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இலங்கை மனித உரிமைகள் ஆணைக்குழு
HUMAN RIGHTS COMMISSION OF SRI LANKA

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දිනය } 2023.06.15
திகதி }
Date }

Complaint Number : HRC/2436/14

R.B. Welangoda
Chamadara
Walawuwatta
Mawathagama.

Complainant

Vs.

Mr. T.K.J. Dissanayake
Exercise Inspector
Department of Excise
No: 353, Rajagiriya.

Respondent

The Commission received this complaint on 18.06.2014. At the time of the complaint, the Complainant was a 29 year old musician and performer.

According to the Complaint, on 08.06.2014, a group of individuals arrived at the Complainant's home, where he lived with his mother and two brothers on rent and had his audio engineering studio. The group had aggressively demanded entry into the house, causing several neighbors

to arrive at the scene. At first, the Complainant and his family members had refused them entry, at which point the group had identified themselves as police officers. When the Complainant's landlord had also arrived on the scene, complainant had finally relented and allowed the group to enter their home. Upon entering, the officers had assaulted the Complainant and his brothers, handcuffed them, verbally abused their mother, and proceeded to search the house for drugs. According to the Complaint, both the landlord and his wife were present inside the house, witnessing the scene.

The officers were accompanied by a stranger who alleged to have tipped them about drugs in the Complainant's home. However, having found no illegal substances, the officers had confiscated the brothers' mobile phones and the Complainant's wallet containing money. They were then taken by a white van to an excise office in Narahenpita, where they were un-cuffed and locked up in a cell. They were kept in this state for over an hour, during which time they were threatened several times with torture in order to obtain information on the alleged drugs.

However, after compelling the Complainant to sign a statement, they were released within about an hour of being locked up in the cell.

Before the Commission; the Complainant claims that he was arbitrarily arrested and detained, and seeks an appropriate remedy for the violation of his rights.

The Commission called for a report from the 1st Respondent on the alleged claims by the Complainant, and received said report, dated 11.08.2014.

According to Respondent's Report of 11.08.2014, excise officers T.K.S. Dissanayake, Excise Inspector Nishantha, N.S. Rathnayake, T. Chaminda, Malinda and Vilochana had carried out a raid at the Complainant's residence based on information received by T. Chaminda. The information was to the effect that the Complainant was in the practice of obtaining large stocks of heroin from one Asanka from Dehiwala and distributing it from the audio engineering studio at his home. Stating that there was no time to obtain a search warrant, the officers arrived at the Complainant's home and observed the environment. They knocked on the door, rang the bell and announced themselves as Excise Officers. However, the residents had not opened the door, shouting at the officers instead. The officers had surrounded the house, and had heard flushing sounds from the residents' toilet. At this point, a large group of people had come to observe the situation. After about an hour of waiting outside the house in this manner, the officers secured entry into the house once the landlord had arrived at the scene. They found three men and a woman inside, with the men being armed with iron bars. The officers had searched the home, the rooftop and the studio, but found no illegal substances. Since the

situation at the scene was not conducive to recording statements, they took the Complainant and his brothers to the Excise Office, recorded a statement from the Complainant, and released them to the mother.

An inquiry was held in 18.09.2014 at the Commission, and 1st Respondent was represented by T.K.J. Dissanayake, N.S. Rathnayake, and T. Chaminda, all of whom, according to the Report of 11.08.2014, were part of the raid relevant to the Complaint. Their statements before the Commission did not vary significantly from the abovementioned report.

Observations

The possession and sale of heroin is an offence under the Poison, Opium and Dangerous Drugs Ordinance.

Under section 77(1) of that Ordinance, Excise Officers may "enter, with or without his assistants, if need be by force, (a) place or premises.....,and to search the place or premises and any person found therein...." if such entry and search is authorized under warrant issued by a Government Agent or Magistrate.

Section 77(2) of the Ordinance provides an exception to the above rule, "Where Any excise officer has reason to believe that a search warrant cannot be obtained Without affording the offender an opportunity of escape or of concealing evidence of the offence." In such cases, the Excise Officer "may after recording the grounds of his belief exercise all or any of the powers which could have been conferred on him (by a search warrant issued by a GA or Magistrate)".

Section 77(2) explicitly requires the officer to record his grounds for believing, before proceeding on that belief, that there might be an opportunity for escape or concealment of evidence if obtaining a warrant was attempted. It is observed that the Respondent has provided no records to the Commission of such reasons necessitating a warrantless search. In this light, firstly, it is unclear why it was necessary to carry out a surprise visit to a suspect's home without a warrant, particularly when the available information was to the effect that the suspect was in the practice of selling heroin in large amounts from his studio. If the conduct was an ongoing business practice, and the tip received was from a confidential source, it is unclear what urgency prevented the officers from duly obtaining a search warrant before carrying out the raid. Indeed, had they arrived there with a warrant, the suspect would not

have been able, as Respondents claim, to flush the evidence down a toilet over the course of an hour.

