

**ODISHA HUMAN RIGHTS COMMISSION  
TOSHALI BHAWAN(2<sup>ND</sup> FLOOR)  
SATYANAGAR, BHUBANESWAR-751007**

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OHRC Case No.2965/2013

Smt. Sadhana Pradhan.....

.....Petitioner

O R D E R

**3<sup>rd</sup> August, 2015**

Perused the petition presented by Smt. Sadhana Pradhan wherein she complained of atrocities committed on her and her husband Sarat Kumar Pradhan by the IIC of Lingaraj Police Station, Old Bhubaneswar Shri R.K.Mandal and forwarding her along with her husband to the Court for no fault of theirs on 18.9.13. On receipt of the complaint of Smt. Sadhana Pradhan, the DCP, Bhubaneswar Urban Police District was asked to enquire the matter and furnish a report. Accordingly, the Additional DCP, Bhubaneswar has submitted his report which has been forwarded to the Commission by the DCP, Bhubaneswar. The Complainant has furnished her response to such report of the DCP, Bhubaneswar. The Commission has also heard Shri R.K.Mandal, who was the IIC, Lingaraj P.S. on 18.9.13. Shri Mandal was given opportunity by this Commission to furnish his response, if any to the petition of the Complainant dated 23.9.13 which he has complied with. The petitioner also furnished her written response to the report of Shri R.K.Mandal, the then IIC, Lingaraj P.S.

Perusal of the materials on record reveal that on 18.9.13 on account of "Ananta Brata", the petitioner along with her husband had come to the temple of Lord Ananta Basudev, Old Bhubaneswar for darshan of the Lord. She and her husband were standing in the queue since 4 AM along with other devotees. Around 4.45 AM early in the morning, the petitioner could see that persons who were not in the queue had entered the temple precincts and the police officials who are on duty were ignoring that. When the petitioner complained to the then IIC Shri R.K.Mandal who was present on the spot, the latter asked to stop her mouth and on hearing this, when the husband of the petitioner protested against such a remark of the IIC, the latter became furious and started abusing him in obscene words, dealt a slap to his face and also threatened to take him to the Police Station where the prowess of police could be exhibited.

Seeing the entire episode, the petitioner requested the said IIC to leave her husband, but the said IIC dealt three slaps very close to her ear as a result of which, she being unconscious fell down. When the petitioner regained her senses around 8.30 AM could find herself lying on a bed in the Municipal Hospital and could know that saline was given to her. After her treatment in the hospital, the petitioner was brought to Lingaraj P.S. in a jeep where she found her husband being severely assaulted by the IIC Shri Mandal with lathi. Seeing the petitioner, the IIC used slangs against her and directed her to clean the latrine. The petitioner further complained that the IIC asked them to pay rupees two thousand to the S.I. of Police Chakradhar Mallick and also asked them to beg apology by prostrating before him, if they want to be released. When the petitioner and her husband refused to fulfill the illegal demand of the police, the couple were forwarded to the Court that day and after being released they returned to their house and subsequently presented a petition before the Commission.

Perusal of the report of the Addl. DCP, Bhubaneswar Urban Police District reveals that on the day of 'Ananta Brata', i.e., on 18.3.13, large number of devotee thronged the Temple of Ananta Basudev for Darshan of the Lord for which there was police arrangement and police personnel were deployed on duty in and around the temple to regulate the crowd and traffic. The petitioner Smt. Sadhana Pradhan along with her husband Sarat Kumar Pradhan had come to have Darshan of the Lord for which they were standing in the queue. The report further reveals that when the petitioner was in the queue, she shouted "Ethi Sale Police Jagichhanti, Paise Khai Dhadi Baharara Lokanku Purauchhi, Egudankara Man Mahat Kichhi Nahi". On hearing that when ASI of Police Chakradhar Mallick enquired from the petitioner, she again started accusing the police for which the concerned ASI of Police along with two Lady Constables tried to pacify the petitioner and her husband. The petitioner's husband who was standing at a little distance suddenly came to the spot and started abusing the police personnel on duty and pushed the Lady Constable. Since the couple created disturbances and deterred the police officers from performing their lawful duty, they were brought to the Police Station. While they were on the way to the Police Station, the petitioner fell down on the road and shouted that the police assaulted her husband and did not stand up for which she was directly taken to the Municipal Hospital for treatment.

