police Station while working as Police Inspector i.e. in January,2013. On 24/01/2013, a complaint was lodged by Mr Kamlesh Jha, the Mines Superintendent of respondent No.4, at Bicholim Police Station claiming that the main entrance road of the mine of respondent no.1 was blocked by putting stones on the road by Babi Suresh Gaonkar/respondent No.1. It is claimed in the petition that earlier numerous complaints from respondent no.4 were received which were in fact a civil dispute and therefore, police do not interfere. The petitioner on receipt of such a complaint dated 24/01/2013 from Mr Jha marked it to Head Constable H.K. Parab for enquiry. On conducting enquiry, a FIR was registered vide Crime No.17 of 2013 under Section 341 of IPC against respondent no.1. Thereafter, on 25/01/2014, Mr Jha, the Superintendent of respondent No.4 informed the petitioner that once again the road was blocked by putting stones. The petitioner thereafter immediately deputed PSI Walke along with PCR Robot Jeep 27. On reaching the said spot, the Police Officer found that the road was blocked. He instructed the staff of respondent No.4 to

remove the stones. At that time respondent No.1/Babi appeared armed with Koita in his hand. The Police Officer was informed by Mr Jha that respondent No.1/Babi is the same person against whom the complaint was lodged and who frequently used to block the road by putting stones. Accordingly, the Police Officer/PSI Walke apprehended the possibility of commission of serious offence at the hand of respondent No.1 since he was armed with Koita. Accordingly respondent No.1 was brought to the police station and placed under arrest in Crime No.17 of 2013 under Section 341 of IPC.

10. It is further contention of the petitioner that all guidelines while arresting respondent No.1 were observed and there was no mental or physical violence or abuse. It is the contention of the petitioner that respondent No.1 was acting in a manner by which he could endanger himself and others and therefore respondent no.1 was referred to Primary Health Centre, Bicholim for medical examination. During such medical examination, respondent No.1 complained of headache and without any reason, created ruckus in the Primary Health Centre and refused to take medicines as advised by Doctors at the Primary Health Centre. The petitioner therefore addressed a letter to Medical Officer, Bicholim Primary Health Centre seeking opinion of the Doctor as to whether respondent No.1 was fit for the lock up. Since respondent No.1 refused to take medicines, the Medical Officer was constrained to refer him to Asilo Hospital. The medical examination of respondent No.1 showed no physical injury on his person. Respondent no.1 was then taken to Asilo District Hospital and the Senior Resident advised that respondent No.1 to

be kept in the hospital for observation since he refused to take medicines. On the next date on 26/01/2013, the Senior Resident of Asilo Hospital certified that respondent No.1 was fit for lock up and discharged him. Accordingly, respondent No.1 was brought to the police station wherein his mother came and, thereafter, bail formalities were completed and he was released.

11. The Goa Human Rights Commission conducted an enquiry into a complaint lodged by respondent No.1 of physical and mental torture, unwarranted arrest etc at the hands of the petitioner and other officers. An enquiry was conducted by the Commission in view of Section 18 of the Protection of Human Rights Act,1993, during which evidence of the parties were recorded and thereafter findings were given vide the impugned Order dated 07/01/2016.

12. Basically, the Commission has observed that complaint lodged by respondent No.4 was in fact in connection with blockage of road and that too a bailable offence. There was no necessity for the petitioner and the other Police Officer to cause arrest of respondent No.1 and that too from his house. The commission also observed that respondent No.1 was taken to the hospital since his blood pressure was found high. Respondent No.1 was just an 18 year old boy and the dispute between him and the Officer of respondent No.4 was purely a civil dispute connected to the land where the road exists. The Commission further observed that at the most respondent No.1 was entitled for bail as a matter of right and therefore even if he was shown as arrested, ought to have been granted bail immediately. The

Commission found that the petitioner and other Police Officers of the concerned Police Station acted in the most high handed manner and with a malafide intention. The Commission then observed in paragraph 13 that such action on the part of Police is in clear infringement of fundamental rights guaranteed to a citizen under Article 21 of the Constitution of India and also violated the human rights of the complainant. Similarly, in paragraph 15, the Commission observed that the respondent No.1 who was a student and was residing with his mother with fixed habitation having firm roots in the State of Goa. There was no possibility of respondent No.1 fleeing away from justice. There is also nothing on record to indicate that respondent No.1 was desperate and rowdy in nature. On this observations the Commission further observed in paragraph 17 that the record indicates that respondent No.1 has suffered mental torture as well as physical discomfort without any fault on his part but on account of high handedness of the petitioner and other Police Officers who apparently misused their powers by curtailing liberty of the petitioner without any justification.

