

**ODISHA HUMAN RIGHTS COMMISSION**  
**2<sup>nd</sup> Floor, Toshali Bhawan, Satyanagar**  
**Bhubaneswar-751007**

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OHRC Case No. 1164 of 2016

Shri Adhikari Sudhansu Sekhar Das

... Petitioner

**ORDER**

The allegation of the petitioner Adhikari Sudhansu Sekhar Das, a resident of Plot No.293, Sastri Nagar, Bhubaneswar, in brief, is that when he being called by the IIC, Government Railway Police Station, Bhubaneswar Shri Soubhagya Kumar Swain reached the Police Station on 8.3.16 around 12 noon, the said IIC had not only abused him in obscene languages but also demanded Rs.30,000/- from him to let him off, but when he did not agree to such an illegal and unreasonable demand, he was kept in the lock-up without giving him any food. The petitioner also alleged that the concerned IIC also forced him to ask the Driver of his vehicle Suresh Kumar Mohaptra to come to the Police Station and when the driver came to the Police Station on 9.3.13 at 8 AM, he was also thrown into the lock up. While both of them were in police custody, two slates mentioning their names with Case No. were hung against their chests and such a thing was flashed in various newspapers on 10.3.16. The petitioner further alleges that though he was shown to be arrested at 11.30 AM of 9.3.16 and forwarded to the Court, he was not informed of the grounds of his arrest or his family members were informed of the same. The

petitioner also alleges that such highhandedness of the concerned IIC has grossly violated his human rights and it was also specifically alleged by the petitioner that mandatory provisions of Section 41 of the Cr.PC was not followed while arresting and forwarding him to the Court.

Perused the report of the S.P., Railways, Cuttack dated 13.5.16. In a nutshell, the report speaks that on the written report of one Sanjay Kumar Padhi of Bhubaneswar against Suresh Kumar Mohapatra, Driver of an OLA Cab and Adhikari Sudhansu Sekhar Das, the owner of the Cab, the IIC, GR Police Station, Bhubaneswar registered BBSR GRPS Case No.25, dated 6.3.16 under Section 341/294/323/506 read with 34 of IPC and the ASI of Police Shri Bijay Kumar Pattanaik took up investigation of the case. Shri Sanjay Kumar Padhi in his written report had complained that the driver of OLA Cab Suresh Kumar Mohapatra, whose vehicle was hired for carrying his friends from Shashtrinagar and dropping at Bhubaneswar Railway Station on 6.3.16 at 9.35 PM had instead of choosing the shortest possible way took a circuitous route, for which there was unusual delay in reaching the Railway Station and there was every possibility of missing the train and when the driver was asked about the reason for such delay, he all of sudden started abusing the complainant and his friends. When the complainant told the driver of his intention of filing an FIR against him at GRPS, Bhubaneswar, he became more furious and again abused in vulgar words and also gave a push to him. Soon thereafter, calls threatening the complainant came to his mobile phone both from the mobiles phones of the driver Suresh Kumar Mohapatra and the CAB owner Adhikari Sudhansu Sekhar Das. As a matter of fact, when the complainant lodged an FIR at the GRPS, Bhubaneswar, the IIC himself contacted the cab booking number, i.e., 9090791765 from the land line of the

Police Station just to know about the actual fact and the driver of the cab who received the call not only abused the IIC, BBSR GRPS but also handed over the mobile to the owner immediately, who also followed suit. Thereafter, both the owner of the cab and the driver were apprehended on 8.3.16 at 7PM and 9.3.16 respectively and forwarded to the Court on 9.3.16 after medical examination at the Capital Hospital, Bhubaneswar on the same day. Further, after their arrest, they were informed of the grounds of arrest and their respective family members were also intimated about such arrest vide Bhubaneswar GRPS radio message No.662/PS dated 9.3.16 (t) local PS IICs. All the CDRs seized by the I.O. established that the driver Suresh Kumar Mohapatra and the owner of the cab Sudhansu Sekhr Das had telephoned the complainant repeatedly. After completion of investigation of the case, the I.O. submitted Bhubaneswar GRPS chardgesheet No.62 dated 28.4.16 under Section 341/323/294/506 read with 34 of IPC to stand trial in the Court of law.

