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Chairman
State Police Accountability Commission,
Assam, Ulubari
Guwahati- 781 007

0361-2462408 (O)

DO No. SPAC/G/15/2013/3
The 26th August, 2013

Dear Shri

I have the pleasure of tendering the report of the State Police Accountability Commission, Assam for the Year 2012. The Assam Police Act, 2007 for the first time, provided the people an opportunity to make complaints against the Police misdemeanour for being enquired by the independent Complaint Authority. It is indeed a significant step for bringing in police accountability. It is worth mentioning that the complaints are increasing day-by-day. People are trying to seize the opportunity. Slowly but surely people are becoming aware of their rights. The increase of the complaints also indicates that such institutions are immensely necessary for the common people to ventilate their grievances against the police functions.

The Commission started functioning since January, 2008. Despite enormous constraint, the Commission is functioning with a sincere commitment. Sixty-seven cases were registered in the first year. Each year cases are increasing, complaints are pouring. The Commission till now disposed 220 cases and 128 number of cases are pending before the Commission. Each and every complaint has its own efficacy. Such complaints are required to be disposed promptly. But due to infrastructure problem, the Commission is seriously handicapped in going ahead with committed task. The Commission is in nascent stage but in crucial stage to earn public confidence. The Commission is not sufficient unto themselves, it is in need of full support from all concerned.

Needless to state about the efficacy of Independent Police Complaint Authority. In Great Britain, the Parliament created an independent Police Complaint Authority by a statute in the year 2002. The said Commission started functioning from 2004 with one Chairperson and nine persons as Members (Commissioners) with a large number of investigators, being tied up in having various fields of investigations who are also engaged in investigation of banking and financial frauds. There, the Chief Constabulary also lodges complaint to the Commission for the offences committed by the Police force. The British Revenue and Custom Services are also brought under the purview of the oversight body. Increasing conflict between the people and the police in recent time has been found to be addressed by the IPCC to satisfy the people as well as the Government. Therefore, in a democratic polity there is a need for an external oversight body to act as a forum for the redressal of the grievances of the complainant and meet the expectation of the people.

The Commission with firm hope and expectation made numerous recommendations, which are waiting for proper implementation. This year also the Commission put forward seven recommendations to enhance the measure of police accountability. We sincerely hope and trust that Government will come forward to take prompt measures for improving the important part of the administrative machinery and to create confidence in the mind of the people on the police force. These recommendations, if implemented, will go a long way in creating a people friendly, professionally organised, service oriented, impartial and efficient police service, that will safeguard the interest of the people.

Thanking you,
With regards,

Yours sincerely,

Sd/-

(Dhiresh Narayan Chowdhury)

Shri Tarun Gogoi
Chief Minister, Assam,
Dispur,
GUWAHATI- 781 006

ANNUAL REPORT 2012

Introduction : The State Police Accountability Commission is in the 5th year of its functioning since 2008. The performance of the Commission, as in the by gone years carries with the vision to ensure accountability of the police as envisaged in the preamble of Police Act 2007. The complaints received during the year 2012 have recorded an increase to 79 (seventy nine) with the increase over the last year. The striking observations on the complaints are indicative of the mindset of the police, which is yet to make a dent on the measures to reform the police making them people friendly, effective, efficient and professional.

The Annual Report 2012 is prepared in accordance with Section 83(1) of the Act, highlighting the nature of misconduct, their identifying patterns and measures to enhance Police Accountability, to be laid before the State Legislature.

2. Composition Of the Commission –Its power and function

The Assam Police Accountability Commission is chaired by Justice Shri. Dhiresch Narayan Chowdhury, former Judge of the Gauhati High Court with Members Shri. Dharendra Nath Saikia IAS(Retd), Smti. Minati Chowdhury, member of the Civil Society and Shri. Sheo Prasad Ram, IPS (Retd). The mandate of the Commission, is to ensure accountability of police, as additional mechanism in addition to the already existing mechanisms, functions, duties and responsibilities of the departmental authorities as detailed in the chapter VIII of the Police Act, 2007 by making “enquiry into public complaints supported by sworn statement against the police personnel for serious misconduct and perform such other function as stipulated in the chapter.”

The term “Serious misconduct” has been explained as any act or omission of a police officer that leads to or amounts to:

- (a) Death in police custody.

- (b) Grievous hurt;
- (C) Molestation, rape or attempt to commit rape; or
- (d) Arrest or detention without due process of Law;
- (e) Forceful deprivation of a person of his rightful ownership or Possession of property;
- (f) Blackmailing or extortion;
- (g) Non-registration of First Information Report and any other case referred to it by the Govt. or the DGP of the State subject to the nature of such cases meriting for independent enquiry.

2.1 Investigation Agency:

Shri. R.K. Bania IPS(Retd), former DIGP has been heading the Investigative Agency of the Commission being assisted by two other retired police officers of the rank of Addl.S.P/DSP on contractual basis from time to time. The approved strength of the agency is one S.P, one Dy S.P and one Inspector of police. Approved strength and the present position of the agency are not adequate to handle the increasing workload of the Commission considering the nature of the investigation as required in the complaints and examination of issues in the fact finding mission. It needs to be augmented now.

Investigation Agency of the Commission which has been working in the initial years on an adhoc basis needs to be revamped, at the earliest instance. It should, have a staff to take up enquiries/investigations for an average of seventy cases(70) annually in addition to the backlog. Five (5) investigators, two senior investigators and one chief investigator should be the present day size of the staff of the Investigating Agency, with necessary working accommodation and transport.

2.2. Secretariat of the commission:-

A retired officer of the rank of Joint Secretary of Assam Secretariat Service was the Secretary of the Commission till November.2012 being assisted by retired ministerial officers (2) and other staff (4) engaged on contractual basis. One Sr. Asst. and one Jr. Asst. are attached from the police Department in the ministerial strength of the Commission's Secretariat of which the Sr. Asstt. appears to be of not helpful at all and it remains vacant for most of the time. The junior assistant is highly useful and is doing very well.

The Secretariat of the Commission also needs to be revamped in view of the increasing trend of its activities in the registration of complaints, follow up action, liaisoning, conducting the hearings of the commissions and the disposal of the complaints timely and effectively.

2.3. Finance

The Commission is yet to have an independent budget provision. However, the funds placed for the Commission during the year under reference is Rs. 48,58,000/- of which, Rs. 39,54,000/- spent on salary and Rs.9,00,000/- on other expenses.

The Government has paid remunerations to the Chairman and Members commensurately except the supporting secretariat and investigating staff of the Commission who are working on a pittance for the last five years. The commission is crippled with the lots being suffered by the supporting and the investigating staff for a considerable period.

3. Accommodation:

The Office of the Commission is at present housed at a rented premises located at Dr. B.K. Kakati Road, House No : 105, Ulubari, Ghy:7, Assam. The accommodation needs to improvement in term of space due to the increasing nature of its work. The present make shift arrangement should be replaced, by the suitable own accommodation, to be built up in lands to be acquired, at the earliest. The Commission is yet to come over from this teething problem.

4. Scope and extent of the Annual Report

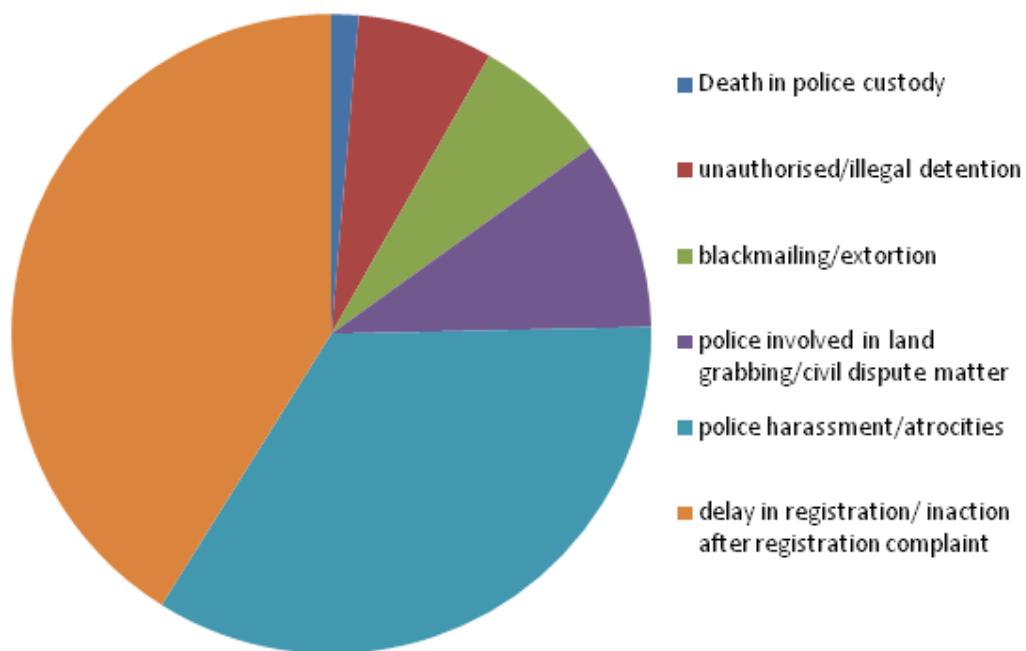
The report to contain:

- (a) The number and type of cases of Serious Mis-conduct enquired into it ;
- (b) The number and type of cases of misconduct referred to it by the complaint upon being dissatisfied by the departmental inquiry into
- (c) The number and type of cases including those referred
- (d) The number of complaints received by the District Accountability Authorities and the manner in which they were dealt with;
- (e) The identifiable patterns of misconduct on the part of police personnel in the state;
- and
- (f) Recommendation on measures to enhance police accountability.

5. Number of cases registered:

Seventy Nine (79) complaints were received and registered by the Commission during 2012. Seventy two (72) cases were pending disposal on the first day of year 2012 having spilled over from the preceding year of report. Hence, at the end of the year 31st December 2012 the total no of cases to be dealt 151 cases. Forty (40) cases have been enquired/ examined by the Commission during the year under report, and the cases are at various stages of progress.

One case was received from the government during the year under reference on matters of extortion by police in a check gate in the District of Goalpara, from vehicles transporting coals from Meghalaya. This is to be mentioned here that the case referred to by Government calls for local investigation by the Commission's own investigating agency which is plagued with constraint of manpower facilities in relation to the challenge inherent on the nature of the investigation and the in- conducive local situation in the area plagued by law and order situation.



Type of complaints received during the year

5.1. A tabular statement of cases:

	<u>Disposed</u>	<u>Pending</u>
(a) Registered during 2012 : 79	17	62

(b) Spilled over from :

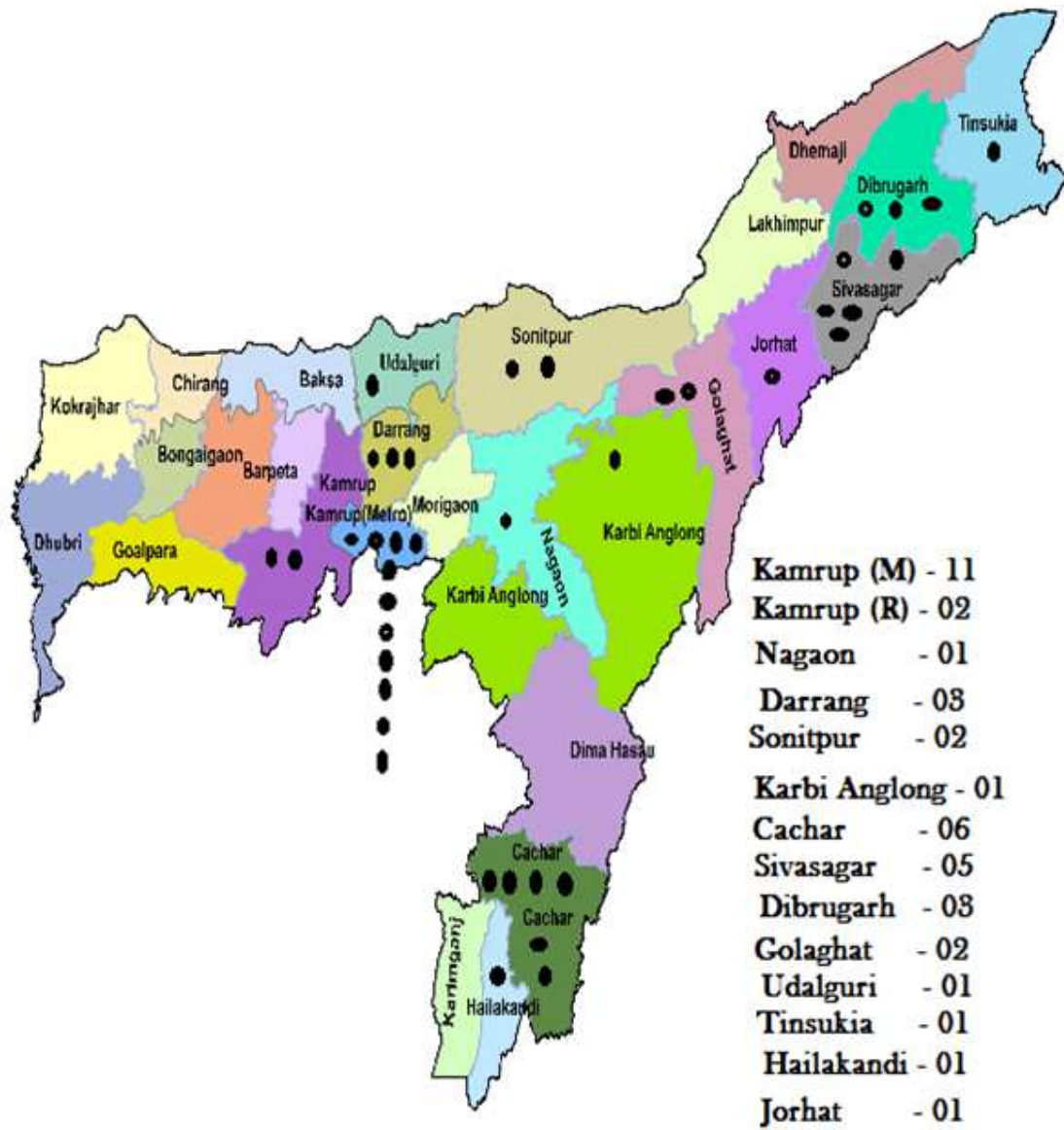
2008	:	04	04	NIL
2009	:	03	03	NIL
2010	:	17	03	14
2011	:	48	13	35
<hr/>				
Total	:	151	40	111

Hence, the number of cases of serious mis-conduct enquired into during the year 2012 are $(40+111)=151$ cases including backlog of $(151-79) = 72$ cases of the previous years.

