THE HIGH COURT OF ORISSA : CUTTACK

No. XI-7/2024/...7021(30).../ Dated...02/05/2024...

From;

Pratap Kumar Patra,
Registrar General

To,

The District & Sessions Judge,..... (All)

Sub: **Forwarding of judgment dated 18th March, 2024 passed in Criminal Appeal No. 1717 of 2024 (@ S.L.P. (Crl.) No.2600 of 2019) titled "Somnath Vrs. The State of Maharashtra & Ors" by Hon'ble the Supreme Court of India for safeguarding the liberty & dignity of individuals arrested and detained in custody**

Sir,

I am to say that Hon'ble the Supreme Court of India, while considering the excess use of force by the police during remand of an arrested person detained in custody, vide Judgment dated 18th March, 2024 passed in Criminal Appeal No. 1717 of 2024 (@ S.L.P. (Crl.) No.2600 of 2019) (Somnath Vrs. The State of Maharashtra & Ors) has been pleased to turn down the same and directed to the police forces in all States and Union Territories as well as all the agencies endowed with the power of arrest and custody to adhere scrupulously to all the Constitutional and Statutory safeguards and the additional guidelines laid down in this regard when a person is arrested by them and/or remanded to their custody.

I am therefore, directed to forward herewith a copy of the aforementioned judgment for your information with a request to circulate the same among all the Judicial Officers working in your judgeship for their information.

Yours faithfully,

PRATAP KUMAR PATRA

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Date: 2024.05.02 15:59:05 +05'30'

REGISTRAR GENERAL

Encl.:- As above.

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1717 OF 2024

(@ SPECIAL LEAVE PETITION (CRL.) NO.2600 OF 2019)

SOMNATH ... APPELLANT

VERSUS

THE STATE OF MAHARASHTRA & ORS. ... RESPONDENTS

R1: State of Maharashtra, through the Secretary

R2: C.P. Kakade, Police Inspector, Police Station, Paithan

R3: Commissioner of Police, Aurangabad

R4: Superintendent of Police (Rural), Aurangabad

R5: S.D.P.O., Paithan

J U D G M E N T

AHSANUDDIN AMANULLAH, J.

Leave granted.

2. Heard learned counsel for the parties.

3. The present appeal is directed against the Final Judgment and Order dated 08.10.2018 (hereinafter referred to as the "Impugned Judgment") passed by the High Court of Judicature at Bombay, Bench at Aurangabad (hereinafter referred to as the "High Court") in Criminal Writ Petition No.215 of 2017 by which the writ petition filed by the appellant was partly allowed and the respondent no.2 was directed to pay a sum of Rs.75,000/- (Rupees Seventy Five Thousand only) from his own pocket to the appellant.

BRIEF FACTS:

4. A First Information Report[1] bearing Crime No.1-117 of 2015 for an offence punishable under Section 379[2] of the Indian Penal Code, 1860 (hereinafter referred to as the "IPC") was filed by one Mr. Madhukar Vikram Gayake on 14.06.2015 with Paithan Police Station, Taluka Paithan, District Aurangabad,

[1] FIR.
[2] *'379. Punishment for theft.—Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.'*

State of Maharashtra (hereinafter referred to as the "PS") alleging that on 12.06.2015 the complainant had come to attend the last rites of his brother-in-law and was standing in a queue in the holy Nath Temple when some unknown persons took away Rs.30,000/- (Rupees Thirty Thousand only), which he was carrying in his pocket, which he realized only after coming out from the temple. The appellant was arrested at 08:30PM in connection with the said crime on 14.06.2015 on the basis of CCTV[3] footage showing the involvement of the appellant in the said crime.

5. On 15.06.2015, the appellant was produced before the Magistrate at 4PM and the investigating agency sought police remand on the ground that recovery had been made from the appellant. The request was granted by the Magistrate and he was remanded to police custody till 18.06.2015.

[3] Closed-Circuit Television.

6. On 17.06.2015, the investigating agency prepared a memorandum under Section 27 of the Indian Evidence Act, 1872 showing recovery of Rs.30,000/- (Rupees Thirty Thousand) from the house of the appellant.

