
(1997) 10 BOM CK 0032

In the Bombay High Court

Case No : Criminal Writ Petition No. 395 of 1995

Chandrabhan Dhengle

APPELLANT

Vs

Indarbai Dhengle and others

RESPONDENT

Date of Decision : 22-10-1997

Acts Referred:

Constitution of India, 1950 — Article 21, 22, 226

Criminal Procedure Code, 1973 (CrPC) — Section 107, 109, 110, 116(3), 151

Penal Code, 1860 (IPC) — Section 323, 34, 504, 506

Citation : (1998) 5 BomCR 191 : (1998) 1 BOMLR 349 : (1998) 1 MhLj 234

Hon'ble Judges : D.D. Sinha, J;A.D. Mane, J

Bench : Division Bench

Advocate : R.D. Mane, for the Appellant; S.S. Pawar and S.K. Kadam, Assistant Public Prosecutor, for the Respondent

Judgement

A.D. Mane, J.—This is a criminal writ petition under Article 226 read with Articles 21 and 22 of the Constitution of India, arising out of following set of circumstances.

2. The petitioner is citizen of India and permanently resides in village Pimpalwadi, Taiuka Kallam, District Osmanabad. The petitioner submits that he is a peace loving citizen and also law abiding citizen. He is agriculturist by occupation. He is married and is having two sons and one daughter. The respondent No. 1 Indirabai is his legally wedded wife. On 24-4-1995 Indirabai filed a complaint against him in Police Station Kallarn, inter alia, alleging that she was beaten by the petitioner and the petitioner is in habit of abusing her. She has further alleged that the petitioner removed the hut and sold some household articles and kept the wife and the children without any shelter.

3. The respondent No. 2 was working as P.S.I. at Kallam at the relevant time. On receiving the complaint from respondent No. 1, he registered the offence under sections 323, 504, 506 read with section 34 of I.P.C. but ultimately it was treated as non-cognizable offence under Serial No. 264 of 1995. The inquiry into that

complaint was conducted by Police Head Constable the respondent No. 3, who at the relevant time was working under the respondent No. 2 at the same police station. During the inquiry he recorded the statements of children of the petitioner and three neighbours. The respondent No. 1 was informed that her complaint is of non-cognizable nature and therefore she may approach the Court if she so desires. On 25-4-1995 the respondent No. 2 P.S.I., however, made a report to the respondent No. 4 the Special Executive Magistrate for ordering the petitioner to execute a bond with or without surety for keeping peace for such period as he may think fit as according to the respondent No. 2 the petitioner was likely to commit breach of peace and disturb the public tranquility. A copy of the said report is annexed to the petition at Exhibit G. At the relevant time one Shri C.G. Sousudi was the Special Executive Magistrate (L.C.B.) Osmanabad but he is now retired with effect from 11-5-1995 and one Shri D.A. Karkhelikar was working in his place as Special Executive Magistrate, who is Police Inspector (L.C.B.) Osmanabad.

4. It appears that the respondent No. 4 issued a show-cause notice to the petitioner to show cause as to why he should not be ordered to execute a bond of Rs. 5,000/- with two sureties as in his opinion there was sufficient ground for proceeding against the petitioner u/s 109 and 110 of the Code of Criminal Procedure. The petitioner submits that the Police arrested him on the same day and produced before the respondent No. 4 who had registered a Chapter Case No. 141 of 1995 u/s 107, 109 and 110 of the Cr.P.C. A copy of the show cause notice is also produced at Exh. J to the petition. The petitioner further says that on the same day he was sent to Jail till 3-5-1995, and he has produced the copy of the warrant at Exhibit K to the petition to that effect.

5. It is the case of the petitioner that right from 25-4-1995 till 26-6-1995 he was kept in District Jail, Osmanabad and released on bond on 26-6-1995 only when the respondents No. 2, 3 and 4 learnt that the petitioner was approaching the Honourable High Court. In this context the petitioner says that on 26-6-1995 he informed the Superintendent of Jail, Osmanabad that he has been in jail two months and due to his poverty he could not furnish any bond. On account of this his wife and children are starving and therefore he requested to release him on personal bond with an undertaking that he would furnish the bond after his release. Copy of the said application is annexed at Exh. L. to the petition.

