

Dattatraya Vs. the State of Maharashtra and Others

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Court : Mumbai Aurangabad

Decided On : Oct-22-2013

Judge : K.U. Chandiwal & a.I.S. Cheema

Appeal No. : Criminal Writ Petition No.964 of 2012

Appellant : Dattatraya

Respondent : The State of Maharashtra and Others

Advocate for Def. : Smt. Bajpai

Judgement :

K.U. Chandiwal, J.

1. Heard finally. On 3rd April, 2013, Rule was issued returnable on 17th June, 2013.

2. The petitioner has prayed to declare that he was illegally detained by respondent nos. 2 to 5 and to direct respondent no.1 to initiate departmental inquiry against respondent nos. 2 to 5 for such illegal detention. He has also urged for a Mandamus or a writ in the nature of Mandamus for grant of compensation of Rs. 5,00,000/- (Rs. five lacs) for his illegal detention, from respondents.

3. On 1.11.2012, after hearing Counsel for the petitioner and perusal of the record, Superintendent of Police, Ahmednagar, was directed to conduct inquiry in the

subject matter and to file affidavit, answering each paragraph of the petition. On 31st Jan., 2013, Division Bench noticed that inquiry has not been conducted by the Superintendent of Police but, he has secured a report from Sub Divisional Police Officer and filed an affidavit on that basis. Consequently, Special Inspector General of Police, Nashik Range, Nashik, immediate superior officer of the Superintendent of Police, Ahmednagar, was directed to conduct an inquiry himself into the grievances represented in the writ petition, record statements of all concerned, and to furnish report on his affidavit. Accordingly, such inquiry was conducted and report is tendered before this Court.

4. Respondent nos. 2 to 5 have also tendered their affidavit. Respondent nos. 2, 3 and 4 have tendered additional affidavit on 24.9.2013, tendering apology for events.

5. FACTS PROJECTED IN THE PETITION:

(a) FIR No.224/2012 was registered against the petitioner for offense under Sections 453, 354, 323, 504, 506 of IPC on 18.8.2012. He was arrested by Rahuri Police on 18.8.2012 at about 11 p.m. He was produced before the learned Magistrate on 19.8.2012, at 7 p.m. Police custody remand was refused by the learned Judicial Magistrate, First Class, and petitioner was sent to Magisterial custody remand. His bail application was granted. He was released at 7.30 p.m. on 19.8.2012. In the Court premises itself, after such release, the petitioner was again arrested by respondent nos. 4 and 5 and he was taken to the Police Station. Imploration by relatives of the petitioner as to reasons for re-arrest did not yield any result. Respondent no.2 abused in filthy language at the Police Station. He directed respondent nos. 4 and 5 to book the petitioner in lock up. On 20th August, 2012, he petitioner was produced before respondent no.3, and without making any inquiry, he acted under Section 122 of Cr.P.C. and petitioner was sent to the jail at Rahuri.

(b) At the request of petitioner's relatives, Advocate Shri Pawar applied to the learned Judicial Magistrate, First Class, Rahuri, requesting the Police to produce the petitioner and the learned Judge asked the Court Constable as to where was the petitioner. At such time, it was informed by respondent no.5 that petitioner has

already been released on 19.8.2012. Later, respondent no.5 informed, the petitioner has been arrested in connection with another crime without furnishing details of such crime even to the learned Judicial Magistrate, First Class. Learned Judicial Magistrate, First Class, was pleased to reject application as there was no remand before him. Respondent no.5 accordingly rushed to the Police Station intimating respondent no.2 about the court proceedings initiated on behalf of the petitioner. At such time, respondent no.2 asked relatives of the petitioner to seek necessary orders from respondent no.3 for releasing the petitioner. Consequently, respondent no.3 was moved and a release order was passed.

(c) It revealed that the petitioner has been arrested under Section 107 of Cr.P.C. but the arrest register shows that he was arrested under Section 151 of Cr.P.C. The release order referred offense under Section 107 of Cr.P.C. This is disclosed even in the remand report furnished to the Court. If the petitioner was arrested under Section 107 of Cr.P.C., a procedure which has been laid down thereunder or under Section 111, 116, 122, 123 of Cr.P.C. has to be followed which the respondent nos. 2 and 3 have deliberately avoided. The detention of the petitioner is illegal by respondent nos. 2 to 5.

