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**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO.111 OF 2016**

Mr. Vishwash P. Karpe  
Son of Late Paramanand Karpe,  
Aged 39 years, Service,  
R/o H.No. F1, 1<sup>st</sup> Floor,  
S and S Complex,  
Airport Road,  
Chicalim – Goa.

... Petitioner

*Versus*

1) State of Goa  
Through Chief Secretary  
Having office at Secretariat,  
Porvorim Goa

2) Home Secretary  
Having office at Secretariat,  
Porvorim Goa

3) The Superintendent of Police  
Porvorim Goa

4) Mr. Cirilo De Souza  
Son of Jesuino A. V. D'Souza  
Aged 55 years,  
R/o H. No.719, Prias Vaddo,  
Anjuna, Bardez, Goa

... Respondents

Mr Gaurish Agni, Advocate *for the Petitioner.*

Ms Akshata Bhat, Additional Government Advocate *for the Respondents-State.*

**CORAM:** M.S. SONAK &  
VALMIKI SA MENEZES, JJ.  
**RESERVED ON:** 25<sup>th</sup> April, 2023  
**PRONOUNCED ON:** 12<sup>th</sup> May, 2023

**JUDGEMENT:** (*Per Valmiki Sa Menezes, J.*)

1. By this Petition, invoking jurisdiction under Article 226 of the Constitution of India, the petitioner impugns the inquiry report dated 24.09.2015 made by the Goa Human Rights Commission (the Commission) in Proceeding No. 06/2013. The relief sought in the Petition was for a writ of certiorari to quash the impugned inquiry report on various grounds raised in the Petition.

2. The broad facts, on the basis of which, this Petition has been instituted are as follows:

(A) The petitioner was a Police Inspector, in charge of the Anjuna Police Station at the relevant time i.e. as on 01.01.2013. Respondent No. 4 (Complainant), who was a resident of village Anjuna had telephonically called the Anjuna Police Station on 01.01.2013 at around 11:30 a.m. to make a complaint about the loud amplified music being played at a Bar called “Hill Top”, which was located next to St. Michael's Convent School (in the jurisdiction of Anjuna Police Station). According to Respondent No. 4 - the duty officer, one Mr. Krishna Shetye informed him that the said Establishment had valid permission to play amplified music,

and requested the Petitioner to come to Police Station to verify the same. Respondent No. 4 claims that when he came to the Police Station, he met the Petitioner and explained to him that the sound level of the music that was being played was at the level of 100 decibels which is much above the 55 decibels level permissible under law, requesting the Petitioner to check the levels of the sound. The Respondent claims that the Petitioner told Respondent No. 4 that it was none of his business and started abusing the Complainant and manhandled him by slapping him on his face 7-8 times and punching him on his stomach. Respondent No. 4 further alleged that the Petitioner then ordered his officer to arrest him and he was kept in the police lockup of the Anjuna Police Station for about half an hour to one hour; that Respondent No. 4 being a Human Right Activist, is actively involved in the fight to stop illegal rave parties which play loud music in his village, much beyond permissible hours, and in pursuance of this cause, several complaints have been made against clubs within the jurisdiction of Anjuna Police Station, that regularly infringe the permissible noise level, to take action against the perpetrators who play loud music.

- (B) It is further the complaint of Respondent No. 4 that when he was confined in the lockup by the Petitioner, his belongings were forcibly taken away and when he requested the Police Sub Inspector (P.S.I.) Mahesh Kerkar to take him for a

medical check-up as his ear was starting to hurt, due to physical assault meted out by the Petitioner to him; the said P.S.I. Mahesh Kerkar returned his belongings but not his mobile phone. That he was detained at the Police Station till about 2:30 p.m. when one Krishna Shetye returned his mobile phone. That said Hawaldar Krishna Shetye refused to take down the complaint of Respondent No. 4 against the Petitioner and no FIR was registered by the said Police Station on that date.

- (C) Respondent No. 4 then reported that it was only when his friend Raju Shirodkar, who was aware that he had gone to the Police Station came to the Police Station to check on him and after that, the Complainant was released after being threatened by the Petitioner and being warned before leaving the Police Station. The Complainant/Respondent no. 4 herein then made a complaint on 01.01.2013 stating all these facts to the Superintendent of Police, the Police Inspector and the SHO at Porvorim. Since no action was taken on his complaint, Respondent No.4 then filed a more detailed complaint on 08.01.2013 addressed to the Superintendent of Police of North Goa, the Chief Minister, the Chief Secretary and the Goa Human Rights Commission seeking action against the Petitioner for having committed the assault on the Complainant and for illegally detaining the Complainant.

- (D) The complaint dated 08.01.2013 was taken up by the State Human Rights Commission which instituted an inquiry in terms of the provisions of Sections 13 and 17 read with Sections 21 and 29 of the provisions of the Protection of Human Rights Act, 1993.
- (E) In the inquiry conducted by the State Human Rights Commission, evidence was recorded on oath, by the Commission on behalf of the Complainant i.e. Respondent No.4 and by the Petitioner; the Complainant/Respondent No.4 examined himself and two witnesses Rajendra Shirodkar and a medical practitioner Dr. Jawaharlal Henriques. The Petitioner examined himself and three other police officers, P.C. Anant Pawar, P.S.I. Mahesh Kerkar and H.C. Krishna Shetye were examined as supporting witnesses.

