

KARATAKA STATE HUMAN RIGHTS COMMISSION

1-4th Floors, 5th Stage, M.S. Building, Bengaluru - 560 001

HRC No.4131/10/31/2020

Dated: 09-05-2022

PRESENT

Justice D.H. Waghela
Chairperson

Shri K.B. Changappa
Member

Shri R.K. Dutta
Member

COMPLAINANT: Hirotooshi Tanaka,
Japan Citizen
(Represented by Advocate Sri Rohan Kothari)

V

RESPONDANT : B. Hanumantharayappa,
Police Sub Inspector (Retired),
R.T. Nagar Police Station, Bangalore City.
Postal Address:
#20, 5th 'K'Cross, 7th Main, Rukmini Nagar,
Nagasandra Post, Bengaluru 560 073.
(State of Karnataka)

OPINION, REPORT AND RECOMMENDATIONS

This proceeding was initiated on 09-12-2020 on the basis of the complaint dated 04-12-2020 by the complainant who has alleged that, he travelled to India in 2019 for the purpose of learning English and on 23-10-2019 arrived at Bengaluru and began learning English at Quick

Step Centre located at R.T. Nagar which was run by Mrs. Suparna Mujumdar. There was an altercation between the complainant and Mrs. Suparna Mujumdar on 13-11-2019 which resulted in Smt. Suparna Mujumdar filing a complaint with R.T. Nagar police station. The complaint dated 3-11-2019 was registered as an FIR on 18-11-2019 as Crime No.247/2020 under Sections 323 and 504 IPC both of which were non-cognizable and bailable offences. On 22-11-2019 when complainant appeared before the R.T. Nagar police station as directed, the then PSI Sri Hanumantharayappa immediately arrested the complainant and the complainant had to spend the whole night at the police station. The complainant being Japanese national and unable to effectively communicate in English and having no knowledge of Kannada language, he was unaware of the legal procedure and even was unable to get legal assistance. It is further alleged that throughout the arrest the R.T. Nagar police did not make complainant aware of his rights. All the documents like passport, credit and debit cards, cash, gadgets, mobile phone were taken away by the police. Police have not given the opportunity to the complainant to speak to his family member, friends or the Japanese consulate. Even the complainant was not allowed to have his medication as he suffered from Attention-Deficit Hyperactivity disorder. The complainant was produced before the magistrate on 23-11-2019 who

remanded him to judicial custody. The complainant had to be at Central Prison, Parappana Agrahara till he obtained bail on 11-12-2019, in a bailable offence which was also non-cognizable registered against him. The complainant states that the police taking undue advantage of his foreign citizenship, used his lack of awareness to victimize, intimidate and harass him and has sought strict action against the police.

2. After taking cognizance of the case, the copy of the complaint was forwarded to the Deputy Commissioner of Police, North Division, Bengaluru to get the allegations investigated and submit his report. The Deputy Commissioner of Police, by his letter dated 19-1-2021, forwarded the report of the Assistant Commissioner of Police which is dated 4-1-2021. The Assistant Commissioner of Police in her report states that the notice sent to the complainant was not served and hence they could not examine the complainant. Further she narrates the case registered and also informing the Police Commissioner, ADGP, State Intelligence, Government of India and other officials and also states that they have produced the complainant -accused before the magistrate. She further states that on examining the then PSI Hanumantharayappa and also HC Raghavendra they have denied the allegations made by the complainant and seeks closure of the case. She has stated about the Hon'ble High Court quashing the case against the complainant. On perusal of the

report of the Assistant Commissioner of Police, J.C.Nagar Sub Division nothing is stated about the procedure that should be followed in a non-cognizable and bailable offences. The whole report is silent about the same.

3. Since, it prima facie appeared that the police officers concerned failed to follow the procedures in bailable offences and non-cognizable cases, the Commission considered it necessary to proceed with the case. In order to give fair opportunity to the police official, the then PSI, R.T.Nagar police station Sri Hanumantharayappa was issued with Notice under Sec.16 of Protection of Human Rights to appear before Commission to state his case and accordingly Sri Hanumantharayappa was present on 23-2-2022. Meanwhile, Sri Rohan Kothari, Advocate appeared on behalf of the complainant.

4. Both the sides were given opportunities to present their case. In view of the rival contentions, the Commission had to see whether the R.T.Nagar police (concerned official) have violated the express provision of Sections 155, 50 and 50(A) of Cr.P.C., as well as the Human Rights of the complainant.

