



Final Order

Date: 27/11/2012

No. PCA/DDD/Case-03/2011/86

Applicant Name : Shri Dilip Magan Patel, Patel Talati, Dadra.
Receding Address : Brahmin Falia, Village – Amlī, Silvassa
Complaint Registration Date : 18th January 2012
Complaint About : Non registration of First Information Report and
false registration of First Information Report for
rioting against him and his family members.
Complaint Against : Shri Harendrasinh Chhibubhai Rathod, Police Sub
Inspector/ In-charge Silvassa Police Station.

No. PCA/DDD/Case-05/2011

Applicant Name & Address : Smt. Meenaben Balcbhai Patel, Khadi Falia, Athola,
DNH.
Complaint Registration Date : 27th January 2012
Complaint About : Non registration of First Information Report and
false registration of First Information Report for
rioting against him and his family members.
Complaint Against : Shri Harendrasinh Chhibubhai Rathod, Police Sub
Inspector/ In-charge Silvassa Police Station.

No. PCA/DDD/Case-06/2011

Applicant Name : Shri Sumanbhai Thakorbbhai Patel, Councilor, SMC
Receding Address : Brahmin Falia, Village- Amlī, Silvassa.
Complaint Registration Date : 27th January 2012
Complaint About : Non registration of First Information Report by the
police authority.
Complaint Against : Shri Harendrasinh Chhibubhai Rathod, Police Sub
Inspector/ In-charge Silvassa Police Station.



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By this common order three complaints No. PCA/DDD/Case-03/2011, PCA/DDD/Case-05/2011 and PCA/DDD/Case-06/2011 would be finally disposed off since there is similar complaints by three different complainants on the one and the same occurrence on 14th December 2011 at the same time and place.

Statements Recorded by the Authority :

1. 20th January 2012 Shri Dilip Maganbhai Patel, Patel Talati Dadra.
2. 21st February 2012 Smt. Meenaben Balebhai Patel, Grocery Shop Keeper.
3. 21st February 2012 Shri Suman Thakor Patel, Councilor, SMC.
4. 31st January 2012 Shri H. C. Rathod, PSI/ In-charge Silvassa Police Station.
5. 21st February 2012 Dr. Keyur Ashokbhai Desai, Medical Officer, VBCH, Silvassa.

Brief of Statements recorded by the authority :

1. : i. Shri Dilip Maganbhai Patel had grievances against the PSI H. C. Rathod, Silvassa Police Station for non registration FIR of cognizable and non bail-able offence and to registering of false FIR of rioting against him and his family members under political pressure.
- ii. In his statement given before the authority Shri Dilip M. Patel stated that on 14/12/2011 at 10:05 AM at Dandul Falia Char Rasta Shri Suman Thakor Patel, Councilor of Dockmardi Ward in SMC, Silvassa obstructed his Vehicle No. DN-09-A-2433 while he was proceeding to his job at Village Dadra.
- iii. Shri Suman T. Patel got angry and caught hold of Shri Dilip M. Patel's neck and drag him from his car and drag him in the shop of Meenaben.
- iv. Shri Suman T. Patel, Shri Raghu C. Patel, Shri Harish K. Patel, Shri Nilesh K. Patel, Smt. Pushpa S. Patel beat him, assaulted him with iron rod and threaten him to kill.
- v. Shri Vinod N. Patel, Shri Nilesh Patel and Smt Meena K. Patel who came to rescue him were also assaulted by them.
- vi. He reported this incident to his superior Shri D. K. Datta, Mamlatdar, Silvassa. He advice him to lodge a complaint in the Silvassa Police Station.
- vii. He along with his family members went to the Silvassa Police Station and met PSI H. C. Rathod and narrated him the entire incidence just happened



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on 14/12/2012 at 10:05 AM and also shown him all the injuries sustain on his body which are taken on record as Exhibit A-4 to A-12.

