

(1966) 03 BOM CK 0012
In the Bombay High Court
Case No : Criminal Appeal No. 17 of 1965

The State of Maharashtra

APPELLANT

Vs

Atmaram and others

RESPONDENT

Date of Decision : 14-03-1966

Acts Referred:

Bombay Police Act, 1951 — Section 161(1), 64(b), 80(1), 80(4)
Civil Procedure Code, 1908 (CPC) — Section 80
Criminal Procedure Code, 1898 (CrPC) — Section 161, 163
Evidence Act, 1872 — Section 24
Penal Code, 1860 (IPC) — Section 302, 330, 34, 342, 343

Citation : (1966) MhLj 674

Hon'ble Judges : V. Ramaswami, J;K. Subba Rao, J;J.M. Shelat, J

Bench : Full Bench

Advocate : R.M. Hazarnavis, R.H. Dhebar and B.R.G.K. Achar, for the Appellant;
R.V.S. Mani, for the Respondent

Final Decision : Allowed

Judgement

V. Ramaswami, J.—This appeal is brought, by certificate, from the judgment of the High Court of Bombay, Nagpur Bench dated July 24, 1964 in Criminal Appeal No. 193 of 1963.

2. The respondents-Atmaram and Uttam—are Head Constables and respondent Bhikaji is a police Constable. All the three of them were attached to Jalgaon Police Station in Buldhana District in September 1962. On September 1, 1962, one Akaram went to the Police Station to report that his brother Lahanu has disappeared. The Sub-Inspector in charge of the Police Station recorded the information in the Station Diary and ordered respondent No. 1, Atmaram to enquire into the matter and report. Respondent No. 1 reached Sungaon village on September 3, 1962 and sent for Smt. Shiwanti, Dwarki, Jumma and Sukha Rams/o Kishan in the Baithak of Police Patel and made enquiries. All these persons denied having any knowledge about Lahanu. They were assaulted by respondent No. 1 and detained in the Baithak of Police Patel till the evening when

they were taken by him to the office of the Gram Panchayat. Respondent No. 1 sent an interim report on September 4, 1962 requesting for more police help. Uttam, respondent No. 2 and Bhikaji, respondent No. 3 alongwith another Constable arrived in response to his request. Dwarki was detained in the office of the Gram Panchayat but the other three persons were taken out to the Jungle and assaulted. On the way back Jumma was stripped naked and kept hanging from a Salai tree. All these persons were detained that night in the office of the Gram Panohayat. On account of ill treatment meted out to them Shiwanti and Sukha Bam s/o Kishan made false confessional statements before respondent No. 1 involving Jumma for the murder of Lahanu. These statements were recorded by respondent No. 1. On the morning of September 5, 1962 respondent No. 1 submitted another report to the Station Officer incorporating the alleged confessions. On receipt of this report a case under s. 302, Indian Penal Code was registered in the Crime Register and Shri Dokhe himself proceeded to the spot for enquiry where he found all the detained persons in the office of the Gram Panchayat. Senior Police Officers later on got suspicious and made enquiries and found that Lahanu was alive and he actually appeared before them. On September 9, 1962, two complaints were received, one from Sukha Ram s/o Kishan and the other from his brother and after further enquiry by the Sub-Divisional Officer a case for wrongful confinement and ill treatment for extorting confession was registered against the respondents. After investigation a charge-sheet was submitted under ss. 330, 342, 343, 348, Indian Penal Code against the respondents. On September 30, 1963, the Additional Sessions Judge, Khamgaon convicted respondent No. 1 for offences under ss. 330, 342, 343 and 348, Indian Penal Code and sentenced him to undergo rigorous imprisonment for a period of one year on each of the offences. Respondents Nos. 2 and 3 were convicted under s. 330 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of six months each. The respondents filed an appeal in the High Court, being Criminal Appeal No. 19\$ of 1963. The High Court took the view that the prosecution of the respondents was barred under s. 161(1) of the Bombay Police Act and accordingly allowed the appeal and quashed the convictions and sentences imposed upon the respondents.

