

ODISHA HUMAN RIGHTS COMMISSION
TOSHALI BHWAN (2ND FLOOR),
SATYA NAGAR, BHUBANESWAR-751007

OHRC Case No. 1710 of 2014

Sri Prabodh Kumar Acharya , Smt. Beenapani Acharya &
Sri Bimala Prasanna Acharya Petitioner.

ORDER

12th Feb 2015

Petitioners Sri Bimala Prasanna Acharya, Smt. Beenapani Acharya and Sri Prabodha Kumar Acharya have alleged vide their petition dt.28.5.2013 that the police personnel of Sambalpur Mahila Police Station committed human rights violation by arresting them at Bhubaneswar on 3.6.2012 without adequate justification. The facts of the case bear narration.

Sri Prabodha Kumar Acharya was married to Smt. Rasmita Dwivedi on 30.11.2008. There was, however, misunderstanding between the husband and the wife Smt. Rasmita Dwivedi returned to her mother's place on 16.01.2009 and never went back to her in-law's house. Thereafter, a petition was filed by the husband (Matrimonial Application No.191 /09 U/s.12 of the Hindu Marriage Act with a prayer to annul the marriage which is pending before the Hon'ble Judge, Family Court, Bhubaneswar. Unable to defend the said suit at Bhubaneswar, she filed transfer petition before the Hon'ble High Court of Orissa in TPR(C) No.34/2009, which is sub-judice. While the matter stood thus, she filed a complaint in the Mahila P.S Sambalpur on 5.1.2012 alleging that after the marriage

misunderstanding arose between her and her in-laws and her husband was refusing to consummate the marriage unless she paid a further dowry of Rs.2 lakhs.The said complaint of hers was converted into S.D.Entry No.79,dt.5.1.2012 and Notice/Message was sent on 7.1.12 by the IIC Mahila P.S, Sambalpur to the petitioner and his parents through the IIC Sahid Nagar P.S.,Bhubaneswar asking them to appear in the Mahila P.S on 22.1.2012 for counseling .Apprehending arrest ,the petitioners approached the Hon'ble High Court in W.P.(Crl.) No.109/2012 challenging the said notice and the Hon'ble Court gave liberty to the petitioners to ignore the said notice if they so wished .Thereafter, on 28.4.2012 Smt.Dwivedi, filed another petition containing the very same facts that she had mentioned in her petition to the Mahila P.S on 5.1.2012. The IIC Mahila P.S ,Sambalpur converted the petition to an FIR,took up investigation and sent S.I. of Police, Ms. Mamata Kumari Samantary, to Bhuabnesswar , where the petitioners reside. With the help of the local police of Sahidnagar Police Station , the police party proceeded to the house of the petitioners situated at Sahidnagar and arrested the petitioners on 3.6.2012 in the early morning. They were produced before the S.D.J.M., Bhubaneswar seeking transit remand for taking them to Sambalpur, but the SDJM,Bhubaneswar enlarged them on bail. Subsequently the petitioners approached the Hon'ble High Court for quashing the F.I.R dt.28.4.12 in W.P.(Crl.) No.589/12 . The Hon'ble High Court stayed further proceeding of Sambalpur Mahila P.S.Case No.17/12 and the position remains unchanged as on date.

Sri Prabodha Kumar Acharya, one of the petitioners, who is a practising lawyer has strenuously argued before us that their arrest by the Mahila P.S., Sambalpur on 3.6.2012 was patently illegal on the following grounds:-

i) That the arrest was purportedly made on the basis of the F.I.R filed by Smt.Rasmita Dwivedi dt.28.4.12 while on the very same allegation, the same Police Station had set criminal law in motion by making S.D.Entry No.79,dt.5.01.12 had issued notice to the petitioners to appear in the Mahila P.S on 22.1.12. He has argued that such action amount to double jeopardy and hence unlawful . In support of his contention, he has cited the judgment of the Hon'ble Supreme Court in Anju Chaudhary -Vs-State of Uttar Pradesh and another (2013) 6,SCC 384 that “ it is a settled principle of law that there cannot be two FIRs registered for the same offence”.

ii) That the Mahila P.S, Sambalpur do not have the jurisdiction to require the attendance of the petitioners since according to Section 160(1) of Cr.P.C “any police officer making any investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station”. He has cited the case reported in N.K. Singh-Vs- Om Prakash and others, ILR 1980 Ctc.309,that “ the police officer making an investigation under Chapter -XII cannot require the attendance before him of any person who is not within the limits of his own or any adjoining station.”

iii) That the I.O. Mamata Kumari Samantaray has not recorded the reasons for making up her mind to arrest the petitioners as mandated U/s.41(1)(b)(ii) of Cr.P.C ,(particularly, when the first report about the incident came to her knowledge as early as on 5.1.2012)which she is duty bound to do. In support of his contention, he has relied upon the judgment of the Hon'ble Supreme Court in Joginder Kumar -Vs- State of U.P., AIR 1994 SC 1349.

iv) That the territorial jurisdiction of a Police station for the purpose of investigation into an offence is co-extensive with that of the appropriate court which is competent to try the offence as per Section 156(1), Cr.P.C.. According to Section 177 of the Cr.P.C, every offence shall ordinarily be enquired into and tried by a court within whose local jurisdiction such offence was committed. Sri Acharya has argued that the Mahila P.S., Sambalpur did not have the necessary jurisdiction to entertain the complaint since the place of occurrence of offence is at the in-law's house situated at Bhubaneswar at a distance of 300 K.Ms from Sambalpur. According to him, the appropriate course of action should have been to transmit the F.I.R filed by Smt.Dwivedi U/s.41(1)(i) to the Mahila P.S of Bhubaneswar. He has argued that the I.O. has exceeded her jurisdiction by herself proceeding to Bhubaneswar and arresting the petitioners.

v) That the procedure required to be followed during the arrest of the petitioners on 3.6.12 were not followed by the I.O.