The type of the cases of serious mis-conduct enquired into during the year 2012 is a follows :

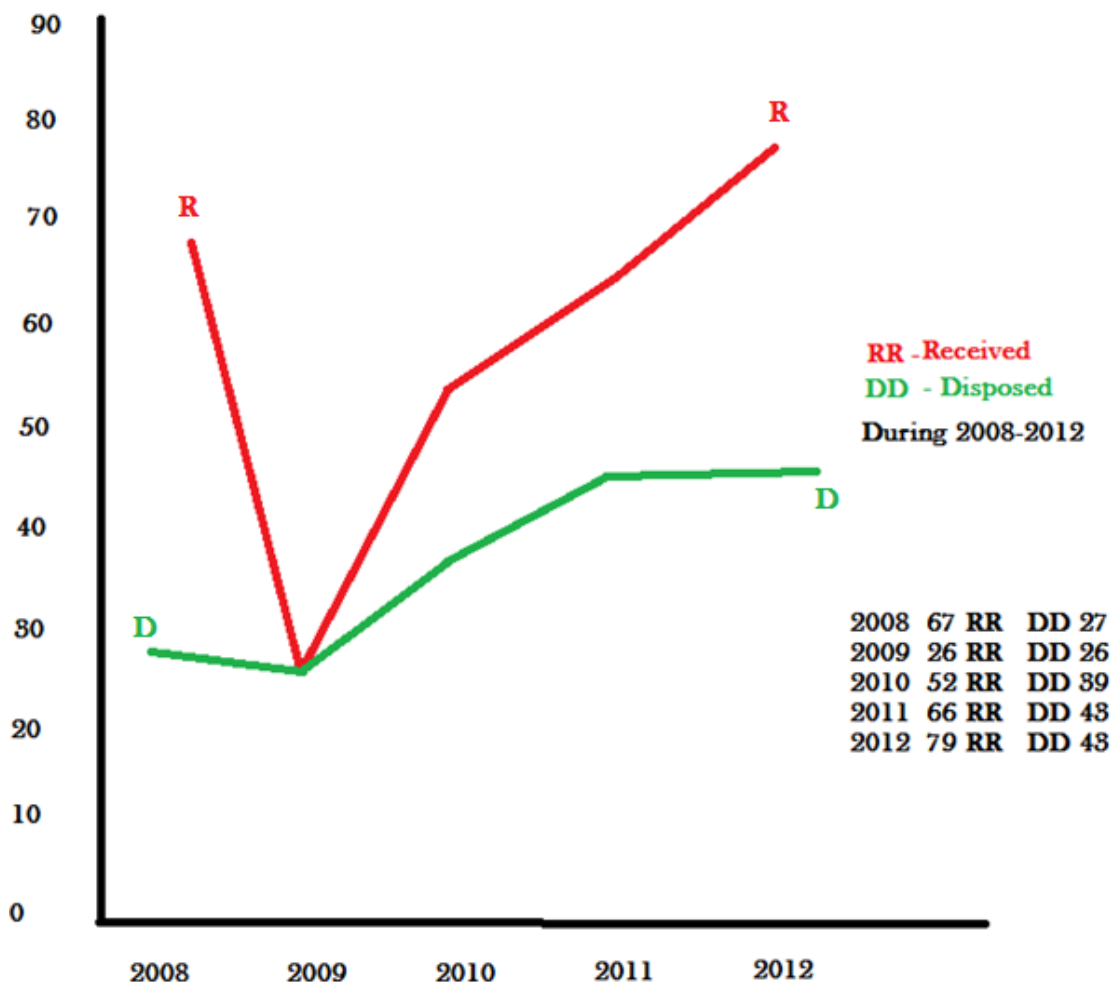
Non-registration of FIR	:	6
Police inaction after registering of FIR/delay in registration	:	29
Un-authorized/illegal detention	:	5
Police involved in land grabbing/civil dispute matter	:	7
Police harassment/ atrocities	:	22
Black mailing/extortion	:	5
Misc Complaint	:	4
Death in police custody/ police presence and police chase	:	1

5.2 (a) : Areawise distribution of cases registered during 2012



5.2. (c) :

Graphical representation of the complaints received / disposed since 2008 to 2012



CAUSE OF DELAY

Delay in disposal is worrying the Commission. These disposal of the complaint should not brook any delay. Delay is because of resource crunch including dearth of manpowers. Work loads are borne by two Investigators. Commission heavily depends on borrowed investigation (investigation by police Department). Delay in submission of reports, records/materials from Police Department is also spectacular. Complaints are increasing. Four units of investigation should be in place to respond to the complaints in four zones namely Guwahati, Jorhat, Tezpur and Silchar for the timely disposal of the public complaints.

6. Reference of cases by individual complainant to the Commission :

Like that of the previous years, the cases of mis-conduct referred to the Commission by complainant in matters of being dissatisfied by the outcome of or inordinate delay in process of departmental enquiry into his/her complaint of mis-conduct as defined under the provision of section 78(3) of Assam Police Act, 2007 have been recorded Nil.

This is, no doubt, an indicating parameter of peoples' approach to the Police for complaints of police mis-conduct for redressal by the in-house mechanism of the police department. None the less it is revealing the public attitude towards police response and people friendly gesture. One of the cherished visions of the State Police Accountability Commission under the ambit of the statue is to render a comprehensive and effective mechanism to render people approach to the departmental authority for redressal of their grievances against the police mis-conduct with fair and free deal. In other words, the Commission is committed to achieve a path-breaking landmark in making the existing police practice, performances and prejudices to usher in the transparent performance and accountable to law by the Police Department with people participation. This alone has called for widespread awareness of the mechanism with full participation of the police department and the State Government to educate people assuring them the response to their grievances locally at the first instance and imploring the provisions in the section 69 of the Assam Police Act 2007. An Inspector of Police and the Sub-Divisional Police Officer may address public complaints with precision of time, facts and the deviations to the rule of law at the PS/OP level staff are better addressed. Similarly, the District SP, the range DIGP/IGP can play a pivotal role in the departmental enquiry mechanism. The Police Department can enjoy the trust and co-operation of the complainant and the people at large through the departmental enquiries thereby the mis-conduct of the juniors is reduced to great extent. This instrument was used by the Department during the Indian Police Act. 1861 previous regime effectively even when the country was the ruled by Foreign Powers. But the Commission has not received now a single reference to the departmental enquiry, to which the complainant not being satisfied has approached the Commission for redressal. Absence of such references speaks volume of the gap between the police and the people empirically and indicative of the reform is yet to take off with the internal mechanism latent and unmindful.

Section 78(1) of the Act empowers the State Police Accountability Commission to enquire into the allegations of "serious misconduct" against police personnel either suo moto or on a complaint received from any of the following:

- (a) a victim or any person on his behalf;
- (b) the National or the State Human Rights Commission;
- (c) the police; or
- (d) any other source.

The Commission is functioning for the last five years. The Commission is, however, yet to receive any complaint from the police. It is not that police personnel are free from any misconduct. But the very police department is yet to create a proper environment and change of paradigm. The transparency, accountability are part of democratic policing. In that view the Assam Police Act, 2007 was enacted build the police force professional organised, service oriented and accountable to law to make it more efficient instrument for prevention and detection of crime. The Act is meant to redefine the role of police keeping in mind and emerging challenges of policing, the security of State, the imperative of good governance and respect for human rights. The DGP as being the police chief who is overall direction and supervision of the police force need to look into this aspect of the matter and take appropriate measure keeping in mind the legislative intent. As per the scheme of the Act, the Commission is required to prepare an Annual Report and the said Annual Report of the Commission is to be laid before the State Legislative the report being the public document which are accessible to the public. Since the inception, the Commission is yet to find any scope to cite any matter referred to the Commission by the police. The Act also provides the Government, DGP of the State to refer any case. The government has referred cases to the Commission for enquiry. But the Commission is yet to receive any complaint from the DGP of the State. The Commission is also provided with the power to monitor the status of departmental enquiry or departmental action on the complaint of misconduct against the Gazetted Officers and above the rank of **Assistant SP**. Through a Quarterly Report obtaining periodically from the DGP of the State and issue appropriate advice to the police department. Since the inception, the Police HQ has failed to submit a report whatsoever as required under Sub-section (3) of Section 78 of the Act. It seems the Police HQ is yet to come in terms with democratic policing and keep a pace with transparency and accountability. Now, there is a need for paradigm shift and change of its attitude towards openness to improve the system and earn public countenance. An important directive of law is thus disobeyed by the police department.

7. Illustrative Cases : The following cases in brief as registered on complaints received during the year under report would speak for themselves as to the police mis-conduct of serious nature complained of by the individuals affecting their right, privilege, dignity due to police actions deviating from the

Law, rule and procedures which the members of the police service are dutifully bound to preserve and protect.

7.1 SPAC Case No. 01/2012

Complainant : Anowar Hussain, S/O Mujibuddin Ahmed,
R/O Machkhowa, T.R Phukan Road,
P.S- Bharalumukh, Dist.- Kamrup (M)

-Vs-

O/C Bharalumukh P.S

The brief of the complaint is that complainant Anowar Hussain executed a power of attorney in favour of one Md. Aftab Hussain, a resident of No.- 2 Sarudampur P.S-Hajo to look after his landed property situated at revenue village Saukuchi under Beltola Mauza, Guwahati due to his old age and suffering from cancer. The power of attorney holder Aftab Hussain came to his house with some musclemen and forcefully obtained his signature in blank paper with an intention to illegally grab his property. In this regard, he filed an FIR before the O/C Bharalumukh P.S, Case No. 238/2011 was registered. But the case was not properly investigated. Rather the police have provided helping hand to the offenders to grab his landed property. For the reasons, complainant Anowar Hussain filed the complaint before the Commission requesting to investigate the matter and help him to recover his property from the clutches of the said culprits.

The Commission registered the complaint and directed the S.P, City, Guwahati, to submit a report.

Having received the direction SSP, City, Guwahati, submitted a report and stated that the investigation of the case was pending for examination of the named accused to ascertain the name of the prospective buyer who made agreement with the FIR named accused person. The Dy. Supdt. of Police, Pandu Division, is supervising the case and is guiding the I/O for speedy investigation of the case. The Commission also summoned O/C Bharalumukh P.S, for his personal hearing. He was heard. He assured to submit the status report for the case within seven (7) days. But not received and the case is pending for non-receipt of the police status report.

The case is pending for enquiry.

7.2 SPAC Case No. 02/2012

Complainant: Sandhyachal Nagar Mahila Samiti, Lalmati Guwahati

-Vs-
Basistha Police Station.

Members of Sandhychal Nagar Mahila Samiti, Lalmati, Guwahati filed a complaint before the Commission that one Shri Dhanpati Barman of Sandhychal sexually abused a minor girl namely Smti. Ramonj Kaur and as a result she became pregnant. Her father lodged a complaint at the Basistha P.S Case No. 753/11 U/S 376(F) IPC was registered, but O/C Basistha P.S failed to nab/arrest the accused person. Hence the complainant approached the Commission and prayed for appropriate action and to issue suitable direction to the O/C Basistha P.S to arrest the culprits and to provide protection to the victim girl.

Perusing the complaint, the Commission called for a report from the Sr. S.P, City, Guwahati and the report was received. As per report, the accused persons were arrested and subsequently charge sheeted both the accused persons vide Basistha P.S C.S. No. 04/2012 dtd. 26/01/2012.

In the set of circumstances, the proceeding stands closed with a direction to the department to intimate the Commission from time to time as to the case in the prosecution.

7.3. SPAC Case No. 05/2012

Complainant : Sri. Dorai Swami Rahul Iyenger

-Vs-

Constable Faizul Haque Mazumder, Police Reserve, Dibrugarh.

A complaint was received from one Dorai Swami Rahul Iyengar of Khalihamari Red Cross Road, Dibrugarh, alleging serious misconduct against one Faizul Haque Mazumdar, a police constable posted in Dibrugarh Police Station. On receipt of the complaint, the Commission registered a case and called for a detail report from the S.P Dibrugarh. The Commission satisfied with the action taken by S.P Dibrugarh as submitted in his report and the progress of the case is in the right direction. The fear and apprehension of the complainant from the Constable Faizul Haque Mazumdar has already been neutralized by transferring the constable from Dibrugarh P.S to Tingkhong P.S. More over the possession of the house property was also restored to Shri Dorai Swami.

The Commission also received a communication from Shri Dorai Swami Rahul Iyenger intimating that he was now staying in his house with his sister and thus the Commission decided to close the proceeding of the case.