All these witnesses, both for the Petitioner and Respondent No.4 were cross-examined by Advocates who appeared for respective parties, during the course of inquiry before the Commission.

- (F) The Commission, on considering the evidence produced by the parties during the course of the inquiry and statements of the witnesses, arrived at a finding that the Petitioner in fact indulged in gross abuse of power by having assaulted Respondent No.4/Complainant and also by illegally detaining the Complainant at the Police Station. Accordingly, the Commission, after concluding that the

Secretary, Home Department has taken a very casual approach towards this grave act, has directed the State of Goa, through the Chief Secretary to pay an amount of ₹ 5,000 as compensation to the Complainant and further held that it would be open to the State Government to recover this amount from the petitioner.

3. In the backdrop of these facts, the main contentions raised by the Petitioner in challenge to the impugned order are the following:-

- (A) That the inquiry report suffers from perversity as the findings rendered therein are not based upon the facts found in the evidence of the parties; that the Commission has ignored the omissions which have been brought on record during the course of cross-examination, as these omissions amount to a contradiction of the original stand of the Complainant.
- (B) That there is a failure on the part of the Commission to appreciate the evidence of the Complainant, more so of the fact that the Complainant had attempted to improve upon the original case set up by him in the complaint. There is also a failure of the Commission in appreciating the evidence of the second witness Rajendra Shirodkar, who was not actually a witness to the alleged incident of detention of the Complainant or the assault by the Petitioner on the Complainant.
- (C) That the finding of the Commission, that there were no grounds to disbelieve the evidence of CW3 Dr. Jawahar

Henriques, is perverse, as the certificate and report submitted by the said doctor itself would demonstrate that the documents were concocted and fabricated only to assist the Complainant; that in any event, the contents of the doctor's certificate were inconclusive as to the nature of injuries that the Complainant claimed were inflicted upon him by the Petitioner.

(D) That the Commission has erroneously discarded positive evidence brought on record by the Petitioner and his witnesses, leading to the erroneous finding that the Petitioner had acted in violation of the provisions of Article 12 of the Constitution of India or in violation of human rights laws.

4. We have heard learned Advocate Mr Gaurish Agni for the Petitioner and Ms Akshata Bhat, Additional Government Advocate for Respondent Nos.1, 2 and 3. Respondent No.4-Complainant, though served, did not appear at the time of the final hearing of this petition.

We have perused the entire record of the proceeding No.06/2013 of the Goa Human Rights Commission, the evidence led by the parties before it, the documents produced in the inquiry and the impugned report.

5. Learned Advocate Mr Gaurish Agni for the Petitioner has taken us through the original complaint dated 01.01.2013 filed before the Superintendent of Police/Police Inspector/Station House Officer wherein the Complainant stated that on 01.01.2013 at around 12:00 noon, when he came to the Anjuna Police Station to complain about loud

amplified music being played at “Hill Top”, Anjuna, the Petitioner abused him, manhandled him, slapped him 7 or 8 times on his face and body and then ordered the police personnel in the Police Station to arrest him and throw him in the lockup; that the complaint further records that the Complainant requested the Petitioner and other officers to send him for a medical checkup but nothing was done about his request. After 30 minutes, his belongings including his mobile phone were returned to him at the Police Station and he was asked to leave the Police Station.

We were then taken through the facts stated in the second complaint dated 08.01.2013, filed by Respondent No.4-Complainant to the Superintendent of Police, North, Chief Minister, Chief Secretary, Sub-Divisional Police Officer, Mapusa and to the Goa Human Rights Commission, wherein the Complainant states that on 01.01.2013 at around 11:30 a.m., he was assaulted by the Petitioner when he came to the Police Station, Anjuna to complain about loud amplified music being played at a bar called “Hill Top” at Vagator/Anjuna situated at a silent zone. In that complaint, Respondent No.4 averred that the Petitioner took revenge on him since he was alone and had in the past agitated about the authorities not taking any steps to stop illegal rave parties; that the Complainant was beaten up by the Petitioner, warned that the party organizers with some anti-social elements wanted to attack him and beat him up along with his group of protesters, and that the Petitioner would support these people. In this complaint, it is further alleged that the Complainant's friend Raju Shirodkar had come to the Police Station to look for him, as he had been detained by the Petitioner for more than three hours, and that the said Raju was present at the time when the

Petitioner threatened him. This complaint further records that the Petitioner has a number of cases filed against him at various police stations, including at Goa Velha Police Station.