13. We have gone through the report of the Human Rights Commission and the case papers which are found appended to the report as well as the petition.

14. First of all the complaint lodged by Mr Jha, the superintendent dated 24/01/2013 refers to the name of respondent No.1 claiming that he blocked the approach road to the entrance of the said mine but the body of

the complaint clearly goes to show that it was clearly a land dispute. Paragraph 2 of the said complaint reads thus:

“Our Mr. Ramesh Mahadev Gaonkar, caretaker, who was coming to mines seen that Mr. Babi Suresh Gaonkar was putting the stones on the road, he requested him not to block the road. Mr. Babi Suresh Gaonkar told him that this our property and he will do anything in his property according to Mr Ramesh M. Gaonkar came to mine to collect the camera to take the photographs in between he left the premises by putting stones.”

15. The petitioner has placed reliance on the chart at Exh.3(Colly) showing three cases registered against respondent No.1, 9 NC cases and 2 chapter cases. Three cases registered against respondent no.1 includes the present Crime No.17 of 2013 for the offence under Section 341 of IPC. Other two cases are of the year 2014 i.e. subsequent to the present FIR and were lodged by Ramesh Gaonkar, the person claiming to be caretaker of the mines of respondent No.4. NC cases lodged in the year 2013 and 2014 are again in connection with giving threats and abuses. Thus, it is clear that the dispute between respondent No.4 and respondent No.1 is in connection with the approach road leading to the mine which respondent No.1 claims as owned by him and his family members.

16. Admittedly Crime No.17 of 2013 was registered with regard to offence under Section 341 of IPC reads thus:

“341. Punishment for wrongful restraint.—Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.”

17. Above offence though cognizable, is a bailable, compoundable and triable by a Magistrate.

18. In the case of **Joginder Kumar v/s. State of UP** [(1994) 4 SCC 260], the Hon’ble Supreme Court considered the powers of the police to arrest and opined as under:

“No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter.”

19. Article 21 of the Constitution of India clearly provided that no person shall be deprived of his life or personal liberty except according to

procedure established by law. The expression “life and personal liberty” includes the right to live with human dignity and further include within itself a guarantee against torture and assault by the enforcing agencies. Similarly, Article 22 of the Constitution guarantees protection against the arrest and detention in certain cases and declares that no person who is arrested shall be detained in custody without being informed of the grounds of such arrest and shall not be denied right to consult and defend himself by legal practitioner of his choice.

20. First of all the offence registered against respondent No.1 that too registered on 24/01/2013 on the basis of the complaint lodged by Mr. Jha, vide Crime No.17 of 2013 is admittedly under Section 341 of IPC only. Thus, such offence under Section 341 though cognizable, is a bailable offence. There was absolutely no need to arrest respondent No.1 in the said offence without recording reason in the case diary.

21. Even if it is considered that respondent No.1 was found at the spot with a koita when PSI Walke instructed the employee of respondent No.4 to remove the stones, there is nothing on record to show that respondent No.1 obstructed such workers or threatened to cause injuries by using koita. In that case. PSI Walke, who was present at the spot could have immediately informed the in-charge of Police Station for the purpose of adding other IPC sections against respondent No.1. There is absolutely no reasoning coming forward as to why respondent No.1 was picked up from the said spot and brought to the police station. Admittedly, offence was registered on 24/01/2013 whereas PSI Walke went to the spot on

25/01/2013 when he received information from Mr Jha that once again the road was blocked by putting stones.

22. The learned Counsel Mr Nikhil Pai tried to submit that respondent No.1 was seen holding Koita in his hand in a photograph produced at Page 59 taken from the spot. Such photograph will not help the case of the petitioner since it is not the case of the petitioner as well as that of PSI Walke that respondent No.1 threatened either the Police Officers or workers of respondent No.4 of causing any injury.