6. The petitioner submits that proceeding initiated against him under the provisions of sections 107, 109 and 110 of the Code of Criminal Procedure is without jurisdiction and without any powers vested with the authorities. It is submitted that the powers vested with the authorities could be invoked only when there is likelihood of breach of public peace or disturb of public tranquility and not in case of individual dispute between the husband and the wife. The dispute between the petitioner and the respondent No. 1 is of matrimonial nature and not of a general nature so as to initiate proceedings against the petitioner under the aforesaid provisions of the Criminal Procedure Code. It is submitted

that the respondent No. 2 P.S.I. has intentionally mis-represented and mis-directed the respondent No. 4 for taking action under the aforesaid provisions of the Code and in consequence the respondent No. 4 in collusion with the respondents No. 2 and 3 illegally detained the petitioner by exercising the powers wrongly under the Criminal Procedure Code. It is further submitted by the petitioner that the action initiated against the petitioner was not only wrong but unwarranted and without jurisdiction. In this context the petitioner submits that there is clear violation of the provisions contained in Articles 21 and 22 of the Constitution of India. It is submitted that in this given set of circumstances, the respondents Nos. 2 to 4 jointly and severally are liable to be punished for their illegal exercise of powers under the Criminal Procedure Code contrary to the safeguards afforded to the petitioner under the Constitution of India.

7. The petitioner further submits that the petitioner has been illegally detained in jail for a period of two months and for the misuse of the power by the respondents Nos. 2 to 4, each of the respondent is liable to pay Rs. 50,000/- as damages to the petitioner besides that this Honourable Court may be pleased to order an Departmental Enquiry, against the respondents Nos. 2 to 4 for misconduct and exercise of powers arbitrarily.

8. We are surprised that the respondent No. 6 the State of Maharashtra has not considered it appropriate in the facts and circumstances appearing on record to take a serious view of the matter in filing an independent affidavit-in-reply but the affidavit-in-reply is filed by the respondent No. 5 for himself and for and on behalf of the State on 20-10-1995. It has been stated in the affidavit of Datta s/o Abaji Karkhelikar who is Special Executive Magistrate, that the respondent No. 1 the wife of the petitioner lodged a complain against him in the Police Station, Kallam alleging that the petitioner used to beat and illtreat her. In that complaint, a reference is made to her beating mercilessly by petitioner on 23-4-1995 at about 5.00 p.m. The petitioner also appears to have given her threat to finish her. Therefore, non-cognizable offence is registered against the petitioner under sections 323, 504 & 506 of Indian Penal Code. It is an admitted fact that statement of persons from village Pimpalwadi were recorded which includes relatives and other persons of the petitioner besides his children. It has further been stated that the P.S.I. the respondent No. 2 made a report to the respondent No. 4, the then Special Executive Magistrate, L.C.B., requesting to start the proceeding u/s 107 of Cr.P.C. against the petitioner. The then Special Executive Magistrate accordingly initiated the proceedings u/s 107 of Criminal Procedure Code against the petitioner. It is however submitted that the proceedings were not initiated under sections 109 and 110 of the Criminal Procedure Code, because mentioning of these sections is on the printing form and because of oversight these sections were not struck down from the show-cause notice. The then Special Executive Magistrate, sent warrant and kept the petitioner inside the jail at Osmanabad. The next date of the proceeding was fixed on 15-5-1995. It is stated that after taking over the charge as Special Executive Magistrate, he applied his mind to the facts of the case and released the petitioner on

26-6-1995. It is however denied that he was released because it was learnt that the petitioner was approaching this Court for his release.

9. The deponent justified the action of the respondent No. 4, as according to him the action was just and proper to initiate the proceedings u/s 107 of Cr.P.C. It is also submitted that the action is bona fide and it was done in discharge of his official duties with conscious mind on going through the papers of the case. The deponent denied that there was no necessity to issue proceedings u/s 107 of Cr.P.C. The action was required to be taken under the prevailing circumstances at the relevant time. It is, therefore, denied that the action was taken by the respondents No. 2 to 4 was either wrong, unwarranted or without jurisdiction. It is submitted that the action was taken to meet the ends of justice. Therefore, the reliefs sought by the petitioner in the petition does not deserve any consideration.

10. The deponent has further stated that the proceedings were initiated and various dates were given to the respondent No. 1 as well as the petitioner after his release to furnish the bond but the petitioner as well as the respondent No. 1 remained absent on the dates given after 29-9-1995. The respondent No. 1 however remained present before him on 17-10-1995 with an application stating that she do not want to press the proceedings against the petitioner. Therefore, according to the deponent the proceedings were closed against the petitioner on 17-10-1995.