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As mentioned in the report, during the inquiry by the Addl. DCP, Bhubaneswar, witnesses were examined. One witness namely; Kunja Parida stated that when on the day of Ananta Brata he had come to the temple to offer prayer and was standing behind the petitioner in the queue to offer prayer, he detected the Police Inspector was assaulting and abusing Sarat Babu. Abhimanyu Mohanty, who was another witness, stated that while he was standing in the queue, he found two Sepoys and Inspector abusing the petitioner's husband. He also stated to have seen the Inspector assaulting the husband of the petitioner and finally the couple were taken to the Police Station. Since there was heavy gathering and there was a lot of disturbance, he came away without offering puja to the deity.

The Addl. DCP deduced from his inquiry that on 18.3.13, the petitioner along with her husband had arrived around 4 AM near the temple to offer prayer and were in the queue. The petitioner observing some irregularities in entry of the devotees to the temple in presence of police had reacted being impatient and blamed the police which culminated in exchange of hot words between the police personnel on duty and the petitioner. At that moment, the IIC, Shri R.K.Mandal arrived at the spot to bring the situation under control brought the petitioner and her husband to the Police Station. But on the report of the ASIP Chakradhar Mallick, Lingaraj P.S. Case No.165 dated 18.9.13 was listed against the petitioner Smt. Sadhana Pradhan and her husband Sarat Kumar Pradhan under Sections 294, 332 and 506 readwith 34 of the IPC. In the said case both the accused persons were arrested and forwarded to the Court. The report also reveals that both the petitioner and her husband were medically examined in the Municipal Hospital, Bhubaneswar but the doctor could not detect any injury on their person. The report further disclosed that when the accused persons were forwarded and produced before the SDJM, Bhubaneswar, they did not complain of any ill-treatment by the police. It is reported that allegation of assault and ill-treatment to the petitioner and her husband at Lingaraj P.S. appears super addition and could not be proved. Shri R.K. Mandal was supplied with a copy of the inquiry report of the Addl. DCP, Bhubaneswar and was asked to submit his response to such report. Shri Mandal who was then IIC, Lingaraj P.S. denied to have hurled abuses and to have assaulted the petitioner and her husband.

On the other hand, he stated in writing that the petitioner and her husband used slangs at police and the husband of the petitioner used criminal force on two Lady Constables by pushing them and also threatened to do away with his life as he is a boy from Pipli. Thus, when the petitioner created disturbance in the work of the police and tried to deter the police officers from discharging their lawful duty and moreover, when criminal force was used in pushing the two Lady Constables, on the basis of the report of the ASI of Police Chakradhar Mallick, Lingaraj P.S. Case No.165 dated 18.9.13 was registered and the accused persons were forwarded to Court after being medically examined. The doctor upon examination did not find any marks of injury on the person of the petitioner and her husband and they also did not complain before the learned SDJM, Bhubaneswar about the ill-treatment meted out to them by the police while in custody and also about the demand of illegal gratification of rupees two thousand from them.

In their further response from the side of the petitioner, it has been asserted that it is absolutely false that they did not complain before the SDJM, Bhubaneswar about any ill-treatment and assault meted out to them while in custody. On the contrary, they had explained in detail before the learned SDJM, Bhubaneswar, and it is best known to the SDJM, Bhubaneswar as to why he did not reflect the said facts in the order sheet. Accordingly, they prayed to pass orders to enable them to further depose in the Court of SDJM, Bhubaneswar as well as before this Commission.

