
(2012) 12 BOM CK 0143

In the Bombay High Court

Case No : Criminal Writ Petition No. 453 of 2008

Mrs. Bharati S. Khandhar

APPELLANT

Vs

Shri. Maruti Govind Jadhav, PSI Matunga Police Station,
Matunga, Mumbai and Others

RESPONDENT

Date of Decision : 21-12-2012

Acts Referred:

Constitution of India, 1950 — Article 21

Criminal Procedure Code, 1973 (CrPC) — Section 46, 6, 60A

Citation : (2013) 1 ABR 694 : (2013) ALLMR(Cri) 662 : (2013) 2 BomCR(Cri) 643 : (2013) CriLJ 677 : (2013) 2 Crimes 568

Hon'ble Judges : S.S. Shinde, J;A.S. Oka, J

Bench : Division Bench

Advocate : Veena Thadani, instructed by Mr. Shreeram Shirsat, for the Appellant; M.M. Deshmukh, Assistant Public Prosecutor, for the State, for the Respondent

Judgement

S.S. Shinde, J.—This Writ Petition is filed praying therein to issue direction to the Respondent No. 1, i.e. Shri. Maruti Govind Jadhav, to pay compensation to the Petitioner for gross violation of provisions of law. It is further prayed that, action may be taken against those Respondents-Officers for gross violation of sub-section (4) of Section 46 of the Code of Criminal Procedure, 1973, (hereinafter referred to as "the Code"), and further to direct the Respondent No. 1 to desist from harassing the Petitioner as well as her family members. Background facts leading to filing of the present Writ Petition, in a nutshell, are as under:

It is the case of the Petitioner that on 13th June, 2007, in the evening, the Petitioner was on her way to a Family Doctor along with her sister Mrs. Rajeshri B. Khandhar, when the Respondent No. 1 reached at the house of the Petitioner and abruptly stopped his bike in front of the car of the Petitioner. The Respondent No. 1 introduced himself as Sub-Inspector of Police, Matunga Police Station and rudely told the Petitioner to accompany him to the Police Station.

It is the case of the Petitioner that, the Petitioner enquired with the Respondent No. 1 as to under which offence she is being called to the Police Station, to which the Respondent No. 1 in a very harsh tone replied that the Petitioner will realize why she is taken to the Police Station, when she reaches the Police Station. It is the case of the petitioner that, the Petitioner vigilantly told the Respondent No. 1 that, if he wants to take her to the Police Station, then he should call a Lady Constable. The Respondent No. 1 thereafter called a Lady Constable, and after a short while a Lady Constable came and the Petitioner was taken to the Matunga Police Station in a Police Van. The sister of the Petitioner also accompanied the Petitioner to the Police Station.

2. It is the case of the Petitioner that, after the Petitioner reached to the Police Station, the Respondent No. 1 arrogantly asked the Petitioner to sit in one corner. After some time, the Petitioner mustered up some courage and asked the Respondent No. 1, the reason for her detention. The Respondent No. 1 thereafter called PSI Anant Bapu Gurav, i.e. Respondent No. 2 herein, and asked him to arrest the Petitioner. The orders of Respondent No. 1 were immediately followed by PSI Gurav without any application of mind and the Petitioner was arrested at 20:45 Hrs. by PSI Gurav. It is the case of the Petitioner that, even at the time of arresting the Petitioner, the grounds of her detention were not made known to the Petitioner. It was only when the sister of the Petitioner requested the Respondent No. 1 and PSI Gurav to reveal the grounds of arrest, the Respondent No. 1 obliged and told her that the Petitioner is being arrested pursuant to the non bailable warrant issued by the Allahabad Court.

3. The Petitioner was produced before the learned Additional Chief Metropolitan Magistrate, 11th Court, Kurla, on the next day of arrest, who released the Petitioner on bail.

4. It is further the case of the Petitioner that, the Petitioner thereafter went to Allahabad Court and got the non bailable warrant cancelled. It is further the case of the Petitioner that, after coming back from Allahabad, she addressed a letter to the Commissioner of Police, Mumbai and also to the Home Minister, State of Maharashtra and appraised them about the aforesaid incident. However, there was no response to the Petitioner's letter by the Higher Police Authorities and the Minister. Therefore, the Petitioner was constrained to file this Writ Petition.