11. There is supplementary affidavit filed by one Chandrashekar Gurupadappa Sausudi, who is retired Dy. Superintendent of Police and who was working as Special Executive Magistrate till 12-5-1995. He has reiterated the version of the earlier deponent and stated that the petitioner was produced before him on 25-4-1995 alongwith the report submitted by the P.S.I. respondent No. 2. In the report it was alleged that one Indirabai Dhengle who happens to be the wife of the present petitioner filed a complaint in Police Station, Kallam, against the petitioner and N.C. No. 264 of 1995 under sections 323, 504 & 506 of I.P.C. was registered on 25-4-1995. The respondent No. 2 alongwith the report also produced the petitioner before him and on the basis of the report and on his satisfaction that there was sufficient ground to proceed against the petitioner for taking action u/s 107 of the Code of Criminal Procedure he initiated the proceedings and the petitioner was called upon to furnish a P.R. Bond and one surety. However, the petitioner declined to execute the bond for keeping peace and good behaviour during the bond period as well as he failed to submit the surety and therefore he was kept in Magisterial Custody. He was sent to the District Prison Osmanabad on 25-4-1995. The next date of proceeding was 3-5-1995. On that day the petitioner was produced. He was called upon to execute the bond and to furnish the surety, but he declined and therefore next date was given on 8-5-1995. On 8-5-1995, the petitioner was again produced before him. Again he was asked to execute P.R. Bond and surety, but the petitioner failed to execute the bond and furnish the surety, and therefore, he was kept in Magisterial Custody till 12-5-1995. On 12-5-1995 he handed over

the charge to the respondent No. 5 the Special Executive Magistrate, L.C.B. Osmanabad. He states that he has written the Roznama on 25-4-1995 regarding the proceeding u/s 107 Cr.P.C. till 8-5-1995. It shows that the petitioner was given opportunity to execute the P.R. Bond to furnish surety but the petitioner failed to do so and therefore there was no alternative but to keep him in M.R.R. It is therefore submitted that there is no merit in the allegations of the petitioner that he was illegally detained by the deponent or that the action taken against him u/s 107 of Cr.P.C. was illegal. It is submitted that he has approached the Law and Judiciary Department to engage Public Prosecutor on his behalf and accordingly his request was granted. The respondent No. 5 thus submits that the petitioner was kept in jail and M.C. from 25-4-1995 to 12-5-1995 in proceedings u/s 107 of Cr.P.C. The respondent therefore submitted that there is no question of any departmental enquiry nor the petitioner is entitled to any damages for loss of personal liberty as alleged. He has further stated that on the format of the report there is a reference to section 109 and 110 of the Cr.P.C. however these sections have no relevance in the present proceedings u/s 107 of Cr.P.C. According to him, the petition is therefore liable to be dismissed.

12. There are two more affidavits filed by one Sidram s/o Chandrasen Chendke the respondent No. 2 and Kisan Narayan Bhole the Police Head Constable, respondent No. 3. The respondent No. 2 submits that the wife of the petitioner filed a complaint on 25-4-1995 against the petitioner and accordingly N.C. 264 of 1995 was registered under sections 323, 504 & 506 of I.P.C. against the petitioner. He has further stated that on the basis of the said complaint it was thought necessary to take preventive action against the petitioner and the respondent No. 3 Police Head Constable was entrusted enquiry regarding proceeding u/s 107 of Cr.P.C. The respondent No. 3 Police Head Constable recorded the statement of various persons from Pimpalwadi on the basis of which it was disclosed that the petitioner is habituated to beating and abusing his wife as he was suspecting the chastity of Indirabai. It is also stated that the petitioner was addicted to liquor and he is not doing any work. On that basis the report was forwarded by the respondent No. 3 to the Special Executive Magistrate and the petitioner was arrested and he was produced before the Special Executive Magistrate on 25-4-1995 and proceedings u/s 107 were initiated. The petitioner was given an opportunity to execute the bond of good behaviour and keeping peace but he declined to do so and hence he was taken into the Magisterial custody and was sent to the District Prison, Osmanabad on 25-4-1995. In this context it is submitted that on the basis of the inquiry report, the respondent No. 3 formed his opinion that there was sufficient ground to proceed against the petitioner for taking preventive action u/s 107 Cr.P.C. with a view to prevent the petitioner from committing breach of peace or disturb the public tranquility or to commit wrong which may cause breach of peace. It is therefore submitted that the petitioner was not illegally detained nor he has lost the personal liberty for 67 days. Therefore, the petitioner is not entitled to any relief in the petition.

