



MAHARASHTRA STATE HUMAN RIGHTS COMMISSION, MUMBAI

9, Hajarimal Somani Marg, Opp. Chhatrapati Shivaji Maharaj Terminus,
(CSMT) Mumbai – 400 001

Tel : 022-22092857



E-mail: court2-mshrc@mah.gov.in

SHRC/MAS/12/2023/ 1583
Date:

**MAS/R. A. No. 912/13/12/2022 (IN Case No. 1367/2017
c/w. 707/2018 c/w. 2147/2017)**

Name of the Review Petitioner : Saddam Shah Khalil Shah

V/s.

Name of Respondents : Superintendent of Police
Jalgaon

Shri Baliram Hire
Shri Kailash Ingle
Shri Kiran Thakre
Police Officials of Yaval Police Station

Order Date : 30th November, 2023

Coram : M. A. Sayeed, Member

PROCEEDING

Review of the order dated 13.01.2020 in Case no. 13672017 c/w. 707/2018 c/w. 2147/2017 is sought to be reviewed primarily on the ground of subsequent material development in the matter, consequent to Judgement and Order in Crm. WP no. 816/20 by High Court of Judicature at Bombay Bench at Aurangabad filed by present petitioner – original complainant Shri Fakir, whereby his grievance of custodial torture and humiliation came to be accepted by the Court vide order dated 13.10.2020. I would be dealing with the reasonings in the aforesaid order in the later part of this order.

2. At this stage it would be appropriate to throw reflection on the factual background of the controversy.

Petitioner came with a grievance of violation of human rights at the hands of the police who subjected him to mental and physical torture, extracted illegal gratification from him to evade prosecution and compelled him to approach Anti Corruption Bureau, Jalgaon to trap and apprehend the erring police officers. Detail oral and documentary evidence came to be tendered by both the parties during course of trial and after considering the pro and cons of the controversy, complaint came to be partially allowed vide order 13.01.2020. The operative part of the order reads thus:

"Therefore, in view of the foregoing discussions, notices issued to the concerned Police officer and officials u/s. 16 of the Protection of Human Rights Act, 1993 stands recalled and the complaint as such stands closed and disposed off. However, at the same time, the Commission has to take note of the fact that so far as the charges of corruption are concerned, are relating to an incident of year 2017 and though the investigation seems to be at its fag end with the proposal for sanction of the prosecution under consideration of the higher supervisory authority. A direction to expedite the aforesaid process on priority basis is necessary so as to meet ends of justice. Even otherwise the law expects a prompt and conscious decisions in such serious matters and the Commission expresses a hope that the supervisory authority would make all attempts to process the sanction at the earliest so that matter can be decided on merit by competent Court of Law. With these observations, the complaints stands closed and disposed off. Ordered accordingly. "

3. This order is sought to be reviewed by taking recourse to the provisions of Order 47 Rule 1 r/w. Sec. 114 CPC on the ground that subsequent to the aforesaid order, his contentions / accusations against the erring police officers were upheld by the High Court in the Writ Petition mentioned above. Observations made in para 20 to 22 are relevant for our purpose and reads thus:

"20. The aforesaid material shows that from the noon time of 12/01/2017 to the evening time of 13/01/2017 the petitioner was detained by the aforesaid two Constables and P. I. Hire. There are statements of Police Officers, Constables who were living

in the police quarters at the relevant time like Quadir and they show that on 12/01/2017 in the night time, the petitioner was taken to the police quarters. There is statement of a witness who was working in the police station that on 12/01/2017 the petitioner was kept for some time in lockup but no entry in that regard was made in lockup register. He was seen at the residential quarter of the Constables at about 9.00 to 9.30 pm on 12/01/2017. Vitthal Dhangar, the Police Officer was doing the guard duty and his statement shows that he had requested P. I. Hire to see that the entry was made in lockup register about the petitioner's keeping in the lockup but such entry was not made. There are statements recorded U/S. 164 of Cr. P. C. of the petitioner and the Home-guard and they are consistent with other record.

21. There is statement of Mannyar, a person of village of the petitioner and it shows that on 13/01/2017 at about 7.30 pm the petitioner was allowed to leave the police station. It also shows that his signature was obtained on one document to show that the petitioner was allowed to leave at that time.