7.4. SPAC Case No. 06/2012

The case is received from Govt.of Assam Political Deptt. vide their letter No. PLA (V) 13/2012/2 dtd. 02.02.2012 against illegal collection of money/extortion from Coal Trucks in the check gate in the district of Goalpara from vehicles transporting Coal from Meghalaya. The case is referred by the Government requiring local investigation by the Commissions own investigating agency. The Commission could not embark upon the enquiry into the matter as the approved as well as the present position of the agency are inadequate to handle the case for the present. However, the Government has been moved to confirm necessary assistance to the Investigating Agency of the Commission.

7.5. SPAC Case No. 07/2012

Complainant: 1. Sri Sanjoy Kumar, S/O Dhiromal, R/O West Maligaon, Guwahati-11, P.S- Jalukbari, Dist: Kamrup(Metro)
2. Md. Saburuddin Ahmed,S/O- Hanif Ali, R/O Nalboma Masjid Path,Bye Lane No. 1 P.S- Hatigaon

Dist.- Kamrup (Metro).

-VS-

Inspector Gauri Kanta Borah,
CID Branch, Assam Police.

Complainants filed complaint before the Commission on alleged encroachment of their patta land by Inspector Gauri Kanta Borah and forceful demolition of boundary wall. They requested the Commission to cause an enquiry against Sri Gauri Kanta Borah for his illegal act of land grabbing of innocent citizen.

On receipt of the complaint, Commission registered a case and called for a report from the Sr. S.P, City, Guwahati and accordingly Sr. S.P, City, Ghy submitted his report. The Commission has taken action and completed the enquiry.

7.6. SPAC Case No. 08/2012

Complainant: Sri Naren Ch. Deka, Hengrabari, Dispur, Guwahati

-Vs-

SI Arun Barua of Dispur PS.

One Sri. Naren Ch. Deka of Hengrabari under Dispur filed a complaint before the Commission expressing his apprehension of harassment/illegal detention at the P.S and threatening to his life by S.I Arun Baruch of Dispur P.S.

On receipt of the complaint the Commission called a detail report from the Sr. Supdt. of Police, City, Guwahati, who in his report stated that the allegation which was enquired by the Addl. S.P (City) could not be established against S.I Arun Baruah as alleged in the complaint. ASI Arun Baruah asked Sri. Naren Ch. Deka to appear before him in connection with Dispur P.S Case No. 2629/2011 U/S 341/325/294/427/34 IPC registered on the ejahar of one Smti. Ruby. Sri. Deka did not appear before the ASI at Dispur Police Station and for which ASI Arun Barua picked up Naren Deka and later released on bail as the sections incorporated are bailable.

The Commission summoned O/C Dispur P.S for his personal appearance and recorded his statement on 23/04/2012 including SI (P) Bijoya Das and ASI Arun Baruah.

The Commission is examining the records of the case & pending for order. The complainant received grievous injuries in an attack prompted by Ms. Ruby Barman in connection with a plot of land having interest of Ms Ruby who filed an ejahar after Sri. Deka received injuries and recuperating in a local Hospital. ASI Arun Barua is alleged to take one sided action and the complainant has become a victim of unfair and motivated action of ASI Arun Barua. The Commission is pursuing the case and pending for reports from the police and examination of records and police personnel concerned.

7.7. SPAC CASE NO :- 10/2012

Complainant : Md. Saddam Hussain
S/O Md. Hatem Ali, 1No. Narmeni.

-Vs-

O/C Dhramtul PS. Nogaon District

Commission received a complaint petition from Md. Saddam Hussain of Dharamtul under Nagaon district alleging that the O/C Dharamtul P.S has not registered his complaint. On receiving the complaint, the complainant was asked by the Commission to furnish sworn affidavit in support of his complaint. Though the opportunity given to the complainant, complainant did not avail of the opportunity during the last seven months for which the complaint returned

to the complainant without any action.(Letter No. SPAC/C/10/2012/2, dtd. 10/10/2012).

7.8. SPAC Case No. 11/2012

Complainant: Chand Mahammad & 2 others (Public Complaint)

-Vs-

Sri. Rajibur Rahman, I/C Mandia OP.

Sherman Ali Ahmed MLA 45 No Baghbar LAC forwarded a public complaint petition addressed to the Commission against Sri Rajibur Rahman, I/C Mandia Police Out Post under Baghbar Police Station of Barpeta district for inhuman torture meted to one innocent person viz Ramejuddin and harassing common people of the area from time to time. The MLA requested the Commission to take necessary action against Sri Rajibur Rahman I/C Mandia O.P so that common people have confidence in the rule of law.

On receipt of the complaint Commission registered a case and directed the S.P Barpeta, to submit a report.

The complaint was enquired into by Smti. R. Kalita, Addl. Supdt. of Police (HQ) Barpeta, and in her report stated that the allegation brought against S.I Rajibur Rahman, is thoroughly false and appears to be motivated.

The Commission is yet to decide on disposal of the complaint against the police officer.

7.9. SPAC Case No.12/2012

Complainant : Meherun Nessa
w/o Lt. Akhtar Hussain Bar Laskar
H. No.- 21, Lachit Nagar, Guwahati.

-Vs-

O/C Fatasil Ambari, Gauhati City.

One Smti. Meherun Nessa of Lachit Nagar, Guwahati filed complaint petition before the Commission that she lodged an FIR on 27/12/2011 at the Fatasil Ambari P.S stating that a group of land mafia attempting to grab her landed property situated at village Jyotikuchi under Beltola Mauza. But instead taking action against land mafia, the O/C Fatasil Ambari Police Station Shri Utpal Kr. Das and the I/O of the case have been demanding money from her to remove the said land mafia and handing over said plot of land to her.

Dist.- Barpeta
-Vs-
Addl. S.P/O.C Barpet& other officials of Barpeta P.S.

The matter arises out of a complaint lodged by Anjeda Khatun stated that Abdul Malek and Hasmot Sikdar along with 10/12 police personnel arrived at her house and asked her to open the door and as she did not open the door the police personnel entered into her house by breaking open the door and conducted search in her house. While she and other inmates cried for help, the police personnel assaulted her and the family members. Abdul Malek, Abdul Samad, Hasmot Ali, Muslem Ali and Jalash Sk forcefully raped her and she became senseless. Later on she came to know that police took away her husband and sent to the Judicial Custody. Complainant in her complaint also alleged that Abdul Malek and others as named in her petition who are close conduit of ASP Barpeta and O/C Barpeta police station have been threatening to implicate innocent villagers of their neighborhood in police cases and extorted Rs. 30,000/- to 50,000/- in the name of police. Those who are adamant not to pay have been taken into the custody. Therefore to apprise the misdeeds of the police, the complainant approached the Commission to take action against police personnel.

The Commission registered a case which is under investigation.

7.12. SPAC Case No. 15/2012

Complainant: Abdul Mannan ,Gopalpur Gaon, Barpeta &
one another
V/S
Barpeta Police Officials.

Brief Of The Complaint is that Abdul Mannan s/o Rukan uddin Ahmed of Gopalpur Gaon, Barpeta Sadar Police Station who are close conduit of ASP Barpeta and O/C Barpeta police station have been threatening to implicate innocent villagers of their neighborhood in police cases and extorted Rs.30,000/- to 40,000/- in the name of police. These who are adamant not to pay have taken into the custody. One Sufiuddin Ahmed, son of Rukanuddin Ahmed of Gopalpur village during the night hours about 7/8 months ago was taken to the Barpeta Sadar police station for implicating him in theft of vehicles. He was released from the police station on the following day. On 18.01.12 at about 12 at the midnight, I/C of Mondia police out post forcedly took Sufiuddin from his house. The I/C, on approach by the villagers informed that Sufiuddin

had been taken into the police station at the direction of the ASP and sent into the custody of Barpeta Sadar police station.

Malik asked over telephone the brother of Sufiuddin 20.01.12 to come with Rs.50,000/- and ASP would release, failing which threatened to implicate Sufiudddin in some other criminal case. Complainant with the brother of Sufiuddin went to the ASP in his office and enquired about the ground for which Sufiuddin was brought to the police station. ASP told them as to why Sufiuddin was after Malik and Hasmat interfering to their work and Sufiuddin would be implicated in some other criminal case and saying so he rang up to the police station directing that Sufiuddin be forwarded in the case of theft of the temple. They made fervent request to release him but the ASP threatend them that they would also to stay in the police station if they don't leave his office. Sufiuddin was sent to the jail custody.

The SP of Barpeta who directed D.S.P. Kulen Deka for enquiry on 09.02.2012. The people of the locality apprised the DySP as to the misdeed of the above named persons.

The Commission on receiving the complaint registered the case and the case is under investigation.

7.13. SPAC Case No. 16/2012

Complainant : Salim Uddin
S/O Afazuddin, Vill.- Dongra,
P.S Barpeta
-VS-
Addl. S.P/O.C Barpeta P.S, Barpeta.

The brief of the complaint is that complainant Salimuddin is a permanent resident of Vill- Dongra under Barpeta district and he is running a Mobile phone repairing business as a livelihood. He alleged that one to Abdul Malek and Hasmat Ali of village Goraimari and Rahampur respectively who are closed conduit of police have been threatening the innocent villagers to implicate in false cases if they refuse to pat Rs. 30,000/- to Rs. 50,000/- in the name of police. The said conduit demanded Rs. 30,000/- and as he adamant not to pay the police is looking for him for which he could not run his business. Though complainant brought it to the notice of S.P Barpeta trough DSP no action has been taken from his end.

Therefore complainant requested the Commission to enquiry into the matter and to take action against the close conduit and involved police personnel.

The Commission registered a case and is under investigation.

7.14. SPAC Case No. 17/2012

Complainant: Sri Kabiruddin Ahmed, S/O Kaziruddin Ahmed
R/O Pulkumari, Dist.- Bongaigaon.

-Vs-

SI Binod Barman, O/C Patacharkuchi PS.

The Commission received a complaint from one Sri Kabiruddin Ahmed of Vill Falkumari under Bongaigaon District on illegal detention and atrocity to driver and Handiman and illegal seizure of truck by Sri Binod Barman O/C Patacharkuchi Police Station.

In his complaint, Shri Ahmed stated that he owns a truck bearing Regd.No AS-18-8045 used in carriage business. On 25/11/2010 while carrying timber from Tura to Barama for delivery in “Barman Timber Shop” observing all the Govt. rules and regulations, the truck was way laid by Police man on N.H Way 31 at about 11 P.M on 25.11.2010 and the truck brought to Patacharkuchi P.S. In the Police Station O.C Sri Binod Barman detained driver Papu Miya. When the driver refused to pay, O.C Binod Barman threatened to kill him by his service pistol and tortured him and bears up badly.

On receipt of the complaint, Commission asked S.P, Barpeta to furnish a report and accordingly S.P Barpeta enquired into the allegation entrusting Sub-Divisional Police Officer, Bajali, Pathsala and reported that the action taken by O.C Patacharkuchi PS. was justified and no evidence found regarding demanding money from the driver and damage of all the documents by O.C Binod Barman.

The Complainant has been duly examined by the Commission and issued order as follows:

7.15. SPAC Case No. 17/2012

Md. Kabiruddin Ahmed S/O Kaziruddin Ahmed,
Vill Fulkumari, Bidyapur, Bongaigaon

Vs

SI Binod Barman, OC, Patacharkuchi PS

Kabiruddin Ahmed lodged a complaint to the effect that his truck bearing registration No. AS18/8045 driven by Papu Miya carrying timber from

Tura to be delivered to Barman Timber Shop of Barama was intercepted by six police men on National Highway 31 between Pathsala and Patacharkchi on 25.11.2010 at 11 PM. The loaded truck with the timber was brought to Patacharkuchi Police Station and the truck was kept in the custody of Police Station. Driver Papu Miya and handyman Ashanur Ali were detained by OC SI Binod Barman, who demanded Rs. 50,000 (fifty thousand) for the release of the truck with loads, threatened them with dire consequences and tortured driver Papu Miya badly when he refused to pay. OC Barman looted Rs. 15000 (fifteen thousand), kept the truck in custody of the Police Station and allowed Papu Miyan to leave the Police Station for discussing the issue with owner of the timber namely Shri Satya Barman. The truck was detained for four days in Patacharkuchi Police Station and finally handed over to Barpeta road Range Officer on 29.11.10. The complainant alleged that OC Barman by his arbitrary and illegal act caused pecuniary loss of the owner and driver Papu Miya, apart from torturing the driver and handyman of the truck.

A report from the SP, Barpeta was called for. The SP, Barpeta forwarded a report submitted by Shri Moni Saikia, SDPO, Bajali, Pathsala who was entrusted to conduct the enquiry in to the allegations against the SI Binod Barman, OC, Patacharkuch PS. The enquiry report of the SDPO, Bajali, was nothing but a piece of casual work who without endeavouring to comprehend the gravity of the grievance of a citizen of a Republic present in report, solely with the object to cover up the mater. A namby pamby, wishy washy account just to screen the wrong doer.

The Enquiry Officer found that Binod Barman, OC, Patacharkuchi PS received an information to the effect that one truck No. AS 18/8045 was carrying some illegal timber from Garo Hills on 25.11.10 at 11 PM. The truck was coming towards Patacharkuchi and on the strength of the information SI Barman along with one section of APBn. personnel and UB constable 84 Akan Choudhury left Police Station at about 2 AM on 26.11.10 and returned to Police Station with his accompanied staff and the truck No. AS 18/8045 being loaded with timber and driven by Papu Miya to be delivered to one Satya Barman of Barama. The OC asked from the driver the relevant document. The driver in turn asked the OC for his leave to pick up the same from the vehicle, it was reported. The OC allowed the driver to leave the PS, instead the driver took to his heels. The OC seized the truck and the timber after preparing a list on 26.11.10 and the truck with the timber handed over to the Forest Range Officer of Barpeta Road as per Shri Tapan Kr. Das, Forester Gr. I of Pathsala Forest Beat Office on 29.11.10.