13. The respondent No. 3 in his separate affidavit adopted the similar contention

by reiterating the facts already stated in support of his submission that the petitioner has made false allegations against him. According to him he has given the true report and therefore he denied the allegations levelled against him to be true and correct. According to him, the allegations that the petitioner was illegally detained is false and without any basis. The action taken by the respondent No. 3 was proper, within the ambit of section 107 and 151 of Cr.P.C. He therefore submitted that the petition deserves to be dismissed.

14. We have called for the Record and proceedings in Chapter Case No. 141 of 1995 initiated against the petitioner. On perusal of the record and proceedings it is clear that the petitioner was detained in District Prison, Osrnabad w.e.f. 25-4-1995 till he was released on 26-6-1995.

15. The petitioner submits that due to the illegal action of the respondents Nos. 2 to 5 he has been deprived of his personal liberty. He has been deprived with his personal liberty by taking him in custody and detaining him in prison without any authority of law. In reply to these allegations, the only reply that the respondents have furnished is that their action is proper and that the petitioner was rightly detained in Magisterial custody in District Prison, Osrnabad for his failure to furnish the personal bond and surety as asked for in proceeding u/s 107 of Cr.P.C.

16. Therefore, the question that requires determination is whether the action u/s 107 Cr.P.C. was justified in the first instance. This is so because it is made clear in affidavit-in-reply of respondent No. 4 sworn by the respondent No. 5 that in show-cause notice issued u/s 107 Cr.P.C. a reference to section 109 and 110 of Cr.P.C. was wrongly mentioned as it is a format show-cause notice. That means we have to examine whether section 107 Cr.P.C. simplicitor gives any power to Special Executive Magistrate in the facts and circumstances. There is no dispute that the respondent No. 3 recorded statement of relations of the petitioner, his wife and children on the basis of the complaint made by the petitioner's wife accusing of the petitioner beating and giving abuses. Significantly though in the complaint certain offences were disclosed the respondent No. 2 treated that complaint as N.C. Complaint and had advised the respondent No. 1 to approach the Court of law if she so desired. This necessarily indicates that on the day of the complaint made by the respondent No. 1, neither the respondent No. 2 nor the respondent No. 3 thought it fit to take cognizance of the complaint made by the respondent No. 1 but something suddenly appears to have happened when the respondent No. 2 stomata ordered the respondent No. 3 to take an inquiry for the purpose of initiating proceedings u/s 107 of Cr.P.C. against the petitioner. The respondent No. 3 made a report solely on the basis of the allegations in the complaint made by the respondent No. 1 and no further material could be collected by him to show that the petitioner was a person who is likely to commit breach of public peace or disturbing public tranquility and wrongful act that may probably cause breach of public peace or disturb the public tranquility.

17. Keeping in view this aspect of the case, we may turn to the provisions of

section 107 of Cr.P.C. Section 107 is aimed at person who cause a reasonable apprehension of conduct likely to lead to a breach of the peace or a disturbance of public tranquility, the Magistrate is authorised to take the proceeding against the person, if upon information he is satisfied that he is likely (i) to commit a breach of the peace or disturb the public tranquility or (ii) to do any wrongful act that may probably produce the same result. Pending the completion of the inquiry a person proceeded against u/s 107 may in a case of emergency be required to execute an interim bond u/s 116(3) of Cr.P.C. This is evident from the provisions of section 107 of the Code of Criminal Procedure,

18. It, therefore, follows that section is preventive and as this section confers wide and unusual powers interfering with the liberty of the subject who has not been found guilty of an offence, it must be exercised strictly in accordance with law but it is not intended to afford the police a means of getting hold of a person against whom they cannot prove an offence or to enable them to detain him until they can work out against him. It necessarily follows that section 107 is mainly intended for persons who are of desperate characters and habitually disturb the public peace or who inspite of orders of civil or criminal courts "finding possession against them" persist in their unlawful conduct of disturbing the possession of others by taking the law into their own hands. It is common ground that if regard be had to a dispute between the petitioner and the respondent No. 1 by no stretch of imagination it can be said that the petitioner is a person who was likely to commit breach of peace or disturb the public tranquility or to do any wrongful act that might have provoked the accused to commit breach of public peace or disturb the public tranquility. It is therefore clear that it is the pre-requisite that before power could be exercised u/s 107 of Cr.P.C. there must be a case of breach of public peace or disturbing the public tranquility. In other words, breach of public peace or disturbance of public tranquility is a sine-qua-non to the exercise of power u/s 107 of Cr.P.C. In the instant case on own showing by the respondent, there was no occasion to initiate such a proceeding u/s 107 Cr.P.C. on mere complaint made by the respondent No. 1.

