

GOA HUMAN RIGHTS COMMISSION

PANAJI – GOA

Proceeding No. 23/2012

INQUIRY REPORT

The Complainant has approached this Commission alleging that the Police Sub-Inspector Shri Dattaguru Sawant attached to Valpoi Station illegally detained and assaulted him at Valpoi Police Station on 26/06/2012.

2. It is the case of the Complainant that on 26/06/2012 at about 20.00 hrs. the Complainant was coming from Mauxi, Dabem road in his car and when he reached three roads junction he saw a group of people gathered at the junction. The Complainant inquired with the people about the incident and he learnt that an vehicular accident had taken place between Omni Car and a Scooter in which one Mr. Santan Gonsalves who is a friend of the Complainant and a Muslim person were involved. The Complainant requested his friends who had gathered on the spot to settle the matter amicably. Thereafter, the Complainant proceeded towards his residence. The Complainant has further stated that on reaching at his residence, he received a call from the said Mr. Santan Gonsalves calling the Complainant at the Valpoi Police Station for releasing him on bail in case of arrest. Accordingly, the Complainant went to the Police Station to help Mr. Santan Gonsalves.

3. The Complainant has specifically stated that the Police Sub-Inspector Shri Dattaguru Sawant asked the Complainant to get out of the Police Station. It is further stated by the Complainant that when he was in the varendah of the Police Station, Police Sub Inspector Shri Dattaguru Sawant came near the Complainant and slapped over and over on his face and also caught hold of his collar, dragged him and put him inside the Police Lock-Up.

4. Taking cognizance of the complaint, this Commission issued notices to 1) the Chief Secretary, Government of Goa, Secretariat, Porvorim, 2) the Secretary (Home), Government of Goa, Secretariat, Porvorim – Goa, 3) Superintendent of Police (North), Porvorim – Goa and 4) Shri Dattaguru Sawant, PSI, Valpoi Police Station, Valpoi – Goa. In pursuance to the notices, the Respondent No.4 filed reply denying the allegations made by the Complainant against him. The Learned Advocate Shri G. D. Kirtani appearing on behalf of the Respondents filed a Memo stating therein that the Respondents No.1, 2 and 3 do not wish to file any reply in view of detailed reply of

the Respondent No.4. In his reply, the Respondent No.4 amongst other things has stated that Head Constable bearing batch No.4063 was instructed to visit the spot for verification and further necessary action. It is further stated that on reaching the spot the said Head Constable noticed that a group of around 50-60 people had gathered on the spot and the Complainant was shouting and/or using foul language against the Police Department. It is also stated that the Complainant was trying to provoke the general public against the Police and that the Complainant was not in proper state of mind and was using abusive language against the Police Department and the Police Officials present at the site. It is further stated that the said Head Constable noticed that the Complainant was smelling of liquor and was intoxicated and was under the influence of alcohol. It is further stated that the Complainant was under the influence of alcohol and this fact was confirmed by the Medical Officer of the Community Health Centre, Valpoi.

5. The Complainant examined himself before this Commission as CW1 and also examined two more witnesses namely Shri Santan J. Gonsalves (CW2) and Shri Pradeep Chandrakant Narvekar (CW3) in support of his case. The Respondents did not examine any witness in support of their case.

6. We have heard the Complainant and Learned Advocate Shri G. D. Kirtani for the Respondents. We have also gone through the records of this case.

7. The question for our determination is whether the Complainant was illegally detained and was assaulted by Shri Dattaguru Sawant/Respondent No.4 at the Police Station thereby violating the basic human rights of the Complainant.

8. The Complainant in his Affidavit-in-Evidence has stated in clear terms that Police Sub-Inspector Shri Dattaguru Sawant asked him to get out of the Police Station. He has further stated that when the Complainant was in the varendah of the Police Station, PSI Shri Dattaguru Sawant came near him and slapped over and over on his face, caught hold of his collar dragged him and put him inside the police Lock-Up. The other two witnesses namely Shri Santan Gonsalves (CW2) and Shri Pradeep Narvekar (CW2) who were present at the place of the incident have corroborated the evidence of the Complainant (CW1) on all the material aspects of the case. The Complainant (CW1) as well as CW2 and CW3 were cross-examined by the Respondents. However, nothing has been brought on record to discard or to disbelieve the evidence of CW1, CW2 and CW3. We do not find any material infirmity

in the evidence of CW1, CW2 and CW3 which to our mind appears to be convincing and trustworthy.

9. The Complainant who argued in person submitted before us that he was arrested without any reason. He contended that his arrest is illegal. He also submitted that the Medical Certificate regarding alcohol produced by the Respondents is a false and manipulated certificate.