In the report, it has been mentioned that as per general practice, the photographs of arrestees are taken for the purpose of maintenance of records in the Police Station and it is best known to the pressmen as to how they got the photographs of both the driver and the owner and published the same in the daily newspaper.

It has also been mentioned in the report that during the enquiry taken up by Shri B.P.Mohanty, DSRP, Headquarters in presence of the complainant Sanjay Kumar Padhy, the accused Adhikari Sudhansu Sekhar Das and Shri Pradipt Kumar Nayak, Humna Rights activist, the accused could not prove anything regarding the illegal gratification of Rs.30,000/- allegedly demanded by the IIC, Bhubaneswar GRPS. On the contrary, the petitioner demanded

money from the IIC as compensation for the financial loss suffered by him and further asked the IIC to beg apology before the TV camera and journalists of daily newspapers.

The enquiring officer concluded that the allegations made by the petitioner appears to be false, frivolous and baseless.

Also perused the reponse of the petitioner to the report of the S.P., Railways, Cuttack dated 25.7.16.

Also perused the replies of both Shri Soubhagya Kumar Swain, IIC and Shri Bijay Kumar Patnaik, ASI of Police, GRPS, Bhubaneswar which were received in this Commission on 22.8.15 and 26.9.16 respectively on the petition of the petitioner. The replies of the above two official appear to be one and the same.

However, both of the them maintained that since there was sufficient prima facie evidence against the accused Suresh Kumar Mohapatra, Driver and Adhikari Sudhansu Sekhar Das, owner of the cab No.OR-02-BA-7117, they were forwarded to the Court of SDJM, Bhubaneswar. The accused duo were forwarded to the Court along with 'Check List' as per the direction of the Apex Court of the country as imminent threat life to the complainant Sanjay Kumar Padhy from their side. Hence, the judgement of the Hon'ble Supreme Court of India in Anwesh Kumar vrs. State of Bihar was not at all violated.

It has also been mentioned that during the entire process of investigation of the case, there was no ill-treatment and torture by Police in the Police Station.

It has further been mentioned that during interrogation of the accused Adhikari Sudhansu Sekhar Das in the GRPS, Bhubaneswar in presence of the S.P., Railways, Cuttack , the acused did not allege anything against the IIC

before the S.P., Railways, Cuttack. Furthermore, when the accused Adhikari S.S. Das was forwarded to the Court on the following day, i.e. on 9.3.16, he did not allege anything about the demand of illegal gratification to make him free or torturing him before the learned SDJM, Bhubaneswar.

It has also been mentioned that while both the accused persons were taken to the Capital Hospital, Bhubaneswar for their medico-legal examination, they did not allege any third degree or assault made against them by Police and the concerned Medical Officer did not find any external injuries on the persons of both the accused.

Besides that, it has been mentioned that slate is generally used in all cases of arrest for identification purpose and documentation of photographs. Slate with name of the accused and case reference is meant only for identifying the criminals and accused persons. It is not that slate was used in his case only with any other ill motive of police. Hence, all the allegations of the petitioner on this point also proved to be false and intentional to counter justified lawful action of police as well as legal mechanism of the State.

The Commission heard Shri Soubhagya Kumar Swain, IIC as well as Shri Bijay Kumar Patnaik, ASI of Police both of Bhubaneswar GRPS. Both of them have submitted their written response to the allegations of the petitioner.

Perusal of the photocopy of the Case Diary dated 9.3.16 reveals that on that day at 11.30 AM the present petitioner as well as the Driver Suresh Kumar Mohapatra were arrested by Shri Bijay Kumar Patnaik, ASI of Police, GRPS, Bhubaneswar. The petitioner was arrested for having committed offences under Sections 294 and 506 of the IPC whereas the driver Suresh Kumar Mohapatra was arrested for having committed offences under Sections 341, 294, 323 and 506 of the IPC.

The Memo of Arrest of Suresh Kumar Mohapatra reveals that he was arrested by the I.O. Shri Bijay Kumar Patnaik, ASI of Police, Bhubaneswar GRPS. So also the Memo of Arrest in respect of Adhikari Sudhansu Sekhar Das reveals that he was arrested by the same ASI of Police attached to Bhubaneswar GRPS Shri Bijay Kumar Patnaik.