Perusal of the materials on record and the certified copies of the order sheet of the learned SDJM, Bhubaneswar in the C.T. Case No.3603/2013 reveal that on 18.9.13 the accused persons were produced before the said Court and the accused persons Smt. Sadhana Pradhan and Sarat Kumar Pradhan on being asked did not complain of any ill-treatment by the police while in custody. Considering the prayer of the accused persons, the learned SDJM, Bhubaneswar released them on bail. The further order dated 3.6.14 of the learned SDJM, Bhubaneswar in the said case shows that in Lingaraj P.S. Case No.165 dated 18.9.13, the charge sheet was submitted on 21.2.14 against the accused persons under Sections 294, 332, 354 and 506 read with Section 34 of the IPC and the learned SDJM, Bhubaneswar took cognizance of the offence and issued summons to them fixing 5.12.14 for appearance. Thus the certified copy of the order passed in the C.T. Case No. 3603/2013 reveals that the said case is now sub-judice. Needless to mention here that great sanctity is attached to the orders

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passed in a judicial proceedings by a judicial officer, as the Court is an impartial body having no animosity with anybody. The learned SDJM, Bhubaneswar has categorically in his orders dated 18.9.13 mentions that on being asked the accused persons did not complain of any ill-treatment by police while in custody. Perusal of the injury reports of Shri Sarat Kumar Pradhan and Smt. Sadhana Pradhan reveals that they had no bodily injury on their persons. Of course, a photograph of a person has been filed which shows that the said person had some marks on his left arm and left side chest. The photocopy of the doctor's prescription which has also been filed in respect of Sarat Kumar Pradhan reveal that the said prescription was given by a doctor of the Govt. Hospital, Pipili on 23.9.13. Needless to mention here that the alleged incident happened on 18.9.13 and on the very date the petitioner and her husband were released on bail by the learned SDJM, Bhubaneswar as revealed from the certified copies of the order sheet in C.T. Case No.3603/2013.

The Commission has no authority to make any comment as to the genuineness of this photocopy of the Out-door Ticket issued by the Government Hospital, Pipili on 23.9.13. It is not known as to why Sarat Kumar Pradhan waited till 23.9.13 for his treatment when he had received severe injuries on his person being assaulted by the police on 18.9.13. These are matters to be agitated before the competent Court of law particularly when the case is pending in the Court of learned SDJM, Bhubaneswar.

The Commission makes it abundantly clear that it has no jurisdiction to direct any judicial court to pass an order to re-examine the accused person for enabling them to depose before the Court afresh. It is a fallacious contention raised by the learned Advocate appearing for the petitioner in his written response dated 19.3.13.

Coming to the crucial point about arrest and forwarding a young lady to the Court, Smt. Sadhana Pradhan, the Complainant in this case who is aged about 28 years in connection with Lingaraj P.S. Case No.165 dated 18.9.13 which has been registered under Sections 294, 332, 354 and 506 readwith Section 34 of the IPC, overwhelming materials are available on record to establish that Shri R.K.Mandal, the then IIC, Lingaraj P.S. did not follow the mandate of law. It is observed with dismay that there is frequent violation of the provision of Section 41(b) of the Cr.PC. It cannot be said or believed that the then IIC, Lingaraj P.S. was oblivious to such provisions of law which has been incorporated in the Cr.PC by way of an amendment made

