

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

**DIVISION BENCH : THE HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, CHIEF JUSTICE
THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE**

WP(PIL) No.12 of 2019

In Re : Atrocities against Jail Inmates by Prison Authorities
in District Prison, Namchi, South Sikkim

Appearance

Mr. Vivek Kohli, Advocate General with Mr. Thinlay Dorjee Bhutia,
Additional Public Prosecutor for the Respondent.

Date of Hearing : 04.12.2019

Date of Order :

O R D E R

Meenakshi Madan Rai, J.

1. This Public Interest Litigation has its genesis in a letter addressed to the Registrar General, High Court of Sikkim, by the District & Sessions Judge (South) at Namchi, informing therein that an under-Trial Prisoner (UTP) in ST (SADA) Case No. 07 of 2019, namely, Som Bahadur Gurung, on 03-08-2019 reported to the learned Sessions Judge that he was beaten by two police personnel inside the jail premises, on 02-08-2019 without his fault. Pursuant to the verbal complaint the learned Sessions Judge forwarded the UTP for medical examination to the Namchi District Hospital, wherein the examining Doctor opined that the UTP had sustained simple injuries but found no fractures or bony injuries. As the matter pertained to an UTP, the Sessions Judge directed the learned Judicial Magistrate, South, in her capacity as Secretary, District Legal Services Authority (DLSA), South Sikkim, at Namchi, to convene a meeting of the Under-Trial Review Committee, which accordingly met on 07-08-2019. The meeting resolved to direct the learned Judicial Magistrate (Namchi) to conduct necessary inquiry into the matter and submit a report, which came

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to be submitted on 16-08-2019. A second meeting of the Committee was convened on 21-08-2019 to discuss (i) Magisterial Inquiry Report; (ii) reply to the show cause as well as the apology submitted by Mr. Tsheten Tashi Lepcha, Assistant Sub-Jailor, District Prison, Namchi (hereinafter, Asstt. Sub-Jailor) to the Jailor of the same Prison; (iii) leave order, medical certificate, joining report and discharge slip of Warder Hamon Rai forwarded by the Jailor and (iv) statement of witnesses forwarded by the Jailor. A report on the resolution was submitted by the Secretary, DLSA on 30-08-2019. During the enquiry by the Secretary, DLSA, the statements of the UTP as well as Asstt. Sub-Jailor, who had assaulted the UTP, Mr. S. M. Chettri, Jailor also Hamon Rai Warder, Amrita Rai Home Guard and some UTPs were also recorded.

2. From a perusal of the enquiry report and all documents placed before this Court, it can be culled out that on 02-08-2019 the UTP was taken outdoors from his cell for the usual chores assigned to UTPs. He, however, went to a corner of the jail premises allegedly with the permission of the Mondal UTP Nar Bdr. Kami to relieve himself. On noticing the UTP making suspicious movements around the area from where two UTPs had previously escaped, the Asstt. Sub-Jailor who was on duty, suspected that the UTP may also be attempting to escape. Apprehending loss of his job should the attempt of the UTP fructify, the Asstt. Sub-Jailor on the spur of the moment hit the UTP with a stick. It is relevant to bear in mind that the apprehension of the Asstt. Sub-Jailor was compounded by his knowledge that the same UTP had while in the custody of the police at Jorethang, in connection with another case, attempted to escape. On the same day, at around 1500 hours, the Asstt. Sub-Jailor informed the Jailor of the incident but did not report any physical assault, neither did the UTP. The following day, i.e., 03-08-2019, on production of the UTP before the learned Sessions Court for

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hearing, he verbally reported the matter to the learned Sessions Judge, who immediately ordered medical examination of the UTP as reflected *supra*. A show cause notice dated 03-08-2019 was issued by the Jailor, District Prison, Namchi to the Asstt. Sub-Jailor, on the directions of the Additional Superintendent of Police, District Prison, Namchi, seeking an explanation concerning the incident of assault on the UTP on 02-08-2019. The Asstt. Sub-Jailor submitted his reply on 09-08-2019, denying all the allegations levelled against him. However, on learning that the matter was in the knowledge of the learned Sessions Judge rendered his apology. It also emerged that the Asstt. Sub-Jailor had served the Prison Department for more than 30 years and had no adverse remarks against him. It was suggested that an advisory memo be issued to him requiring him not to repeat the act. On 20-08-2019 a memorandum was issued by the Superintendent of Police, District Prison, Namchi, expressing displeasure for non-compliance of repeated instructions and directions regarding the proper care and custody of UTPs.

3. The enquiry of the learned Judicial Magistrate (South) for its part concluded that the Asstt. Sub-Jailor appeared to be a diligent and dedicated government servant, a strict disciplinarian but generous and kind with the UTPs. He was apologetic of the fact that he had hit the UTP with the stick but the reasons were clear and unambiguous. After considering the report and the statements forwarded by the learned Sessions Judge of the UTP, Asstt. Sub-Jailor, Warder Hamon Rai, UTP Nar Bahadur Kami, UTP Titus Subba, UTP Kiran Rai, Jailor Saharman Chhetri, UTP Passang Gyaltchen Sherpa, the UTP Committee was of the considered opinion that there was no ill-motive on the part of the Asstt. Sub-Jailor who had taken preventive steps apprehending that the UTP was making an attempt to escape.

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4. The State-Respondents in their Counter-Affidavit before this Court *inter alia* averred that the Sikkim Prison Manual, 2010, has been prepared in line with the Model Prison Manual and the guiding principle laid down by the Hon'ble Supreme Court in ***Sunil Batra vs. Delhi Administration and Others***¹. Chapter IV of the Prison Manual provides for duties of prison officers and staff and the guidelines to be followed by prison officers in relation to the prisoners. That, these guidelines are being followed by all prison officers and staff.

5. After careful consideration of the report of the learned Judicial Magistrate, South at Namchi, the Counter-Affidavit of the State respondents as also the documents on record, we are of the considered opinion that nothing further requires to be adjudicated in this matter as departmental steps were initiated and completed against the erring official as also having regard to the fact that the Sikkim Prisons Manual, 2010 contains elaborate guidelines to be followed by Prison Officers in relation to the prisoners.

6. With the above observations, the petition stands disposed of.

(Meenakshi Madan Rai)
Judge

(Arup Kumar Goswami)
Chief Justice

Approved for reporting : **No**

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¹ (1978) 4 SCC 409