- viii. Shri Dilip M. Patel was referred to the VBCH, Silvassa for medical treatment under Police Yadi by PSI H. C. Rathod.
 - ix. Shri Dilipbhai M. Patel had submitted 17 photographs of the injuries sustain to his body. Which are taken on record as Exhibit A-4 to A-12.
 - x. Shri Dilipbhai M. Patel had lodge a private complaint in the Court of Chief Judicial Magistrate, Silvassa on 27/12/2011 as PSI H. C. Rathod had not registered his complaint and court directed police to investigate the matter and file the report in the court on or before 27/01/2012.
2. : i. Smt. Meenaben B. Patel had grievances against the PSI Shri H. C. Rathod for inaction and non registration FIR against her written complaint given on 14/12/2011.
- ii. Smt. Meenaben Patel stated that on 14/12/2011 at 10:45 AM, she visited the Silvassa Police Station with her younger brother Harish, Shri Suman Patel and other 3-4 persons and met PSI H. C. Rathod and narrated the whole incidence of assault on her by Shri Dilipbhai M. Patel.
- iii. Smt. Meenaben B. Patel further stated that Shri H. C. Rathod noted the incidence on a plain paper and obtained her signature then she was referred to the SVBCH, Silvassa for medical treatment. Shri H. C. Rathod had also recorded her statement in the hospital.
- iv. Police had not taken any action against her complaint hence she had lodge a private complaint through Court of Chief Judicial Magistrate, Silvassa bearing RCC No. 9/2012.
3. i. Shri Sumanbhai T. Patel had grievances against the PSI Shri H. C. Rathod, Silvassa Police Station for inaction and non registration of FIR.
- ii. On 14/12/2011 at about 10:45 AM Shri Sumanbhai T. Patel along with Smt. Meenaben B. Patel, Shri Harish Patel, Shri Nilesh Patel and Shri Raghu Patel met PSI H. C. Rathod and gave written complaint against Shri Dilipbhai M. Patel.
4. : i. Shri H. C. Rathod, Police Sub Inspector stated that on 14/12/2011 at about 10:45 AM to 11:00 AM Shri Suman T. Patel and Smt Meenaben B. Patel along with 2-3 persons came to the police station to lodge the complaints against Shri Dilipbhai M. Patel and others and also gave the written complaint which



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- is at Exhibit
- ii. Shri H. C. Rathod also stated that Shri Dilipbhai M. Patel, his wife Smt. Sadhna Patel along with 2-3 persons also came to the police station to lodge the complaints against Shri Suman T. Patel and other 3-4 persons and not gave any written complaint.
 - iii. Shri H. C. Rathod stated that when Smt. Meenaben B. Patel came to the police station she had bleeding injury on her left elbow and Shri Dilipbhai M. Patel was complaining of severe body pain. Hence both were referred to the SVBCH, Silvassa for medical treatment under Police Yadi.
 - iv. On being inquired Dr. Keyur Desai informed Shri H. C. Rathod that Smt. Meenaben Patel and Shri Dilipbhai Patel sustain simple injuries and they are admitted in the hospital as indoor patient for further treatment. Shri G. B. Patel, Head Constable was directed to investigate the matter and to verify the spot and also to record the statements.
 - v. Shri H. C. Rathod stated that after the verification Shri G. B. Patel, Head Constable registered the CR No. 297/2011 for the offence punishable u/s 160 of IPC against (1) Suman Thakor Patel, (2) Harish Karshan Patel, (3) Nilesh Karshan Patel, (4) Meena Bable Patel, (5) Raghu Chotu Patel, (6) Dilip Magan Patel, (7) Rajesh Magan Patel, (8) Sadhna Dilip Patel, (9) Arpana Rajesh Patel and (10) Rakesh Suresh Patel.
 - vi. Head Constable Shri D. C. Chauhan is carrying out the investigation of CR No. 297/2011 under the superintendence and direction of Shri H. C. Rathod.
 - vii. On the direction of the Court of Chief Judicial Magistrate Shri H. C. Rathod directed Shri S. G. Valvi to register the FIR No. 317/2011 and the investigation of this FIR is being carried out by Shri G. B. Kamde under the superintendence and direction of Shri H. C. Rathod.
 - viii. Shri H. C. Rathod stated that Investigating Officer Shri G. B. Kamde had drawn the panchnama of the spot and recorded the statements of witness.
5. : i. Dr. Keyur Desai, Medical Officer, SVBCH, Silvassa stated that at 11:00 AM Smt. Meenaben Balebhai Patel was brought by lady police constable for the medical treatment. She had bleeding injury on her right arm caused by hard and blunt object like iron rod or stick and not by sharp edge weapon. She was complaining for giddiness hence she was admitted as indoor patient.
- ii. Dr. Keyur Desai further stated that at 11:10 AM Shri Dilipbhai Maganbhai Patel was also brought by police constable for the medical treatment. Shri



