

SHRC, Maharashtra

| | | | |
|--------------------|-----------------------|--------------------------|----------------|
| Diary No | 221/CR/2024 | Case / File No | 163/13/30/2024 |
| Victim Name | ADV. GANESH P. GHOLAP | Registration Date | 05/01/2024 |

Action List (Click on Action given in blue color to view details)

| Action No. | Action | Authority | Action Date |
|------------|---|--|-------------|
| 8 | Relief granted [Compensation, Disciplinary & Prosecution] | [Select Authority]- PSI Shri Suhas Patil Pune City Police Station | 28/11/2024 |
| 7 | Relief granted [Compensation, Disciplinary & Prosecution] | THE DEPUTY COMMISSIONER OF POLICE- ZONE IV, ULHASNAGAR | 28/11/2024 |
| 6 | Relief granted [Compensation, Disciplinary & Prosecution] | THE COMMISSIONER OF POLICE- THANE | 28/11/2024 |
| 5 | Call for Hearing | THE DEPUTY COMMISSIONER OF POLICE- Zone IV, Ulhasnagar | 14/11/2024 |
| 4 | Call for Hearing | THE COMMISSIONER OF POLICE- THANE | 14/11/2024 |
| 3 | Call for Hearing | THE COMMISSIONER OF POLICE- THANE | 12/09/2024 |
| 2 | Call for Hearing | THE COMMISSIONER OF POLICE- THANE | 01/08/2024 |
| 1 | Call for Hearing | THE COMMISSIONER OF POLICE- THANE | 07/05/2024 |

[Expand All Action List](#)**Action****Action : Relief granted [Compensation, Disciplinary & Prosecution](Action No 8)**

| | |
|--------------------|---|
| Action Date | 28/11/2024 |
| Authority | [Select Authority]- PSI Shri Suhas Patil Pune City Police Station |
| Proceeding | The following parties are present: PI Shri Tukaram Padir, Shivaji nagar Police Station Adv. Ganesh Gholap a/w. victim Shri Keval Vikmani 1. The present complaint unfolds, the usual unfortunate apathy on the part of a member of the |

law enforcing agency who admittedly not only misused is official post and power but, tarnished the very image of the law enforcing agency, by his alleged misdeeds and actions. Let us reflect on the factual background of the complaint, gist of which is summarized in my order dated 12.09.2024, which reads thus:

“The following parties are present:

PI Shri Tukaram M. Padir, Ambarnath Police Station

Adv. Ganesh Gholap a/w. complainant Shri Kewal Vikmani

1. Adv. Gholap submitted rejoinder dated 12.09.2024, in compliance of direction dated 01.08.2024. Copy is already furnished to PI Shri Padir, for respondent CP, Thane.
2. After having heard the arguments at length and after scrutinizing the record, I am of the firm opinion that the facts and circumstances clearly indicate a blatant violation of human rights of complainant Shri Kewal Vikmani. This conclusion is drawn as, the then alleged erring police officer PSI Shri Patil, is facing non-cognizable charges at the behest of complainant u/s. 323, 506, 504 IPC and as per the submissions advance by PI Shri Padir, by way of punishment, he has been transferred to Pune Control and departmental enquiry is also initiated against him.

The most shocking aspect or rather the gray area is the fact that the incident in question, occurred on 20.05.2023 and after a lapse of more than six months, NC came to be registered in blatant breach of the provisions u/s. 155(1), (2) Cr. PC. Besides incorrect information as regards a registration of cognizable offence of theft of electricity against complainant Shri Kewal came to be mentioned not only in police report Ex. ‘A’ but also in Investigation Wing of the Commission report Ex. ‘C’. This statement turns out to be absolutely incorrect as PI Shri Padir made a statement at Bar that no such case is registered against the complainant Shri Kewal Vikmani, as only an application was received for conducting an enquiry in respect of alleged theft of electricity, but, no procedure as mandate u/s. 154 Cr. PC was followed.