6. It was further submitted by the Petitioner that a comparison of the statement made in the first complaint dated 01.01.2013 and the facts stated in the complaint of 08.01.2013 would clearly show that the Complainant had attempted to improve upon his version stated in the first complaint. It was then argued that the affidavit in evidence of the Complainant, CW1, before the Commission, had further improved upon the first two complaints made by Respondent No.4, and that the first two complaints were devoid of any statement made by Respondent No.4 to the effect that he took medical treatment from a doctor immediately after the alleged assault; that the version stated in the affidavit in evidence has falsely improved upon the earlier version by stating that the Complainant took medical assistance from one Dr. Jawaharlal Henriques. It is the Petitioner's submission that not only is there an omission on the part of the Complainant in the two complaints about seeking medical help, but the Complainant for the first time introduced in his evidence, a medical certificate issued by the doctor, which clearly points to the fact that the Complainant was attempting to improve his case and falsely implicate the Petitioner, by concocting evidence such as the medical certificate issued by the doctor.

It was then submitted that during the course of the cross-examination of the Complainant, there are material contradictions brought out, the first being that there was no mention of the presence of

the second witness Rajendra Shirodkar, and the other being that there was no mention of the Petitioner having visited a private hospital for medical treatment. It was further submitted that the Complainant had no explanation to offer when confronted with these two omissions, and in law, these omissions would amount to material contradictions, which ought to have been considered by the Commission whilst arriving at its findings. Consequently, the findings recorded by the Commission in its report, that the Complainant had sufficiently proved through witness Shirodkar and Dr. Henriques, that he had in fact been assaulted by the Petitioner, were perverse findings and findings which were not based upon legal evidence.

7. The next submission of learned Counsel for the Petitioner makes reference to the affidavit in evidence and cross-examination of Shri Rajendra Shirodkar, witness for the Complainant (CW2), which according to the Petitioner, does not allege that the Petitioner had assaulted the Complainant. The Petitioner then refers to the cross-examination of this witness and submits that the evidence of this witness is unreliable since he is the Complainant's friend, and in any event, since there was no mention of this witness in the original complaint, Rajendra Shirodkar has been put up as a witness only as an afterthought and to embellish the case of the Complainant.

The Petitioner then submits that the entire evidence of CW3-Dr. Jawaharlal Henriques ought to be discarded as there was no reference made by the Complainant to the fact that he had referred himself for medical treatment after the alleged incident; it was submitted that the

evidence of the doctor stating that he had examined the Complainant on 01.01.2013, is false and cooked up against the Petitioner. That the medical certificate issued to the Complainant by this doctor has been created only for the purpose of leading evidence in the case, more so since the doctor has chosen not to inform the police about the assault on the Complainant.

8. It is further submitted by the Petitioners that the Commission has completely ignored the evidence of the Petitioner, who, though admits that he was present at the Police Station, Anjuna, when the Complainant came there on 01.01.2013, but has denied the entire incident in the manner that the Complainant alleges that it has taken place. It was submitted that the other witnesses who were present on that day i.e. PSI Mahesh Kerkar, Police Constable Anant Parwar and Head Constable Krishna Shetye were examined, and their depositions clearly suggest that the incident as alleged by the Complainant did not take place on the relevant day. It was submitted that ocular evidence led before the Tribunal by the above-referred three witnesses in favour of the Petitioner, could not be discarded merely because they were from amongst the police personnel present at the Police Station when the incident is alleged to have taken place. By discarding this evidence, it was submitted that the Commission has arrived at perverse and one-sided findings, and such a process is contrary to basic principles of law, where the entire evidence before the Commission ought to have been marshalled and the findings to have been arrived at on the reading of the totality of the evidence before it.

9. Respondent Nos.1, 2 and 3 have chosen to support the Petitioner, and as noted by the Commission in its report, have neither initiated any investigation into the complaint nor taken any disciplinary action against the Petitioner.

The affidavit filed by Respondent Nos.1, 2 and 3 before the Commission through Shri B. Vijayan, Chief Secretary and Secretary (Home), Government of Goa, merely adopts the reply filed by the Petitioner before the Commission. Strangely, the verification clause of the reply filed by the Chief Secretary, Government of Goa affirms that the contents of the paragraphs of his reply are based upon the reply filed by Respondent Nos.5 and 6. The affidavit is conspicuous by its silence on the action contemplated by the State of Goa against the Petitioner, on the basis of specific complaints of assault and illegal detention by Respondent No.4 against the Petitioner. The reply of the Chief Secretary is also silent about the stand of the Government of Goa on inquiring into the serious allegations made by the Complainant, which if taken at face value, are direct infringements of his right to life under Article 21 of the Constitution of India. The least that would be expected of the highest officer of the Executive of the State would be to inquire into such serious allegations, more so since they concern the liberty of a citizen and it would be the bounden duty of the State machinery to protect and uphold the fundamental rights at all costs.

Be that as it may, there was no witness examined or evidence led or any further material placed by the Government of Goa and the Home

Department on the record of the Human Rights Commission, to state what action would be taken by it on the complaint.

10. We now proceed to examine the evidence led before the Commission, in order to test whether there was any perversity in the findings arrived at by the Commission or whether the Commission had acted in any manner outside the bounds of its jurisdiction under the Protection of Human Rights Act, 1993.