5. It is the case of the Petitioner that, not only was the Petitioner harassed by the Respondent-Authorities, but the husband of the Petitioner was also arrested and other family members of the Petitioner are also harassed by the Respondent-Authorities. The Respondents-Officers visited the house of the Petitioner at odd hours and most of the times at night under the pretext of recording their statements. Therefore, according to the Petitioner, all such acts of the Respondent No. 1 are causing enormous mental agony and harassment to the Petitioner and her entire family.

6. Pursuant to the notices issued to the Respondents in this Writ Petition, as

many as four affidavits are filed by the Respondents. One affidavit is filed by one Mr. Anant Babu Gurav, PSI, on 2nd April, 2008. Another affidavit is filed by the Commissioner of Police, Mumbai. Third affidavit is filed by the Deputy Commissioner of Police, Mumbai and the fourth affidavit is filed by the Respondent No. 1. Therefore, in all, there are four affidavits filed on behalf of the Respondents. In reply to the said affidavits, the Petitioner has also filed the rejoinder affidavits.

7. The learned Counsel appearing for the Petitioner submitted that, the Petitioner is constrained to approach this Court because of the high handed attitude of and constant harassment by the Respondent No. 1, which has caused mental torture and agony to the Petitioner as well as her family members. It is submitted that the Respondent No. 1, who is supposed to be the guardian of law, has transgressed his limits and shown complete disregard to the law. It is submitted that the provisions of sub-section (4) of Section 46 of the Code mandates that, if the Police want to arrest woman after sunset, they have to seek prior permission of the Magistrate, and arrest should be made by a Lady Police Officer. Therefore, it is submitted that, the arrest of the Petitioner is in complete violation of provisions of sub-section (4) of Section 46 of the Code. It is submitted that, though it is the duty of the Commissioner of Police, Mumbai to ensure that his subordinate officers perform their duties within the framework of law, in spite of representation by the Petitioner, no steps have been taken to remove the Respondent No. 1 from the Office. It is submitted that the action of the Respondents and the manner in which arrest of the Petitioner has been effected, clearly leads to the only conclusion that the said action of the Police Officers of arresting the Petitioner was in breach of provisions of sub-section (4) of Section 46 of the Code and, therefore, those Police Officers, who are involved in arrest of the Petitioner, deserve to be removed from the Office and, further, they should be dealt with in accordance with law for their high handed action. Hence, the learned Counsel appearing for the Petitioner, relying upon the pleadings in the Petition, annexures thereto, rejoinder affidavits filed in reply to the affidavit-in-replies filed by the Respondents, would submit that this Writ Petition deserves to be allowed.

8. On the other hand, the learned A.P.P. appearing for the Respondent-State of Maharashtra, invited our attention to the contents of the affidavit-in-replies filed by the Respondents-Police Officers and submitted that the Respondents-Police Officers have lawfully acted to execute the non bailable warrant issued by the Allahabad Court in discharge of their official duties. The learned A.P.P. submitted that, it is not the case of the Petitioner that there is any torture or harassment to the Petitioner after her arrest. It is submitted that, there are more than 200 bailable/non-bailable warrants are issued against the Petitioner, and the Petitioner was avoiding execution of the warrant and, therefore, the Respondent No. 1, when he was on patrolling, noticed the Petitioner and took her to the Police Station. According to the learned A.P.P., all the actions of the Respondents-Police Officers were lawful and they were discharging their duties to execute the

non-bailable warrant issued by the Allahabad Court. It is submitted that, even the Magistrate, while granting bail to the Petitioner, has observed in his order that there was no any ill treatment given to the Petitioner at the hands of the Police. The learned A.P.P. invited our attention to the contents of the affidavits filed by the Respondents-Police Officers and submitted that the Petition is devoid of any merits and the same may be dismissed.

9. We have given careful consideration to the rival submissions, perused the pleadings in the Petition, annexures thereto, affidavit-in-replies filed by the Respondents and also the other documents placed on record, and we are of the opinion that, the Respondents in gross violation of provisions of sub-section (4) of Section 46 of the Code has arrested the Petitioner.

The Legislature in its wisdom added sub-section (4) to Section 46 of the Code by Act 25 of 2005 (w.e.f. 23-6-2006), to prohibit arrest of a woman after sunset and before sunrise except in unavoidable circumstances. The provisions of sub-section (4) of Section 46 of the Code reads thus:-

46. Arrest how made-

(1)... to (3)...

(4) Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.