3. Police is supposed to be the guardian of law and is supposed to protect the right of the citizen whenever infringed by the law breaker, which in this case happens to be none other than the police officer who in his wisdom not only committed criminal trespass by entering into the premises of the complainant but, exceeded his powers by committing the alleged illegal acts, a reference to which is already made in the complaint as well as in the early order. It is rather unfortunate that in such serious matter neither DCP Zone IV, who is the immediate supervisory authority nor CP, Thane, bothered to monitor and supervise the investigation of such serious incident involving its own police officer and its team. Such casual attitude resulted into miscarriage of justice, constraining this Commission to invoke its powers u/s. 16 of Protection of Human Rights Act, 1993, calling upon Commissioner of Police, Thane, DCP Zone IV, Ulhasnagar, PSI Shri Suhas Patil to explain why for above noted serious lapses powers u/s. 18 of the Protection of Human Rights Act, 1993 should not be invoked against them. Explanations duly endorsed should be submitted in duplicate by next date.

To be taken on 17.10.2024”

2. In compliance of the aforesaid direction, detail explanation, Ex. ‘F’ dated 15.10.2024, came to be submitted by ACP, Ambarnath on behalf of CP, Thane and DCP Zone IV. The entire merit of the present complaint now rest on the justification sought to be placed on record vide explanation Ex. ‘F’

3. Pertinent to note that much emphasize is made on antecedents of victim Shri Keval L. Vikmani, by asserting that in the past also he has been found running his cricket turf beyond

the schedule timings and whenever caught or confronted by the Law Enforcing team was found responding in an arrogant manner by blaming them of being corrupt and of harassing and humiliating him, despite accepting haftas from him.

I am again repeating and emphasizing that the alleged criminal antecedents, of complainant, cannot be ground or justification for condoning the serious omissions and commissions on the part of the concerned police officer. What is significant to note is the fact that so called criminal antecedents are restricted to the registration of 03 non cognizable offences, falling under Maharashtra Police Act, 2000 and 02 cognizable offences viz. 10/2018 u/s. 395, 452, 342, 506 IPC registered on 16.07.2018 with Dombivali Police Station and crime no. 379/23 u/s. 135 Indian Electricity Act, registered on 09.07.2023. Evidently, these two cognizable cases, registered with a gap of 3/4 years in no way, creates any dent on the very foundation of the present complaint.

4. Infact, the very registration of non cognizable offences against the concerned erring police officer vide NC no. 2236/23 u/s. 323, 504, 506 IPC, establishes or rather implicates the concerned erring police officer PSI Shri Suhas Patil. Pertinent to note that a specific clarification was sought by the Commission vide order 12.09.2024, reproduced supra above as to why and inordinate delay of six months occurred in registering a simple non cognizable case. However, the explanation Ex. 'F' submitted on behalf of the erring police officer as well as his higher supervisory authorities is absolutely silent on this aspect. Besides, this inordinate delay, and failure to place any plausible explanation, another glaring aspect which deserves to be mention here is why an offence of criminal trespass which is a cognizable offence is not registered against the erring police officer and his team. Surprisingly, the so called departmental action taken against the concerned police officer was his transfer to Pune initially to the Control Room and presently attached with Samarth Police Station, Pune City. Can such action said to be meeting with the ends of justice, if compared with the gravity of the illegal actions, established against the erring officer? Answer has to be in bold negative.

5. In order to appreciate the aforesaid contentious issue and the legal aspect, let us first understand the meaning and concept of human rights as highlighted by Supreme Court in re-National Legal Services Authority AIR 2014 SC 1863, observing as under:

“Human Rights are pre legal rights:- Human rights are rights that “belong” to every person, and do not depend on the specifics of the individual or the relationship between the right-holder and the right-grantor. Moreover, human rights exist irrespective of the question whether they are granted or recognized by the legal and social system within which we live. They are devices to evaluate these existing arrangements: ideally, these arrangements should not violate human rights. In other words, human rights are moral, pre-legal rights. They are not granted by people nor can they be taken away by them.”