(d) A representation was made to respondent no.1 but no action was taken. Respondent no.3 has passed order of remand without any jurisdiction that too at Ahmednagar. It was in collusion with other respondents and ensured petitioners detention. Section 107 of Cr.P.C. contemplates, respondent no.2 ought to have produced the petitioner before the Executive Magistrate at Rahuri but the petitioner was produced before respondent no.3 Police Inspector, Local Crime Branch, Ahmednagar, and not at Rahuri. The petitioner alleged that on a blank paper his signature was obtained at margin and it has been photo-stated, used for showing service of show cause notice on 20.8.2012, while he was already in custody of the Police and surreptitiously without hearing / communication, the order is passed. The petitioner has in paragraph no.3 of the writ petition declined that he was medically examined after arresting him on second occasion on 19.8.2012. The petitioner feels, there was a conspiracy as he is made victim of that conspiracy.

6. DEFENCE VERSION

(a) In the affidavit of respondent no.1 sworn in by Raosaheb Dattatraya Shinde, he disclosed that record regarding Chapter Case No. 498/2012 initiated under the provisions of Section 107 read with Section 151 Cr.P.C. was perused by Additional Superintendent, Ahmednagar, for an inquiry. In inquiry it was revealed that "the petitioner was arrested on 19.8.2012 at about 0015 hrs in Crime No.224/2012 registered at Rahuri Police Station, on 18.8.2012 at 22.00 hours and after his arrest, he was produced before the Judicial Magistrate, First Class, Rahuri at 1900 hours and he was directed to be released by the learned Judicial Magistrate, First Class, on 19.8.2012, at or around 1900 hours (7 p.m.)". Respondent no.1 says, during inquiry it has been revealed that petitioner has committed serious offense against women thereby outraging her modesty. He has also threatened witnesses, including the victim and her husband. Consequently, the investigating officer with an intention to protect safety of the complainant and witnesses and to avoid possibility of grave offense, by the petitioner, detained him by following due process of law. The investigating officer apprehended that petitioner is likely to commit breach of peace. The petitioner was arrested outside the Court premises under Section 151(1) of Cr.P.C. and entry to that effect is taken in Station Diary on 19.8.2012. The petitioner was immediately examined by Medical Officer, Rahuri, on 19.8.2012. He was produced before respondent no.3 on 20.8.2012.

(b) The petitioner was directed by Special Executive Magistrate, Ahmednagar, to furnish two sureties of Rs.7,000/-, each with P.R. bond of Rs.15,000/- so as to prevent commission of any other crime. The allegations made against respondent nos. 2 to 5 are found to be totally false and denied.

7. We have perused the record. Heard learned Counsel at length.

8. Learned Counsel for respondent nos. 2 to 5 repeatedly contended that the respondents were discharging their official duties and no fault could be attributed to them. All procedural aspects were adhered to. In the additional affidavit on behalf of respondent nos. 2, 3 and 4, it is informed that directions given to the State Government by the Division Bench in the matter of **PravinVijaykumar Taware Vs. Special Executive Magistrate (2009 (3) B.C.R.(Cri.) 383)** dated

18.6.2009 concerning execution of powers under Chapter VIII of Cr.P.C. have never been communicated to the respondents. Being absolutely unaware of the said specific directions, the respondent bona fide conducted the proceedings under Section 107 of Cr.P.C. The respondents tendered apology for any lapse that occurred while conducting the impugned proceedings. It was without any malice amounting to violation of the directions passed by this Court in the afore referred decision of Pravin.

Smt. Bajpai, learned Counsel for respondent nos. 2 to 5 submits that, respondent no.2 Pawar was conferred with powers of Executive Magistrate in absence of P.I. Ugale who was on leave. Station Diary entry was made at 21.50 hours about arrest of the petitioner. There is no forgery in medical report. She has relied on following judgments:

A) Govinder Singh Verma Vs.

BachubhaiT.Pestonji

(1972 AIR (SC) 528)

B) Parvatabai Bhaurao Gaikwad and others vs.

(2004 (1) Bom.C.R. (Cri.) 638)

C) Ahmed Noormohamed Bhatti

vs.

State of Gujrat and others

(2005 (2) Bom.C.R. (Cri) 279)

D) Rajender Singh Pathania and others

vs.

State of N.C.T. of Delhi and others

(2011 (10) JT 294)

She says, Police authorities' powers should not be curtailed; it will be deterring the Police officer from discharging their lawful obligations. There were no mala fides nourished by the respondent Police Officers to illegally detain the petitioner.