22. The aforesaid record is more than sufficient to prima-facie show that the petitioner was detained by P. I. Hire and his two Constables from the noon time of 12/01/2017 till at least 7.30 pm of 13.01.2017. He was detained by saying that the lady had given complaint that she was raped by the petitioner. The record shows that the petitioner was taken to AXIS Bank on 12/01/2017 and also on 13/01/2017. On 12/01/2017 the petitioner could not withdraw the amount as the business hours were closed. It is the case of the petitioner that after 13/01/2017 also, he handed-over money to the aforesaid three persons. There is such mention in the recorded conversation also. There is allegation that there was demand of more amount and mobile handset of petitioner was also in the custody of the aforesaid two Constables and there was separate demand of money from them."

4. Keeping in mind these conclusive findings, let us now consider the grounds for review of judgment as set out under Order 47 Rule 1 CPC which reads thus:

"(1) Any person considering himself aggrieved-

- By a decree or order from which an appeal is allowed, but from no appeal has been preferred,
- By a decree or order from which no appeal is allowed, or
- By a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was

not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order."

5. Apparently, the subsequent development viz the conclusive findings of the High Court reproduced supra above came into existence almost after nine months of the passing of the order by this Commission as the impugned order was passed on 13.01.2020 while the order by the High Court came to be passed on 13.10.2020.

The dictionary meaning of Review is "reconsideration and as 'verb' it means 'to see and examine again". In judicial parlance it means the judicial re-examination of case in certain specified and prescribed circumstances as enumerated u/s. 114 and Order 47, Rule 1 to 9 of CPC. Reliance with advantage is placed on a decision of Supreme Court in re- Haridas AIR 2006 SC 1634.

So far as the merits of the present review is concerned , the ground on which the impugned order of this Commission is being reviewed or reconsidered is conclusive findings of the High Court, supra above upholding, allegations of illegal detention and torture of the complainant, thereby bringing his case within ambit of fact not within his knowledge or could not be produced at the time when the decree or the order was passed by the Court.

6. For the reasons discussed above, the impugned order passed by the Commission deserves to be set aside and considering the adverse findings by the High Court, enquiry needs to be ordered de nova by reviving the order of show cause notice issued to the erring police officers u/s. 16 of the Protection of Human Rights Act, 1993, and also directing and calling upon the Director General of Police,

Maharashtra State to submit detail report on affidavit as regards the step taken against the erring police officials PI Shri Baliram Hire, PC Shri Kailash Ingle, PC Shri Kiran Thakare attached at the relevant time with Yaval Police Station, Dist. Jalgaon.

7. Accordingly for the reasons discussed above, following order is passed:

- a) Review stands allow.
- b) Notices u/s. 16 of Protection of Human Rights Act, 1993 be issued to PI Shri Baliram Hire, PC Shri Kailash Ingle, PC Shri Kiran Thakare attached at the relevant time with Yaval Police Station, Dist. Jalgaon through Director General of Police, Maharashtra State, Mumbai to show cause as to why powers u/s. 18 of Protection of Human Rights Act, 1993 should not be invoked against them.
- c) Director General of Police, Maharashtra State to submit report on affidavit as regards the step taken in complying and implementing with the order passed by the High Court as referred above and also clarify as to whether any prosecution under IPC came to be initiated against the erring police officials besides, conduction of departmental enquiry if any.
- d) Consequently, original proceedings before the Commission stands revived. Notices / summons be issued in consonance with directions clause (b) & (c) .
- e) Stand over to 13.02.2024.



M. A. Sayeed
(M. A. Sayeed)
Member 30.11.23



MAHARASHTRA STATE HUMAN RIGHTS COMMISSION

9, Hajarimal Somani Marg, Opp. Chhatrapati Shivaji Maharaj Terminus, Mumbai – 400 001

Tel : 22092857 Email:- court2-mshrc@mah.gov.in

No: MSHRC/COURT NO.2/12/2023/ 1583

(Before Hon'ble Member Shri. M.A. Sayeed)

Review Case No: 912/13/12/2022

(In 1367/2017 with 707/2018 & 2147/2017)

SUMMONS

(The Protection of Human Rights Act, S. 13 & under the Regulation 19 and 24 of Maharashtra State Human Rights Commission (Procedure) Regulations 20011, for appearance in person)

To,

The Director General of Police
Maharashtra State,
Colaba, Mumbai.

