

**BEFORE THE KERALA STATE HUMAN RIGHTS COMMISSION,
THIRUVANANTHAPURAM**

**Present: Mr.Justice N.Dhinakar,
Hon'ble Chairperson**

Dated this the 22nd September, 2010.

H.R.M.P.No.331 of 2010

Petitioner : Sajad, S/o Shajahan,
Asaripachayil veed, Neyyatam.P.O,
Ambalamkunnu, Velinallur village,
Kottarakkara Taluk, Kollam Dist.

Respondents : 1) Abhilash, Sub Inspector of Police,
Pooyappally Police Station,
2) Mohanan, Police Constable,
Pooyappally Police Station.
3) Another Police Constable of Pooyappally Police
Station who is identifiable by sight

ORDER

The complaint of the petitioner is that the Sub Inspector of Police and two Police Constables of Pooyappally Police Station, who are arrayed as respondents 1 to 3 in this HRMP, came to his house on 28-12-2009 between 8.30 p.m. and 9.00 p.m where he was talking with his friends Shamnad and Rafi and assaulted them and took them to Pooyappally Police Station and he was assaulted by the respondents in the Police jeep and at the Police station. According to him, at the Police Station he was forced to drink urine and his friends were also assaulted and that they were released at 7.30 p.m. on 29-12-2009. He has further alleged that on account of the assault on him by the police officials he was admitted in the hospital on 30-12-2009 and was discharged on 5-1-2010. He has also annexed,

along with his complaint, the accident register cum wound certificate issued by the hospital.

A report was called for from the Deputy Superintendent of Police (Dy.S.P), Punalur and he has filed his report. In the report it is stated that the petitioner is an activist of NDF (the Dy.S.P. ought to have mentioned the expansion of NDF instead of giving the abbreviation only) and an accused in several cases on account of his involvement in assaulting the Rashtreeya Swayamsevak Sangh (RSS) activists and that the Police are conducting patrolling in the area in order to prevent riots taking place between the two communities. According to the report, at 8.30 p.m. on 28-12-2009 a complaint was given by Vijayan complaining that he and his friends Reghu and Akhil, who are the activists of RSS, were waylaid by the petitioner and also behaved in a manner causing disturbance to communal harmony and on the said complaint of Vijayan crime 751/09 was registered u/s 153, 294 (b), 506 (ii) r/w section 34 of the IPC against the petitioner and his friends Shamnad and Rafi who are NDF activists. It is also stated in the report that with a view to avoid law and order problem in the area the petitioner and Shamnad were taken to the Police Station where after talking with the petitioner and the activists of RSS they were released on bail. According to the report, in respect of an earlier incident dated 5-7-2008 crime 300/08 was registered against the petitioner which after the investigation resulted in filing of the final report before the Court and similarly crime 510/08 was registered against the petitioner and Sajith which also after investigation resulted in filing of a charge sheet before the Court.

The averments of assault are denied in the report and that according to the report, the present complaint made in this HRMP is only on account of the above action taken by the Police against the petitioner and his friends. It is further stated in the report that an order was issued u/s 15 of the Kerala Anti-social Activities (Prevention) Act (KAAP Act) prohibiting the petitioner from entering Punalur sub division for a period of six months from 1-4-2009 and that the petitioner, after the expiry of the said period, returned to the sub division and created the problem leading to the registration of a crime in crime No.751/09 as mentioned above.

I have carefully perused the report and no where in the report it is mentioned that the officers against whom allegations are made in the HRMP were questioned and explanations were sought from them on the said allegations made by the petitioner and similarly there is nothing in the report to indicate that the petitioner was questioned during the enquiry in the above HRMP. In the above circumstances, it could be presumed that the said report was prepared by the Dy.S.P, Punalur, by merely looking into the records kept and maintained at the Police Station and that neither the petitioner nor the respondents who are the Police officials were given an opportunity to put forth their versions.

It is also to be remembered that there is no reference as to the accident register cum wound certificate annexed with the complaint filed by the petitioner. A perusal of which indicates that the petitioner was treated by a doctor at the Community Health Centre, Nebumpana, at 2.00 p.m. on 30-12-2009 and at the time of examination by the doctor the petitioner informed him that he has suffered injuries on account of the assault by three Police officials including the Sub

Inspector of Police, Pooyappally Police Station at 8.30 p.m. on 28-12-2009. The doctor noticed two injuries which are noted in the said accident register cum wound certificate. The petitioner was discharged from the hospital on 5-1-2010 as per the discharge card which is also annexed with the complaint.

In the above circumstances, the Dy.S.P ought to have questioned the petitioner and the doctor who treated him to find out the truth of the allegations; but on the contrary, the report was prepared, without even giving an opportunity to the petitioner and the respondents and also without recording their statements, was forwarded to this Commission. The mere fact that in the said report it is mentioned that an order was passed against the petitioner u/s 15 of the KAAP Act and that he was involved in two other crimes are not grounds for him to be treated in the manner as alleged in the complaint, if they are found to be true.

As the report is not satisfactory for the reasons mentioned above, I am of the view that a proper and thorough enquiry is required in the matter and accordingly, the Superintendent of Police, Kollam, will nominate a competent officer to enquire into the allegations mentioned in the complaint filed by the petitioner. The officer so nominated will give sufficient notice in advance to the parties concerned for them to appear and put forth their respective cases and thereafter the said officer will pass appropriate orders according to law.

The petition is closed with the above recommendation. Send a copy of this order each to the petitioner and the Superintendent of Police, Kollam.

Justice N. Dhinakar,
Chairperson.