9. The annexures to the affidavit of respondent no.1 demonstrates that the purported show cause notice under Section 111 Cr.P.C. issued to the petitioner is dated 20th August, 2012. Orders under Section 116(3) Cr.P.C. are of the same date.

10. Learned Counsel for petitioner has explained us as to how the hospital record showing examination on 19.8.2012 at Sr.No.278 has been manipulated.

11. In the inquiry conducted by the Special Inspector General of Police, Nashik Range, Nashik, Dhananjay Dattatraya Kamlakar, he has reverified the facts. He has recorded statement of the petitioner and witnesses produced by him and the respondents in the writ petition (police officers). The report in para no.25 says that respondent no.3 should have afforded considerable opportunity to the petitioner for complying its order dated 20th August, 2012, passed under the provisions of sub section 3 of Section 116 of Cr.P.C.

12. Having dwelt upon rival contentions, we find that the Division Bench of this Court, in the matter of **Rajesh Suryabhan Nayak Vs. State of Maharashtra** (2006 (2) Bom.C.R.(Cri) 199), in proceedings purportedly under Section 107 or 108 concerning security bond has issued directions to the State in paragraph no.11, which read as under:

"11. This, we are required to highlight as a fact that in a proceedings initiated under Section 107 of the Code, it is common practice on the part of the Executive Magistrate to insist for surety bond by passing interim order under Section 116(3) Cr.P.C. The court has taken judicial notice of this that inspite of a clear cut provisions in Clause (a) of the proviso to Sub-section 3 of Section 116 of the Code of Criminal Procedure, in a proceeding initiated under Section 107 of the Code and the form No. 12 (Scheduled II) which is prescribed for executing bond under

Section 107 of the Code, persons are detained in judicial custody for their failure to furnish interim surety in a proceedings initiated under Section 107 of Chapter VIII of the Code in exercise of jurisdiction not vested upon them in law. {See State of Maharashtra and Anr. v. Mangali Dewaiyya Pupalla, Mh.L.. 483, Mrs.Pramila Navin Shaha v. State of Maharashtra and Ors. 2005 All MR (Cri) 1233}. Having clarified the fact that in a proceedings initiated under Section 107 of the Code no surety/security or personal bond is required to be furnished under an interim order under Section 116(3) Cr.P.C., henceforth if it comes to the notice of this Court that a person against whom proceedings are initiated under Section 107 of the Code is detained in judicial custody for failure on his part to furnish interim surety/security Bond or personal Bond pursuant to an order passed under Section 116(3) of Cr.P.C. The State shall be liable to pay compensation to such person for violation of his fundamental right enshrined under Article 21 of the Constitution of India and the aggrieved person may also take recourse to other remedies available to him under the general law viz to prosecute the said magistrate for wrongful confinement and appropriate compensation for wrongful detention."

In para 15, it is observed, "We only propose to forewarn Police Offices vested with powers under Chapter VIII of the Code that they should also remember that the party against whom proceedings are initiated under Chapter VIII of the Code is entitled to forthwith receive copy of the order which may result in curtailing their liberty before they are remanded to judicial custody, either for their failure to execute necessary bond with or without sureties or at the conclusion of the proceedings... "

13. The arrest or purported action under Section 151 and proceedings under Section 107 Cr.P.C. having taken in the jurisdiction of Rahuri taluka, it was expected of concerned Police to refer the petitioner to the Tehsildar / Executive Magistrate at Rahuri. The reasons assigned by the respondents, that due to Ramzan, nobody was present in the Tehsil office, is an eye wash as, on 24.7.2012, Shri T.G.Kolhe, Naib Tehsildar, was authorized to take up the matter under Section 107 of Cr.P.C. That apart, record illustrate some suspects were produced before the learned Tehsildar on 26.8.2012, a Sunday. Then, there was no justification not to produce the applicant before Tehsildar at Rahuri on 20th

