

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRL) No.6408 of 2006

Jaywant P. Sankpal

... Petitioner

Vs.

Suman Gholap & Ors.

... Respondents

J U D G M E N T

ALTAMAS KABIR, J.

1. The Petitioner herein has challenged the order of the Bombay High Court dismissing the Criminal Writ Petition No.1839 of 2005, in which he had challenged the order dated 19th October, 2004, passed by the Maharashtra State Human Rights

Commission in Case No.1912/2002/3258. The complainant in the said case was one Smt. Suman Sriram Gholap, the Respondent No.1 herein. In the said complaint, the State of Maharashtra was made the Respondent No.1 through the Commissioner of Police, Brihan Mumbai. The Respondent Nos.2, 4 and 5 were police personnel attached to Shahunagar Police Station, Mumbai-17. The Petitioner herein was made the third Respondent in the said complaint case. It was the case of the complainant that the Respondents had violated the human rights of one Baban, the son of the complainant, within the scope of Section 12(a) of the Protection of Human Rights Act, 1993.

2. The facts revealed in the complaint and which came to light during the hearing thereof by the Maharashtra State Human Rights Commission, Mumbai, hereinafter referred to as "the Commission", indicate that the complainant, who is a widow, had

two sons, one Kisan and the other Baban. She resides in Sanjay Gandhi Nagar Zopadpatti, Matunga, and works as a domestic servant to earn her livelihood. Her elder son, Kisan, lives with his family at Vashi at New Mumbai and the complainant lives with her unmarried younger son, Baban, at Matunga. In 1998, Baban was arrested by the Dharavi Police in connection with a case which was tried by the Court of Sessions and he was acquitted in respect thereof on 2nd May, 2002. Thereafter, various cases were lodged against Baban and after his acquittal in the case filed by the Dharavi Police, he left Matunga and went to reside with his elder brother at Vashi where he earned a living by selling fruits as a street vendor. On weekends he used to come to see the complainant and on 30th June, 2002, he had come to Matunga to meet the complainant. While he was at his mother's place of residence, the Respondent No.4 before the Human Rights Commission, ASI K.R. Kubel, along with some

other police personnel, came and asked Baban to accompany them to the police station. He was, however, released on the next day.

3. On 8th August, 2002, at about 8.00 a.m., Baban had gone to the stall of one Abbas Bhai. According to the complainant, he was assaulted and injured by the said Abbas Sayyed Ali Kadri @ Abbas Ali. The complainant took him with bleeding injuries to the police station where she was asked to wait by the Duty Officer. In the meantime, the said Abbas Ali and his three brothers and some women came to the police station and soon thereafter the police personnel came out and started assaulting Baban. The petitioner herein told the complainant to leave the police station. It is the complainant's case that she was also abused and forcibly removed from the police premises while Baban was detained. An hour later,

the police personnel took Baban to hospital while the complainant went home.

4. It is also the complainant's case that when in the evening she went to the police station to enquire about her son, she saw that he had been placed in the police lockup. She was thereafter informed by Havildar Kubel that her son would not be released from the police station and, accordingly, next day she went to the Court of the Magistrate at Bandra, where Baban was to be produced for the purpose of remand. It was mentioned by the complainant in her complaint that she had been threatened by the police officers in question not to reveal the incidents of the previous day, but when Baban was produced she noticed that he had bandages all over his body and there were injuries on his back and hand. The complainant was threatened not to make any complaint to the Court as otherwise her son would

be involved in other crimes. Subsequently, Baban was released on bail on 6th September, 2002, but was, once again, taken to the police station on 30th September, 2002, and was assaulted allegedly on the ground that he had assaulted Abbas Ali's son. It was the grievance of the complainant that instead of recording the complaint made by her or her son against Abbas Ali, the police registered a case against her son at the behest of Abbas Ali and illegally detained him in police custody till he was released on bail. She also submitted that the police had been harassing her and her sons without any cause or justification and appropriate action should, therefore, be taken against them.

5. The complainant's allegations were fully supported by her son Baban who reiterated that he had been ill-treated by the police personnel.

6. In reply to the charges against the Respondents, all the Respondents filed their

respective replies denying the allegations, and in particular, in the report submitted by the Deputy Commissioner of Police, Zone V, Worli, Mumbai, it was mentioned that the complainant's son, Baban, had gone to the shop of Abbas Ali on 8th August, 2002, and demanded a sum of Rs.5,000/- as 'hafta'. On Abbas Ali's refusal to pay the same, Baban assaulted him with a razor and threatened him that he would come again the next day. After being treated at Sion Hospital, the said Abbas Ali lodged a complaint with the Shahunagar Police Station, on the basis of which Crime No.99 of 2002 was registered against Baban under Sections 387 and 324 IPC, in pursuance whereof Baban was arrested. The report of the Deputy Commissioner of Police also revealed that Baban was a habitual offender against whom several criminal cases had been initiated under Sections 326, 114, 379, 452, 342 and even 376 IPC between 1992 and 1995 with the Dharavi Police Station. It was also pointed out that proceedings

for detention had also been commenced against Baban under the Maharashtra Preventive of Dangerous Activities of Slumlords, Bootleggers & Drug Offenders Act, 1981.

7. As far as the police personnel, including the petitioner herein, are concerned, they had only arrested the complainant's son on the complaint made by Abbas Ali, who is a food grain merchant at the Gandhi Nagar Labour Camp, Mumbai, under Sections 387 and 324 IPC and they had acted on the instructions of their superiors. Reference was also made to an order of detention which had been passed against Baban on 27th February, 2002, and the various other crimes registered against him and his brother Kisan with the Dharavi Police Station.