10. From bare perusal of the aforestated provisions of sub-section (4) of Section 46 of the Code, it is crystal clear that, the said provision mandates that no woman shall be arrested after sunset and before sunrise save in exceptional circumstances, without the prior permission of the Judicial Magistrate, First Class, in whose local jurisdiction the offence is committed or the arrest is to be made. Upon careful perusal of the aforesaid provision, it is abundantly clear that, save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise and where such exceptional circumstances existed, a Lady Police Officer shall, by making a written report, obtain prior permission of the Judicial Magistrate, First Class. Therefore, the requirement of the provisions of sub-section (4) of Section 46 of the said Code is two fold. If the Police Officer wants to arrest the woman after sunset and before sunrise, there must exist exceptional circumstances for such arrest. In cases wherein such exceptional circumstances do exist, a Lady Police Officer shall make a written report and obtain prior permission of the Judicial Magistrate, First Class in whose jurisdiction the offence is committed or the arrest is to be made.

In the facts of this case, none of the above stated requirements have been followed by the Respondents-Police Officers while effecting arrest of the Petitioner. Indisputably, the Respondent No. 1 had taken the Petitioner to the

Police Station at 5:30 p.m. Admittedly at the relevant time, Respondent No. 1-Police Officer was not having the copy of non-bailable warrant issued by the Allahabad Court. It has come on record in the affidavit filed by P.I. Somnath Ghuge that, the Petitioner was brought by the Respondent No. 1 to the Police Station at 5:30 p.m. However, arrest was not effected till 8:45 p.m. on the said night. According to Respondents, the Officer, namely, PSI Gurav was not on duty and the non-bailable warrant was in his custody. Therefore, on the aforementioned admitted facts, it is abundantly clear that, the petitioner was brought to the Police Station at 5:30 p.m. Admittedly, that was without effecting arrest of the Petitioner in accordance with the provisions of the Code and also guidelines issued by the Supreme Court in D.K. Basu Vs. State of West Bengal, [1997 (2) Bom.C.R. 666]. Admittedly, the Petitioner was shown to be arrested at 8:45 p.m. It is not in dispute that, at the time of arrest of the Petitioner after sunset at about 8:45 p.m., no prior permission of the Judicial Magistrate, First Class was sought for or taken by the concerned Police Officers.

11. We have carefully perused the affidavit filed by Shri. Somnath M. Ghuge, Senior Inspector of Police. As per the contents of the said affidavit, at 5:45 p.m., the Petitioner was handed over by the Respondent No. 1 in the custody of the affiant and, as directed by him, necessary formalities were carried out by PSI Gurav with regard to execution of the non-bailable warrant upon the Petitioner. Accordingly Petitioner was arrested at about 8:45 p.m. and the relevant Station Diary Entry was made vide Entry No. 11 of 2007 dated 13th June, 2007. It is further stated that, to avoid delay in arrest and execution of the non-bailable warrant, the Petitioner was arrested at about 8:45 p.m., after PSI Gurav arrived at Matunga Police Station. In paragraph 4, it is stated that the Petitioner was taken to the Matunga Police Station in order to execute the non-bailable warrant issued against her by the Allahabad Court. The concerned Police Officer has tried to justify the actions of the Respondent No. 1-PSI Jadhav stating in the said paragraph that, if immediate steps had not been taken by PSI Jadhav, then in that case, there was every possibility of the Petitioner absconding from the place from where she was apprehended, as she was aware of the pending non-bailable warrant, which was issued against her.

It is further stated in paragraph 5 of the said affidavit that the warrant issued by the Allahabad Court was kept by PSI Gurav under his lock and key. It would be apposite to reproduce here-in-below paragraph 5 of the said affidavit-in-reply, which reads thus:-

5. I most respectfully say that the warrant issued by Allahabad Court was kept by PSI Gurav under his lock and key. He was at his residence and not on duty as it was his weekly off. He was called at the police station to execute the warrant as the warrant was under his lock and key. I further say that it took some time for PSI Gurav to come to the police station from his residence. The warrant could be executed only after PSI Gurav came to the police station at about 8:00 p.m. and after completing all the necessary formalities. I most respectfully say that

under these circumstances, the Petitioner was shown arrested at 8:45 p.m. after the warrant was executed.