The report reveals that there was no handyman in the truck while it was intercepted. There was no evidence of torturing driver Papu Miya and no evidence of demanding money from driver, the report recounted. The seizure

witness was not present at the time of detection nor could say anything about the timber, but signed on the body of the seizure list prepared by OC at his request. The report is devoid of date, time and place of seizure and the authority to do so. The Enquiry Officer has also ignored to examine the complainant Shri Kaziruddin Ahmed and the driver Papu Miya. The omission is noteworthy, if not striking.

Examination of Witnesses

- (a) Papu Miya has corroborated the complaint submitted by the complainant before the Commission. He in his deposition said that Manager of the truck owner namely Md. Asanur Ali also accompanied him during his drive to Barama. He saw a Gypsy vehicle with a red capped constable who signaled to stop the truck and he stopped the truck and all police men came near him enquired about the articles carried in the truck and demanded Rs. 500 (five hundred). He refused to pay Rs. 500 and there was no officer in police uniform among them. The Constable brought the vehicle with the timber to Patacharkuchi PS. The truck was parked on the NH in front of the Police Station and Police team took Asanur Ali and him inside the Police Station. He saw the person in civvies in the Police Station identifying himself as OC and then he handed over the T.P. to him. The OC kept the T.P. in the table saying it to be fake and directed him to call the timber party for releasing the timber and demanded Rs. 50,000 (Fifty thousand). Thereafter the Manager Asanur Ali contacted timber owner, Satya Barman of Barama but Barman denied to pay any amount. The timber was purchased from Forest Depot and were genuine. OC on hearing this slapped him twice and pointed pistol in the mouth of Manager Ali. It was the time when there was no other person except police personnel in the Police Station and both of them were kept in the Police Station for the whole night. Next Day at 8 AM OC came in uniform and asked them to bring the owner of the timber. Manager Ali left Police Station at 9 AM and after one and half hour OC asked for document of the vehicle. The photocopy of the document of the vehicle was brought and the OC tore that saying it to be Photostat and asked for the original document from the owner for which he was to come from the Police Station. But OC asked him to pay money whatever was with him. He had Rs. 15000 (fifteen thousand) for maintaining the truck and the OC took the amount and allowed him to go. He then left the PS leaving his vehicle and did not return.
- (b) Md. Asanur Ali, the Manager of the owner of truck No. AS18/8045 who look after the business of truck owner accompanied driver Papu Miya who was carrying timber to Barama. He corroborated the

statement of Papu Miya. He informed about the detention of the vehicle with the timber. Vehicle owner did not come to the Police Station. The truck could be released from Barpeta Road Range Officer after seven months and eight days and no seizure list in respect of vehicle and timber received by him and the driver Papu Miya was in the Police Station while he left at 9 AM on 26.11.10.

The Commission heard SI Binod Barman, OC, Patacharkuchi PS in person. He deposed that he detained truck No. AS 18/8045 being loaded with illegal timber on the strength of information received in the night of 25.11.2010. The driver of the truck was Papu Miya and there was no handyman/Khalasi in the truck. The timber belongs to one Satya Barman of Barama and the documents in respect of timber were in the truck. He therefore allowed the driver to bring the documents but the driver Papu Miya fled away leaving his vehicle behind. The OC denied the allegation brought against him. However, on examination of the records/documents and reports, it has disclosed breach of rules and procedure on the part of the police on the following counts:

- (i) Seizure was done without following the procedures prescribed by law, as required u/s 94/102 of Cr. P.C. by OC, SI Binod Barma. The learned Court was even not been informed immediately even after the illegal seizure. Timber with the seized truck handed over to Forest Department without order from the Court.
- (ii) The Enquiry Officer, Shri Moni Saikia, SDPO, Bajali omitted to have enquired into the crucial aspects of the matter as cited above. His report is distorted, discriminatory, unfair and unjust aimed at for justifying the wrong done by the OC, SI Binod Barman. Likewise, SP, Barpeta acted mechanically in forwarding the enquiry report of the SDPO which appears to be perfunctory and seemingly induced by motive. The SP hastily assented with the report of the SDPO, Bajali thereby eagerly defended the OC, SI Binod Barman from his illegal act of search, seizure and unlawful confinement. The OC Binod Barman took recourse to subterfuge and provided the driver to take off from the PS which itself attracts action against the OC u/s 225(A) of IPC. But the SP, Barpeta has failed even to look into the lapse of OC SI Barman of not being able to prevent a person taken into custody

The above action of OC SI Binod Barman attracts the provisions of Section 98 (a)/99(2), (3), (6) of Assam Police Act, 2007. The SDPO, Bajali Mr. Moni Saikia deserves to be pulled up so that he never repeats the perfunctory enquiries as has been done in this context. The District Superintendent of Police,

Barpeta has also failed in his superintendence by relegating responsibility to his juniors who have acted in breach of law and procedure.

We have given our anxious consideration of the matter in its entirety. We have seen neither hide nor hair of the police professionalism.

All things considered we therefore advise the Director General of Police to initiate departmental action against the Officer In-charge of Police Station, SI Binod Barman for his dereliction of duty on the basis of the findings set out above.

The Director General of Police is accordingly required to present the Department's view and additional facts, if any, not already in the notice of the Commission within three weeks to enable the Commission to finalise the opinion of the Commission.

7.16. SPAC Case No.17/2012

Md. Kabiruddin Ahmmed

Vs

Officer-in-charge, Patacharkchi PS, Dist. Barpeta.

Perused the communication received from the Assam Police Headquarters vide letter No. SPAC/APHQRs/17/2012/44 dated 28th February, 2013. By the said communication the Police Headquarters conveyed its decision that it has agreed to conform to the order and it also indicated about the steps taken for compliance of the order. With this, the proceeding stands closed. (this refers to order passed by the Commission in the case dated 05.03.2013)

7.17. SPAC Case No. 24/2012

Smti. Meghali Rajput

Vs

OC Dispur Police Station & I.O. Dy.SP, Dispur Divn.

One more case of police harassment against woman has been reported. The complainant at the relevant time was 23 years, undergoing Master Degree course in the Gauhati University. It was asserted by the complainant that on 13.12.2011 she was married to a person following all religious rites with her free will. She also asserted that the family of her parents was unhappy with the marriage, as a result lodged an FIR in the Dispur Police Station on 13.12.2011 for kidnapping. As per the complaint police came to the Rukminigaon

residence and from there she along with her husband was taken to the Dispur Police Station at 10.20 PM on 13th December, 2011. They were kept for the night in the Police Station. Police even took her for medical examination but she refused. The next day they were produced before the Judicial Magistrate, Kamrup and remanded to the judicial custody. She made a statement u/s 164 Cr.PC. From the court she was taken to the PS where she was confined till 9.00 PM and after that she was allowed to go. She lodged complaint to the Dy.SP, Dispur Division but no action was taken.

We called for the report. Reports received from the authority supported her statement. The materials on record indicated that Addl. SP conducted enquiry on this matter wherein it was found that the lady was a major. The FIR itself indicated that she was also 23 years of age. The FIR did not disclose the essential element of section 366 of the IPC. In the instant case, the police itself conducted a thorough probe. The report also indicated that the complainant stated in her statement that she was 23 years of age and married the person at her will. The Addl. SP's report also clearly spelt out that it was a misadventure. The police in hot haste took this action which is contrary to law. Addl. SP in his report also mentioned that it demands action to be taken by the police as per DGP's circular No. 6 dtd. 09.04.2010.

Considering all the aspects of the matter we are of the view that the competent authority is proceeding in the matter seriously as per law. We hope and trust that the police authority will take necessary action as per law since it amounts to infringement of human rights. With this, we close the proceeding.

7.18. SPAC Case No.33/2012

Shri Aditya Mundra, Tinsukia

Vs

SI Chitta Ranjan Buragohain of Tinsukia Police Station

Vide our order dated 7th January, 2013 the matter was disposed with the appropriate direction to the concerned authority to initiate departmental action against the SP, Tinsukia. The Commission also directed DGP to take steps for registering FIR against SI Chitta Ranjan Buragohain u/s 342/166 IPC for misdemeanor as mentioned in the report. The Commission on assessment of the facts awarded its findings on completion of enquiry and communicated the same to the DGP and the State Government. The commission before finalization of its opinion as per proviso one of S.82 of the Act, the concerned authorities were provided with an opportunity to provide additional facts if any, not already in the notice of the Commission. Vide its communication dated 7th January, 2013 the Commission forwarded the copy of the order along

with the relevant documents instructing the concerned authority to submit its views and additional facts if any in terms of proviso 82 of the Act on or before 28.1.2012. Instead of submitting its report promptly as advised, the Police Headquarters vide its communication dtd 25th January, 2013 requested three weeks' further time to submit its report. Vide communication dated 4th Feb/2013, the Commission directed to submit the report within ten days. Vide communication dated 13th January, 2013 the Government also directed the Police Headquarters to furnish its views immediately on the order of the SPAC Case No. 33/2012. The Assam Police Headquarters even failed to submit its views in time and asked for further time of seven days vide communication dtd. 7th Feb/2013. Finally, the officer of the Directorate submitted its views on 21st February, 2013. The Police Headquarter in its reponse did not make any whisper on the findings and directions of the Commission so far as the Inspector J.K. Bora, Tinsukia PS as well as SI Citta Ranjan Buragohain are concerned. The Commission on the basis of its findings, directed to initiate steps for registering FIR against Inspector C.R. Buragohain u/s 342/166/217/218 of the IPC and to initiate DP against him. The Commission also directed to initiate action against Inspector J.K. Bora for the misconduct cited. The view presented by the Department has centred round the Superintendent of Police of Tinsukia Shri P.P. Singh, IPS. The Police Headquarters is advocating for SP and made a feeble attempt to justify his action. The Commission has already given its findings on all the issues. The Commission on examining the matter including the evidence forwarded its report upon considering all the aspects of the matter. The plea in defence of non-production of GD at the first instance is untenable. The Police Headquarters as well as the SP should know that the GD is needed to be written in duplicate with carbon paper. Therefore, plea of the SP as to the need of permission of the Court did not arise. The General Diary as prescribed u/s 44 of the Police Act, 1861 is to be maintained under Rule 53 of the APM. An elaborate procedure is prescribed therein. Therefore, declining to part with the GD was not justified, in fact as well as in law. The Commission is a fact finding authority and therefore, to ascertain the facts called for the GD. Instead a single Diary entry was furnished, keeping out of the notice of the Commission other relevant entries. The first and foremost duty of the SP was to direct the OC to furnish the duplicate copy of the GD without resorting to acrimonious issues of Court's order. The view expressed by the Police headquarters on Section 172 Cr.PC is uncalled for and contrary to law. The bar of production and use of case diary indicated in section 172 is intended to operate only in an enquiry and trial for an offence and even this bar is limited bar, because in an enquiry or trial the bar does not operate if the case diary is used by the police officer for refreshing his memory or criminal court uses it for the purpose of contradicting such police officer. The bar can obviously have no application where the case diary is sought to be produced and used in

evidence in a civil proceeding or in a proceeding under Art. 32 or 226 of the Constitution as well as in a matter conducted by the statutory body. More so, when the party calling for the case diary is neither an accused nor his agent in respect of the evidence to which case diary related. The Assam Police Act, 2007 has indicated for impartial, efficient police service safeguarding the interest of the people making the police force professionally organised, service oriented and accountably to law. The constitution of Commission has its own meaning to ensure the law of the land and all concerned must assist the Commission and ensure that no relevant facts should be shut out from the Commission, else the Commission may get distorted and incomplete facts that might affect justice. The need to produce all relevant facts before us is both fundamental and comprehensive. Justice would falter or for that matter would be defeated if decisions are to be founded on partial or speculative presentation of facts. The very integrity of the system and public confidence in the system depend on full disclosure of full facts within the frame work of rules of evidence.

It is immaterial as to whether the report was sent by the Additional SP, Tinsukia on current charge as the report is a matter of record in the office of the SP, Tinsukia, which should not escape the attention of Shri P.P. Singh, IPS, SP, Tinsukia. Mere disowning of the report at this stage does not hold good.

The registration, investigation and returning the case in CS do not exonerate the concerned police officials engaged in the entire process. It is found to have committed lapses constituting misconduct as defined in the Assam Police Act, 2007. In our order itself the issue was discussed at length. SI Chitta Ranjan Buragohain took Shri Aditya Mundra into custody at 9.45 PM but the person was arrested at 10.30 AM on the following day. Obviously the views in para 2 over looked the wrongful confinement of about 10 hours including the night in the police lock-up. The FIR itself does not disclose the offence u/s 294 and 506 IPC.

The Commission's order is pregnant with all the connected issues along with observations very clearly made out that Shri P.P. Singh, IPS, SP, Tinsukia disobeyed the law with an intent to cause injuries to the victim and with a view to protecting his subordinates. It is highly an arrogant view of the department that the observation of the Commission does not appear to be correct in spite of the fact that the Commission had to make long and continuous correspondences for arriving at a factual report. Here note from the Police Headquarters to the Government vide their letter No. APHQRs/SPAC/33/2012/13 dtd. 12.07.2012 for exempting all SPs from appearance before the Commission and that SP, Tinsukia have been repeatedly called up by the Commission is a matter of record and exposes the attempt of

the officer to keep the vital records like General Diary away from the attention of the Commission. Obviously, it was to protect the subordinate and to cause injury to the victim.