Whilst reading through the evidence led by the parties before the Commission, we are mindful of the fact that this Court's jurisdiction under Article 226 of the Constitution of India is not one akin to the one exercised by an Appellate Forum, nor would this Court embark upon a reappraisal of the entire evidence before the Commission, to arrive at conclusions different from the ones arrived at by the Commission or to take any other possible view in the matter. Being mindful of the jurisdiction of this Court to be exercised under Article 226 of the Constitution of India, the purpose of scanning through the evidence recorded by the Commission is only to test whether there is any perversity in the findings arrived at and to conclude whether the principles of natural justice and fair play were adhered to by the Commission in the entire process of arriving at the conclusion contained in the inquiry report.

11. There is no doubt that in the original complaint dated 01.01.2013 and in the second complaint of the Commission dated 08.01.2013, the Complainant may have omitted to make a mention of his visit to Dr

Jawaharlal Henriques for treatment, after the alleged incident. There also does not appear to be any mention made of the medical certificate issued by the said doctor to the Complainant after he was examined. However, the omission of recording these facts by themselves would by no means have the effect of negating the occurrence of the alleged incident of assault and illegal detention, nor is it the Petitioner's case that the Complainant had any specific motive or past enmity with the Petitioner to impel him to create false evidence against the Petitioner.

A reading of the affidavit in evidence of the Complainant clearly, and in unequivocal terms, specifies with great detail that the Petitioner, on 01.01.2013, somewhere around 11:30 a.m. to 12:00 p.m., assaulted the Complainant by slapping him on his face about 7 to 8 times and punched him in his stomach. The Complainant's evidence specifically records that thereafter the Petitioner forced him into the lockup and kept him in the lockup for about half an hour to one hour, meaning thereby, the Petitioner illegally detained or unlawfully restrained the Complainant within the lockup, without recording any FIR or complaint against Respondent No.4 or making any entry in the station diary, of the incident.

If one reads the statement in evidence of the Petitioner, the Petitioner specifically admits that the Complainant did come to the Police Station on 01.01.2013 at 12:00 p.m., met him, and alleged that there was loud music being played at Hill Top restaurant. The Petitioner states in his cross-examination that he did not register any oral complaint about loud music at the behest of the Complainant on 01.01.2013. He also

admits that the volume level of the music alleged by the Complainant could not be verified since the device to measure the volume of the sound in possession with the Police Station was not working.

12. From the facts stated by the Petitioner, it is quite clear, that on his own admission, neither the complaint was recorded about the loud music, nor was any attempt made to stop the music or to ascertain its volume, thereby giving a clear impression that the Petitioner was either in connivance with the persons who were playing the music at the said Hill Top bar, or the Petitioner had committed an act of dereliction of his duty by refusing to record the complaint and to investigate the same.

This Court cannot turn a Nelson's eye to the rampant abuse of the provisions of the Environment Protection Act, 1986 the Air (Prevention and Control of Pollution) Act, 1981 and the regulations made thereunder which clearly specify the ambient noise levels permitted at maximum 55 decibels. We have taken judicial notice of the rampant infraction of this law, committed by restaurants, bars and nightclubs all over the coastal areas of Goa, and the inaction of the Police and the State in curbing this menace and illegal activity. Several Public Interest Litigations are pending before this Court wherein directions have been passed from time to time against the authorities, including the officers of Anjuna Police Station, for their inaction to curb this menace of playing loud music, both during the day and late into the night, beyond the ambient noise levels specified by law.

13. We then come to the cross-examination of the Complainant on the aspect of having obtained medical help, after the alleged incident, and the submission that he omitted to state this fact in his complaint. The Complainant's cross-examination reveals that he was alone when he filed his complaint at the Police Station on 01.01.2013. The cross-examination further reveals that he was illegally confined in the lockup for about half an hour to one hour and his belongings including his mobile phone, were taken away from him. He admits that he was released from the lockup at about 1:30 p.m. on the same day, that after his release, he went to the nearest hospital, which is a private hospital for medical treatment at about 3:00 p.m. and the doctor examined him for the pain he was having in his left ear, his stomach and chest. A reading of the cross-examination would in no manner suggest that the witness has been shaken in his deposition and stands by the material part of his statement i.e. incident of the assault, the illegal detention and getting medical help thereafter.

To corroborate these statements, Dr. Jawaharlal Henriques was examined, who deposed on oath that he had, in fact, examined the Complainant on 01.01.2013 and had issued a medical certificate of the same date to the Complainant. His cross-examination is restricted to four lines, wherein he states that the Complainant was not his personal friend and that he did not inform the police about the assault alleged by the Complainant. He rules out that the injuries seen by him on the body of the Complainant were self-inflicted. He also stated that there were no bloodstains on the body of the Complainant. Other than this cross-examination, there appears to be no cross-examination on the contents of the medical certificate issued by him, which specifically records three

injuries noted on examination. The first injury was a contused lacerated wound (CLW) on the right inner cheek 1 cm x ½ cm. The second is trauma to the left ear, and the third, is a soft tissue injury (STI) on the left side of the abdomen. The cause of the injuries was stated to be a blunt object and the injuries were found to be less than six hours old.