[Underlines Added]

12. Upon careful perusal of paragraph 5 reproduced here-in-above from the affidavit of Shri Ghuge, PI, it is abundantly clear that the non-bailable warrant issued by the Allahabad Court was kept by PSI Gurav under his lock and key. On the relevant day of arrest of the Petitioner, PSI Gurav was at his residence and not on duty, as it was his weekly off. He was called by PI Ghuge for executing the non-bailable warrant, as the warrant was under his lock and key. This demonstrates that this entire procedure followed by the concerned Police Officers was totally illegal and contrary to the Mandate of sub-section (4) of Section 46 of the Code. It is difficult to understand that how the Respondent No. 1-Jadhav, without having a copy of non-bailable warrant in his possession and without following the guidelines in the case of D.K. Basu's case (supra) could apprehend the Petitioner at 5:30 p.m. and bring her to the Police Station. The action of the Respondent No. 1 was clearly in breach of guidelines issued in the case of D.K. Basu (supra).

13. In paragraph 6 of the affidavit of Mr. Ghuge, P.I., it is stated that the Petitioner was taken to the Police Station before sunset, i.e. at 5:45 p.m., and, therefore, it cannot be said that the arrest of the Petitioner was after sunset. If this contention is to be accepted, in that case, action of Respondent No. 1 to take the Petitioner to the Police Station and further to ask her to sit in the Police Station by Mr. Ghuge, P.I., is without following any procedure of arrest. Therefore, on the aforesaid admitted facts, it is abundantly clear that, without having a copy of the non-bailable warrant with PSI Jadhav, he has taken the Petitioner in custody and she was taken to the concerned Police Station. She was asked to sit there till 8:45 p.m. till her arrest by PI Ghuge. There is no manner of doubt that, the acts of the Respondent No. 1 and PI Ghuge are totally in violation of relevant provisions of the Code. It is admitted position that, no prior permission of the Judicial Magistrate, First Class, was asked for and without following the Mandate of subsection (4) of Section 46 of the Code, the Petitioner was arrested at 8:45 p.m. The case in hand is not only a classic example of violation of provisions of sub-section (4) of Section 46 of the Code, but initial action of the Respondent No. 1 to take the Petitioner to the Police Station at 5:30 p.m., without having even a non-bailable warrant with him and without following any procedure, as contemplated under the Code, was totally in disregard to the law laid down by the Supreme Court in D.K. Basu's case (supra). The provisions of Section 60A of the Code reads thus:-

60A. Arrest to be made strictly according to the Code-

No arrest shall be made except in accordance with the provisions of this Code or any other law for the time being in force providing for arrest.

The aforesaid provision clearly binds the Police Officers to follow the procedure

prescribed under the Code before arrest is effected. The Police Officer by no stretch of imagination can arrest any person in breach of provisions of the Code.

14. The Commissioner of Police, Mumbai, has also filed affidavit, it is stated in the said affidavit that enquiry is initiated against the concerned Police Officers. The Commissioner of Police, Mumbai in his affidavit-in-reply in paragraph 3 has tried to justify the action of Mr. Jadhav/Respondent No. 1 and Mr. Ghuge, P.I., in arresting the Petitioner by relying upon the observations of the learned Chief Metropolitan Magistrate, 11th Court, Kurla in its order dated 14th June, 2007, in which there are passing observations that the Petitioner has not made any complaint about ill treatment at the hands of the Police. At-least it was expected from the Commissioner of Police that he should have candidly admitted flagrant violation of provisions of sub-section (4) of Section 46 of the Code at the hands of the concerned Police Officers. It is well established that any observations made in the order granting bail are not supposed to be taken into consideration in subsequent proceedings on which adjudication of merits is called for. Therefore, the observations by the learned Chief Metropolitan Magistrate in its order dated 14th June, 2007, that the Petitioner has not complained about ill treatment at the hands of the Police cannot be stretched too far and those are required to be considered and confined only for the purpose of deciding the said application. The Deputy Commissioner of Police, Mumbai, has also relied upon the said observations to justify the actions of the concerned Police Officers.

Whether the Petitioner has received ill treatment at the hands of the concerned Respondents-Police Officers or not is not the main point involved in the Petition. The real point which is involved in this Petition is, while taking the Petitioner in custody at 5:30 p.m. by the Respondent No. 1, and further while arresting the Petitioner at 8:45 p.m. on the same day, whether the Respondent No. 1 was in possession of the non-bailable warrant to execute the same on the Petitioner at 5:30 p.m., and further taking the custody of the Petitioner at the hands of the concerned Police Officer was in accordance with the provisions of the Code and in particular Mandate of provisions of sub-section (4) of Section 46 of the said Code, and guidelines issued in case of D.K. Basu (supra) by the Supreme Court. Upon careful perusal of the entire material placed on record, there is no manner of doubt that, there is a flagrant violation of provisions of sub-section (4) of Section 46 of the Code at the hands of Respondent No. 1 and Respondent No. 2 and Mr. Ghuge, P.I. as well. The Respondent No. 2 effected the arrest of the Petitioner without taking recourse to the provisions of sub-section (4) of Section 46 of the said Code.