8. On the basis of the said allegations, a complaint came to be filed by the Respondent No.1 before the Maharashtra State Human Rights Commission, Mumbai, alleging that instead of

recording the complaint made by her or her son against Abbas Ali, the Petitioner and the Respondent Nos.3 to 5 showed undue indulgence to the said Abbas Ali by registering a case against her son at the behest of Abbas Ali and illegally detained him in police custody till he was released on bail. Upon notice being served, the Petitioner herein and the other Respondents appeared before the Commission and filed their respective affidavits, which were considered in detail by the Commission. The Commission noticed that no affidavit had been filed on behalf of Abbas Ali nor was any oral evidence adduced on his behalf. Furthermore, no attempt was made by any of the police officers, including the Petitioner herein, to summon the witnesses to the occurrence according to their version. Ultimately, the Commission observed as follows :-

"On appreciation of the discrepancies and contradictions in unfolding the alleged

incident either of extortion or assault by Baban on Abbas Ali, it seems that the entire version presented in defence is nothing but a concoction."

9. On the other hand, the complainant and her son Baban had stated that when they rushed to the police station to lodge a complaint, they were asked to wait outside. After some time, Abbas Ali and his brothers and some women came to the police station and they were entertained first by the police and though Baban was the victim of the assault, he was illegally arrested. The Commission also disbelieved the defence of the police personnel that Baban inflicted injuries with a razor on himself having regard to the medical evidence of Dr. Raju Patel of the Lokmanya Tilak General Hospital, which did not support such theory. The Commission also took note of the Doctor's evidence that Baban had complained of chest pain and had been removed to hospital at 2.30 a.m. He was treated for tenderness over the left

anterior chest, which indicated hairline fracture on his ribs. In the said facts, the Commission had no hesitation in holding that there had been violation of Baban's human rights at the hands of the Respondent Nos.3, 4 and 5 and the Petitioner herein. On account of the above, the Commission recommended as follows :-

"(a) the State Government shall pay to the complainant on behalf of the victim of Police atrocity a sum of Rs.45,000/- as compensation and recover the same from the respondents PSI Shri G.G. Navele, PSI Shri J.P. Sankpal, PSI Shri K.R. Kubal equally;

(b) that the State Government shall submit within six weeks from the receipt of these directions its compliance report to the Commission."

10. The said order of the Commission was challenged by the Petitioner herein before the Bombay High Court, which dismissed the same by the impugned order dated 30th August, 2006, indicating that since the State of Maharashtra had not challenged the

order dated 19th October, 2004, passed by the Commission and had also complied with the same, there was no necessity of entertaining the writ petition, particularly, on account of the fact that an earlier petition filed by the Petitioner herein where he had sought relief challenging the said order came to be withdrawn.

11. Appearing for the Petitioner, Mr. K.N. Rai, learned Advocate, submitted that the antecedents of Baban, the son of the Respondent No.1 herein, would clearly go to show that he was a habitual offender and had been involved in various criminal cases registered against him as he was creating a reign of terror in the minds of the public in the Matunga Railway Colony, Sanjay Gandhi Nagar, Kunchi Kurve Nagar, Matunga Labour Camp and areas adjoining thereto, within the jurisdiction of Dharavi and Shahunagar Police Stations, and had even been detained under the Maharashtra Preventive Detention

Act by the Commissioner of Police, Greater Mumbai, which order has been confirmed by the Advisory Board. Mr. Rai submitted that the Commission had overlooked the affidavits filed by the Petitioner and the Respondent Nos.3 to 5 as well as the report of the Deputy Commissioner of Police, Zone V, Worli, Mumbai. Mr. Rai submitted that aggrieved by the recommendation made by the Commission, the Petitioner had filed Writ Petition No.975 of 2005 in the Bombay High Court which was withdrawn on account of the understanding given to him on behalf of the State of Maharashtra that it had decided not to implement the order passed by the Commission. Mr. Rai submitted that the same should not be taken into consideration while considering the writ petition which had subsequently been filed challenging the order of the Commission, since the earlier writ petition was withdrawn on the basis of an occurrence which never materialised.

12. Mr. Rai lastly submitted that there was nothing on record to indicate that Baban had actually been assaulted by the Petitioner or the Respondent Nos.3 to 5, except for the allegations made by him and the statement made by the doctor that he had noticed certain tenderness over certain parts of Baban's body. Mr. Rai urged that having regard to the antecedents of Baban, the defence taken that he had inflicted injuries on himself with a razor in order to implicate the Petitioner and the Respondent Nos.3 to 5, could not be ruled out and ought not to have been rejected by the Commission.

13. As far as the State of Maharashtra is concerned, it has been submitted that the recommendation of the State Human Rights Commission had since been implemented and since the State had chosen not to challenge the order of the Commission, no separate submission would be made on behalf of the State.

14. Having regard to the special emphasis laid by Mr. Rai on Baban's antecedents, we have carefully considered the order of the Commission which was upheld by the High Court and we see no reason to differ with the same. There is sufficient material, which has been duly looked into by the Commission and the High Court that the son of the Respondent No.1 had been physically tortured while in custody in violation of the norms relating to custody of persons arrested or detained in connection with any offence. It is not for us to appraise the evidence further since two forums have had a chance to look into the same. Except for a bare denial, there is no material on record to refute the complaint of torture of Baban by the Petitioner and the Respondent Nos.3 to 5. It is clear that for whatever reasons, which could also include his antecedents, he was treated differently

from Abbas Ali against whom he had come to make a complaint and ended up being the accused.

15. In such circumstances, we are not inclined to interfere, either with the order of the Commission or the High Court, and the Special Leave Petition is, accordingly, dismissed.

.....J.
(ALTAMAS KABIR)

.....J.
(DR.MUKUNDAKAM SHARMA)

New Delhi
Dated:28.07.2010