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effective from 2.11.10. Perusal of the FIR drawn up by the ASI of Police Chakradhar Mallick of Lingaraj P.S. at best makes the case against the petitioner Smt. Sadhana Pradhan prima facie under Section 294 of the IPC. All other allegations namely; outraging the modesty of the Lady Constables, deterring the police officers from performing their lawful duties and deterring Police Officers from discharging their duties and intimidating the police officers are charges which can at best be agitated against Shri Sarat Kumar Pradhan, the husband of the petitioner. The petitioner who is a young lady was standing in a queue since 4.20 AM on 18.9.13 to have darshan of the Lord Ananta Basudev without knowing what would come about a little later and had to bear the brunt of the police. There is no material on record to show that the petitioner was involved in serious crime like murder, dacoity, drug peddling or any other serious offence or her attendance cannot be secured without any amount of delay or that she will be influencing the witnesses. Law prescribes that when the charge sheet submitted in Lingraj P.S. Case No.165 of 2013 shows that offences charged with are not punishable with death or life imprisonment and only punishable up to a maximum period of three years, should not have been arrested by the police. The police officer in such cases is to satisfy himself that such arrest is necessary to prevent such person from committing any further offence or to prevent such person from causing offences 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 from disclosing such facts to the Court or to the police officer etc. So why arrest and that too a young woman? Is it really required?, What purpose it will serve? What object it will achieve? These questions remain unanswered in the given facts and circumstances of this case.

The Commission is of the considered view that the police officer of Lingaraj P.S. namely; Shri R.K.Mandal, the then IIC and the Investigating Officer, Shri Chakradhar Jena, ASI of Police did not follow the mandate of law and deprived the lady of her liberty.

The Apex Court of the country in its judgment dated 24.7.15 in Cr;. M.P. Nos.16086/1997 in Crl. M.P. No.4201/1997 with Crl.M.P. No.4201/1997, 4105/19999, 2600/2000, 2601/2000, 480/2001, 3965,

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10385/2002, 12704/2001, 19694/2010 in CrI.M.P. No.4201/1997, CrI.M.P. No.13566/2011 in CrI.M.P. No.16086/1997 in CrI.M.P. No.4201/1997, CrI.M.P. No.15490/2014 in Writ Petition(s)(Criminal) No.(s) 539/1986 in the case of Shri Dilip Kumar Basu Vrs. State of West Bengal and Others the Apex Court have held that pecuniary compensation was permissible in appropriate cases by way of redressal upon proof of infringement of fundamental rights of a citizen by the public servants and that the State is vicariously liable for their acts. The Court further held that compensation is payable on the principle of strict liability to which the defence of sovereign immunity is not available and that the citizen must receive compensation from the State as he/she has a right to be indemnified by the government which is now the settled position of law and the rights position of law.

The general perception is that arrest brings humiliation, curtails freedom and leaves scars forever. Probably Police Officers make arrest as they believe that they possess the power to do so. Therefore, Law Commission and Police Commission and above all the Apex Court in a large number of judgments emphasised the need to maintain a balance between individual liberty and societal order while exercising the power of arrest.

The existence of the power to arrest is one thing, justification for the exercise of it is quite another. Thus, no arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. Hence the Parliament had to enact Section 41 of the Cr.PC in the year 2010 (Arnesh Kumar Vrs. State of Bihar and another). Section 41 (1)(b) of the Cr.PC is felt apt to be quoted.

Section 41-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) xxx      xxx      xxx

(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) xxx              xxx              xxx

(ii) the police officer is satisfied that such arrest is necessary-

- (a) to prevent such person from committing any further offence; or
- (b) for proper investigation of the offence; or
- (c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or
- (d) 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
- (e) 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 reasons in writing for not making the arrest.

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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.

The Commission observes that there has been gross infringement of fundamental rights of the petitioner and gross violation of the mandatory provisions of law as envisaged under Section 41 (b) of the Cr.PC. Therefore, keeping in view the gross violation of the fundamental rights of the petitioner and the manner in which she was arrested and forwarded to Court, the Commission recommend that she should be awarded with a pecuniary compensation of rupees twenty-five thousand.

Let copy of this order be communicated to the Principal Secretary to Government, Home Department, Odisha, Bhubaneswar and the D.G. & I.G. of Police, Odisha, Cuttack and Commissioner of Police, Bhubaneswar for compliance of the recommendation of the Commission. The action taken report on the above

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recommendation of the Commission should be made available within two months hence.

Put up on 25.10.15 awaiting action taken report from the authorities as mentioned above.

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

3<sup>rd</sup> August, 2015