15. There are various pronouncements of this Court and the Supreme Court, in which consistent view has been taken that, if an illegal arrest is made by the Police Officers, that amounts to violation of Article 21 of the Constitution of India. In the present case, the procedure under sub-section (4) of Section 46 of the Code has not been followed in respect of arrest of the Petitioner by the Respondent No. 1 and other Police Officer.

The Petitioner was produced before the Judicial Magistrate, First Class, on the next day of arrest, in the afternoon. It was the duty of the Police Officers to have either obtained prior permission of the Judicial Magistrate, First Class, or to have arrested the Petitioner on the next day after sunrise. The sub-section (4) of Section 46 of the Code is added by the Act No. 25 of 2005, Section 6 (w.e.f. 23rd June, 2006). The intention of the Legislature to add sub-section (4) to Section 46 of the Code, was to give special protection to a woman from arrest after sunset and before sunrise, unless there exist exceptional circumstances for such arrest, and that too with prior permission of the Judicial Magistrate, First Class on a written report made by the Woman Police Officer.

16. The learned A.P.P. appearing for the Respondents pressed into service the unreported Judgment in the case of The State of Maharashtra Vs. Purushottam Dashrath Borate & Anr. in Criminal Confirmation Case No. 1 of 2012, and submitted that, this Court has occasion to consider the provisions of Section 46 of the Code and in the facts of that case held that, for the purpose of arrest of the accused though, normally, Arrest Panchanama is made at the subsequent time, the moment the accused is in control and custody of the Police, he is deemed to be arrested. Therefore, relying upon the said Judgment, the learned A.P.P. would contend that, the Petitioner was taken in custody at 5:30 p.m. and, therefore, it was not necessary to follow the mandate of sub-section (4) of Section 46 of the Code. If contention of the learned A.P.P. is to be accepted, in that case, the action/act of the Respondent No. 1 to take custody of the Petitioner at 5:30 p.m. without having even a copy of non-bailable warrant in his possession and without following the relevant provisions under the Code and without recording arrest memorandum is illegal. This shows that when warrant was not available, the action of taking her to Police Station before sunset was with a view to defeat the provisions of sub-section (4) of Section 46 of the Code, which are brought on Statute with intent to prevent the arrest of the woman after sunset and before sunrise, unless there exist exceptional circumstances. Secondly, in the aforesaid case, this Court was not dealing or considering the provisions of sub-section (4) of Section 46 of the Code in particular and, therefore, it cannot be said that, the observations in the said case are applicable in the facts of the present case. Upon careful perusal of the aforesaid Judgment, it is crystal clear that none of the Accused therein are woman and, therefore, this Court had no occasion to consider sub-section (4) of Section 46 of the Code in the facts of that case. Admittedly, the Petitioner was arrested at about 8:45 p.m., as stated by Shri. Somnath Ghuge, Senior Inspector of Police of the concerned Police Station in its affidavit. Therefore, as per record, arrest of the Petitioner was at 8:45 p.m. without following the mandate of sub-section (4) of Section 46 of the Code. Therefore, in our opinion, the reliance placed by the learned A.P.P. on the aforesaid Judgment is wholly misplaced in the facts of this case.

17. Even if the contention of the Respondent-State is accepted that, there are more than 200 bailable/non-bailable warrants issued by the various Courts against the Petitioner, that would not entitle the Police Officers to take the law in

their own hands and in flagrant violation of the aforesaid provisions, arrest the person. The Respondents-Police Officers are bound by the provisions of the Code and they cannot be heard to say that, they could have arrested the Petitioner in breach of provisions of the Code in general and sub-section (4) of Section 46 of the Code in particular, since more than 200 bailable/non-bailable warrants are issued against the Petitioner. The Police Officers acting in their official capacity/duties cannot frustrate the legislative intent, which grants protection to woman by virtue of insertion of sub-section (4) to Section 46 of the Code, which in clear words prohibits the Police Officers to effect arrest except there are unavoidable circumstance. Even if unavoidable circumstance exist, only with a prior permission of the Judicial Magistrate, First Class, a woman can be arrested after sunset and before sunrise. It is true that, in exceptional circumstances, in an appropriate case, the arrest of women after sunset and before sunrise may be necessary. However, unless the procedure laid down under sub-section (4) of Section 46 of the Code is followed, no woman can be arrested at the whims and wills of the Police Officers.