7. On 18.06.2015, the investigating agency produced the appellant before the Magistrate praying for further extension of police custody for two days and the same was granted till 20.06.2015. On 19.06.2015, the appellant was allegedly taken out of the lock-up by the respondent no.2, the then officiating Inspector of PS, in handcuffs and paraded half-naked with garland of footwear around his neck and is said to have been verbally abused with reference to his caste as also physically assaulted by the respondent no.2.

8. On 20.06.2015, the investigating agency did not ask for any further extension of police remand and thus the appellant was remanded to judicial custody

till 04.07.2015. On the same day, the appellant filed an application for bail in the Court of Judicial Magistrate, First Class, Paithan, which was allowed on the condition that he would visit Police Station on every alternate day between 1000hrs to 1300hrs till filing of the Final Report. The appellant was not released pursuant to the order due to the respondent no.2 not allowing him to be released and instead had taken the appellant to the PS.

9. Mr. Rahul Raju Kamble, relative of the appellant filed application before the Judicial Magistrate, First Class, Paithan, narrating the chain of events and praying for directions to release the appellant and, *inter alia*, praying for issuance of Show-Cause Notice to the concerned police officer. Thereon, the Magistrate had directed the prosecution to file its reply. However, the appellant was finally released on 20.06.2015.

10. The Superintendent of Police, Aurangabad (Rural), on complaint made by the appellant and others, directed the Sub Divisional Police Officer, Paithan on 07.07.2015 to initiate inquiry on the entire issue and submit report. The Sub Divisional Police Officer, Paithan conducted inquiry relating to the complaint made against the respondent no.2, directing both the appellant and respondent no.2 and other Police officers/constables to appear and submit their statements. In his report dated 11.09.2015, it was recorded that on 19.06.2015 the appellant was taken out from the lock-up by the respondent no.2 and paraded on the streets of the city of Paithan and was also physically assaulted during the said procession and held respondent no.2 responsible for this. It further narrated that despite grant of bail to the appellant he was illegally detained by respondent no.2 for four hours.

11. On 08.10.2015 and 09.10.2015, the sister of the appellant complained to various authorities including the Superintendent of Police, Aurangabad (Rural) and the President [*read* Chairperson], National Human Rights Commission (hereinafter referred to as the "Commission") seeking initiation of departmental enquiry and criminal prosecution under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the "SC/ST Act").

12. On 25.12.2015, the appellant was charge-sheeted in connection with another FIR bearing Crime No.1-192/2015 punishable under Section 394[4], IPC and he was sought to be declared a Proclaimed Offender despite him being available in town and co-operating with the investigating agency. However, the appellant was arrested on 24.05.2016 and subsequently released on bail.

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[4] '*394. **Voluntarily causing hurt in committing robbery**.—If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with [1][imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.*'

13. The Special Inspector General of Police, Aurangabad Range, Aurangabad, after perusing the Inquiry Report of the Sub Divisional Police Officer dated 11.09.2015 and not finding the explanation of respondent no.2 to be satisfactory, imposed punishment of "strict warning".

14. The appellant on 02.02.2017, approached the High Court by way of filing Writ Petition, *inter alia*, praying for initiation of departmental inquiry and criminal proceedings against respondent no.2 and also sought compensation. The writ petition was partly allowed by the Impugned Judgment by awarding Rs.75,000/- (Rupees Seventy Five Thousand only) to be payable to the appellant by respondent no.2 from his own pocket but declining to give any direction for initiating criminal action under the SC/ST Act.

SUBMISSIONS BY THE APPELLANT:

15. Learned counsel for the appellant submitted that it would be a travesty of justice if for such

blatant violation of the personal liberty of the appellant and abuse of authority, the respondent no.2 is let off with just "strict warning" without any real effective punishment. It was submitted that the conduct of the respondent no.2 besides being unprovoked was also in the teeth of the judgments of this Court in ***D K Basu v State of West Bengal*, (1997) 1 SCC 416** and ***Sube Singh v State of Haryana*, (2006) 3 SCC 178**, which have laid down the guidelines of how a detenu has to be treated when in custody.