23. The letter dated 25/01/2013 addressed by the petitioner to the Medical Officer Primary Health Centre, Bicholim clearly shows that he requested for the medical examination and opinion as to whether respondent No.1 was fit to be kept in the lock up. This itself shows that the opinion was called upon in order to find out the fitness of the respondent No.1 for the purpose of lock up. When admittedly the offence registered against him was bailable in nature, first and foremost step is to inform the accused/respondent No.1 about his right to be released on bail. If he offers the bail bond, the Police Officer is supposed to release such accused on bail without any further delay. If the offence is non-bailable or if the accused fails to give bail bond in spite of informing him about his right to bail, then the step of sending such accused for medical check up and asking about his fitness is justified.

24. In this case, respondent No.1 was sent to the medical examination at Primary Health Centre, Bicholim and he was examined by the Medical Officer by 5.45 p.m. The station diary entry No.52 refers to 17.00hours

and shows that PSI Walke reported to the police station along with Babi Suresh Gaonkar/respondent No.1 and directed Head Constable to arrest the said person under Section 151 of IPC to avoid any serious offence. Thus, it shows that respondent No.1 was not even arrested under Section 341 of IPC of Crime No.17 of 2013 but was arrested under Section 151 of CrPC. In such circumstances, the letter to the Medical Officer requesting fitness of respondent No.1 to be kept in the lock up was totally unnecessary. The blood pressure of the respondent No.1 was found 180/90 when examined at Primary Health Centre, Bicholim and he was referred to Asilo for further treatment. It also shows that respondent No.1 complained of chest pain, headache and sweating. No doubt there is a remark from the Doctor that respondent No.1 refused to take medicines/tablets.

25. The discharge card from Asilo hospital shows that respondent No.1 was admitted on 25/01/2013 and discharged on the next date i.e. 26/01/2013. His blood pressure was found 160/90 and he was advised to take tablets. Respondent No.1 was declared fit for the lock up.

26. We have clearly observed that findings given by the Human Rights Commission are based on the deposition of respondent No.1 and the documents placed on record. While dealing with petition under Article 226 of the Constitution of India, we are certainly not required to re-appreciate the evidence led before the Human Rights Commission for the simple reason that enquiry conducted by said Commission was clearly within their powers and domain. The only aspect which we are entitled to

consider as to whether such findings are totally perverse and or beyond the jurisdiction.

27. The Commission in its detailed order clearly observed that there was absolutely no need to carry out arrest of respondent No.1 for the trivial matter. We see substance in such observations. The Hon'ble Apex Court in the case of **Arnesh Kumar v/s. State of Bihar and another** [2014 (8)SCC 273], clearly observed that the investigating agency needs to restrain itself from effecting unnecessary arrest. In Fact the provisions of Section 41A of the Code of Criminal Procedure which was introduced by way of amendment w.e.f. 2010, has been discussed in detail and even guidelines have been issued. In this case, there is clear violation of Section 41A of CrPC and the concerned Police Officer was duty bound to follow the guidelines issued by the Apex Court in the above decision. No doubt, Section 41 of CrPC empowered the Police Office to cause arrest in case of cognizable offence, however he must comply with the settled propositions of law by recording or satisfying himself as to whether such arrest was warranted. When the offence is bailable, the duty of the Police Officer is to inform the accused about his right to be released on bail and if the accused is ready and willing to execute bail bond, shall release him immediately. In the present case, by sending respondent No.1 for medical check up with a letter asking the Medical Officer to certify whether respondent No.1 was fit to be put into lock up, clearly shows the intention to unnecessarily detain respondent No.1. The Human Rights Commission was therefore fully justified in observing so.

28. Accordingly, we see no merit in this petition, which is required to be dismissed with costs. The petitioner got away with a minor penalty of censure and an order for payment of compensation of hardly Rs.10,000/-. As compared to the trauma faced by Babi Suresh Gaonkar, who was protesting transportation by mining trucks, the petitioner was let off rather lightly.

29. Therefore, we dismiss this petition with costs of Rs.10,000/-. Such costs must be paid by the petitioner to Babi Suresh Gaonkar within 15 days from today, failing which the concerned Superintendent of Police must ensure that this amount is deducted from the petitioner's salary and paid to Babi Suresh Gaonkar at the earliest. Further, Babi Suresh Gaonkar is permitted to withdraw compensation amount of Rs.10,000/- deposited by the petitioner in this Court after producing identity and bank details. The Registry to transfer this amount directly into Babi Suresh Gaonkar's bank account.

30. The Rule is discharged with costs.

31. All concerned to act on the authenticated copy of this Order.

BHARAT P. DESHPANDE, J.

M.S. SONAK, J.

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