Regarding the argument of the petitioner ,Sri Prabodha Kumar Acharya on the point of jurisdiction of the Mahila P.S, Sambalpur, and the procedure of arrest etc, we would not like to comment since the petition is already before the Hon'ble High Court in W.P.(CRL) No.589 of 2012 seeking to quash the F.I.R of Smt. Dwivedi dt.28.4.12 . The limited point before us is whether the Mahila P.S, Sambalpur paid due deference to the sanctity of human rights while effecting the arrest of the petitioners.

We have perused the petition of Smt.Rasmita Dwivedi filed before the Mahila P.S, Sambalpur dt.5.1.12 and subsequently, the one filed by her on 28.4.12 in the same police station. While the former was converted into a S.D.Entry the latter was converted into an F.I.R.

Both the reports contain the very same facts. The explanation of the police for not converting the first report dt.5.1.12 into F.I.R is that they had attempted “counseling” the husband and in-laws of the complainant after receipt of the report and that is why notice was sent to them to appear before the P.S. on 22.1.12 . The wisdom of such action by police in attempting a session of “counseling” when the matter of annulment of the marriage was pending before the Hon’ble Judge Family Court, Bhubaneswar is not clear to us. This attempt of the police was, however, frustrated by the Order of the Hon’ble High Court dt.9.2.2012 where by the Hon’ble Court ordered that the petitioners were at liberty not to attend such counseling .

On 28.4.12 when another petition was filed before the same Police Station with the same set of complaints, the Mahila P.S., Sambalpur decided to register an F.I.R. , conducted preliminary investigation and proceeded to arrest the petitioners , who were residing at a distance of 300 K.Ms. away from the P.S. Section 41(1) of the Cr.P.C stipulates that arrest of persons can be made only when 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 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;

The said Section further stipulates that” the police officer shall record while making such arrest the reasons in writing “.The Case Diary of the Mahila P.S(F.I.R No.17 dt.28.4.12) which we have perused does not mention any ground on the basis of which the I.O. came to the conclusion that the petitioners deserved to be arrested. Since the accused persons were remaining far away from the complainant who was admittedly staying with her parents in Jyoti Vihar ,Burla and she was under no physical threat from her in-laws, the I.O. Mamata Samantary had the option to follow the procedure U/s.41(A) of the Cr.P.C. This is particularly so since the same P.S, only 3-1/2 months earlier, had considered that arrest of the accused persons was not warranted. The husband of the complainant is a practising advocate of Bhubaneswar Bar. His parents are pretty old .All of them reside in their own house at AL/22,VSS Nagar, Bhubaneswar . Arrest of such persons in the early hours of morning on 3.6.2012 by Mahila P.S of Sambalpur with the help of the local police Bhubaneswar as if they were fugitives of law , was in our considered opinion a clear case of high handedness while alternative recourse for investigation was available to the police. Arrest of a person by the police can be a traumatic experience and this weapon of the State should be used only with extreme discretion and dexterity since the Constitution has guaranteed to its citizens right to life, liberty, equality and dignity . The Hon’ble Supreme Court in Joginder Kumar –Vs- State of U.P. ,AIR 1994 SC 1349 observed that:-

“No arrest can be made because it is lawful for the Police Officer to do so. The existence of the power of arrest is one thing and the justification for the exercised of it is quite another. The Police Officer must be able to justify the arrest apart from his power to do so. Arrest and detention in a police lock-up of a person can cause

incalculable harm to the reputation and self-esteem of a person. 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 is 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 the arrest. Denying a person of his liberty is a serious matter”.

The I.O. Ms.Mamata Kumari Samantaray was given an opportunity by this Commission vide order dt.5.5.2014 to explain her conduct and she has submitted her written response dt.11.5.2014. Her response does not breathe a single word about why she found it necessary to arrest the petitioners by proceeding to Bhubaneswar traversing a distance of 300 K.Ms. without satisfying the mandatory provision of Section 41-A of the Cr.P.C, 1973 as amended in 2010 and Section 41 (1)(b)(ii) which mandates that “ the police officer shall record while making such arrest his reasons in writing”. Not a single scrap of paper has been produced of the ground of arrest nor has it been reflected in the Case Diary maintained in Sambalpur Mahila P.S.Case No.17/2012 or In the arrest memo.

We have, therefore, no hesitation in observing that the I.O. Ms. Mamata Kumari Samantaray, by arresting the petitioners at Bhubaneswar on 3.6.2012 , has willfully violated the human rights of the petitioners to live with dignity. Their liberty has been infringed by the State through colourable exercise of power.

We recommend to the D.G/I.G of police Odisha to take suitable action against the erring police officer Ms.Mamata Kumari

Samantary the I.O. in Sambalpur Mahila P.S Case No.17 of 2012 in a manner which will deter others from committing such acts of high handedness .For such loss of human rights suffered by the petitioners in the hands of a functionary of the State, we deem it appropriate to recommend to the Government in Home Department for payment of compensation of Rs. 50,000/- (Rupees fifty thousand) to the petitioners within two months of receipt of the copy of this order and report of compliance be submitted.

Put up on 11.5.2015 awaiting report of compliance.

SHRI B.K.PATNAIK
MEMBER

JUSTICE B.K.MISHRA
ACTING CHAIRPERSON