August, 2012. The procedure under Sections 107 to 123 of Cr.P.C. has been mocked upon as plain paper and orders are brazenly used to manipulate record to show procedural compliance within a day i.e. 20th August, 2012. It is curious, the petitioner was under fetters with the respondents on 20th August, 2012. There was no show cause notice served to him when he was at the Court or immediately after his release on 19.8.2012 by the learned Judicial Magistrate, First Class. He was first detained, carried to Police Station and purported notice was served to him asking him to show cause without affording time even to contact his relatives or to file reply, and thereafter, the order dated 20th August, 2012, of seeking security was passed. The respondents, obviously, were bent upon to teach a lesson to the petitioner and, consequently, the Special Executive Magistrate / Police Inspector, Crime Branch, Ahmednagar recorded questions answers and passed order. Then, he noticed and recorded that since the petitioner has failed to furnish security / the bond in terms of Section 116(3) Cr.P.C., he was directed to be produced before the Special Executive Magistrate / Police Inspector, Crime Branch, Ahmednagar, on 23rd August, 2012. He was dispatched to jail and by communication dated 22.8.2012, of the learned Special Executive Magistrate / Police Inspector, Crime Branch, Ahmednagar (respondent no.3), he was directed to be released on executing bond of Rs.7,000/- each dated 22.8.2012. The theory of threat to the witnesses is illogical, as, owing to FIR petitioner was in custody and then learned Magistrate directed to release him on bail. There could not be threats while petitioner was already under Police custody.

14. If an action under Section 151 Cr.P.C. is to be taken, prior action under Section 150 thereof is imperative. Superior officer has to be informed about such information or design to commit cognizable offense and to ensure that it is prevented. Section 151(2) Cr.P.C. prohibits detention in custody for a period exceeding 24 hours from the time of arrest unless further detention is required or authorized under any other provisions of the Code.

15. We fail to understand as to how Section 151 Cr.P.C. could be invoked by the officer when he desired to initiate proceedings under Section 107 of Cr.P.C. Chapter VIII of Cr.P.C. conceive a complete procedure in respect of security for keeping peace and for good behaviour. Section 151 of Cr.P.C. from its very tenor

travels on a different pedestal. Procedure under Chapter VIII Cr.P.C., are to be regular proceedings before Executive Magistrate. A show cause notice is to be issued after having satisfied from such response, to be discarded, a security / bond is to be executed. Section 112 contemplate a procedure if the person is present in the Court. Section 116 deals with inquiry as to the truth of the information. No such inquiry, apparently, has been conducted by respondent no. 3, acting in the capacity as Executive Magistrate / Police Inspector of Crime Branch. There was no material before respondent no.3 sitting at Ahmednagar to pass deterrent orders. The inquiry under Section 116 Cr.P.C. is identical in the manner prescribed for conducting trial and recording evidence in summons case. Section 116 also incorporate that such person shall be given full opportunity. Record also illustrate, the petitioner was detained beyond 24 hours and it was imperative to have referred him for medical examination by the competent medical officer. The communication dated 19.8.2012 with Outward No.100/2012, addressed to the Medical Officer, Rural Hospital, Rahuri, has been manipulated by the respondent as the date and timings have been altered; the date is shown as R.C.C. 19.8.2012 at 9.11 p.m., however, under Right to Information Act, the petitioner got communication that he was taken for medical examination on 19.8.2012 at 10 a.m. Thus, the purported entry at 9.11 p.m. of examination is manipulated. The communication by Medical Officer dated 14.2.2012 with the endorsement on 19.8.2012, to be 10 a.m. was a mistake but it should have been treated as 9.11 p.m. having examined the petitioner has no bearing as record rebels even against approach of Medical Officer. He should have desisted to associate with respondents. The communication dated 8th Jan., 2013, from Medical Officer, Rural Hospital, Rahuri, illustrate that the petitioner was examined on 19.8.2012, as per the case paper no.278 at 10 a.m. This is, certainly, in consonance as the petitioner was arrested in Crime No.224/2012 and before he could be produced before the learned Judicial Magistrate, First Class, he was medically examined where the petitioner has recorded no grievance. It is, thus, apparent from the record, the petitioner was not medically examined after his re-arrest in the night / evening of 19.8.2012. The medical record also does not indicate such examination at 9.11 p.m. as the commencement entries of patients is from 273 which is practically impossible to be taken at night. We subscribe to the affidavit in rejoinder

of the petitioner that respondent nos. 2 to 5 had audacity to manipulate the record and such fabricated record was produced before the inquiry officers. If petitioner was examined in present proceedings, then, there is no proof that he was examined in Crime No.224/2012, when he was arrested and taken to Magistrate.