18. Therefore, taking an overall view of the matter and the facts of this case, it will have to be held that, the action of the Respondent No. 1 to take the custody of the Petitioner at 5:30 p.m. on 13th June, 2007 and to take her to the Police Station and further ask her to sit there was in total disregard to the provisions of the Code in general and sub-section (4) of Section 46 of the Code in particular, and also the guidelines laid down in the D.K. Basu's case (supra) by the Supreme Court. The arrest of the Petitioner by Respondent No. 2 on the direction of P.I. Ghuge at 8:45 p.m., without following the Mandate of provisions of sub-section (4) of Section 46 of the said Code, was totally illegal and cannot be countenanced. Therefore, there is no option but to hold that the act of the Respondent No. 1 to take the custody of the Petitioner at 5:30 p.m. de hors the procedure prescribed under the Code, and take her to the Police Station even without possessing the copy of the non-bailable warrant, on which heavy reliance has been placed by the Respondents, was totally illegal. The period which is spent by the Petitioner from 5:30 p.m. till her arrest at 8:45 p.m. in the Police custody was her illegal detention by the Police Officers. The said illegal detention continued even after the arrest of the Petitioner at 8:45 p.m. since arrest was in flagrant violation of provisions of sub-section (4) of Section 46 of the Code and, therefore, the acts/actions of the Respondent No. 1 and other Police Officers right from 5:30 p.m. till the Petitioner was produced before the Judicial Magistrate, First Class, was in flagrant violation of relevant provisions and, in particular, provisions of sub-section (4) of Section 46 of the Code and, therefore, an appropriate action, not only against the Respondent No. 1, but even against the Respondent No. 2 and other Police Officer Mr. Ghuge, P.I., who was instrumental in giving directions to Respondent Nos. 1 and 2, deserves to be initiated and should be taken by the concerned Superior Officers from the Police Department in accordance with law.

19. Even if the case of the Respondents is taken as it is that, there are more

than 200 bailable/non-bailable warrants are issued against the Petitioner, that does not entitle the Respondents in law to breach the legal provisions and effect to illegal arrest of the Petitioner. The Petitioner was in illegal custody of the Respondents from 5:30 p.m. on 13th June, 2007 till 1:00 p.m. on the next day till she was produced before the learned Magistrate. Therefore, the Petitioner is entitled for the compensation. Though, in the facts of this case, in normal course, prayer for compensation should have been granted, but while issuing Rule on 18th June, 2008, this Court has confined the reliefs to the extent of prayer clause (a). Therefore, the prayer clause (b) for compensation cannot be granted. However, this is a fit case to direct the Respondents to pay costs of Rs. 5,000/- to the Petitioner.

20. Accordingly, we pass the following order:-

ORDER

(i) The Petition is allowed in terms of prayer clause (a).

(ii) The Commissioner of Police, Mumbai is directed to hold enquiry against the concerned Police Officers, including Respondent No. 1, for illegal detention and arrest of the Petitioner from 5:30 p.m. on 13th June, 2007 till she was produced before the Judicial Magistrate, First Class in the afternoon on the next day at 1:00 p.m. The Commissioner of Police himself can conduct the inquiry or can appoint the Officer not below the rank of Joint Commissioner of Police, Mumbai as an Enquiry Officer for enquiring into the matter, and after completion of the enquiry, take disciplinary action against the concerned Police Officers. Such inquiry should be conducted within three months from today and follow-up action should be taken within one month thereafter.

(iii) The Director General of Police, State of Maharashtra and the Commissioner of Police, Mumbai are directed to issue instructions within a period of two weeks from today to all concerned to follow the mandate of sub-section (4) of Section 46 of the Code of Criminal Procedure, 1973, if they want to arrest any woman accused of any offence after sunset and before sunrise. All concerned should be made aware that, such arrest is permissible only in unavoidable circumstance, that too after strict compliance of the provisions of sub-section (4) of Section 46 of the Code of Criminal Procedure, 1973 in particular and other provisions of the Code of Criminal Procedure, 1973 in general.

(iv) The Respondents are directed to pay costs of Rs. 5,000/- to the Petitioner.

Though we have disposed of the Petition, this matter shall be shown for compliance of the directions on the Daily Board on 28th January, 2013.