The law of the land amply indicates that Superintendent of a district cannot absolve himself from the responsibility on day to day basis in respect of subordinate personnel and officials in the District Police. SP being a senior police officer is to perform duties assigned to him. The SP is a main spring of the district police. Duties and functions of SP is indicated in the Police Act as well as in APM Part-II. The charter of duties and responsibilities are elaborately restated, which cannot be relegated to the subordinate police. He has the overall superintendence. His subordinate may fail but he cannot for the sake of the duties and responsibilities to the public. It is unfortunate that concerned police failed to take action for violation of the orders under section 144 Cr.PC. How the police can expect that a citizen would honour police who failed to honour a citizen.

All things considered the Commission is of the opinion that it cannot review its order. The order is made absolute.

All concerned are hereby advised to take appropriate action as per law and advised to inform the Commission the progress of the actions taken from time to time.

7.19. SPAC Case No. SPAC/C/33/2012

Aditya Mundhra, Issa Building, Lalbanglaa Road, Tinsukia - Complainant
Vs

SI Chitta Ranjan Buragohain of Tinsukia Police Station

This proceeding arises out of a complaint received from the victim for serious misconduct against police personnel of Tinsukia PS vide complaint dated 31.3.2012. The complainant stated inter alia that on 27/03/2012 at about 9:30 P.M he went to purchase medicine, on his newly purchased Motor bike, when he reached Tinkonia of the Tinsukia town, Sri Chittaranjan Buragohain, S.I of Police Tinsukia signalled him to stop. He stopped accordingly and the S.I demanded documents of the motor bike. He handed over the documents, the invoice and insurance certificate of the motor bike. The Registration Certificate of the vehicle was yet to be received from the DTO, Tinsukia. The said Motor bike was purchased on 23/3/2012, from a local dealer, seven days before the incident and payments for registration and insurance were also included in the total cost of the Motor bike, which he paid stated the complainant.

The S.I insisted on production of the Registration Certificate of the Bike and snatched away the vehicle from the complainant and asked him to pay an amount of Rs. 2000/- for the release of the bike. The complainant reported that he would inform this matter to his higher authority and at the time when he was to make a move, the Sub-Inspector restrained him and started slapping him while using filthy words and there after took him into his custody to the Tinsukia P.S and lodged him in the Police Station lock-up.

The complainant asserted, further to the effect that the S.I lodged a false complaint against him alleging that the complainant obstructed the Sub-Inspector C.R Buragohain in discharging his duty and registered a Case U/S 353/294/506 IPC and he was forwarded to the Court on the next day at 2 P.M.

2. On receiving the complaint from Sri Aditya Mundhra, a notice was served to S.P. Tinsukia for submitting parawise comment and factual report along with supporting documents.

Sri Prithipal Singh, the S.P submitted his reply. The rejoinder was found to be incomplete, short of the relevant supporting documents of the case. However, the following documents were forwarded to the Commission along with the report.

- (A) Certified Copy of FIR of Tinsukia P.S Case No.- 190/2012 U/S 353/294/506 IPC
- (B) Xerox copy of signals of Police Guwahati
No.- C.15/2005/Vol.-XXV/33, dtd. 21/03/2012
No. C.16/2011/Vol.-VI/16, dtd. 23/03/2012
No. C.16/2011/Vol.-Vi/12, dtd. 22/03/2012
No. C.15/2005/XXV/76, dtd. 19/03/2012.
- (C) Certified copy of GDE No.- 1379, dtd. 27/03/2012
- (D) Copy of detailment register of Tinsukia P.S evening shift.
- (E) Xerox copy of Order of ADC Tinsukia order
No.- TMJ/2/2010/225, dtd. 16/03/2012.
- (F) Xerox copy of DTO's Memo No.- DTT/2553-062/2012, dtd.
04/02/2012
- (G) Copy of arrest memo and inspection memo.

3. On examination of the aforesaid enclosures as forwarded with the report found as follows :

Only GDE No. 1379 dtd. 27/03/2012 is furnished where details about detailment of officer, CRPF and APBn contingent as per duty register is not explicit with the duty register not indicating the detailment of the force personnel with their identifying particulars. GDE references regarding the

complainant Mundhra brought to the P.S, time of arrest, case registration etc were not furnished along with the report. Arrest memo and inspection memo were also found to be incomplete.

4. Second notice was issued to S.P Tinsukia to furnish a detailed report with supporting relevant documents like GD entries having relevance to the complaint within a week.

The Reply from the S.P Tinsukia as received vide his Memo No.- TSK/V/2012/7368, dtd. 27th May, 2012 was found fragmentary partial, and patchy. The S.P expressed his inability to submit the GD references as submitted vide his Letter No.- TSK/V/2012/669, dtd. 09/05/2012 regarding taking the complainant Aditya Mundhra into custody to the P.S, date and time of arrest, registration of the case etc were not furnished. The reply indicates attempt of the S.P to suppress facts from the Commission in order to protect the police officer and cover up the misconduct of the officer.

5. The Commission issued notice to the S.P Tinsukia to detail S.I Chitta Ranjan Gohain with the GD No. 1379 dtd. 27/03/2012 in original, C.D of Tinsukia P.S Case No. 190/12 and C.S No. 88/2012 dtd. 25/04/2012 to report before the Commission on 12/06/2012 at 11 A.M for personal hearing.

But S.P in his reply vide Memo No.- TSK/V/2012/7804 stated that the original C.D and G.D could not be sent to the Commission without approval of Hon'ble Court Vide Judgement in connection with W.P (C) No. 159 of 2011 and further submitted that the matter has been referred to Assam Police Headquarters for clarification and passing necessary instruction. On perusal of the S.P's report, the Commission issued notice for personal appearance of Shri P.P. Singh, IPS, S.P Tinsukia on 22/06/2012 at 11 A.M.

The Commission procured meanwhile a copy of the order passed in WP(C) No. 159 of 2011 from the Asstt. Registrar General (Judicial), Gauhati High Court. The said order has nothing to do with the present case.

6. S.P Tinsukia on 21/06/2012 vide his signal No.- TSK/V/2012/8075-78, dtd. 21/06/2012 requested to fix another date and expressed inability to attend on 22/06/2012 **due to agitational programme of Moran Students Union.**

The Commission perused the report and fixed date 03/07/2012 at 11 A.M and directed to report with the case diary along with the I/O of the case and respond to Commission's requirements from the General Diary and the case diary. Also directed that the General Diary in original should be handed over to the Commission for detail examination in the case and investigative action by

police as there is no restriction on the examination of the records by the Commission.

Sri P.P. Singh, IPS, Superintendent of Police, Tinsukia along with S.I C.R Buragohain attended the Commission at a later date. The Commission heard him in person. The allegation made by the complainant before the Commission is about high handedness and arbitrary action of the law enforcing agency. The FIR in Tinsukia P.S Case No.- 190/12 on the basis of which complainant was arrested under Section 353/294/506 IPC was brought to his pointed attention. The FIR prima facie did not disclose offences U/S 353/294/506 IPC. He was told so. He was also referred to the wrongful arrest of citizen, alluded the judgment of the Supreme Court passed in Joginder Kumar Vs State of UP as far back as on 24.04.1994 reported in (1994) 4SCC 260 – interdicting from arrest in a routine manner without reasonable justification – except in heinous offences arrest to be avoided. Copy of the judgment was also handed over to the officer for his guidance. The officer was also reminded of the Guidelines issued by the Police Headquarters vide IGP (CID) Memo No. CID XI/I-93/338 dtd 25.4.97. The arrest and detention of the complainant was tentatively found to be unlawful on the facts of the situation. The officer could not give satisfactory reply. He was asked by the Commission to justify the police action by referring to his records. He expressed his inability and said that the relevant records were not available with him. The Commission was not satisfied with such a plea.

The Commission in course of examining the serious allegation is entitled to look into the records and found it difficult to understand as to the reasons for inability of the S.P even to furnish duplicate copy of the G.D which are invariably kept with the Inspector of Police. Incidentally the Inspector of Police who is custodian of the duplicate G.D is the O/C of Tinsukia P.S. The local Court, it was reported by the SP did not spare the original copy of the GD. The Court order did not prohibit from furnishing of duplicate copy of the G.D. The reasons ascribed by the S.P are wholly untenable. At this stage the S.P stated that if an opportunity was provided, he would be in a position to provide copy of relevant documents. Accordingly the S.P sought for time to produce the same. The Commission was not happy with the conduct of the authority in suppressing the relevant records from the Commission. However, since he has sought for time, the Commission allowed 10 (ten) days time and he agreed to appear before the Commission on 17th July, 2012 at 11 A.M.

The S.P Tinsukia was informed to furnish the copy of the judgement No. WP (C) 159 of 2011, the copy of the order passed by CJM Tinsukia which was shown before the Commission on 03/07/2012 with reasons to state his inability to produce G.D and C.D before the Commission. The Commission

accordingly allowed the SP 10 (ten) days time and fixed the next date on his asking for fixing appearance. The Commission also reminded him for submission of the required documents. In reply the SP, Tinsukia informed the Commission stating that it was not possible to send the GD No. 1379 dt. 27.03.2012 in original and CD of Tinsukia PS Case No. 190/12 before the Commission in the wake of Judgement No. W.P (C) 159 of 2011 passed by the Gauhati High Court as well as order passed by the Learned CJM, Tinsukia as it would amount to violation of the order of the Hon'ble Court(s).

During the complaint being examined the Commission received the request on 13/07/2012 from Sri M. Agarwal, IPS, IGP (Logistics), Assam, Guwahati for exemption of personal appearance of SP, Tinsukia on 17.7.12 in the interest of maintenance of law and order in the sensitive district like Tinsukia which is in the grip of insurgency. The Commission also received request from SP Tinsukia made on 16.7.2012 for fixing another date **as he was unable to attend Commission on 17/07/2012 due to flood situation in the district.** The Commission however fixed next date for his appearance on 24/07/2012 at 11 A.M. The S.P Tinsukia further requested to fix another date after the Independence Day, 2012 as he was unable to appear on 24/07/2012 due to emergency Security scenario at Tinsukia.

On going through the communication from Police HQRs as received Vide No. APHQRs/SPAC/33/2012/13-A dtd. 12.7.2012, the Commission desired to have a meeting with the Director General of Police, Assam, Ulubari, Guwahati The Commission requested the DGP, Assam to make it convenient to attend at the Commission office at Ulubari on 19/07/2012 at 11 A.M. However, the DGP requested to fix another date after 15th of August, 2012 for the meeting. In course of time a meeting was held and the matter was deliberated upon.

A copy of the letter in question written to DGP, Assam by the S.P, Tinsukia vide NO. CB/TSK/2012/371 dated 09/07/2012 as referred to in the foregoing communication to the Government by the Police Hqrs was requested for perusal by Commission. Having received the communication furnished by IGP (L) vide Letter No. SPAC/APHQRS/33/2012/23, dtd. 30th July, 2012 where S.P, Tinsukia expressed "his inability to supervise each and every case and requested the DGP to take up the matter with the concerned authority" . The Commission viewed with utter dismay and seriousness - the contention of the SP that he was unable to supervise each and every case and requested the DGP to take up the matter with the Government. The Commission is much more astonished at the action of the Police Headquarters for mechanically endorsing the view of the Superintendent of Police and very promptly made a request vide their letter No. SPAC/APHQRS/33/2012/13, dtd. 12th July, 2012 highlighting

the subject as “*repeated appearance of Superintendent of Police of districts before the State Police Accountability Commission, Assam*”. The Commission also expressed its dismay on the issue with distortion of facts and misinformation as could be discernable from the foregoing para. As for instance, the General Diary is an instrument of transparency of police action as required under the statute and any pleading for keeping the GD away from the view of the Commission – an oversight body mandated for police accountability to law would amount to derailment of the generic change in police attitude and conduct as stipulated with the State Police Act, 2007 and therefore, the communication is seen as an abortive attempt to wreck the ship of reform and obfuscate the very aim of the Legislature to bring about accountability in police. On the contrary the Police Department ought to have suggested the Government to move the Hon’ble High Court to remove legal impediments if any that hinder the Commission and any other superior office of the Government kept out of the bounds of the General Diary in the interest of transparency and accountability.

From this act, it appears that the Police Headquarters is collaborating to shield the important police functionary like the District Superintendents of Police from the purview of the Police Accountability Commission in their accountability to law and procedures pleading dispensation of the Superintendents of Police District appearance before the Accountability Commission.

Needless to state, that the General Diary (GD) and the Case Diary (CD) are important indicators of Police performance in the matter of investigation under Section 44 of the Police Act, 1861 (since repealed) and Section 172 of the Code enjoin upon a Police Officer to maintain a diary.

Part-V of the Assam Police Manual prescribes the methodology of maintaining a General or Station Diary in Form 135 of Schedule XL (A), Part I. The Police Diary is to contain only the proceedings of the Police Officer. The GD is to be kept at all Police Station, outpost and beat houses. The Officer-in-Charge is responsible that it is punctually and correctly written. Every occurrence which is to be brought to the knowledge of the Police Officer, at the time at which it is communicated to the Station is to be recorded. The Diary under the Police Act is called a GD because of its contents, whereas the Diary required to be maintained under Section 172 of the Code is known as the Special Diary or the Case Diary.

An Accountability Commission is the creature of the Statute saddled with duties and responsibilities of ensuring Accountability to the Police in addition to the already existing mechanism. As a complaint Authority, it has to enquire into Public Complaint against Police Personnel for serious misconduct. The Statute is

entrusted with all the powers of Civil trying a suit under the Code of Civil Procedure, 1908 and in particular in the matter of :

- (a) Summoning and enforcing the attendance of witness and examining them on oath;
- (b) Discovery and production of any document;
- (c) Receiving evidence on affidavit;
- (d) Requisitioning any Public record or copy thereof from any office.