According to Sec.41-A of Cr.PC - The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a

notice directing the person 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, to appear before him or at such other place as may be specified in the notice.

According to Sec.60-A of Cr.PC - No arrest shall be made except in accordance with the provisions of this Code or any other law for the time being in force providing for arrest.

And as per Sec.155(2) of Cr.PC - No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial and

as per Sec.155(3) of Cr.PC - Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

5. So clearly the investigation in respect of a non-cognizable offence must proceed in accordance with Sec.155 of Cr.PC and such provision mandates that the police had no powers of arrest in the course of such investigation.

6. "The PSI of R.T.Nagar police station was permitted to register the crime and to investigate the matter under Sec.323, 506 of IPC in NCR No.166/2019 against the accused". So clearly there is no order by the

court for arrest of the petitioner as seen in the intimation given to the PSI nor there was any warrant for arrest.

7. In a case reported in (2009) 4 Supreme Court Cases 446 the Hon'ble Supreme Court at para 10 states thus:

“10. The position of persons accused of non-bailable offence is entirely different. The right to claim bail granted by Section 436 of the Code in a bailable offence is an absolute and indefeasible right. In bailable offences there is no question of discretion in granting bail as the words of Section 436 are imperative. The only choice available to the officer or the court is as between taking a simple recognizance of the accused and demanding security with surety. The persons contemplated by Section 436 cannot be taken into custody unless they are unable or willing (*sic* unwilling) to offer bail or to execute personal bonds. There is no manner of doubt that bail in a bailable offence can be claimed by the accused as of right and the officer or the court, as the case may be, is bound to release the accused on bail if he is willing to abide by reasonable conditions which may be imposed on him”.

8. So clearly in this case even the personal bonds were not asked or explained to the complainant-accused. Merely because the learned magistrate has passed the remand order will not absolve the wrong done by the PSI in arresting the accused without any order by the concerned court. The arrest of the complainant was clearly illegal and without

authority of law by the then PSI Sri Hanumantharayappa. Further there was also no legal basis for seeking remand of the complainant. The arrest of the complainant was also without any warrant.

9. The PSI states that he has taken permission from the magistrate to arrest the accused. But nowhere in the document he has furnished there is an order for arrest and the document furnished by him is only regarding permission for investigation.

10. The non-mentioning of the procedure regarding the non-cognizable and bailable offences in the report of the Assistant Commissioner of Police clearly indicates that the police officials are not able to furnish any proper reason for the arrest of the complainant-accused which lead to the unnecessary judicial custody of the complainant for merely 19 days.

11. The material placed on record examined by the Commission in detail leads to the conclusion that no proper procedure was followed in this case. And the arrest and detention of the complainant was illegal and violated his human rights. Hence it is necessary to compensate the complainant for the illegality committed by the then PSI Sri B.Hanumantharayappa who was expected to protect the law and order and safeguard the rights of the people.

12. Therefore on careful consideration on the facts and circumstances, the Commission recommends that -

- (1) The State Government should issue appropriate guidelines to the police officers in the cases involving foreign nationals or illiterate persons when they are arrested, so as to follow in letter and spirit the provisions of Section 50(1), 50(2) and 50-A of Code of Criminal Procedure, in bailable and non-cognizable cases.
- (2) An amount of Rs.75,000/- (Seventy-five thousand only) must be paid to the complainant by demand draft in his name towards compensation for gross violation of law and human rights in dealing with bailable and non-cognizable offence involving the complainant.
- (3) The State Government should consider taking necessary disciplinary action and recovery of the amount, required to be paid by way of compensation as aforesaid, from the PSI, concerned as discussed herein above, in accordance with law as may be provided in the relevant service Rules.

13. It may be appropriate to point out at the end that under the provisions of Section 18(3) of The Protection of Human Rights Act, 1993 the Government or the authority concerned is duty bound to forward within a month its comments on this report and

also report the action taken or proposed to be taken. It is hereby brought to kind notice of the authorities concerned that, under the provisions of Regulation 22 of Karnataka State Human Rights Commission (Procedure) Regulations 2007, if any application seeking modification or review of order or proceeding passed by this Commission is received, it may be considered by the Commission for appropriate order.

Sd/-

Justice D.H. Waghela
Chairperson

Sd/-
K.B. Changappa
Member

Sd/-
R.K. Datta
Member