19. Now the respondent No. 4 has come forward to say that he was satisfied regarding the sufficiency of grounds to proceed u/s 107 of Cr.P.C. against the petitioner. The gist of the allegations against the petitioner as incorporated in the show-cause notice are clear enough to point out that it was a personal dispute between the husband and the wife. We are of the firm view that such a dispute is incapable to u/s 107 of Cr.P.C. in this particular case. It is well settled that for invoking to invoke the proceeding the proceeding u/s 107 of Cr.P.C. there must be strong material to satisfy the Magistrate that imminent breach of public peace is threatened and satisfaction regarding sufficiency of ground to proceed must be clear from the order. The instant case, therefore, demonstrates lack of power with the authority namely the respondent Nos. 2 to 4 to initiate the proceeding u/s 107 of Cr.P.C. Moreover, merely because the petitioner failed to furnish the personal bond and surety cannot be an answer to continue with the proceeding

and detain the petitioner in jail until his wife files an application for dropping the proceeding. It is thus clear from the averments made by the deponents namely the respondents Nos. 4 and 5 that they have mechanically applied their mind and without proper application of mind proceeded with the case even though there is a lack of power with them to detain the petitioner in jail by virtue of the proceeding u/s 107 of Cr.P.C. Is it not a case of deprivation of personal liberty ?

20. in this context we may emphasise that the very foundation of Criminal justice is based on the principle of presumption of innocence and fairness about the accused. Every action of the executive or any person or body of persons which affects individual liberty is subject to the scrutiny of the judiciary. The supervision of investigation, remand procedure, bail etc. under the Code of Criminal Procedure are powers of the courts aimed at defending the liberty of the individual. There cannot be a dual opinion on rule of law is a condition of liberty. The Supreme Court of India proceeded to hold that insistence on monetary bail in a case of a poor accused would be inconsistent with reasonable, fair and just procedure so far as the poor accused is concerned and therefore violative of the constitutional guarantee under Article 21. It was held for the first time that more liberal norms consistent with human rights should be adopted on which accused persons may be allowed to remain at liberty pending trial. It was observed by the Supreme Court that the risk of monetary toss is not only deterrent against fleeing from justice, but there are others which act as equal deterrent against fleeing. Had the authorities considered the true nature or character of the allegations levelled against the petitioner they would not have detained the petitioner even for a day in jail since it is the cardinal principle that no one can be deprived of his life and personal liberty by the executive without authority of law.

21. The matter may be considered from another angle. Assuming that section 107 Cr.P.C. is applied in the present case as the Magistrate enjoins with the jurisdiction and was of the opinion that there was sufficient ground for proceeding against the petitioner, it is incumbent on the Executive Magistrate to require such a person to show-cause why he should not be ordered to execute a bond with or without sureties for keeping peace for such period not exceeding one year as the Magistrate thinks fit as required by sub-section (1) of section 107 of Cr.P.C. In order to arrive at his subjective opinion, it is expected of him to read the police report. The police report undoubtedly mentioned that on receiving the complaint from the respondent No. 1, N.C. No. 264/1995 was registered and the respondent No. 1 was advised to approach the Court if she desires for action against the petitioner. That means the Police did not prima facie found any cognizable offence on the allegations made by the respondent No. 1 against her husband namely the petitioner. Therefore, where no offence on the complaint of the respondent No. 1 was disclosed, the Magistrate will not be permitted to say that the object was to be achieved by initiation of proceeding u/s 107 of Cr.P.C. it is true that section 107 contemplates individual acts but it has relation with the breach of peace or disturbance of public tranquility. The very

facts of the case do not satisfy the essential ingredients of section 107 of Cr.P.C., therefore, subjective satisfaction which is said to be bonafide action is without any foundation, and it is not possible to accept the explanation offered by the respondents Nos. 4 and 5 that their action was perfectly justified in law or that it was a bonafide action. Moreover, section 107 gives discretion to the Magistrate and the Magistrate will use his discretion and determine which will be a most effective method in the circumstances. Where there is absence of any breach of public peace or disturbance of public tranquility and the facts alleged do not require imminent action, the exercise of such discretion is not only illegal but entire action can be termed as arbitrary and capricious and in clear violation of Article 21 of the Constitution of India. There must be a credible information which will form a foundation of the Magistrate's jurisdiction to act u/s 107 of Cr.P.C., the information must show strong probability of breach of public peace and not a bare possibility. It must be such that the Magistrate must be satisfied that breach of public peace or disturbance of public tranquility is likely to take place.