Perused the photocopy of the FIR alleged to have been lodged by one Sanjay Kumar Padhi on the basis of which Bhubaneswar GRPS Case No.25 dated 6.3.16 was registered and investigation of the case was entrusted to Shri Bijay Kumar Patnaik, ASI of Police attached to Bhubaneswar GRPS. The case was registered under Sections 341,294,323 and 506 of the IPC read with Section 34 of the IPC. The FIR reveals that Sanjay Kumar Padhi took a call from Cell No.9090791765 and the caller threatened him to lodge the FIR as soon as possible and also the caller told that he was the owner of the Cab (OR-02-BA-7117), and further told that since the complaint has been lodged at the Police Station, he does not care as he has lots of Cabs which are plying throughout Odisha under OLA and he has big contacts. Perusal of the FIR further reveals that the Driver of the Cab uttered "Ja Jaha chodibu chod". "We are having a strong Association." All the offences alleged to have been prima facie, appear to be bailable in nature.

Section 506 of the IPC comprises of two parts.

The first part says that "whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to 2 years, or with fine, or with both" and the same is bailable.

The second part of 506 says that "if the threat be to cause death or grievous hurt, or to cause the destruction of any property shall be

punished with imprisonment for a term which may extend to 7 years, or to impute unchastity to woman, shall be punished with imprisonment of either description for a term which may extend to 7 years, or with fine, or with both". The second part of the offence under 506 is non-bailable in nature.

Section 41 (1)(b) of the Cr.PC reads as follows;

"When police may arrest without warrant-(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person.

(a)xxxxxxx

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely,

(i) xxxxxxxx

(ii) the police officer is satisfied that such arrest is necessary-to prevent such person from committing any further offence; or for proper investigation of the offence; or to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or as unless such person is arrested, his presence in the

Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reason in writing for not making the arrest ”.

Thus, from a plain reading of the aforesaid provision, it is evident that a person accused of offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on its satisfaction that such person had committed the offence punishable as aforesaid. Police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or unless such accused person is arrested, his presence in the Court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts. Law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. Law further requires the police officers to record the reasons in writing for not making the arrest. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above

is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reasons to believe on the basis of information and material that the accused has committed the offence.”

Another provision, i.e., 41 (A) Cr.PC also aimed to avoid unnecessary arrest or threat of arrest looming large on accused requires to be vitalised. Section 41A as inserted by Section 6 of the Code of Criminal Procedure (Amendment) Act, 2008 (Act 5 of 2009) read as follows;

“ Notice of appearance before police officer:-(1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.”

The Apex Court of the country in Arnesh Kumar vs State of Bihar and Another has discussed the point very vividly.

In the instant case, the Case Diary is totally silent as to why the arresting officer namely, the I.O. did not record anything as to what led him to arrest the petitioner and the Cab Driver and why he did not follow the provisions of Section 41 (1)(b) Cr.PC. So also 41-A Cr.PC. In Arnesh Kumar case, the Apex Court have held that failure to comply with the direction contained in Arnesh Kumar case supra shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction. This judgment of the Apex Court has been widely circulated in each and every State of the country. So also in our State. Despite the decision of the Apex Court, the arresting officer Shri Bijay Kumar Patnaik, ASI of Police, GRPS, Bhubaneswar arrested the petitioner as well as the Cab Driver Suresh Kumar Mohaptra in flagrant violation of the direction of the Apex Court.

Thus, the Commission being satisfied with the fact that the I.O. in this case Shri Bijay Kumar Patnaik, ASI of Police, GRPS, Bhubaneswar has failed to act as per the direction of the Apex Court in Arnesh Kumar vs State of Bihar and Another and his action is totally incomprehensible in nature. Accordingly, the Commission recommends the I.G., Railways, Cuttack to issue a stern warning to Shri Bijay Kumar Patnaik, ASI of Police, GRPS, Bhubaneswar to be careful in future while dealing with investigation of the case.

With the aforesaid observation and direction, the case stands disposed of.

**JUSTICE B. K. MISRA  
ACTING CHAIRPERSON**