There cannot be any bar on production in a Civil Proceeding or in a writ proceeding particularly when the party seeking production is neither an accused nor an agent of the accused in the offence to which the Diary related (*Khatri IV v State of Bihar*)

Refusal of production of CD or GD before a Commission in the circumstances therefore cannot arise.

The S.P, Tinsukia sent Xerox copy of GDE dtd. 27/03/2012, 28/03/2012 and 29/03/2012 of Tinsukia P.S vide Memo No. TSK/V/2012/9903 dtd 01/08/2012 on long pursuation. The GD reveals;

- A) GDE No.1403 dated 27/3/2012 at 9:35 P.M indicates that S.I C.R Buragohain with his accompanied constable returned to the P.S having brought Sri Aditya Mundhra, 21 Yrs, S/O Gopal Mundhra of Lal Banglo Issa Building P.S –Tinsukia for arguing and obstructing police on duty and using abusive language with intimidation with his motor cycle to the police station and placed in the custody of the Sentry constable of the P.S and S.I Buragohain committed to the submission of FIR.
- B) Entry No. 1408 at 10:05 P.M reveals that constable 608 Shyam Moran detailed with reference to GDE No. 1400, 1403,1356 for medical examination of Aditya Mundhra, Sukhder Tanti.
- C) GDE No. 1411 at 10:30 indicates receipt of FIR from S.I Chitta Ranjan Buragohain, S/o Sri Rameswar Buragohain to the effect that at 9:45 P.M on date Sri Aditya Mundhra obstructed police on duty at Tinkonia Naka Checking Point with abusive languages and intimidation. Accordingly on receipt of the FIR Case No. 190/2012 U/S 353/294/506 IPC registered against Aditya Mundhra and S.I C. Milli is detailed for investigation.

- D) Entry No. 1423 at 10 A.M dated 28/3/2012 indicates that Aditya Mundhra, 21 Yrs, S/O Sri Gopal Mundhra, Lal Banglow, Tinsukia is arrested in Case No. 190/2012 U/S 353/294/506 IPC and S.I C. Milli having him interrogated and found him involved in the case arrested him.
- E) Entry No. 1436 at 13:00 Hrs dated 28/3/2012, records that UB Constables Gokul Chetry and Modan Das detailed to produce Aditya Mundhra in Case No. 190/2012 and Sri Parasu Ram Singh in Case No.-174 in the Court.

The Commission on examination of the GD found that Aditya Mundhra was taken into custody at 9:35 P.M on 27/3/2012 for alleged offences committed at 09:45 P.M and was sent for medical examined at 10:05 P.M on 27/3/2012. The Case against Aditya Mundhra was registered at 10:30 P.M on 27/3/2012 and he was arrested on 28/3/2012 at 10:00 Hrs and forwarded into custody at 13:00 AM on 28/3/2012.

Complainant Aditya Mundhra, S/O Sri Gopal Mundhra of Issa Building Tinsukia, Lal Bangla Road and witness Vishal Agarwal (23 Yrs) S/O Kanhayalal Agarwal of Khargeswar Road Tinsukia appeared before the Commission and Commission heard them in person and their statements were recorded.

Sri Vishal Agarwal (23yrs) stated that on 27/03/2012 around 9:45 P.M when he was on way from medical shop towards house he was stopped by police checking them near Tinkonia and was asked for documents and accordingly he showed them to S.I Chitta Ranjan Gohain but he detained him, and took him to the Police Station and kept till 11:00 P.M. But he was directed to report the Police Station on the next morning i.e as on 28/03/2012. Accordingly he came to P.S at 09:30 A.M on 28/03/2012 and appeared before S.I C.R Buragohain. He saw Aditya Mundhra in the lock up where he was. S.I C.R Buragohain wanted to know how he knew Aditya Mundhra and pressurised him to one of the associates of Aditya Mundhra. Afterwards S.I Buragohain obtained a signature in plain papers as well as in the arrest memo stating to be the relative of Aditya Mundhra and he was to leave police station. He further stated that he was present in the place of checking where Aditya Mundhra was detained by police party. He heard asking for money by S.I C.R Buragohain from Mundhra for releasing his bike. He was also taken to Tinsukia P.S along with his scooter where S.I. Chandan Milli was demanded Rs. 100/- for releasing the scooter. He refused to pay as demanded by S.I Chandan Milli.

Complainant Aditya Mundhra (22 yrs) stated that on 27/03/2012 near about 09:45 P.M when he was on the way to purchase medicine with his friend Arjun Verma on his newly purchased bike and on reaching Tinkonia he was stopped by the police team conducting checking. Bike was driven by his friend Arjun Verma and he was sitting behind. S.I C.R Buragohain asked for documents and he handed over all the papers of the bike received from the dealer and disclosed that the bike was purchased on 20/03/2012 and applied for R/C and paid all the fees required for registration and the same was mentioned for registration and the same was mentioned in the invoice bill of the bike. But S.I C.R Buragohain took the bike from him and went riding. He waited about 30 minutes there and S.I Buragohain returned informing him that his bike was at police station and if he wanted it he had to pay Rs. 2000/-. He refused to pay the amount and informed the officer that he got all appropriate documents. At this the S.I told him that he should not be taught law. Then complainant Mundhra told him that he would complain about this and at this S.I Buragohain started using slang words, caught hold of his colour, slapped him and took him to the police station and put him in the police lock up. Later on launched a false case on him stating that he obstructed S.I Buragohain from doing his duty and also forcefully took his signature on blank paper and threatened that if he make complaint against him (S.I Buragohain) he would implicate him in some serious case on the complaint and threatened to ruin his life. He was put into the lock up on the night on 27/03/2012 from 10 P.M to next day about 2 P.M. He begged for mercy from S.I Buragohain saying that he was suffering from Melina and undergoing treatment but the S.I refused. Because of his stomach trouble when he was sent to Tinsukia Civil Hospital he fainted there as he was not allowed to take any medicine in the P.S.

The complainant further stated that as reported by the S.P, Tinsukia to the Commission he was not a reporter of Purbanchal Prahari nor connected with any media. He did not say anything illegal to S.I Buragohain. He obeyed the Police Officer S.I C.R. Buragohain who took him to the police station in his INDICA car and put him in the lock up.

The Commission heard Inspector Juga Kt. Bora, O/C Tinsukia P.S and I/O S.I Chandan Milli. A questionnaire made out to the O/C. Who replied that he detailed a police staff for duty as per detailment register but could not furnish the name and particulars of the police personnel. It was also not written in the G.D. In his reply he stated that the accused was taken into custody at 09:35 P.M on 27/03/2012 vide GDE No. 1403 and a case was registered at 10:30 P.M on receiving the FIR from S.I C.R. Gogoi vide No. 190/12 U/S 353/294/506 IPC. The case was endorsed to S.I Chandan Milli for investigation. Aditya Mundhra was detained in connection with Case No.- 190/12 and was sent to Civil Hospital Tinsukia on 27/03/2012 at 10:05 P.M for medical check-up. Inspector

J.K. Bora, O/C registered the case and supervised but no supervision report submitted to his superior. The OC has refrained from replying as to whether the period between taking Aditya Mundhra to PS at 09.35 PM on 27.03.12 and his arrest at 10 AM on 28.03.2012 amounts to wrongful confinement. He served the arrest memo after Aditya Mundhra was arrested having found him in the PS.

S.I Chandan Milli stated that he was the I/O of Case No. 190/12 and he charge sheeted the case on 25/04/2012 vide C.S. No. 88/12. However, he disclosed that Tinsukia P.S Case No. 190/12 was registered by O/C Tinsukia P.S on 27/03/2012 at 10:30 P.M and endorsed to him for investigation. He arranged medical examination of Aditya Mundhra on 27/03/2012 at 10:05 P.M and arrested him on 28/03/2012 at 10 A.M. The formalities of issuing arrest memo were done on 28/03/2012 at 10 A.M at police station as the accused was found in the P.S. He examined S.I C.R. Buragohain who brought Aditya Mundhra to P.S on 27/03/2012 at 09:30 P.M.

On consideration of all the relevant records and statements, the Commission found the police action amounted to wrongful restraint and confinement to Aditya Mundhra, the complainant of SPAC Case No. 33/2012.

We have already indicated about the complaint/FIR lodged by SI Buragohain dated 27.3.12. The full text of the complaint is set out below:

“I have the honour to report that while I was executing Naka Checking Duty today evening at Tinkonia at about 9.45 P.M. one Sri Aditya Mundra who claimed to be press correspondent of Purbanchal Prohari Driving two wheeler Hero Honda Karizma Bike was found and asked to stop for checking. But he challenged me with dire consequences saying that he is from press and should not be checked even though he is not having the number plate of the vehicle and abused me using unparliamentary and filthy language and harassed me and my checking party comprising of CRPF and UBC with violent nature obstructing in discharging of our duties as deputed for.

I therefore pray your honour to kindly take necessary action.”

Needless to state that FIR is the basis of a criminal proceeding. On bare perusal of the FIR it did not disclose any offence u/s 353/294/506 IPC at best it disclosed contravention of the section 36 of the Motor Vehicle Act, if at all it could be punishable u/s 192 of the M.V. Act It did not give the police power to arrest a person for such offence. The FIR alleged that the person concerned abused the complainant with unparliamentary and filthy language and harass “one and any” party i.e. second party comprising of CRP and UBC with

violent nature obstructing the discharge of our duties” . Mere use of unparliamentary and filthy language does not amount an offence u/s 294. The complainant only abruptly stated that the accused person abused with unparliamentary and filthy language. The test of obscenity to display the acts or words with representation of shame to be idea of sexual and morality as was observed by Cockburn C.J. in Queen V Hicklin 1868 (3Q B360) the test of obscenity is “ whether the tendency of the matter is charged as obscenity is to deprave and corrupt those, whose minds are open to such immoral influences” The words uttered must be capable of arousing sexually impure thoughts in the minds of the hearers (Chacko George Vs State of Kerala – 1969- Kerala Law Time 219) That apart the Said act must cause annoyance to others. Without annoyance the act would be no crime. The alleged obstruction in the manner alleged more so when the complainant was fortified and protected with CRPF and UBC persons is inherently improbable. Mere asking not to check the vehicle of allegedly of a Press person and instead alleged challenging person who said the challenge to the party for harassing and using purported unparliamentary and filthy language also does not amount an offence u/s 354. Seemingly basic ingredients of assault or abusing police force are not disclosed in the FIR. The complaint also does not disclose an offence u/s 506.

In the set of circumstances the arrest of a person is found to be arbitrary and unauthorised which is a serious misconduct under the Assam Police Act 2007. In this context it would be appropriate to refer to the decision of the Supreme Court in Joginder Kumar Vs. State of UP and others (reported in 1994 4 SCC.60) The Supreme Court while referring to the Third report of the National Police Commission observed that “ no arrest can be made because it is lawful for the police officer to do so. The existence of power to arrest is one thing. The justification for exercise of it is quite another. The Hon’ ble Supreme Court also cited at the report of the third National Police Commission where it set out the circumstances where;

- (i) The case involves a grave offence like murder, dacoity, robbery, rape etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror-stricken victims.
- (ii) The accused is likely to abscond and evade the process of law.
- (iii) The accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint.
- (iv) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.

Police Hqrs also issued guidelines in terms of the judgment referred to above vide Notification No. IGP/1/1/93/338 dtd 25.4.97.

On consideration of all aspects of the matter, it is found as follows:

(a) The S.P. Tinsukia Mr. P.P. Singh, IPS has endorsed his view of illegal action of his subordinates- SI C.R. Buragohain, Inspector J.K. Bora and SI Chandan Milli and disobeyed direction of law. The SP also framed an incorrect record and submitted a written report with intention to save S.I. C.R. Buragohain, Inspector J.K. Bora, SI Chandan Milli from punishment. The SP has further disobeyed law with intent to cause injury to the victim of illegal police action – complainant Aditya Mundra.

(b) SP has also resorted to the strenuous method of concealing the illegal act of confinement of the complainant by taking plea of he being restrained by the Court order for not producing the relevant G.D.Es of Tinsukia P.S and to choose not to appear before the Commission for clarification of the connected issues. He has also been instrumental to non-appearance by the O/C Tinsukia P.S. before the Commission at the first instance.

(c) Grounds for his inability have differed in the correspondences to the Commission for exemption to appear and not limiting to the temporary non-appearance, the S.P has been the instrumental to the Police HQrs' communication with request to the Govt. to spare S.Ps from appearing before the Commission in flagrant disobedience to the SPAC set up under the statute for Police Accountability to law..

(d) The S.P, Tinsukia, thus, appears to have abetted the illegal act of the S.I C.R Buragohain, O/C Inspector J.K. Bora and in the perfunctory investigation of the Case No.190/12 by S.I Chandan Milli. The SP by his conduct in relation to the complaint has failed to demonstrate his duties, responsibilities as enumerated in the Assam Police Act Rule 47 and the connected duties and function under the provisions of Police Manual part II renders himself to be liable u/s166/217/218 IPC for his shirking of responsibilities as head of the District Police.

(e) His communication to the Police Headquarters as discussed above reveals an ominous design to over throw the reform and the generic change in the duties, functions and responsibilities of a District Superintendent of Police with absolute integrity, honesty and diligence to his duties. The Commission viewed with concern that the SP, Tinsukia Shri P.P. Singh, IPS has acted in an unbecoming manner and conduct as District Superintendent of Police. He has abetted the unlawful act of his subordinate thereby involved himself in knowingly disobeying the lawful direction of the law thereby causing injury to

person, disobeying the direction of law to save person from legal punishment and in framing incorrect record indicated in Sections 166/217/218 of the IPC. The Commission, in the set of circumstances is inclined to issue such direction to the Govt. of Assam as well as the DGP, Assam to initiate a departmental action against the S.P, Tinsukia. The Commission further directs the DGP, Assam to initiate steps for registering FIR against S.I C.R Buragohain U/S 342/166/217/218 of the IPC and initiate D.P in addition. The Commission also directs the DGP to initiate D.P against Inspector J.K Bora of the Tinsukia Police Station for the misconduct mentioned above. The Govt. of Assam as well as the Director General of Police may submit their respective views and additional facts if any that may have a material bearing on the case within three weeks of the receipt of the order to ensure the Commission to finalise its opinion and finalized the order dated 05.03.2013.