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Dilip Patel was having simple injuries on his ear, back, shoulder, upper abdomen and on right elbow caused by hard and blunt object. Shri Dilip Patel is having injury on upper abdomen hence he was admitted as indoor patient for further treatment. Accordingly I had issued injury certificate of Smt. Meenaben Patel which at Exhibit A-28 and Shri Dilipbhai Patel A-19.

- iii. Dr. Keyur Desai stated that both the patient gave the history of assault at Brahmin Falia, Village- Amla, Silvassa at about 10:00 AM.

Facts immersing from the statements and documentary evidence. :

- a) Shri H. C. Rathod, PSI admitted that he had received the written complaint from Smt. Meenaben B. Patel and Shri Sumanbhai T. Patel on 14/12/2011. He also admitted having seen the bleeding injury on the left arm of the Smt. Meenaben B. Patel, when she along with Shri Sumanbhai Patel appeared in the Silvassa police station at 10:45 AM on 14/12/2012. This fact discloses commission of cognizable offence sufficient to put investigation machinery in to motion.
- b) Shri H. C. Rathod also admitted that Shri Dilipbhai M. Patel came to the police station on 14/12/2011 and reported assault by 1) Shri Suman Thakor Patel, 2) Shri Raghu Chootu Patel, 3) Shri Harish Kurshan Patel, 4) Smt. Pushpa Suman Patel and 5) Shri Nilesh Kurshan Patel named accused and shown his injuries.
- c) Both Smt. Meenaben Patel and Shri Dilipbhai Patel were sent for medical treatment at Shri Vinoba Bhawe Civil Hospital, Silvassa under Police Yadi.
- d) Both Smt. Meenaben Patel and Shri Dilipbhai M. Patel were admitted as indoor patients in SVBCH, Silvassa on 14/12/2011 and were initially treated by Dr. Keyur A. Desai. He admitted that Shri Dilipbhai Patel was complaining of severe body pain.
- e) Dr. Keyur Desai admitted that there are discrepancies in recording injuries sustained by Shri Dilipbhai M. Patel. On being confronted with the photographs at Exhibits A-4 to A-12 Dr. Keyur Desai admitted that many of the injuries found on the body of Shri Dilipbhai Patel were not recorded due to heavy work load.

Final Order/Judgment :

The facts unfolded during the inquiry of three complaint cases registered with the Police Complaint Authority against PSI H. C. Rathod, Silvassa Police Station portray very grim and pathetic picture of police in-action where by the complainant were required to roam from pillar to post to redress their grievances. Had the concern police officer acted within the mandate of code of criminal procedure, all the three complaints ought not to have suffered at the hands of police machinery.