The medical evidence of the doctor clearly suggests a cut inside the right cheek, trauma to the left ear and a soft tissue injury to the left side of the abdomen, all of which match up to the specific description of the areas of which the Complainant alleged the Petitioner had assaulted him i.e. slaps on the cheek, punches to his abdomen and a slap to his ear. There is no reason for disbelieving the evidence given by the doctor as it is not the Petitioner's case that there was some past enmity or any ulterior motive that either the Complainant or the doctor had against the Petitioner to create such evidence against him. From this evidence alone, there would be no reason to disbelieve these witnesses and the evidence of assault on the Complainant.

14. The three witnesses who have deposed on behalf of the Petitioner are officers who were subordinate in rank and under the direct command and authority of the Petitioner. All three officers worked under the authority of the Petitioner at the Anjuna Police Station on the relevant date, which is 01.01.2013. Their evidence clearly corroborates the statement of the Complainant that he did come to the Police Station at around 12:00 noon on 01.01.2013 and did lodge a complaint about loud music being played at Hill Top bar on which no action was taken by any of these officers. Their statements clearly support the case of the

Complainant that the officers at Anjuna Police Station, including the Petitioner, were not in the mood to take any action against the management of Hill Top bar for playing loud music.

Though the evidence denies any assault on the Complainant or that he was thrown into the lockup, the consistency with which all three officers have supported the Petitioner is a pattern that has emerged over decades, and of which Courts in India have taken cognizance.

15. In *Munshi Singh Gautam (Dead) and Ors. vs. State of M.P.*, reported in (2005) 9 SCC 631, the Supreme Court was dealing with a case of custodial death and the consideration of evidence led by police officers of the Police Station where the deceased detainee died. In that case, whilst examining the depositions of the police personnel at the Police Station, all of whom supported the accused police officers who were alleged to have assaulted and caused the death of the detainee, the Hon'ble Supreme Court has observed as under:-

“ *If you once forfeit the confidence of our fellow citizens you can never regain their respect and esteem. It is true that you can fool all the people some of the time, and some of the people all the time, but you cannot fool all the people all the time*”, said Abraham Lincoln. This Court in *Raghubir Singh v. State of Haryana* (AIR 1980 SC 1087) and *Shakila Abdul Gafar Khan (Smt.) v. Vasant Raghunath Dhoble and Another* (2003 (7) SCC 749), took note of these immortal observations while deprecating custodial torture by the police.

2. *Custodial violence, torture and abuse of police power are not peculiar to this country, but it is widespread. It has been the concern of international community because the problem is universal and the challenge is almost global. The Universal Declaration of Human Rights in 1948 which marked the*

*emergence of a worldwide trend of protection and guarantee of certain basic human rights stipulates in Article 5 that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Despite this pious declaration, the crime continues unabated, though every civilized nation shows its concern and makes efforts for its eradication.*

*3. If it is assuming alarming proportions, nowadays, all around it is merely on account of the devilish devices adopted by those at the helm of affairs who proclaim from roof tops to be the defenders of democracy and protectors of peoples' rights and yet do not hesitate to condescend behind the screen to let loose their men in uniform to settle personal scores, feigning ignorance of what happens and pretending to be peace-loving puritans and saviours of citizens' rights.*

*5. The diabolic recurrence of police torture resulting in a terrible scare in the minds of common citizens that their lives and liberty are under a new and unwarranted peril because guardians of law destroy the human rights by custodial violence and torture and invariably resulting in death. The vulnerability of human rights assumes a traumatic torture when functionaries of the State whose paramount duty is to protect the citizens and not to commit gruesome offences against them, in reality perpetrate them. The concern which was shown in Raghbir Singh's case (supra) more than two decades back seems to have fallen on deaf ears and the situation does not seem to be showing any noticeable change. The anguish expressed in Gauri Shanker Sharma v. State of U.P. (AIR 1990 SC 709), Bhagwan Singh and Anr. v. State of Punjab (1992 (3) SCC 249), Smt. Nilabati Behera @ Lalita Behera v. State of Orissa and Ors. (AIR 1993 SC 1960), Pratul Kumar Sinha v. State of Bihar and Anr. (1994 Supp. (3) SCC 100), Kewal Pati (Smt.) v. State of U.P. and Ors. (1995 (3) SCC 600), Inder Singh v. State of Punjab and Ors. (1995(3) SCC 702), State of M.P. v. Shyamsunder Trivedi and Ors. (1995 (4) SCC 262) and by now celebrated decision in Shri D.K. Basu v. State of West Bengal (JT 1997 (1) SC 1) seems not even to have caused any softening of attitude in the inhuman approach in dealing with persons in custody.*

6. Rarely in cases of police torture or custodial death, direct ocular evidence of the complicity of the police personnel alone who can only explain the circumstances in which a person in their custody had died. Bound as they are by the ties of brotherhood, it is not unknown that the police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues - and the present case is an apt illustration - as to how one after the other police witnesses feigned ignorance about the whole matter.”