7.20. SPAC Case No. 18/2012

Complainant: Mr. Akbar Ali, Sub Inspector of Police, Dhubri.
-Vs-
O/C Dhubri PS.

A complaint filed against the illegal and arbitrary action amounting to serious misconduct in violation of section 78(1) of the Assam Police Act, 2007 on the part of O.C Dhubri P.S, TSI Mr. Pranjal Sarma and the I/C of Dhubri TOP by complainant Mr. Akbar Ali Sub Inspector of Police resident of Jhgrarpar, Dhubri.

On receipt of the complaint the Commission registered a case and a factual report was sought from Supdt. of Police, Dhubri.

The matter relates to land dispute between complainant and one Mr. Dilbar Mollah. Mr. Mollah in collusion with the aforesaid police personnel illegally trespassed into his plot and severely beat his brothers and brother-in-law causing grievous injuries. That the aforesaid police personnel also arrested his brother in a false FIR after the incident, in order to strengthen their position as well as to legalise their action. The complainant submits that the dispute is purely civil in nature and Mr. Mollah instead of taking recourse to the Civil Court, forcefully grabbed his land with the active support of the aforementioned police personnel and the said police personnel also caused injuries to his relatives under the influence of power which is clear violation of the law as well as serious misconduct on the part involved police personnel.

The Supdt. of Police Dhubri, in his report submitted to the Commission states that that investigation has been on. After the investigations of the cases are complete, finality of the allegations brought against the police officer would emerge. The report has indicated, however, that the OC, Dhubri is not found.

Action on the complaint is being pursued.

7.21. SPAC Case No. 19/2012

Complainant: Md. Abdul Aziz, S/O Majibur Rahman of
vill.- Kawadanga, Darrang.

-Vs-

SI Sahjahan Ali

Md. Abdul Aziz of Vill- Kawadanga P.S Dhula under Darrang district lodged a complaint at Dhula P.S on 12/10/2011 against Head Master Sohrab Ali of Pachim Kawadanga L.P School and President Abdur Rahman school managing committee misappropriating food etc. supplied by the Govt. in the name of take student of the school. The complainant also opposed the name of Abdur Rahman for President of new managing committee for which the accused persons threatened him and put pressure on him to withdraw the case he had lodged at the PS.

The complaint the Commission registered a case and directed S.P Darrang to submit a report for the reason as to why the investigation of Dhula P.S Case No. 228/11 could not be completed within stipulated time and the present status of the case supported by relevant documents.

Accordingly S.P submitted his report informing that the present I/O of the case arrested the FIR named accused Sohrab Ali, Abdur Rahman, Abu Shama and Lal Miya. The case is pending for non receipt of injury report of the complainant from Mangaldoi Civil Hospital.

After perusing the report, the Commission summoned S.I Sahjahan Ali of Panbari O.P, to appear before the Commission to record of his statement and on report recorded his statement. The SPAC case has been disposed in view of departmental action initiated against SI Sahjahan Ali. The Commission expressed displeasure at the indifferent attitude of the SP, Darrang Mr. Jitmal

Doley in his effort to provide protection to the sub-Inspector for his perfunct investigational act.

7.22. SPAC Case No. 21/2012

Complainant: Shri. Prakash Sarma, Secretary General, Sadharon Jati Bikash Parisad, Asom, Dispur

-Vs-

Shri S. Singh, I/O, Dispur P.S

One Sri Prakash Sarma, Secretary General, Sadharan Jati Bikash Parisad, Asom, Dispur, Guwhati filed a complaint before the Sr. S.P, City, Ghy with a copy to the State Police Accountability Commission alleging that Sri S. Singh, Investigation officer of Dispur P.S misbehaved with Sri Mitradev Sarmah, the founder General Secretary of Asom Jatiyatabadi Yuba Chatra Parisad who is also noted social activist on 07/03/2012. The said officer summoned Sri Mitradev Mahanta to the Dispur P.S in connection with Rent of the house where Sri Sarmah is residing. In Police Station the police officer not only misbehaved with Sri Sarmah but also accused him being a fraud and therefore the complainant requested the authority to take action against the Police officer.

7.23. SPAC Case No. 24/2012

Complainant : Smti Meghali Rajput
W/O Sri Utpal Barman, H. NO. 64,
Near Lakhimandir, Rukminigaon, Ghy. 22.

-Vs-

O/C Dispur PS.

Smti. Meghali Rajput of Rukminigaon, Guwahati-22 lodged a complaint before the Commission against police harassment and illegal action of Dispur Police Station officials including the O.C Dispur P.S as well as the I.O of the case along with the DSP of the Division.

In her complainant she stated that she got married to one Sri Utpal Barman aged 32 yrs at her own will on 13/12/2011 at Kamakhya Temple. As her parents were against the marriage, her father lodged a complaint at Dispur P.S alleging that she was kidnapped by said Utpal Barman. The Dispur police picked them up on 13/12/2011 at 10:30 P.M and kept at the P.S for the whole night. On the next day her husband was forwarded for judicial remand, even though she repeatedly stated before the police that she was not kidnapped. The police also kept her in the police station till 9 P.M of 14/12/2011. She alleged that the DSP, O/C and I.O of the case are involved in framing and harassing her husband and the complainant.

After perusing the complaint, the Commission registered a case and asked SSP, City, Guwahati, to furnish a report into the complaint. The Commission having examined the complaint and other police records issued the following order:

One more case of police harassment against woman has been reported. The complainant at the relevant time was 23 years, undergoing Master Degree course in the Gauhati University. It was asserted by the complainant that on 13.12.2011 she was married to a person following all religious rites with her free will. She also asserted that the family of her parents was unhappy with the marriage, as a result lodged an FIR in the Dispur Police Station on 13.12.2011 for kidnapping. As per the complaint police came to the Rukminigaon residence and from there she along with her husband was taken to the Dispur Police Station at 10.20 PM on 13th December, 2011. They were kept for the night in the Police Station. Police even took her for medical examination but she refused. The next day they were produced before the Judicial Magistrate, Kamrup and remanded to the judicial custody. She made a statement u/s 164 Cr.PC. From the court she was taken to the PS where she was confined till 9.00 PM and after that she was allowed to go. She lodged complaint to the Dy.SP, Dispur Division but no action was taken.

We called for the report. Reports received from the authority supported her statement. The materials on record indicated that Addl. SP conducted enquiry on this matter wherein it was found that the lady was a major. The FIR itself indicated that she was also 23 years of age. The FIR did not disclose the essential element of section 366 of the IPC. In the instant case, the police itself conducted a thorough probe. The report also indicated that the complainant stated in her statement that she was 23 years of age and married the person at her will. The Addl. SP's report also clearly spelt out that it was a misadventure. The police in hot haste took this action which is contrary to law. Addl. SP in his report also mentioned that it demands action to be taken by the police as per DGP's circular No. 6 dtd. 09.04.2010.

Considering all the aspects of the matter we are of the view that the competent authority is proceeding in the matter seriously as per law. We hope and trust that the police authority will take necessary action as per law since it amounts to infringement of human rights. With this, we close the proceeding.

7.24. SPAC Case No. 25/2012

Complainant: Smti. Swapna Deka, D/O Lt. Jogendra Deka,

R/O & P.S Fatasil Ambari, Dist- Kamrup (Metro).

-Vs-

SI Bipin Ch. Kalita, Fatasil Ambari PS.

A complaint received from Smti. Swapna Deka of Fatasil Ambari, Guwahati against S.I Bipin Ch. Kalita of Fatasil Ambari P.S. In her complaint she stated that the complainant along with her mother Smti. Pranita Deka, sisters Miss. Twinkle Deka and Smti Puja Deka were staying in a dwelling house constructed by her father during his life time. A case (non FIR) was registered U/S 107 CrPC by her own married sister Smti. Papu Kalita & her husband. On 11/04/2012 S.I Bipin Ch. Kalita along with police force and Smti. Papu Kalita entered their residence. The S.I directed the complainant to stop construction work but when she objected and asked the S.I to show order in this regard, her sister Smti. Papu Kalita started assaulting her and used filthy languages while her sisters came to her rescue, the S.I came in between and assaulted her and her sister Puja Deka, Twinkle Deka. Thereafter they were detained in police station. It is also alleged that though she lodged a complaint against her married sister at the Fatasil Ambari P.S a Case No. 158/12 registered but S.I Bipin Chandra Kalita has not arrested the accused persons.

After perusing the complaint the Commission called for a report from the Sr. S.P, City, Guwhati. Both OC and the IO were heard in person.

It is a case of civil dispute. The police officers have intervened without lawful authority and did not register a case of cognizable offence relating to assault. The complainant has been illegally restrained and detained in Police Station, which is offence committed by both the Police Officers.

7.25. SPAC Case No. 26/2012

Complainant : Smti. Manju Dutta, Odalbakra,
Dispur P.S, Kamru (M) Dist.

-Vs-

O/C Dispur P.S

Complainant Smti. Manju Dutta filed a complaint before the Commission alleging inaction of O/C Dispur P.S for compliance of CJM's order and requested to issue suitable direction to the police to act upon urgently.

A case was registered accordingly and after examining the complaint the Commission is of the view that since the matter is subjudiced in the Court, the Commission decided to close the proceeding.

7.26. SPAC Case No. 27/2012

Complainant : Pankaj Maheswari
 -Vs-
 O/C Narayanpur PS, Lakhimpur

The matter emerged from a complaint received from one Sri Pankaj Maheswari of Bihpuria Town of Lakhimpur district against S.I Bhimkanta Pegu O.C Narayanpur P.S, and ASI Jogen Saikia of Narayanpur Police Station, accompanied by other police personnel for police harassment/assault/blackmailing and restraint at the P.S on the matter complainant's vehicle involved in the accident with a Verna car.

The Commission registered a case No. 27.2012 and called for a detailed report from the S.P Lakhimpru with parawise comments and accordingly S.P Lakhimpur submitted his report.

The Commission has examined the report and the OC, SI Bhimkanta Pegu. The Commission has not found act of misconduct on the part of the OC and his staff.

7.27. SPAC Case No. 30/2012

Complainant: 1) Radhika Shah
 2) Gayatri Shah, D/O Sri Ramchandra Shah,
 Vill.- Pan Engti, P.S Howraghat,
 Dist.- Karbi-Anglong.
 -Vs-
 Howraghat Police

The Commission received a complaint under signature of Miss Radhika Shah and Miss Gayatri Shah, both daughters of Shti Ramchandra Shah of Howraghat Dist- Karbi-Anglong for the alleged police inaction on the complaints lodged before the O/C Howraghat P.S on different dates and so on. According to the contents of the application, the complainants alleged threatening, inhuman and barbaric torture inflicted on them at the instance of Sri Khan Singh Enghti through Benu Rangpi & others to grab the land owned and possessed by their father. As the Police Authority have failed, to protect, therefore, the complainant, approached State Police Accountability Commission praying for directing the concerned police authorities to take necessary action against the culprits and arrange to provide protection and safety to their life and property and to take action against the Police officers.

On receipt of the complaint, the Commission registered a case and called a factual report on the complaint from the Superintendent of Police, Karbi-Anglong and accordingly S.P, Karbi-Anglong submitted his report which was inquired into by Dr. Sadique Alo Ahmed, APS, Addl. S.P.

The matter having been examined is found to have elements of serious misconduct for not registering the complaints and investigates with due seriousness by OC, Howraghat, SI Pankaj Kalita.

7.28. SPAC Case No. 31/2012

Complainant: Juri Saikia
-Vs-
ASI Rajani Saikia of Amguri PS.

One Smti. Juri Saikia of Hilaidarigaon under Amuguri P.S of Sivasagar filed a complaint against ASI Rajani Saikia of Amuguri P.S for harassment.

A case was registered and notice was issued to the S.P Sivasagar, to submit a factual report on her complaint and accordingly S.P submitted his report.

After examining the report the Commission did not find any material of police misconduct hence decided to close the proceeding.

7.29. SPAC Case No. 32/2012.

Complainant: Smti. Guna Prava Deori, Lakhimpur.
-Vs-
Narayanpur PS. Lakhimpur

A complaint received by the Commission on 08/05/2012 from one Smti. Guna Prava Deori of Kundil Nagar P.S Narayanpur of Lakhimpur district against S.I Bhimkanta Pegu, O/C Narayanpur and ASI Jogen Saikia Narayanpur P.S and Sri Iswar Sharma Bharali Principal Madhabdev College. Narayanpur for causing undue harassment to Sri Munindra Nath Deori, husband of the complainant by illegally detaining him in judicial custody on a false ejarah lodged by Sri Iswar Sharma Bharali.

On receipt of the complaint the Commission registered a case and directed the S.P Lakhimpur to submit a detailed report.

The report of the S.P Lakhimpur of the S.P Lakhimpur reveals that a land dispute between complainant's husband Sri Munindra Nath Deuri and Madhabdev College authority is continuing since long. The matter is now sub-Judice in the Hon'ble Gauhati High Court and Hon'ble Assam Board of Revenue. On receipt of a written ejarah from Shri Iswar Sharma Bharali, Principal & Secretary, Madhabdev College, O/C Narayanpur P.S registered a case vide Case No. 40/2012 and investigated and accordingly he was arrested and forwarded to Judicial custody. Latter the case was charge sheeted vide C.S No. 33/2012. After completion of investigation of the case is ended in C.S vide C.S No. 36/2012 dtd. 21/05/2012. During enquiry it is found that the allegation levelled against S.I Bhimkanta Pegu, O/C Narayanpur P.S, and ASI Jogen Saikia is mistake of fact.