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Admittedly PSI H. C. Rathod appears to have completed sizable numbers of years as a Police Sub Inspector and was expected to have firsthand knowledge what action is required to be taken by police when the complaint and counter complaint has been filed before the police on the facts disclosing commission of cognizable offence on the same facts, place, time and date, though the version of both the complainant are slightly different. As police did not registered FIR of the respective complainants and if there was doubt in the mind of PSI as to what action is required to be taken by him, he could have obtained guidance from his superior officer who is the Sub Divisional Police Officer. Nothing has been produced on record whether advice of a Superior officer was sought by the PSI in respect of complaint and counter complaint received on 14/12/2012. As the provision under the Code of Criminal Procedure prescribed under Section 154, there is little scope for the PSI to deviate from the procedure prescribed and resorted to very innovative approach of registering an FIR against both the parties under Section 159 r/w Section 160 of IPC for committing an affray. From the facts emerging from the complaints of both the parties, it is nobody's case that the offence was committed in the public place and because of the commission of offence there was a disturbance of a public peace. This kind of approach to find a shortcut on the part of the police officer does not and cannot address the grievances of the complainants and result in to unjustifiable action on the part of police officer.

As can be seen from the facts emerging from the records, Shri Dilipbhai M. Patel being dissatisfied by the conduct of the police officer approached the Chief Judicial Magistrate, DNH by filing a private complaint on the RCC No. 126/2011 on 27/12/2011. The Chief Judicial Magistrate was pleased to pass an order directing Police Inspector Silvassa Police Station to conduct the investigation under Section 156(3) of Cr. PC and report within one month by order dated 27/12/2011. Consequently Silvassa police was obliged to register a First Information Report No. 317/11 under Section 353, 332, 323, 324, 504, 506(2), 143, 147, 148 and 149 r/w Section 120 B of IPC on 13/12/2011.

Similarly, being aggrieved by the conduct of the police Smt. Meenaben Balebhai Patel who was allegedly injured in the incidence had to file RCC No. 9/2012 before the Chief Judicial Magistrate, DNH. Consequently the Chief Judicial Magistrate by order dated 16/01/2012 was please to direct Police Station In-charge to conduct the investigation through proper police officer under Section 156(3) of Cr. PC and report to the court within a month. During the recording of statement of Shri H. C. Rathod did



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not disclosed as to what action had been taken with reference to the above complaint.

Therefore, now the situation as it immerges from the facts, the police has to investigate three cases on three different First Information Reports based on almost same facts, place, time and date of occurrence.

The point for consideration is whether PSI H. C. Rathod is guilty of any serious misconduct or misconduct as stipulated under the Notification No. 1/95/Home/2011-12/418 dated 10/08/2011 As per the definition under the Notification "Serious Misconduct" shall mean any act of omission of the Police Officer that leads to or amounts to:

- a)
- b)
- c)
- d)
- e)
- f)
- g) Any incident involving serous abuse of authority

Considering the evidence in the form of oral evidence as well as documentary evidence on record, it is abundantly established that Shri Dilipbhai Magan Patel and Smt. Meenaben Bale Patel appeared before the PSI H. C. Rathod with their respective written as well as oral complaints together with visible multiple injuries disclosing cognizable offence. Both the complainants were sent to the Shri Vinoba Bhawe Civil Hospital under Police Yadi. Both the complainants treated in the Hospital as an Indoor patient from the 14/12/2012 to 16/12/2012. The medical certificate issued by Dr. Keyur Ashok Desai in respect of the injuries sustain by Shri Dilipbhai M. Patel and the photographs produced by the complainant shows that the Dr. Concerned were very much casual in their approach and he did not recorded all the injuries sustain by Shri Dilipbhai M. Patel. Dr. Keyur Desai in his statement before the authority had admitted that he did not recorded those injuries which are depicted in the photographs produced as Exhibit A-4 to A-12. The Dr. Keyur Desai explain that because of so much of over burden of examination of so many patient, this injuries could not noted by him.

The Hon'ble Supreme Court in case of Shivshankar Singh V/s State of Bihar reported (2012) 1 SCC 130 had held that multiple FIRs – more than one FIR – in respect



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of same incident, but with differing versions – permissibility – Held, the law does not prohibit the registration and investigation of two FIRs in respect of same incidence having different version of events.