6. After highlighting on the concept of human rights as formulated by the Supreme Court we now turn to another important aspect of the controversy and i.e. Powers and Role of the Police. In any society, the main object and aim of law is to alleviate the intensity of the conflicts and prepare the citizens for progressive development of a society. Hence, implementation of the legal dicta, the State normally empowers the police to enforce the law and order to establish peace and security. Thus police officers have enormous powers as well as duty as they have to enforce their rights in order to prevent crime in the society. This being the main task of the police, the law of the State empowers them to enforce measures, methods and means in order to prevent criminal offences or to detect and apprehend he perpetrators of

those offences. These powers at the same time come with number of obligation to protect and promote human rights of persons at all times only by enforcing minimum use of force. It goes without saying that at the international as well as national level, an obligation is imposed on the law enforcing agency to protect and promote the human rights of the individual. One of the important code of conduct for the law enforcing agencies adopted by General Assembly at the international level prescribed a code of conduct to be observed by them – (law agencies) “Code of Conduct for the Police

1. The Police must bear faithful allegiance to the Constitution of India and respect and uphold the rights of the citizens as guaranteed by it.
2. The Police should not question the property or necessity of any law duly enacted. They should enforce the law firmly and impartially, without fear or favour, malice or vindictiveness.
3. The Police should recognise and respect the limitation of their powers and functions. They should not usurp or even seem to usurp the functions of the judiciary and sit in judgement on cases to avenge individuals and punish the guilty.
4. In securing the observance of law or in maintaining order, the Police should as far as practicable, use the methods of persuasion, advice and warning. When the application of force becomes inevitable, only the irreducible minimum of force required in the circumstances should be used.
5. The prime duty of the Police is to prevent crime and disorder and the Police must recognise that the test of their efficiency is the absence of both and not the visible evidence of Police action in dealing with them.
6. The Police must recognise that they are members of the public, with the only difference that in the interest of the society and on its behalf they are employed to give full time attention to duties which are normally incumbent on every citizen to perform.
7. The Police should realise that the efficient performance of their duties will be dependent on the extent of ready cooperation that they receive from the public. This, in turn, will depend on their ability to secure public approval of their conduct and actions and to earn and retain public respect and confidence.
8. The Police should always keep the welfare of the people in mind and by sympathetic and considerate towards them. They should always be ready to offer individual service and friendship and render necessary assistance to all without regard to their wealth or social standing.
9. The Police should always place duty before self, should remain calm in the face of danger, scorn or ridicule and should be ready to sacrifice their lives in protecting those of others.
10. The Police should always be courteous and well-mannered; they should be dependable and impartial; they should possess dignity and courage; and should cultivate character and the trust people. of the
11. Integrity of the highest order is the fundamental basis of the prestige of the Police, Recognising, this, the police must keep their private lives scrupulously clean, develop self-restraint and be truthful and honest in thought and deed, in both personal and official life, so that the public may regard them as exemplary citizens.
12. The Police should recognise that their full utility to the State is best ensured only by maintaining a high standard of discipline, faithful performance of duties in accordance with law and implicit obedience to the lawful directions of commanding ranks and absolute loyalty to the force and by keeping themselves in a state of constant training and preparedness.
13. As members of a secular, democratic state the Police should strive continually to rise above personal prejudices and promote harmony and the spirit of common brotherhood

amongst all the people of India transcending religious linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women and disadvantaged segments of the society.”

At national level we have Constitution of India which directly endorses the aims and objects of the Charter of United Nations and UDHR. The unique feature of our Constitution inspired by the ideals of human rights for the first time in the annals of human rights, bifurcated the mixture of justiciable civil and political rights, and non justiciable (economic, social and cultural rights) adopted them as fundamental rights and directive principles of State policy. The important provisions in our Constitution are Article 21 & 22 laying down number of safeguards for enforcement of criminal justice system without any misuse by police.

In number of cases, Supreme Court held that whenever the rights of the citizens are invaded with a mischievous or malicious intent, then the Court can exercise the jurisdiction to compensate the victim and also specify any other remedial mechanism. The principles expounding the law with reference to human rights, find place in the following decisions by the Supreme Court –

- i) re- Bhim Singh MLA V/s. State of Jammu & Kashmir & Others (Bhimsingh 1985 (4) SCC 677)
- ii) re- Smt. Neelabati Behera Alilas Lalit Behera V/s. State of Orissa & others (Neelabati Behera 1993 (2) SCC 746)
- iii) re – Shri D. K. Basu, Ashok K. Johri V/s. State of West Bengal, State of U. P (D. K. Basu 1997 (1) SCC 416)
- iv) re- A. K. Roy V/s. Union of India & Anr. (A. K. Roy 1982 SCC 710)
- v) re- Sunil Batra V/s. Delhi Administration (Sunil Batra AIR 1978 SCC 1675)
- vi) re- Hussainara Khatoon & Ors V/s. Home Secretary, State of Bihar, Patna (Hussainara AIR 1975 SCC 1369)