10. The Learned Advocate Shri G. D. Kirtani contended that the Complainant was not assaulted by the Respondent No.4/Shri Dattaguru Sawant. He submitted that the Complainant was examined by the Medical Officer at Community Health Centre, Valpoi but the Complainant did not make any complaint to the Medical Officer on duty. In fact, the Complainant has admitted in his cross-examination that he did not make any complaint about the assault by Shri Dattaguru Sawant/Respondent No.4. But then, the mere fact that the Complainant did not make any complaint before the Medical Officer is not at all sufficient to draw an inference that the Complainant was not assaulted by the Respondent No.4. It is not the requirement of law that any person brought for medical examination before the Medical Officer in assault cases by the Police, should inform the Medical Officer about such assault, if any. We therefore do not find any merit in this contention of the Respondents.

11. The Learned Advocate Shri G. D. Kirtani next contended that there is no medical evidence to prove that the Complainant was assaulted by the Respondent No.4. This contention is devoid of any substance. It is pertinent to note that the Complainant has alleged that he was assaulted by slaps only. In such a situation, it would be ridiculous to expect corroboration to the evidence of the Complainant by medical evidence.

12. The Learned Advocate Shri G. D. Kirtani next submitted that the Complainant was under the influence of liquor at the time of the incident. It is his contention that the Medical Officer has certified that the Complainant was under the influence of liquor at the time of examination. We also do not find any force in this contention of the Respondents. At this stage it would be convenient to look into the Medical Certificate issued by the Medical Officer, Community Health Centre, Valpoi. By letter dated 26/06/2012, the Complainant was referred for medical examination by Valpoi Police. The said letter dated 26/06/2012 is reproduced below for the sake of convenience.

Valpoi Police Station
Dtd. 26.06.2012

To,
The Medical Officer,
CHC Valpoi
Valpoi Sattari
Goa

Sub: Request for medical examination
Ref: Arrest u/s.151 Cr.PC on 26.06.2012
Respected Doctor

I am sending herewith one person namely Vincent s/o Manuel Fernandes age 45 yrs R/o H.No.362, Massordem, Valpoi, Sattari Goa for medical examination since he has been arrested u/s.151 Cr.P.C.

Kindly medically examine the above mentioned person and opine whether he is fit to be placed in police custody.

Thanking You,
Yours faithfully,

Sd/-
Police Inspector
Valpoi P.S. Goa.

The opinion of Medical Officer is reproduced below:

-Patient unfit for custody as BP-180/110mmHg c/o accelerated hypertensive pt kept under observation and discharged after treatment.

From the opinion given by the Medical Officer, it is abundantly clear that the Medical Officer did not express any opinion that the Complainant was under the influence of alcohol. It is also pertinent to note that the Police also did not ask the Medical Officer to examine the Complainant to ascertain whether the Complainant was under the influence of alcohol.

13. The Respondents have also produced a copy of Medical Certificate which was received by Valpoi Police Station on 30/06/2012. This Medical Certificate is reproduced below:

To whom-so-ever it may Concern.

This is to inform you that Mr. Vincent Fernandes, 45 yrs r/o of Massordem Sattari was brought to our CHC on 6/06/12 @ 11.10pm for medical fitness for custody. Mr. Vincent was examined, he was under influence of alcohol.

On examination his Blood pressure was found to be high i.e. BP=180/110mmHg
He was given Tab Depin 5mg S/L + Tab Alprax 0.5mg stat and was kept for
observation overnight.

Morning patient was discharged & put on

Anhypertensive medicine.

Morning BP-140/100mmHg.

Patient was discharged on medicine Tab Amlodipine 5mg

½ - 0 - 0 x 10 days

Tab Alprax 0.5mg

Fu after 10 days.

Thank You

Sd/-

MO CHC Valpoi.

The above Medical Certificate is not free from reasonable doubts. First of all it is not known as to under what circumstances the above Medical Certificate was issued by the Medical Officer, particularly when the Medical Officer had earlier issued the Medical Certificate/opinion when the Complainant was taken for medical examination on 26/06/2012. Admittedly, there is nothing on record to indicate that the Valpoi Police had requested the Medical Officer to issue second Medical Certificate/opinion. In this so called second Medical Certificate, it is stated by the Medical Officer in a casual manner that the Complainant was under the influence of alcohol which is conspicuously missing in the first Medical Certificate. It is not known as to on what basis the Medical Officer has stated that the Complainant was under the influence of alcohol. Admittedly, the Medical Officer did not subject the Complainant for blood test to ascertain the contents of alcohol in his blood. The Medical Officer has also not stated that the Complainant was aggressive and was not cooperative. A mere observation that the Complainant was under the influence of alcohol is not sufficient to come to positive conclusion that the Complainant was under the influence of alcohol. It appears to our mind that this so called second Medical Certificate has been introduced by the Respondents as a clear case of afterthought to cover up the illegalities committed by the Shri Dattaguru Sawant/Respondent No.4.