The Hon'ble Supreme Court in the case of Upkar Singh V/s Ved Prakash reported in (2004) 13 SCC 292 had held that Section 154 and 156(3) and Section 161 and 162 – two FIRs – Second complaint in regards to same incident filed as counter complaint, Held, not prohibited under Cr. PC – Hence, on refusal by the police on counter complaint magistrate can direct the police at any stage to register the complaint and investigate the same.

The Hon'ble Supreme Court by order dated 14/07/2008, in Lalita Kumari's case, reported in (2008) 7 SCC 164 passed a comprehensive order express its grave anguish on non registration of FIR even in a case of a cognizable offence.

"This extract is taken from Lalita Kumari v. Government of Uttar Pradesh, (2008) 7 SCC 164, at page 165 :

It is a matter of experience of one of us (B. N. Agrawal, J.) while acting as Judge of the Patna High Court, Chief Justice of the Orissa High Court and Judge of this Court that in spite of law laid down by this Court, the police authorities concerned do not register FIRs unless some direction is given by the Chief Judicial Magistrate or the High Court or this Court. Further, ¹⁶⁵ experience shows that even after orders are passed by the courts concerned for registration of the case, the police does not take the necessary steps and when matters are brought to the notice of the inspecting Judges of the High Court during the course of inspection of the courts and Superintendents of Police are taken to task, then only FIRs are registered. In a large number of cases investigations do not commence even after registration of FIRs and in a case like the present one, steps are not taken for recovery of the kidnapped person or apprehending the accused person with reasonable dispatch. At times it has been found that when harsh orders are passed by the members of the judiciary in a State, the police becomes hostile to them, for instance, in Bihar when a bail petition filed by a police personnel, who was the accused was rejected by a member of the Bihar Superior Judicial Service, he was assaulted in the courtroom for which contempt proceeding was initiated by the Patna High Court and the erring police officials were convicted and sentenced to suffer imprisonment.



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On the other hand, there are innumerable cases that where the complainant is a practical person, FIRs are registered immediately, copies thereof are made over to the complainant on the same day, investigation proceeds with supersonic jet speed, immediate steps are taken for apprehending the accused and recovery of the kidnapped persons and the properties which were the subject-matter of theft or dacoity. In the case before us allegations have been made that the Station House Officer of the police station concerned is pressurising the complainant to withdraw the complaint, which, if true, is a very disturbing state of affairs. We do not know, there may be innumerable such instances.

In view of the above, we feel that it is high time to give directions to the Governments of all the States and Union Territories besides their Director Generals of Police/Commissioners of Police as the case may be to the effect that if steps are not taken for registration of FIRs immediately and copies thereof are not made over to the complainants, they may move the Magistrates concerned by filing complaint petitions to give direction to the police to register case immediately upon receipt/production of copy of the orders and make over copy of the FIRs to the complainants, within twenty-four hours of receipt/production of copy of such orders. It may further give direction to take immediate steps for apprehending the accused persons and recovery of kidnapped/abducted persons and properties which were the subject-matter of theft or dacoity. In case FIRs are not registered within the aforementioned time, and/or aforementioned steps are not taken by the police, the Magistrate concerned would be justified in initiating contempt proceeding against such delinquent officers and punish them for violation of its orders if no sufficient cause is shown and awarding stringent punishment like sentence of imprisonment against them inasmuch as the disciplinary authority would be quite justified in initiating departmental proceeding and suspending them in contemplation of the same.

Keeping these facts in mind, we are of the view that notices should be issued to the Government of all the States and Union Territories besides the Director Generals of Police/Commissioners of Police, as the case may be.

Issue notice to the Chief Secretaries of all the States and Union Territories and the Director Generals of Police/Commissioners of Police, as the case may be, to show cause



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as to why aforesaid directions be not given by this Court."