16. In the matter of Rajender Singh Pathania, the issue of award of compensation in case of violation of fundamental rights, was reported. It was observed, before awarding any compensation, there must be a proper inquiry on the question of facts alleged in the plaint. The Court may examine the report and determine the issue after giving opportunity of filing objections to rebut the same and hearing to other side. In the matter of Ahmed Noormohmed Bhatti, the Supreme Court dealt with scope of Section 151 Cr.P.C. which empowers a Police Officer to arrest without orders from the Magistrate, a person designing to commit a cognizable offense. The Section further requires, that such an arrest should be made only if it appears to such Police Officer that commission of the offense cannot be otherwise prevented. It has been observed by the Supreme Court, a further condition for the exercise of such power, which must also be fulfilled is that the arrest should be made only if it appears to the Police officer concerned that commission of the offense cannot be otherwise prevented. If these conditions are not fulfilled and a person is arrested under Section 151 of Cr.P.C., the arresting authority may be exposed to the proceedings under the law. The Supreme Court has observed, the provision under Section 151, by no stretch of imagination can be said to be arbitrary, unreasonable or infringing upon the fundamental rights of the citizen under Articles 21 and 22 of the Constitution. We have gone through these judgments and we find that the protections expected from respondent nos. 2 to 4 in particular are not adhered to and their credibility has landed in tatters; it has, certainly, a sting and depth of mala fides to teach a lesson to the petitioner. We do not agree to submissions of Smt. Bajpai that, there was no malice by respondent or they had discharged official duties. Respondent acted indiscreetly with colourable exercise of power. The petitioner was under custody in the afore referred crime. Immediately there was no such situation that action under Section 151 was imperative. That apart, the conditions laid down by the Supreme Court in the matter of Joginder Kumar Vs. State of U.P. (1994 (4) SCC 260) are, seemingly, put to a smokescreen.

17. In **D.K.BasuVs. State of West Bengal (1997 (1) SCC 416)**, Honourable Supreme Court expected following requirements to be followed in all cases of arrest or detention till legal provisions are made as preventive measures which are referred in paragraph nos. 35 to 38 and are reproduced as under:

"35. We therefore, consider it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures :

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest a such memo shall be attested by atleast one witness. who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lockup, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the illegal Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and state headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

36. Failure to comply with the requirements hereinabove mentioned shall apart from rendering the concerned official liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the country, having territorial jurisdiction over the matter.

37. The requirements, referred to above flow from Articles 21 and 22 (1) of the Constitution and need to be strictly followed. These would apply with equal force to

the other governmental agencies also to which a reference has been made earlier.

38. These requirements are in addition to the constitutional and statutory safeguards and do not detract from various other directions given by the courts from time to time in connection with the safeguarding of the rights and dignity of the arrestee."

18. In **SiddharamSatlingappa Mhetre Vs. State of Maharashtra (2011 (1) SCC 694)**, in paragraph no.118, the Supreme Court has observed, "In case arrest is imperative, according to the facts of the case, in that event, the arresting officer must clearly record the reasons for the arrest of the accused before arrest in the case diary".

Reverting to the facts, the arrest in the present case is shown under Section 151 Cr.P.C and then procedure under Chapter XIII Cr.P.C. has been initiated. No reasons are recorded for clipping liberty of petitioner, by bringing him to Police Station from Court and to show detention.

19. We are conscious, Section 300 in Chapter XXIV of Cr.P.C. deals with a person who has once been tried by a Court of competent jurisdiction while such conviction or an acquittal remains in force is not liable to be tried again for same offense nor on same facts for any other offense for which different charge might have been made under sub section (1) of Section 221 of Cr.P.C. It indicates a rule applicable to criminal trials. In the instant proceedings there is no other case pending against the petitioner. He was slapped with Crime No.224/2012 wherein he has been arrested and was directed to be released by learned Judicial Magistrate, First Class, on 19.8.2012.

20. The Supreme Court, in the matter of **State of Rajasthan Vs. Hat Singh on 8th Jan., 2003 (2003 LawSuite (SC) 11)**, has held, by placing reliance to the judgment in the matter of **MakbulHussain Vs. State of Bombay (AIR 1953 SC 325)**, if offenses are distinct, there is no question of rule as to double jeopardy being extended and applied. We find, there was no material before the respondents to take action under Section 150 of Cr.P.C. followed by 151 thereof and then to bank upon the procedure under Chapter VIII thereof.

21. The directions by the Division Bench in the matter of Pravin (supra), which are recapitulated as under, are not followed by the respondents.