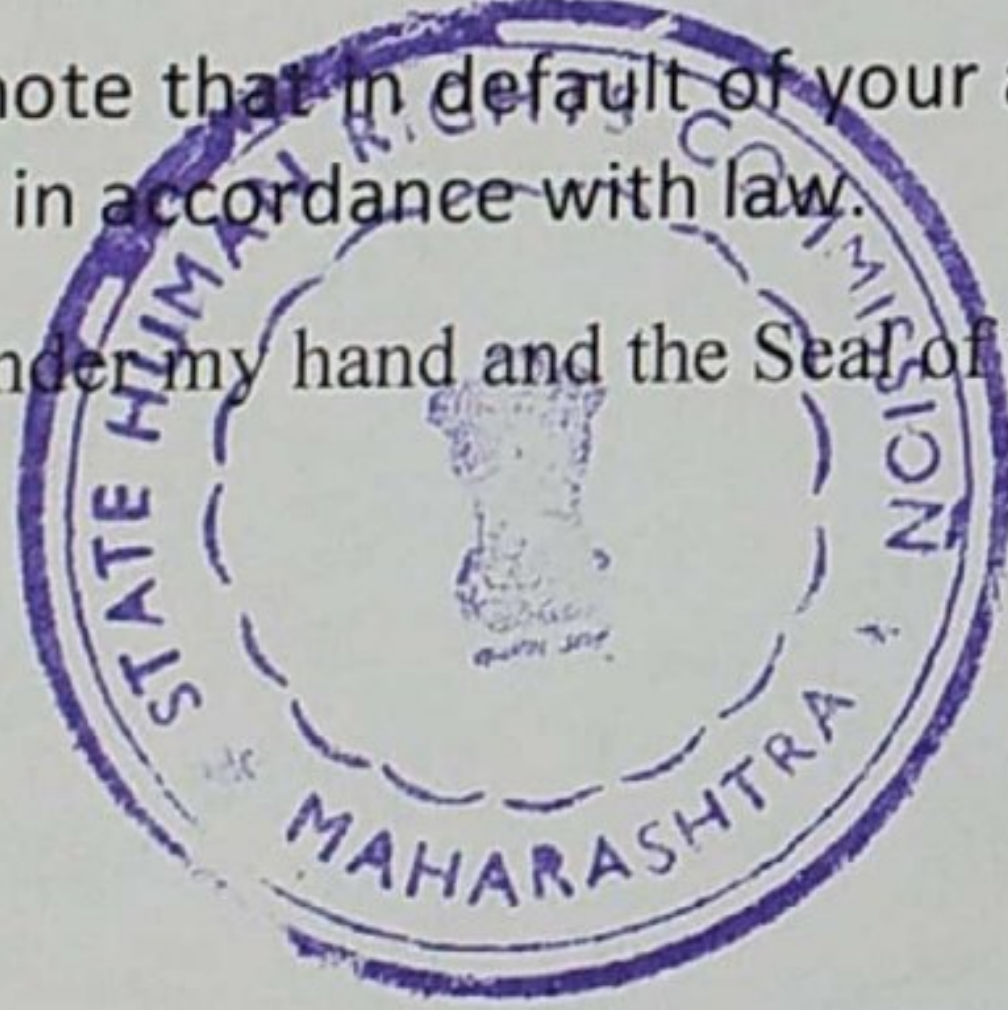
2. PI- Baliram Hire
PC- Kailash Ingle
PC- Kiran Thakare, Yaval Police Station, Jalgaon
Through
Director General Of Police
Maharashtra State, Colaba, Mumbai

You are hereby summoned to appear before Commission in court room no 2 in person or through duly authorized agent on **13/02/2024** at 11.00 a.m., and thereafter, to submit response to the complaint.

You are further directed to submit your response in writing with relevant documents upon which you intend to rely in respect of your defence.

Take note that in default of your appearance on the day mentioned above, the matter will be decided further in accordance with law.

Given under my hand and the Seal of the Commission this 26/12/2023



(By Order)

Registrar,

Maharashtra State Human Rights Commission,
Mumbai.

✓ Encl : Copy Of Proceeding dtd. 30.11.2023, Review Application & (Order of 1367/2017 with 707/2018 & 2147/2017)

*****Note: - Respondent to appear and submit Report and Explanations (hard copies) with relevant documents as per proceeding and serve its copy to Complainant to facilitate submission of Rejoinder.**

Pl. Acknowledge this mail and further information contact phone No. 022-22073434 (Email- court2-mshrc@mah.gov.in)

Copy to Review Petitioner:-

Saddam Shah Khalil Shah
At Post.Kingaon, Tal. Yaval, Dist. Jalgaon
shah.saddam877@gmail.com

The Superintendent of Police
Jalgaon
Dist. Jalgaon

You can personally attend or Join Zoom Meeting

<https://zoom.us/j/93823586307?pwd=Uzl1MFNVZ1VLUWF0djdnMWlvSit2UT09>

Meeting ID: 938 2358 6307

Passcode: 768559

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