I have considered the statement of defense filed by PSI H. C. Rathod in response to the Show Cause Notice dated 03/01/2012. There is no explanation what so ever as to why no complaints either from Shri Dilip M. Patel or Smt. Meenaben B. Patel were registered by the police officer. I have also perused the statement of PSI H. C. Rathod recorded by the authority on 31/01/2012. During the statement of the police personnel was confronted with the photographs depicting the injury sustain by Shri Dilip M. Patel. There was no convincing answer by the concern police personnel whether he had verified those injuries when Shri Dilipbhai Patel appeared before him with complaint of assault on 14/12/2011. Similarly there was no explanation as to why no FIR was registered on the basis of the facts disclosing the commission of cognizable offence by Smt. Meenaben B. Patel and Shri Dilipbhai M. Patel.

Similarly a strange facts has emerged that the concerned police personnel is supervising three investigation based on almost same facts, time, date and place under Cr. No. 297/2011 and Cr. No. 317/2011 and investigation pursuant to the investigation order by the Chief Judicial Magistrate under RCC No. 9/12 dated 16/01/2012. How one and the same officer would supervise, superintend and control all three investigations is a matter which needs to be considered by an appropriate authority.

One of the allegation made by Shri Dilipbhai M. Patel against the police personnel to the effect that his complaint was not registered by the police officer that he did not registered his FIR disclosing cognizable offence and had further alleged that a false complaint of affray had been registered against him and his family members under political pressure.

One of the facts which needs to be considered is that Shri Dilipbhai M. Patel is Government servant and serving as Patel Talati, Dadra. Smt. Meenaben B. Patel is a grocery shop keeper and had been assisted by Shri Sumanbhai who happens to be seating councilor of Silvassa Municipal Council, who also had filed complaint field before the PCA being the complaint no. PCA/DDD/Case-06/2012 registered on 27/01/2012. It is for the police to find out the truth under fair and transparent investigation and come to the correct and logical conclusion.

This is the first case of its kind of Non Registration of FIR by the police personnel



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filled before the PCA. In spite of the facts that the Station House Officer could have solicited the advice of his immediate superior that is the Sub Divisional Police Officer and if the issue is not resolved, the SHO and the SDPO could have approached the Superintendent of Police for his guidance and directions. In this case nothing of that kind of action appears to have been taken by the police personnel.

Considering the evidence on record, it is established that police personnel concerned has omitted to act on the information of cognizable offence having been laid down together with visible injuries, in accordance with the provision of Section 154 of Code of Criminal Procedure and committed misconduct by misusing his authority.

Under the circumstances I find it appropriate to request the Inspector General of Police of Daman & Diu and Dadra & Nagar Haveli to issue following directions to the subordinate officers:

1. SHO of Daman & Diu and Dadra & Nagar Haveli police stations, in a case of complaint and counter complaint on almost similar facts, shall immediately seek guidance of respective SDPO in writing together with the record and concern SDPO after verifying the records shall issue necessary instruction directing to the SHO or the Investigation Officer as the case may be in writing. The record of such written instruction shall be kept by the respective SDPO and by SHO or Investigation Officer.
2. In case the respective SDPO cannot resolve the issue, the concern SDPO together with respective SHO or the Investigation Officer shall approach the concern Superintendent of Police in writing along with the case papers. The concern Superintendent of Police after verifying the case papers and after hearing SHO and the SDPO shall issue a written instruction for the further course of action to be taken by the concern SHO or the Investigation Officer.



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3. The Superintendent of Police of both the UTs may be directed to take cognizance of directions of the Hon'ble Supreme Court passed in Lalita Kumari's case reported in (2008) 7 SCC 164 and issue appropriate directions to the subordinate police officers.

4. Under the pecuniary facts and circumstances of these cases and this being the first case of its kind, the PCA proposed to take a lenient view against PSI H. C. Rathod and direct Inspector General of Police, DNH to issue censure against PSI H. C. Rathod.

Passed on this 27TH day of November 2012 at Silvassa.

S. M. Parmar

Chairperson

Police Complaint Authority

Daman & Diu and Dadra & Nagar Haveli

Silvassa