3. In *The State of Maharashtra v. Narkarrao* 1966 Mh. L. J. 670 (Criminal Appeal No. 214 of (1984.)), judgment in which has been pronounced just now, we have considered the true legal effect of s. 161(1) of the Bombay Police Act. We have expressed the view in that case that there must be a reasonable connection or nexus between the alleged act and the duty or authority imposed upon the officer under the Bombay Police Act or any other enactment conferring powers on the police under colour of which the act may be said to have been done. Unless there is a reasonable connection between the act complained of and the powers and duties of the office, it is difficult to say that the act was done under the colour of the office. In the present case, it was said that the respondents were making an enquiry under s. 64(b) of the Bombay Police Act which states:

64. It shall be the duty of every Police Officer-

(a)

(b) to the best of his ability to obtain intelligence concerning the commission of cognizable offences or designs to commit such offences, and to lay each information and to take such other steps, consistent with law and with the orders of his superiors as shall be best calculated to bring offenders to justice or to prevent the commission of cognizable and within his view of non-cognizable offences.

It is apparent in this case that the First Information report was recorded on September 5, 1962 on the enquiry report of respondent No. 1 and investigation commenced thereafter. There is nothing in the language of s. 64(b) of the Bombay Police Act to suggest that the police officer is authorised to beat the persons examined or to confine them for the purpose of inducing them to make a particular statement. Section 161, Criminal Procedure Code empowers any police officer investigating a crime or any other police officer acting on his requisition to examine orally any person supposed to be acquainted with the facts and circumstances of the case. That section further provides that such person shall be bound to answer all questions relating to such case put to him by such officer, other than questions answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture. It is necessary, in this connection, to notice to the provisions of s. 163, Criminal Procedure Code which is to the following effect:

163. (1) No police-officer or other person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in the Indian Evidence Act, 1872, section 24.

(2) But no police-officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this Chapter any statement which he may be disposed to make of his own free will.

The provisions of ss. 161 and 163 of the Criminal Procedure Code emphasize the fact that a police officer is prohibited from beating or confining persons with a view to induce them to make statements. In view of the statutory prohibition it cannot, possibly, be said that the acts complained of in this case, are acts done by the respondents under the colour of their duty or authority. In our opinion, there is no connection, in this case, between the acts complained of and the office of the respondents and the duties and obligations imposed on them by law. On the other hand, the alleged acts fall completely outside the scope of the duties of the respondents and they are not entitled, therefore, to the mantle of protection conferred by s. 161(1) of the Bombay Police Act. This view is borne out by the decision of this Court in *The State of Andhra Pradesh Vs. N. Venugopal and Others*, in which the effect of s. 53 of the Madras District Police Act was construed by this Court and it was held that the protection of that section cannot be extended to police officers accused of beating a person suspected of a crime of confining him in the course of investigation. A similar view has been expressed

by Full Bench of the Bombay High Court in Narayan Hari Tarkunde Vs. Yeshwant Raoji Naik, in which a Sub-Inspector of Police while investigating a cognizable offence against two Berads sent for the plaintiff and questioned him as to his connexion with the Berads. The plaintiff disclaimed all knowledge about the Berads. Then it was alleged, defendant No. 1, the Sub-Inspector, grew angry and abused the plaintiff and pulled him up by his moustache. It was further alleged that defendant No. 2 at the instance of defendant No. 1 beat the plaintiff. The plaintiff filed a suit to recover damages from the defendants for their alleged wrongful treatment of him. It was held by the Full Bench that, the alleged assault or battery cannot be said to have been committed under colour or in excess of such duty or authority under s. 80(1) of the Bombay Police Act and that the defendants were not entitled to notice either under s. 80(4), Bombay District Police Act or s. 80, Civil Procedure Code.

4. For these reasons we hold that this appeal should be allowed, the judgment of the High Court acquitting the respondents should be set aside and the appeal is accordingly ordered to be remanded to the High Court for being dealt with and disposed of in accordance with law.