16. Learned counsel submitted that one of the grounds for not directing criminal prosecution of respondent no.2 by the High Court was that Section 161[5], Maharashtra Police Act, 1951 (hereinafter

[5] *'161. Suits or prosecutions in respect of acts done under colour of duty as aforesaid not to be entertained or to be dismissed if not instituted within the prescribed period.—(1) In any case of alleged offence by the Revenue Commissioner, the Commissioner, a Magistrate, Police officer or other person, or of a wrong alleged to have been done by such Revenue Commissioner, Commissioner, Magistrate, Police officer or other person, by any act done under colour or in excess of any such duty or authority as aforesaid, or wherein, it shall appear to the Court that the offence or wrong if committed or done was of the character aforesaid, the prosecution or suit shall not be entertained, or shall be dismissed, if instituted, more than six months after the date of the act complained of:*

Provided that, any such prosecution against a Police Officer may be entertained by the Court, if instituted with the previous sanction of the State Government within two years from the date of the offence.

(2) In suits as Aforesaid one month's notice of suit to be given with sufficient description of wrong complained of. In the case of an intended suit on account of such a wrong as aforesaid, the person intending to sue shall be bound to give to the alleged wrong-doer one month's notice at least of the intended suit with sufficient description of the wrong complained of, failing which such suit shall be dismissed.

referred to as the "Police Act") gives protection to a police officer from any belated prosecution, the period being six months. It was submitted the same should not be so enforced particularly in the facts of the present case where the appellant belongs to a weaker section and is without the wherewithal to pursue prosecution of a police officer. It was submitted that respondent no.2 has in fact been let off without any punishment as "strict warning" does not translate into any effective punishment which is also one of the minimum/minor punishments contemplated, whereas the conduct of the respondent no.2 required inflicting major punishment upon him.

SUBMISSIONS BY THE STATE:

17. Learned counsel for the State submitted that it has initiated departmental proceeding against respondent no.2 and punishment has also been awarded to him pursuant thereto.

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(3) Plaint to set forth service of notice and tender of amends. The plaint shall set forth that a notice art aforesaid has been served on the defendant and the date of such service, and shall state whether any, and if any what tender of amends has been made by the defendant. A copy of the mid notice shall be annexed to the plaint endorsed or accompanied with a declaration by the plaintiff of the time and manner of service thereof.'

SUBMISSIONS BY THE RESPONDENT NO.2:

18. Learned counsel for respondent no.2 submitted that the incident is totally without any truth and only to browbeat, and to demoralise the police, the appellant, who is habitual offender, has lodged a false complaint, that too, much after the time prescribed under the Police Act. It was further submitted that respondent no.2 has already paid Rs.1,75,000/- (Rupees One Lakh Seventy Five Thousand only) to the appellant i.e., Rs.1,00,000/- (Rupees One Lakh only) beyond what was directed by the High Court and in terms of the order passed by this Court on 07.07.2023[6]. It was submitted that the appellant having been found committing the offence for which

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[6] *'Learned counsel for respondent No.2, on instructions, states that he will further compensate the petitioner by an amount of Rs.1,00,000/- (Rupees one lakh only) within a period of four weeks from today.*

Learned counsel for the petitioner may provide the bank details of the petitioner to the learned counsel for respondent No.2 within a week from today.

List the matter again on 22.08.2023.

If by the said date, the said amount is paid to the petitioner and the counsel for the parties make a statement, the matter may be considered for closure on the next date.'

his prosecution began, from the CCTV footage, cannot claim innocence.

19. Learned counsel submitted that on 20.06.2015 at 3PM when he was produced before the Magistrate, the appellant did not allege any ill-treatment much less spoke about him having been subjected to parade in handcuffs and in a half-naked state with a garland of footwear around his neck. Even when relatives of the appellant had filed a complaint before the Magistrate on 20.06.2015, due to delay in release of the appellant despite grant of bail, there was no reference of any alleged instance of the appellant being paraded half-naked on 19.06.2015. Further, the report of the Sub Divisional Police Officer does not refer to the appellant having been paraded half-naked with a garland of shoes. It was submitted that due to the strained relationship of the respondent no.2 with the then Sub Divisional Police Officer, who had submitted the Report, adverse findings were

recorded against the respondent no.2. Thus, it was submitted that the Special Inspector General of Police found the clarification submitted by the respondent no.2 to be satisfactory and that was the reason why a punishment of only "strict warning" was awarded. He submitted that pursuant to FIR bearing Crime No.1-192 of 2015, the appellant could not be traced and was declared a proclaimed offender under Section 82(4) of the Code of Criminal Procedure, 1973 on 25.12.2015. It was further contended that only on 03.02.2017, the appellant had filed the underlying Writ Petition before the High Court and for the first time agitating that the respondent no.2 paraded him half-naked with a garland of shoes.