Secondly, it is wholly unclear why the officers, even without a warrant, would arrive at the suspected venue, announce themselves, and then proceed to wait a period of one hour outside the house without using their statutory power to force entry, while hearing sounds of a flushing toilet and admitting that this gave rise to a belief that the Complainants were destroying evidence. If the Respondents were convinced of the credibility of the information and could physically observe conduct reasonably suspicious of criminal activity (i.e. illegal substances being flushed down the toilet), they were well within their authority to enter the premises forcefully, verify their suspicions of criminal conduct by observing it visually, and proceed to arrest the culprits on the strength of their own cognizance. The fact that they failed to do this indicates either their poor faith in the information received, or the possible falseness of their claim of having heard such flushing noises in the first place.

A natural question in this respect is whether the substances were flushed with their packaging intact. If not, how did the suspect manage to dispose of the packaging without being discovered by the officers, who at the time had the entire house surrounded, and had also searched the house thoroughly soon after? If the drugs had been flushed with the packaging intact, what steps were taken to retrieve them from the sewer pit for further analysis? The scourge of heroin affects multitudes of innocent Sri Lankans and processing heroin in the quantities alleged would have attracted capital punishment. Surely, it would not have been excessive to pursue an investigation of the toilet's plumbing, had the officers truly been convinced of either the information received or their beliefs or both.

Given they had failed to force entry for a duration of an hour, while standing outside the premises and believing evidence was being concealed even as they stood there, a claim under s.77(2) to enter the house without a warrant after an hour's duration is irrational. The purpose of that provision, as relevant here, is to prevent the concealment of evidence. There could not have been a possibility of concealment that became real only when the landlord arrived, and not before. Nothing prevented the Respondents from forcing entry when they had the opportunity to do so, had they truly believed evidence was being concealed. That they had not forced entry in time indicates there was no such belief, and in the absence of such a belief, the Respondents are precluded from embarking on a warrantless voyage of discovery under s.77(2).

It follows from the above that the Complainant and his brothers were arrested illegally. The Respondents had entered the house armed only with an informant's tip and the memory of

having heard flushing noises while they waited outside. Neither of those things could be said fairly to give rise to a "reasonable suspicion" either under s.32(1)(b) of the Code of Criminal Procedure or under s.77(1) of the PODD Ordinance. They further claim a thorough search of the house, in which no illegal substances had been discovered. Thus, nothing that happened after they searched the house (illegally) could give rise to a reasonable suspicion either. This conclusion is supported by the fact that, in Respondent's Report of 11.08.2014, Complainant and his brothers' arrest is explained by Respondent as having been for the purpose of recording statements.

In his original Complaint to the Commission, Complainant stated that they were handcuffed at their home and taken in a van to the office, where all three of them were kept in a cell. Both Respondent's Report dated 11.08.2014 and Respondents' statements to the Commission on 18.09.2014 clearly indicate they "released" the Complainant and his brothers to their mother after recording statements. A release is only necessary if there had been some confinement. These facts cumulatively indicate that the threshold for an arrest, i.e. being deprived of the "ability to go on one's way", has been satisfied. Accordingly, Complainant and his brothers were arrested, and such arrest was without any basis in law.

Conclusion

Based on the foregoing, the following can be concluded;

- that the search without warrant carried out on Complainant's home was contrary to law
- that his and his brothers's arrests were contrary to law
- that their detention resulting from such arrest was contrary to law

Accordingly, the fundamental rights of the Complainant and his family members guaranteed under Chapter III of the Constitution, namely, under Article 12(1), and Article 13(1) have been violated and are disclosed in this Complaint to the Commission.

Recommendations

Human Rights Commission of the Sri Lanka recommends to Commissioner General of Excise to identify relevant officers who were involved in the said violation and have a disciplinary action against the identified Respondents including mentioned Respondent in the HRCSL recommendation.

As per Section 15(7) of the HRCSL Act, the Respondent should report to the HRCSL on the action taken to implement this Recommendation within the month of the date issue.



Justice Rohini Marasinghe
Retired Supreme Court Judge
Chairperson
Human Rights Commission of Sri Lanka.



Anushuya Shanmuganathan
Commissioner
Human Rights Commission of Sri Lanka.

Ms. Anusuya Shanmuganathan
Commissioner
Human Rights Commissioner of Sri Lanka

Copy to : Commissioner General of Excise, Department of Excise

Justice Rohini Marasinghe
Judge of the Supreme Court (Retired)
Chairperson
Human Rights Commission of Sri Lanka