22. There is no dispute that in the present case all these factors are lacking except the allegations of the respondent No. 1 against her husband - petitioner that she was beaten by him. There is no foundation for the Magistrate to invoke his jurisdiction u/s 107 of Cr.P.C. It necessarily follows that there is no nexus between the allegations made in the complaint by the wife of the petitioner and exercise of the jurisdiction by the Magistrate u/s 107 of the Cr.P.C. In the circumstances, the order to execute a bond for keeping behaviour good, cannot be made. If the observations of the Supreme Court as hereinabove are considered obviously it follows that the course adopted by the Executive Magistrate the respondent Nos. 4 and 5 is violative of the constitutional guarantee under Article 21 of the Constitution of India.

23. The Roznama of the case further shows that total casual approach is adopted by the respondents Nos. 4 and 5 in adjourning the case from time to time when the petitioner failed to furnish the bond and surety. It must be reiterated that everyone shall be guaranteed in the determination of any criminal charge against him, the right to a prompt and speedy hearing. The Supreme Court of India held that the right to a reasonably expeditious trial is an integral and essential part of reasonable, fair and just procedure in case of an accused who is in jeopardy of his life or personal liberty. It is, therefore, implicit in the fundamental right to life and personal liberty enshrined in Article 21. The State accordingly has a constitutional mandate to do whatever is necessary to ensure an affirmative obligation on the State instead of merely reading them as negative restraints on the power of the State. The respondents Nos. 4 and 5 in disregard of this mandatory requirement adjourned the case from time to time. It is not the one case that we came across but there are cases and cases where large masses of the people in the country were leading a life of want and destitution and on account of lack of awareness, assertiveness and availability of machinery were priced out of the legal system and were denied access to justice. The Apex Court

has taken a view that in a criminal case which imperils the life or personal liberty of an accused, if the accused is on account of his poverty or ignorance or socially or economically disadvantaged position unable to afford legal representation, it would be violative of Article 21 of the Constitution to proceed to try him without giving him proper and adequate legal representation. At no point of time either the respondent No. 4 or the respondent No. 5 apprised themselves of the constitutional right available to the petitioner before acting upon the report. On the words of Article 21 the State can effect such deprivation by reasonable, fair and just procedure prescribed by law. However, the judiciary held that no procedure which deprives a person of the right to live with basic human dignity can possibly be reasonable, fair and just. The right to live with basic human dignity was thus elevated to the status of a fundamental right which could not be abridged, defeated or taken away by the State and this was achieved through a process of judicial interpretation.

24. Therefore, as the matter stands, we are of the firm view that the authorities namely the respondents Nos. 2 to 5 in total disregard to the personal liberty of the petitioner detained him in jail for a period of 63 days in District Prison at Osmanabad and so the action suffers from arbitrariness and colourable exercise of powers u/s 107 of the Code of Criminal Procedure.

25. Taking into consideration the ratio laid down by the Apex Court in the case of Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, , and in the facts of the present case, on the findings which we have already recorded, we think the mode of redress which commends appropriate is to make an order of monetary amends in favour of the petitioner for his illegal confinement in jail for a period of 63 days by ordering payment of compensation as exemplary damages.

26. In the case cited supra, it has been laid down that in case of violation of fundamental right by State's instrumentalities or servants, Court can direct the State to pay compensation to the victim or his heir by way of "monetary amends" and redressal that is so because the State has a strict duty to ensure that a citizen in custody of police or prison is not deprived of his right under Article 21 of the Constitution except in accordance with law. The principle of "sovereign immunity" is inapplicable in such cases. This remedy is apart from the private law remedy.

27. In the view that, we therefore, direct the respondent No.6 State of Maharashtra to pay a sum of Rs. 50,000/- to the petitioner. We further direct that the amount shall be deposited with the Additional Register of this Court within a period of four weeks from today and the Additional Registrar is directed to pay it to the petitioner on his proper identification. We however permit the respondent No. 6 to recover the said amount of Rs. 50,000/- proportionately from the respondents Nos. 2 to 5. We also direct the respondent No, 6 to hold a Departmental Enquiry into the conduct exhibited by the respondents Nos. 2 to 5 and take appropriate action against them. Rule is, therefore, made absolute in

the above terms with costs.

28. Petition allowed.