20. Learned counsel submitted that in terms of Section 161 of the Police Act, prosecution against a police officer acting under colour of official duty after six months of the alleged act cannot be

entertained and rightly the High Court has declined to direct any action on such prosecution.

ANALYSIS, REASONING AND CONCLUSION:

21. Having considered the facts and circumstances of the case, this Court finds that there is enough material to indicate that respondent no.2 did commit excesses against the appellant, as the same has also been found in an enquiry by the Commission as also relied upon by the High Court and such finding has not been varied or interfered with. Thus, the Court has no hesitation in strongly denouncing such high-handed action by the respondent no.2, who being in a position of power, totally abused his official position. However, in view of the fact that the respondent no.2 has superannuated and during the course of the present proceedings Rs.1,00,000/- (Rupees One Lakh only), apart from what was ordered by the High Court, has also been paid by the respondent no.2 from his own pocket to the appellant, which the appellant

accepted, the Court finds that the matter now requires to be finally given a *quietus*. Be it noted, the appellant has additionally received Rs.25,000/- (Rupees Twenty Five Thousand only) as ordered by the Commission. We only add that the power of the High Court under Article 226 of the Constitution of India to award compensation is undoubtable, reference whereof can be made to ***Nilabati Behera v State of Orissa*, (1993) 2 SCC 746.**

22. Accordingly, the appeal stands disposed of by upholding the Impugned Judgment, with the modification that the respondent no.2 is held liable to pay a further sum of Rs.1,00,000/- (Rupees One Lakh only) to the appellant. However, as the same stands already complied with, no further steps are required to be taken by the respondent no.2.

23. Before parting, the Court would indicate that in such matters the Courts need to take a very

strict view. A zero-tolerance approach towards such high-handed acts needs to be adopted as such acts, committed by persons in power against an ordinary citizen, who is in a non-bargaining position, bring shame to the entire justice delivery system. As such, we were considering resorting to Article 142 of the Constitution of India to direct initiation of criminal proceedings, but only because of the fact that respondent no.2 has retired and has already paid a sum of Rs.1,75,000/- (Rupees One Lakh Seventy Five Thousand)[Rs.75,000/- (Rupees Seventy Five Thousand) as per the Impugned Judgment and Rs.1,00,000/- (Rupees one lakh) as per this Court's order dated 07.07.2023] in total to the appellant, who has also been paid Rs. 25,000/- (Rupees Twenty Five Thousand) as per the Commission's order, we refrain from so directing, in these peculiar facts and circumstances. We hold back noting that justice ought to be tempered with mercy.

POST-SCRIPT:

24. It is sad that even today, this Court is forced to restate the principles and directions in ***D K Basu*** (*supra*). Before ***D K Basu*** (*supra*), this Court had expressed its concern as to how best to safeguard the dignity of the individual and balance the same with interests of the State or investigative agency in ***Prem Shankar Shukla v Delhi Administration*, (1980) 3 SCC 526**. In ***Bhim Singh, MLA v State of Jammu and Kashmir*, (1985) 4 SCC 677**, this Court noted that police officers are to exhibit greatest regard for personal liberty of citizens and restated the sentiment in ***Sunil Gupta v State of Madhya Pradesh*, (1990) 3 SCC 119**. The scenario in ***Delhi Judicial Service Association v State of Gujarat*, (1991) 4 SCC 406** prompted this Court to come down heavily on excess use of force by the police. As such, there will be a general direction to the police forces in all States and Union Territories as also all agencies endowed with the power of arrest

and custody to scrupulously adhere to all Constitutional and statutory safeguards and the additional guidelines laid down by this Court when a person is arrested by them and/or remanded to their custody.

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[VIKRAM NATH]

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[AHSANUDDIN AMANULLAH]

NEW DELHI
MARCH 18, 2024