After having analysed the legal mandate governing the basic tenet of human rights, I have no hesitation to hold that a case justifying intervention by the Commission is made out. This finding necessitates a concise reflection on scope and ambit of Sec. 12(1), and Sec. 18 of Protection of Human Rights Act, 1993, which came to be aptly formulated by Patna High Court in the case of re – Bihar State Electricity Board, AIR 2013 PATNA 11,

That Section 18 of Human Rights Act empowers the Commission to take appropriate action, where the inquiry discloses the Commission of violation of human rights or negligence in prevention of violation of human rights by public servant. Thus, the ambiguity if any, in Section 12(a) of the Human Rights Act gets removed by perusing Section 18 of the Human Rights Act.

7. Further we would like to emphasize that instrumentality of the State and its officials must conform to the Rule of Law leading to fairness in action. IT is well settled dictum of law that fairness is a facet of Article 21 of Constitution of India which mandatorily has to be followed in criminal investigation. A right to fair investigation is not only a constitutional right but a natural right as well. Reliance with advantage is placed on a decision of Supreme Court in re-Nirmal singh Kahlon (2009) 1 SCC 441. Yet in another decision, in re – Amitbhai Anilchandra Shah (2013) 6 SCC 348, Supreme Court pointed out that investigating officer is the kingpin of the criminal justice delivery system. Supreme Court in re- Karansingh (2013) 12 SCC 529 pointed out that right to life and personal liberty viz a viz investigation cannot be deprived without following the procedure prescribed by law. A defective tainted decision definitely

leads to miscarriage of justice depriving a man of his fundamental rights guaranteed under Article 21 of Constitution of India.

We are also reminded a famous quotation of Mr. Jennison V. Baker –

“Should law sit limply while those who defy it go scott free; and Those who seeks its protection lose hope !

8. From the strong incriminating materials on record, I have no hesitation to hold that PSI Shri Suhas Patil not only failed to discharge his duties strictly in accordance with Rules and the Law regulating it, but by his alleged illegal actions brought dark cloud on the entire machinery of the law enforcing agency as it is because of such officers that the citizens in general lose their trust in them.

9. This brings me to another crucial question as regards award of compensation to the complainant of course besides making some relevant recommendation to streamline the administration of the law enforcing agency ensuring discharge and performance of their duties within the framework of Maharashtra Police Act, Cr. PC. Police Manual and finally uphold the spirit and soul of Constitution of India viz a viz Art. 14, 19, 21 of Constitution of India. Under the given set of circumstances of the case, award of compensation is absolutely justified as per dictum of Supreme Court in re- D. K. Basu and re-A. K. Johri observations made in Para 42 as under:

42. Article 9 (5) of the International Covenant on Civil and Political Rights, 1966 (ICCPR) provides that “anyone who has been the victim of unlawful arrest or detention shall have enforceable right to compensation”. Of course, the Government of India at the time of its legal system does not recognize a right to compensation for victims of unlawful arrest or detention and thus did not become a party to the Covenant. That reservation, however, has now lost its relevance in view of the law laid down by this Court in a number of cases awarding compensation for the infringement of the fundamental right to life of a citizen. (See with advantage Rudul Sah V. State of Bihar 1983 4 SCC 141; Sebastian M Hongray V Union of India 1984 1 SCC 339; Bhim Singh v. State of J& K 1984 Supp SCC 504 Saheli. A women’s Resources Centre V. Commr. Of Police 1990 1 SCC 422)There is indeed no express provision in the Constitution of India for grant of compensation for violation of a fundamental right to life, nonetheless, this Court has judicially evolved a right to compensation in cases of established unconstitutional deprivation of personal liberty or life. (See Nilabati Behera V. State)”

At the same time, liberty is taken to refer to the meaning and interpretation of the word “harass” in P.Ramanatha Aiyar’s Law Lexicon 2nd Edition, the term “harass” has been defined thus