"(1) That the State Government shall immediately take steps to train its all Executive Magistrates so that they understand as to how the provisions of Chapter VIII of the Criminal Procedure Code have to be applied.

(2) We understand that there is a police academy in the State. All the Executive Magistrate should undergo a crash course. Preferably the Sessions Judges should be invited to teach these Magistrate about the nuances of law, so that the powers are not abused or misused by the Executive Magistrate.

(3) Whenever, an order is passed by a Magistrate at interim stage or at final stage requiring a person to give a bond, he shall be given sufficient time to furnish the bond and the surety.

(4) At the stage of inquiry, the Magistrate shall not ask for an interim bond pending inquiry unless the Magistrate has satisfied himself about the truth of the information sufficient to make out a case for seeking a bond.

(5) Whenever, an Executive Magistrate passes an order under sub-section (3) of Section 116 of Chapter VIII of the Criminal Procedure Code directing a person to be sent to jail, a copy of the order shall be sent to the learned Principal Sessions Judge immediately.

(6) On receiving copy of the order, the learned Principal Sessions Judge shall go through the order and if he finds a case of revision, he may intervene under Section 397 of the Criminal Procedure Code.

(7) A copy of the order directing a person to be sent to jail under Chapter VIII of the Criminal Procedure Code shall also be sent to the immediate superior of the Magistrate in his Department. "

This is more or less, accepted in the additional affidavit by respondent nos. 2 to 4. The excuse forwarded was, the directions of Division Bench to State are not communicated by the State to Local Police. We do not subscribe to it.

22. The legal position in respect of right to life, allegations of Police atrocities are indicated in the matter of Rajendra Singh Vs. State of NCT (2011 DGLS (soft) 688: 2011 (10 JT 294, it has been observed, if the conditions appended in the matter of D.K.Basu Vs. State of West Bengal (AIR 1987 SC 610) are not followed and there is violation of fundamental rights inherent in Articles 21 and 22 of the Constitution of India and a person is arrested under Section 151 Cr.P.C., the arresting authority may be exposed to the proceedings under the law.

In the said judgment, in paragraph nos. 17 and 19, the Supreme Court has dealt with the issue of award of compensation in case of violation of fundamental rights of a person. It has been observed that, though High Court or the Supreme Court, in exercise of their jurisdiction under Articles 226 and 32 of the Constitution of India, can award compensation for such violations but such a power should not be lightly exercised. These articles cannot be used as a substitute for enforcement of rights and obligations which could be enforced efficaciously through the ordinary process of Courts. Before awarding any compensation, there must be a proper inquiry on the question of facts alleged in the complaint. The Court may examine the report and determine the issue after giving an opportunity of filing objections to rebut the same and hearing to the other side. Awarding of compensation is permissible in case the Court reaches the same conclusion on re-appreciation of evidence adduced at the inquiry.

23. We have, hereinbefore, discussed the facts and events, including inquiry report by two competent authorities. We have assessed the inquiry reports. Our conclusions are: there is apparent, patent incontrovertible violation of Article 21 of Constitution of India; it, indeed, shocks the conscience of the Court. The respondent nos. 2 to 4, in particular, were desirous to torture, humiliate, harass and teach a lesson to the petitioner; they have acted in excess of their authority; it was couched with illegality. The alleged procedural compliance under Chapter VIII is mocking at and is a cover to influence the illegal acts with improbity. It has the impact of fret and fume to the rights and protection extended to the petitioner by the Constitution of India. The belated apology by the respondents cannot be a justification of the act. Indeed, there cannot be both justification and an apology. They are incompatible. We are not banging our powers in shallow manner but

having gone through the record, including inquiry report, we are constrained to hold respondent nos. 2 to 5 to have illegally dealt with while arresting / detaining the petitioner.

24. The compensation which we propose to be paid to the petitioner would be by the State Government and it will be open for the State Government to recover the same from respondent nos. 2 to 5, the officers, who are found guilty of deliberate dereliction of duty in discharging their obligations. We hold that detention of the petitioner by respondent nos. 2 to 4, from 19th August, 2012, till 22nd August, 2012, is illegal and a gross violation of fundamental rights and calls for compensation. In the factsituation, we direct the State to pay compensation of Rs.3,00,000/- (Rs. Three lacs), to the petitioner upto 22nd Dec., 2013.

Rule made absolute with costs as above.

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