(emphasis/underlining supplied)

16. As specifically noted by the Hon'ble Supreme Court in the aforesaid judgement, direct ocular evidence of the complicity of the police personnel within the Police Station, who are the only witnesses to the circumstances in which the person in their custody died, is almost never available, as such personnel, invariably are bound by their ties of brotherhood. It is by now a common trend in all such cases, that police personnel who are witnesses to excesses such as the one complained of in this case, where by way of assaulting a citizen or illegally detaining him, always feign ignorance about the whole matter, when called upon to depose before a Court or Tribunal. This same trend has also been noted by the Hon'ble Supreme Court in a catena of decisions, to make reference to one such in ***Prithipal Singh and Ors. vs. State of Punjab and Anr***, reported in (2012) 1 SCC 10 as under:-

*“25. Police atrocities in India had always been a subject-matter of controversy and debate. In view of the provisions of Article 21 of the Constitution, any form of torture or cruel, inhuman or degrading treatment is inhibited. Torture is not permissible whether it occurs during investigation, interrogation or otherwise. The wrong-doer is accountable and the State is responsible if a person in custody of the police is deprived of his life except in accordance with the procedure established by law. However, when*

*the matter comes to the court, it has to balance the protection of fundamental rights of an individual and duties of the police. It cannot be gainsaid that freedom of an individual must yield to the security of the State. The Latin maxim *salus populi est suprema lex* - the safety of the people is supreme law; and *salus reipublicae suprema lex* - the safety of the State is the supreme law, coexist. However, the doctrine of the welfare of an individual must yield to that of the community.*

*26. The right to life has rightly been characterised as "supreme' and 'basic'; it includes both so-called negative and positive obligations for the State". The negative obligation means the overall prohibition on arbitrary deprivation of life. In this context, positive obligation requires that State has an overriding obligation to protect the right to life of every person within its territorial jurisdiction. The obligation requires the State to take administrative and all other measures in order to protect life and investigate all suspicious deaths.*

*27. The State must protect victims of torture, ill-treatment as well as the human rights defender fighting for the interest of the victims, giving the issue serious consideration for the reason that victims of torture suffer enormous consequences psychologically. The problems of acute stress as well as a post-traumatic stress disorder and many other psychological consequences must be understood in correct perspective. Therefore, the State must ensure prohibition of torture, cruel, inhuman and degrading treatment to any person, particularly at the hands of any State agency/police force.*

*28. In addition to the protection provided under the Constitution, the Protection of Human Rights Act, 1993, also provide for protection of all rights to every individual. It inhibits illegal detention. Torture and custodial death have always been condemned by the courts in this country. In its 113th report, the Law Commission of India recommended the amendment to the Evidence Act, 1872 (hereinafter called "the Evidence Act"), to provide that in case of custodial injuries, if there is evidence, the court may presume that injury was caused by the police having the custody of that person during that period. Onus to prove contrary*

*is on the police authorities. Law requires for adoption of a realistic approach rather than narrow technical approach in cases of custodial crimes. (Vide Dilip K. Basu v. State of W.B. (1997) 6 SCC 642), N.C. Dhoundial v. Union of India (2004) 2 SCC 579 and Munshi Singh Gautam v. State of M.P. ((2005) 9 SCC 631.*

*34. Thus, in view of the above, in absence of any research/data/material, a general/sweeping remark that a "substantial majority of the population in the country considered the police force as an institution which violates human rights" cannot be accepted. However, in a given case if there is some material on record to reveal the police atrocities, the court must take stern action against the erring police officials in accordance with law."*

17. In view of the observations made by the Hon'ble Supreme Court on this trend that has emerged over the years, of the consistency with which police officers at Police Stations, in an act of camaraderie that fellow officers protect each other during inquiries into incidents of police excesses, the evidence recorded before the Commission, especially that of the three police personnel supporting the Petitioner in their depositions, would have to be viewed with more circumspection.

The cross-examination of the Petitioner reveals at least five complaints being made against him by different persons, before the State Police Complaints Authority (SPCA), for excesses committed by him in his line of duty as a police officer. The details of these complaints as admitted by the Petitioner in his cross-examination are:-

(A) Complaint by one Jowett D'souza on which the SPCA directed the Petitioner to render social service; Petitioner did not file any appeal against the order of the SPCA and stated that he intended to prefer such an appeal.

- (B) Complaint by one Paul Fernandes which was later withdrawn.
- (C) Complaint by one Ganadish Chari on which the SPCA recommended censure which was accepted by the Government.
- (D) Complaint by Mandesh Govenkar which was withdrawn.
- (E) Complaint by Iries Rodrigues which was withdrawn.

The Petitioner did not disclose in his affidavit-in-evidence these facts, and on the contrary, claimed in paragraph 10 of this affidavit-in-evidence that he had an unblemished service record. From this evidence, it appears, as admitted by the Petitioner himself, that he has a past history of at least five complaints having being made against him before the SPCA, in which, the SPCA, has at least on two of these complaints censured the Petitioner or directed the Petitioner, as a punishment, to render social service.