“Harass.—‘Injure’ and ‘injury’ are words having numerous and comprehensive popular meanings, as well as having a legal import. A line may be drawn between these words and the word ‘harass’, excluding the latter from being comprehended within the word ‘injure’ or ‘injury’. The synonyms of ‘harass’ are: to weary, tire, perplex, distress tease, vex, molest, trouble, disturb. They all have relation to mental annoyance, and a troubling of the spirit.” The term “harassment” in its connotative expanse includes torment and vexation. The term “torture” also engulfs the concept of torment. The word “torture” in its denotative concept includes mental and psychological harassment. The accused in custody can be put under tremendous psychological pressure by cruel, inhuman and degrading treatment.” 26. In the said case, emphasizing on dignity, it has been observed:- “.....The majesty of law protects the

dignity of a citizen in a society governed by law. It cannot be forgotten that the welfare State is governed by the rule of law which has paramountcy. It has been said by Edward Biggon “the laws of a nation form the most instructive portion of its history”. The Constitution as the organic law of the land has unfolded itself in a manifold manner like a living organism in the various decisions of the court about the rights of a person under Article 21 of the Constitution of India. When citizenry rights are sometimes dashed against and pushed back by the members of City Halls, there has to be a rebound and when the rebound takes place, Article 21 of the Constitution springs up to action as a protector....”

10. Accordingly following recommendations are made by invoking powers u/s. 18(i) of Protection of Human Rights Act, 1993.

a) PSI Shri Suhas Patil presently attached with the Samarth Police Station, Pune do pay compensation of Rs.5,00,000/- (Rupees Five Lacs Only) to complainant Shri Keval L. Vikmani within six weeks from the date of receipt of the order, failing which to pay simple interest @ 6% p.a. on the awarded amount till its full realization.

b) Commissioner of Police, Thane do consider and examine, registration of cognizable offence against PSI Shri Patil u/s. 448 IPC besides the offences already registered against him under non cognizable category and order further reinvestigation in terms of Sec. 154 Cr. PC. Commissioner of Police, Thane is further directed to reexamine whether further departmental action as contemplated under Disciplinary Rules requires to be initiated against the erring police officer PSI Shri Patil..

c) With an alarming rise in such incidents at the police station involving members of the legal fraternity, Director General of Police, State of Maharashtra, Mumbai to initiate seminars periodically at all the Commissionerates / Divisions for sensitization of the police force in Maharashtra State and to focus on developing a sense of responsibility, courtesy, in dealing with the citizens, victims who look at them as protectors of law.

d) Ld. Secretary attached with the Commission to forward the copy of the order to the office of Additional Chief Secretary, Home Department, Mantralaya, Mumbai, Director General of Police, State of Maharashtra, Mumbai, Commissioner of Police, Thane to comply in accordance with the provisions u/s. 18(e) of the Act of 1993 r/w. Reg. 22 to 24 of Maharashtra State Human Rights Commission (Procedure) Regulations, 2011 and to submit report accordingly.

With these recommendations complaint stands closed and disposed off.

Complaint

| | | | |
|---------------|-------------|----------------|------------|
| Diary No | 221/CR/2024 | Section | M-2 |
| Language | MARATHI | Mode | BY HAND |
| Received Date | 04/01/2024 | Complaint Date | 04/01/2024 |

Victim

| | | | |
|--------------------|---|---------------|-------------|
| Victim Name | ADV. GANESH P. GHOLAP | Gender | Male |
| Religion | Unknown | Cast | Unknown |
| Address | GROUND FLOOR, RITESH TOWER CHS, NEAR COMMISSIONER BUNGLOW, OPP. TEJASHRI, MSEDCL OFFICE, KARNIK ROAD, KALYAN (W.) | | |
| District | THANE | State | MAHARASHTRA |

Complainant

| | | | |
|-----------------|---|--------------|-------------------|
| Name | ADV. GANESH P. GHOLAP | | |
| Address | GROUND FLOOR, RITESH TOWER CHS, NEAR COMMISSIONER BUNGLOW, OPP. TEJASHRI, MSEDCL OFFICE, KARNIK ROAD, KALYAN (W.) | | |
| District | THANE | State | MAHARASHTRA (0) |

Incident

| | | | |
|--------------------------|----------------|-----------------------|-------------|
| Incident Place | THANE | Incident Date | 25/05/2023 |
| Incident Category | ABUSE OF POWER | | |
| Incident District | THANE | Incident State | MAHARASHTRA |
| Incident Details | | | |