14. The next and last contention of the Learned Advocate Shri G. D. Kirtani is that the Complainant tried to create law and order situation and hence, the Complainant was arrested to prevent any untoward incident giving rise to cognizable offences. This contention also has no legs to stand. Admittedly, the Police invoked Section 151

of Criminal Procedure Code to place the Complainant under arrest. The Respondent No.4 in his reply at para-4 has stated that the Complainant was trying to provoke general public peace. In para-5 of the reply the Respondent No.4 has stated that in order to avoid any commission of cognizable offence and to avoid any breach of law and other situation, the Complainant was taken into custody u/s 151 of Cr.P.C. The question for determination is whether in the facts and circumstances of this case, the Police were justified in arresting the Complainant by taking shelter u/s 151 of Criminal Procedure Code. We are unable to digest the contention that the Police had no option but to invoke the provisions of Section 151 of Cr.P.C. to prevent commission of cognizable offences. The reasons spelt out for arresting the Complainant by invoking Section 151 of Cr.P.C. are against the mandate of law. Admittedly, the incident had taken place at the Police Station. There is nothing on record even to suggest that the Complainant was capable of committing any cognizable offences or was in a position to create law and order problem. It is settled law that if it is possible to prevent commission of cognizable offence by any other method without arresting the proposed offender, any such arrest has to be construed as illegal arrest. It is also settled law that Police cannot arrest any person on the ground that such person is likely to commit breach of peace or disturb public tranquillity.

15. Chapter XI of the Criminal Procedure Code deals with Preventive Action by the Police.

Section 149 of Cr.P.C. provides that every police officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence.

Section 150 of Cr.P.C. lays down that every police officer receiving information of a design to commit any cognizable offence shall communicate such information to the police officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

Section 151 (1) provides that police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing if it appears to such officer that commission of the offence cannot be otherwise prevented.

Section 151(2)

16. It is apparent from the records of this case that the Police have not fulfilled the requirement of Section 149 and 150 of Cr.P.C. There is nothing on record to show that the Police have received any information relating to cognizable offence by the Complainant. Now, even assuming that the Respondent No.4 had received such

information, no such information or design to commit any cognizable offence was communicated by the Respondent No.4 to his superiors. Thus it is apparent that the Valpoi Police have arbitrarily invoked the provisions of Section 151 of Cr.P.C. by misusing their powers. The arrest of the Complainant therefore is not at all justified.

17. On the basis of the records of this case we are satisfied that the Complainant was illegally detained and was assaulted by the Respondent No.4. The conduct of Respondent No.4/Shri Dattaguru Sawant is a clear infringement of the Fundamental Right of the Complainant as guaranteed under Article 21 of the Constitution of India and also amounts to violation of his basic human rights.

18. In the case of Joginder Kumar v/s State reported in (1994) 4 Supreme Court Cases 260, the Apex Court considered the dynamics of misuse of police power of arrest and opined as follows:

“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. The justification for the exercise of it is quite another No arrest should be made without a reasonable satisfaction reached after some investigation about the genuineness and bonafides of a complaint and a reasonable belief both as to person’s complicity and even so as to the need to effect arrest. Denying a person his liberty is a serious matter”

19. In the case of D. K. Basu v/s State of Bengal reported in AIR 1997 Supreme Court 610, the Apex Court has observed as follows:

“Fundamental rights occupy a place of pride in the Indian Constitution. Article-21 provides “No person shall be deprived of his life or personal liberty except according to procedure established by law” Personal liberty, thus, is a sacrosanct and cherished right under the Constitution. The expression “life or personal liberty” has been held to include the right to live with human dignity and thus it would also include within itself a guarantee against torture and assault by the State or its functionaries.

20. **Section 18. Steps during and after inquiry.-** The Commission may take any of the following steps during or upon the completion of an inquiry held under this act, namely:-

- (a) *where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights or abetment thereof by a public servant, it may recommend to the concerned Government or Authority –*
- (i) *to make payment of compensation or damages to the Complainant or to the victim or the members of his family as the Commission may consider necessary.*

21. The facts of this case reveal that the Complainant had to suffer mental torture as well as physical discomfort on account of high handedness of the Police who have apparently misused their powers by curtailing the liberty of the Complainant without any justification. We are therefore satisfied that this is a fit case to award appropriate monetary compensation to the Complainant by the State Government.

22. In the case of D. K. Basu v/s State of Bengal (Supra), it has been observed as follows:

“it is well accepted proposition in most of the jurisdiction, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by a public servant and the State is vicariously liable for their acts

In the facts and the circumstances of this case, we make the following recommendation:

- (i) *The State of Goa through its Chief Secretary shall pay an amount of Rs.5,000/- (Rupees five thousand only) to the Complainant as compensation within a period of 30 days. It shall be open to the State Government to recover the amount of compensation from the erring Police Officials.*

Date: 23/08/2016

Place: Panaji – Goa.

Sd/-
(A. D. Salkar)
Chairperson
Goa Human Rights Commission

Sd/-
(J. A. Keny)
Member
Goa Human Rights Commission