18. PSI Mahesh Kerkar who was deputed by the Petitioner to verify the complaint made by Respondent No.4 with regard to loud music at Hill Top restaurant, has deposed in his cross-examination that he went to the restaurant and verified the noise level but had not carried the decibel meter with him when he went to the site. He then deposed that when he went to the spot, he found music being played but not played loudly, though he admits that the noise level can be ascertained only by measuring it with a decibel meter. He also admits that no entry was made by him in the station diary of his exiting the Police Station when he went to the Hill Top restaurant or entry made on his return to the Police Station, in the station-diary. He also admits that though the Complainant

has been alleged to have used abusive and foul language with the police personnel at the Police Station, no complaint was made by him or other personnel against the Complainant, even though their depositions clearly allege the offence having been committed against public servants by the Complainant.

So also, Krishna S. Shetye-Head Constable, who claims to have witnessed the Complainant's utterances, deposed that no action was taken by the police personnel against the Complainant.

The normal expected reaction from the number of police officers who have deposed of the Complainant's insulting behaviour against public servants, it would have been expected that some entry would have been made either regarding an offence or detaining the Complainant for his alleged misbehaviour against a public servant. In the natural course of things, this behaviour of the Petitioner and his witnesses itself would lead one to believe that all the depositions appear to have been tailor-made to support the Petitioner.

19. The Protection of Human Rights Act, 1993 was enacted by Parliament to give effect to the International Covenants on Civil and Political Rights and to Economic, Social and Cultural Rights, adopted by the General Assembly of the United Nations on 16.12.1966, to which India was a party. The statement of objects and reasons records that amongst the salient features of the Act was the power given to the State Government to set up a Human Rights Commission in which powers would be vested as a fact-finding body, to conduct inquiries into complaints of violation of Human Rights. The objects further specify that

the Commission would be assisted by investigating agencies of the State Government.

Under the scheme of the Act, the functions and powers of the Commission are set out under Chapter III, wherein Section 12 empowers the Commission to inquire, suo moto or on a petition presented to it by a victim or any person on his behalf into a complaint of a violation of Human Rights or negligence in the prevention of such violation by a public servant.

Section 13 of the Act, empowers the Commission, while inquiring into such complaints to have all powers of a Civil Court trying a suit including the power to summon and enforce the attendance of witnesses and examine them on oath. In addition, under Section 14 of the Act, the Commission may, for the purpose of conducting an investigation pertaining to the inquiry, utilize the services of any officers or investigating agency of the Central or State Government.

**20.** Chapter IV of the Act sets down the procedure to be followed by the Commission, in which Section 17 specifies, that while inquiring into the complaints of violation of Human Rights, the Commission may call for information or a report from the State Government or any other authority or organization subordinate thereto and if it considers necessary, initiate an inquiry. Section 18 specifically empowers the Commission to, if such inquiry discloses the commission or violation of Human Rights or the negligence by public servants in preventing the violation of a Human Right, to recommend to the concerned Government or Authority to make compensation to the Complainant, to

initiate proceedings for prosecution or suitable action against such a public servant and to also send a copy of its inquiry report together with its recommendations to the concerned Government or Authority, and such Government or Authority shall within a period of one month forward its comments on the report including the action taken or proposed to be taken therein to the Commission.

**21.** The setting up of the State Human Rights Commission is envisaged under Chapter V of the Act, wherein Section 21 requires the State Government to constitute the State Human Rights Commission, while Section 29 specifically provides that the provisions of the aforementioned Sections 9, 10, 12, 13, 14, 15, 16, 17 and 18 shall apply to the State Commission. The Goa Human Rights Commission set up pursuant to Section 21 of the Act is vested with all powers and is required to function in the manner specified under Sections 9, 10, 12, 13, 14, 15, 16, 17 and 18.

**22.** In the present case, the Commission has proceeded with the complaint under Section 12(a)(i)(ii) by treating the Petitioner's complaint dated 08.01.2013 as a petition. It then proceeded to conduct an inquiry as envisaged under Section 13, read with Section 17 of the Act. From the grounds raised in the petition, no specific grievance has been made by the Petitioner that the Commission has not adhered to the principles of natural justice or that the procedural mandate of the Act has not been followed. Going by the record, the Petitioner has been granted a full opportunity to cross-examine the Complainant and his witnesses; all

documents relied upon by the Complainant have been furnished in advance to the Petitioner giving full opportunity to the Petitioner to consider the Complainant's case. The Commission has allowed both the Petitioner and the Complainant to be represented by Advocates, thus giving them every opportunity to take legal assistance in the matter. There can be thus, no infirmity found in the procedure followed by the Commission whilst conducting the inquiry.

**23.** This brings us to the findings arrived at by the Tribunal and whether the same can be accepted as reasonably borne from the evidence recorded during the inquiry. The two main findings of fact recorded by the Commission are that the witness Rajendra Shirodkar (CW2) had corroborated the Complainant's statement that he was put by the Petitioner in the lockup when the said Rajendra deposed that he saw the Complainant in the lockup, and thereafter he was released within five minutes after Rajendra reached the Police Station. The second finding returned by the Commission after holding the inquiry was that the deposition of Dr Jawaharlal Henriques established that the Complainant had sustained injuries on account of the assault by the Petitioner, reference being made to the three injuries described in the medical certificate, as detailed by us in paragraph 14 above.

The Commission has also taken into consideration the evidence of the Petitioner himself and the extract of the station diary dated 01.01.2013 at Serial No.40 which shows that the Petitioner had left the Police Station at 13:15 hours and further indicates that at Serial No.52, he returned only at 17:15 hours. The Commission has further held that from

these records it was established that the Petitioner was at the Police Station during the period of the alleged incident.

24. The findings, as referred to by us in the preceding paragraphs, arrived at by the Commission, are based on the evidence before it and the view taken by the Tribunal whilst arriving at these factual findings can by no means be considered unreasonable or not based upon the evidence before it. In fact, we find it difficult to convince ourselves, based upon the entirety of evidence on record, to take any other view, than the one taken by the Commission in its report. We are, therefore, of the opinion, that the findings of fact arrived at by the Commission are neither perverse nor unreasonable and are based purely on the evidence before it. We see no reason to interfere with these findings.

25. The Commission, at paragraphs 11 and 12 of its report has recorded that the higher officers of the Petitioner, including the Chief Secretary and Secretary (Home) have taken a very casual approach to this case and have taken a very mechanical approach to dealing with the seriousness of the matter, which involves the personal liberty of an individual. After making reference to the fundamental rights of the Complainant guaranteed under Article 21 of the Constitution of India, the Commission has specifically recorded that the acts complained of, amount to a violation of the Complainant's Human Rights and ought to have been properly investigated by higher officers of the State of Goa, more so by the Secretary (Home) who is the immediate Controlling and Supervising Officer of the Petitioner. The Commission also notes that

the Secretary (Home) and the State of Goa chose not to inquire into the serious allegations thereby acting as an accessory to the denial of the Complainant's fundamental rights protected under Article 21 of the Constitution of India.

26. We are entirely in agreement with the conclusions arrived at by the Commission of the dereliction in duty, on the part of the Secretary (Home) and the higher police officials, including the Superintendent of Police under whom the Petitioner was directly subordinate, in supporting the acts of the Petitioner, of violation of the Complainant's Human Rights and his right to liberty guaranteed under Article 21 of the Constitution of India.

In *Prithipal Singh* (supra), the Supreme Court has observed as under:-

*“86. Police atrocities are always violative of the constitutional mandate, particularly, Article 21 (protection of life and personal liberty) and Article 22 (person arrested must be informed the grounds of detention and produced before the Magistrate within 24 hours). Such provisions ensure that arbitrary arrest and detention are not made. Tolerance of police atrocities, as in the instant case, would amount to acceptance of systematic subversion and erosion of the rule of law. Therefore, illegal regime has to be glossed over with impunity, considering such cases of grave magnitude.”*

In the present case, the Government of Goa has filed an affidavit of the Secretary (Home) before the Commission only reiterating the contents of the affidavit in reply filed by the Petitioner and other parties. The affidavit of the Secretary (Home) is totally silent as to what action

the State proposes to take against the Petitioner on the complaint which contains allegations of serious violation of the Complainant's Human Rights and his fundamental right to liberty under Article 21 of the Constitution of India.

It appears from the inaction demonstrated by the Government of Goa in the present case, that it has not even bothered to order an independent investigation into the complaint which is of serious nature, thereby lending its support to police officers who indulge in Human Rights atrocities, and becoming an accessory to the act of denial of a citizen's Human Rights and his fundamental rights guaranteed under Article 21 of the Constitution of India.

27. For the above reasons, we find that there is no case made out for interference with the findings arrived at in the inquiry report dated 24.09.2015 of the Goa Human Rights Commission, or with its recommendations to the State of Goa/Government of Goa. Accordingly, the writ petition is dismissed with costs of ₹10,000/-. The costs must be deposited in this Court within four weeks from today.

28. The Rule is discharged. The interim order is vacated.

29. Having considered all these facts, we deem it fit to direct the Secretary (Home), Government of Goa to give effect to the report dated 24.09.2015 of the Goa Human Rights Commission and to implement the recommendations made therein within 30 days.

The Secretary (Home) who is the Controlling and Supervising Officer of the Petitioner, shall institute an inquiry into the allegations made by the Complainant which are contained in the complaints dated 01.01.2013, 08.01.2013 and contained in the evidence of the Complainant recorded by the Commission, and take necessary action in terms of the disciplinary rules applicable to the Petitioner. The Secretary (Home) shall consider the contents of the orders passed by the SPCA, referred to by us in paragraph 18, whilst considering the past record of the Petitioner. We hope that the directions issued herein would be followed by the Secretary (Home) expeditiously.

**VALMIKI SA MENEZES, J.**

**M.S. SONAK, J.**

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