7.30. SPAC Case No. 33/2012

Complainant : Shri Aditya Mundhra, Issa Building,
Lalbanglaa Road, Tinsukia.

-Vs-

S.I Citta Ranjan Buragohain, Tinsukia Police Station.

One Shri Aditya Mundhra of Tinsukia filed a complaint before the Commission alleging serious misconduct against police personnel of Tinsukia P.S stated that on 27/03/2012 at about 09:30 when he went to purchase medicine on his newly purchased Motor bike S.I Citra Rnjan Buragohain of Tinsukia P.S signaled him to stop at Tinsukia of the Tinsukia Twon and demanded documents of the motor bike. Though he handed over the documents of the motor bike to the S.I as demanded but the S.I insisted on production of the Registration Certificate and snatched away the Motor bike from him and asked him to pay an amount of Rs. 2000/- for the release of his bike. As he refuse to pay and when he was to make a move, the S.I restrained him and started slapping him using filthy words and there after look him into his custody to the Tinsukia P.S, and lodged him in the P.S lock-up. The complainant further stated that the S.I lodged a false complaint against him alleging that the complainant obstructed the S.I in discharging his duty and registered a case and then he was forwarded to the Court on the next day.

On receiving the complaint from Shri Aditya Mundhra, a notice was served upon S.P Tinsukia, for submitting para wise comments and factual report along with supporting documents.

The S.P Tinsukia, submitted his report as called for by the Commission and examining the report and other relevant records and the concerned police officials, the Commission has issued order as follows:

7.31. SPAC Case No. 34/2012

The matter emerged from a complaint received from one Sri Nabin Saikia, resident of Bhalukpara Gaon P.S- Tingkhong of Dibrugarh district against the police harassment/assault/demanding money and forwarding him to jail custody by S.I Dipak Baishya of the Tingkhong P.S. The complainant in his complaint stated that his daughter was kidnapped by one Sri Bhaskarjyoti Hazarika and as per his FIR Police arrested the accused person and forwarded to the Judicial custody. The said S.I Dipak Baishya demanded Rs. 20,000/- (twenty thousand) from him saying that if he fails to pay the amount the case would end in final report.

On receipt of the complaint, the Commission registered a case and asked S.P Dibrugarh, to submit factual report with para wise comments on the complaint petition.

The S.P Dibrugarh submitted his report and denied the allegation of demanding money by the said S.I as the accused person had been forwarded to jail custody and the submission of Final Report depends on the evidence found during investigation and not at the liking of the I/O.

The complaint is under examination of the Commission and investigation locally in view of the divergent nature of statement and report. The Commission is incapacitated in the investigation at the farflung areas of the State due to manpower and other resource crunch.

7.32. SPAC Case No. 36/2012

Complainant : Inspector (T) Hemanta Barman.
32nd Bn SSB Howly, Dist.- Barpeta.
 -Vs-
 S.I Bitupan Chutia
 I/C of Pathsala Police O.P.

A complaint was received from Inspector (T) Hemanta Barman, 32nd Bn SSB Howly against S.I Bitupan Chutia, I/C Pathsala O.P for Police in-action on FIR submitted by him on 22/02/2012 and harassment made by the police to him and family members.

On receipt of the complaint the Commission registered a Case vide No. SPAC/C/36/2012 and directed Supdt. of Police, Barpeta to submit parawise comments along with related case records.

As directed, the S.P. Barpeta, submitted his report along with relevant documents of the case records. In his report it is admitted that the action taken by S.I Bitopan Bhutia, I/C Pathsala O.P. not as per law and at his initiative the case was registered. Necessary departmental proceeding has already been initiated.

7.33. SPAC Case No. 38/2012

Shri Debabrata Saikia MLA Nazira LAC has brought to the notice of the Commission that the police of Simuloguri P.S have been harassing general public and requests the Commission to take appropriate action against such harassment.

The Commission forwarded the compliant to the Director General of Police, Assam for enquiry and to take appropriate measures from his end with intimation to the Commission.

No communication has been received from the police Headquarters as yet.

7.34. SPAC Case No. 39/2012

Complainant Miah Chand of Chirakuti P.S Fakirganj Dist.- Dhubri lodged a complaint before the Commission against the O/C Fakirganj P.S as well as S.P Dhubri for non registering of CR Case No. – 2492/2011 for corruption & mis-appropriate of fund under MGNREGS and non investigation of Case No. 2492/2011.

A report was called from S.P Dhubri. S.P Dhubri, who admitted that the complaint received through the Ld. Court of CJM, Dhubri Vide CR No. 2492 dtd. 21/06/2011 was unattended by the O.C Fakirganj P.S and kept the petition pending without any action. A D.P vide 12/2012 has been drawn up against S.I Jogendra Nath Deka for his negligence towards lawful duties in the registration and investigation of the case.

The Commission has heard the SI and also called for relevant records. The Commission has found SI Jogendra Nath Deka guilty of serious misconduct and issued direction accordingly.

7.35. SPAC Case No. 40/2012

Complainant :

Smti Bina Pani Das.
W/O Lt. Kulendra Kr. Das, R/O Karnachal,

Silpukhuri, P.S- Chandmari, Guwahati
 -Vs-
 Chandmari P.S

One Smti Bina Pani Das, Kornachal Silpukhuri, Guwhati filed a complaint before the Commission that her elder son Deba Kr. Das died in a mysterious circumstances at his residence at Kornachal, Silpukhuri on 07/01/2012. She claimed that her son's death was unnatural. She alleged that the police without any investigation registered a UD Case and sent the dead body for Post Mortem examination. The police have not investigated about the mysterious death of the deceased properly. She lodged a complaint into the matter at the Chandmari P.S, but no action seems to be taken.

On receipt of the complaint the Commission registered a case and called for a detail report from SSP, City, Guwahati.

It is pending for further examination of police records.

7.36. SPAC Case No. 41/2012

Complainant : Md. Islam Ali
 S/O Safed Ali, Vill- Kalitakuchi,PS- Hajo,
 Dist : Kamrup(Rural).
 -Vs-

O/C Sualkuchi PS.

The brief of the complaint is that the complainant went to the Sualkuchi PS. to ascertain as to whether one Jitu Deori visited the PS. Where the O/C Sualkuchi PS. asked him to pay Rs. 1500/- to catch the aforesaid Jiten Deori within a day.

7.37. SPAC Case No: 42/2012

Complainant: Anita Mandal, Prop. M/S Anita Enterprise Rly
 Colony,
 -Vs-

O/C Tinsukia Police Station, Dist: Tinsukia.

Brief of the complaint is that Miss Anita Mandal is proprietor of M/S Anita Enterprise who opened a C.C loan A/c no 830 with Dena Bank, Tinsukia Branch for facilitation of drawl of a loan of Rs.3,00,000/-(3lacs).The Dena Bank issued her a cheque book for withdrawal of the amount. The aforesaid accountant Sri Raj Kr.Roy obtained her signatures on some blank cheques on the said cheque book on the bank premises itself saying that he would write down name of the payee in the bank signed cheque quoting amount and date

accordingly as her requirement as when the withdrawal would be required. He then retained the cheque book with a assurance that it would be safe to keep in the bank. Said accountant Mr.Raj Kr. Roy informed Miss. Anita Mandal in the month of Oct 2006 that the cheque book was missing and as such she would be issued with second cheque book. The accountant issued 2nd cheque book and also 3rd cheque book. Thereafter in the month of July 2008 the said bank issued her a notice to the effect that her C.C. loan A/c had become seriously irregular. Then she approached the bank for issuing her a computerized statement on 15.08.2008, and she found that the amount of Rs.1lacs was cleared on 02.03.2006 to C.N.Enterprise. On her enquiry, she came to know that Rs.1lacs connected by Gramin Bikash Bank,Tinsukia Branch on behalf of the said C.N.Enterprise and she stated that she never issued the cheque no.605103 as shown in the statements of the A/c of the C.N.Enterprise and another amount had been shown withdrawn on 09.03.2006 of Rs.20,000/- issued to her without her knowledge. This has regarded clear cut in her mind that Sri.Raj Kr. Roy mis-appropriated the said amount of Rs.1,00,000/-(1lacs) and 20,000/-(twenty thousand) in her A/c.

Hence she lodged a complaint before the O/C of the Tinsukia Police Station on 16.01.09 for taking necessary action for the guilty person. Tinsukia police registered a case no.57/09 u/s 408/409/IPC and SI Nabin Borbora arrested one Mithun Dutta and forwarded him to the judicial custody with a speaking forwarding report. The investigation refers that cheque no 605103 for Rs. 1lacs was issued in favor of N.G.Enterprise and not in favor of C.N.Enterprise. Some of the bank employee was found involved in the offence. The bank employees including Sri.Raj Kr. Roy not were arrested even after 3years since the date of FIR and police has also failed to file charge sheet. Hence the complainant is seeking immediate appropriate steps to complete the investigation and submitted the charge sheet with necessary directions to Tinsukia Police.

7.38. SPAC Case No. 43/2012

The case is initiated on a complaint filed by Smti. Sadhana Singh, W/O Bikram Singh of Station Road, Duliajan, Dibrugarh District alleging serious misconduct of blackmailing, extortion, intimidation etc. against the Officer-in-Charge of Duliajan Police Station.

The Commission called for a factual report from the S.P Dibrugarh. After careful examination of the report from the S.P Dibrugarh, the Commission disposed the complaint with direction to the competent authority is to forthwith register an FIR against the O/C S.I B.K Barman for not registering the complaint lodged by the complainant.

Detail of order passed/direction issued at 7 (order of the Commission)

7.39. SPAC Case No.- 44/2012

Complainant: Babul Hussain, S/O Ali Husssain,
R/O Jogipam, Dabalipara, P.S & Dist- Barpeta.

-Vs-

S.P. Barpeta and other police officials of Barpeta.

Complainant Babul Hussain filed a complaint before the Commission stating that while he went to the Barpeta Town for marketing one Husmat Sikdar and Abdul Malek (known as police informer) told him that Addl. S.P called him to the S.P's office Barpeta to discuss some matters. He went to the S.P's office. They asked him to stay at the canteen of the office. After some time S.P Barpeta went there and take him to the Police Reserve and detained him in the lock up from 28/12/2011 to 03/01/2012 without any reason. On 03/01/2012 a case was registered against him at Barpeta P.S vide No. 1417/2011 and sent him to jail for judicial custody. After lapse of two & half months he was released in bail from the jail custody. Complainant therefore seeks justice from the Commission and to take action against the police officers who had been harassing him on false ground.

The Commission registered a case and directed the S.P Barpeta to submit factual report and para wise comments on the complaint.

The S.P Barpeta submitting his report stated that the complainant was arrested on 03/01/2012 in connection with Barpeta P.S Case No. 1417/2011 registered in dacoit in the NRL Petrol ump on Howly-Barpeta Road on the night of 25/12/2011. The matter was already enquired into by the IGP rank officer as per direction of the Assam Human Rights Commission.

7.40. SPAC Case No. 45/2012

Mr. Nripen Ch. Nath of Narengi Tiniali, P.S- Panikhaiti, Guwahati filed a complaint petition before the Commission against police harassment of Panikhaiti O.P officials. In his allegation brought against the police is that police personnel were trying to evict him from the land, legally occupied by him in connivance with one Nagen Borkataki who himself demands that the land belonged to him.

On receipt of the complaint, a case was registered and asked S.S.P, City, Guwahati, to submit a report.

The Sr. Supdt. of Police, City, Guwahati, caused an enquiry into the allegation through Addl. S.P, I/C Chandmari Division, and submitted his findings before the Commission. The allegation raised by the petition against the police officials for involving themselves in land grabbing is absolutely false and perverse, the report indicates. The officials of Panikhaiti O.P. is in no way accountable for any wrongful act as police has discharged their duties as per procedure as laid down in law.

The Commission is however examining the report for further action to be taken.

7.41. SPAC Case No. 46/2012

Complainant : Md. Azmat Ali
S/O Lt. Abdul Kader, Vill.- Dighir Pam,
P.S Baghbar, Dist.- Barpeta

-Vs-

S.I (UB) Razibur Rahman, I/C Mandia O.P. and ASI Pradip Chandra Kumar, Mandia O.P.

A complaint received by the Commission from one Azmat Ali of Barpeta on police torture/harassment and illegally detained him at the Mandia O.P with his son without any reason on 02/06/201 against a false complaint submitted by one Mrs. Rezia Khatun, an employee of No. 46 Anganwadi Centre under Vill-Digirpam, Mandia. However on 03/06/2012 on public demand they were released from the P.S. The Complainant lodged a memorandum before the S.P Barpeta against Police harassment and to take action against I/C Mandia O.P and Rezia Khatun.

The Commission registered a case and directed the S.P Barpeta to submit a report into the complaint. The Commission examining the report as submitted by the S.P Barpeta, to take follow up actions including the local investigator.

7.42. SPAC CASE NO. 47/2012

Complainant: Smti. Rashmi Jha, Mumbai.

Smti. Rashmi Jha filed a petition asking information about the progress of the case filed at the Dispur PS. vide Case No. 857/09. The complainant also approached RTI authority seeking the same information. But as she could not

get any suitable reply from the Sr. S.P, City, Guwahati she requested the Commission to submit a reply about present position of the case.

The Commission examining her complaint for logical end of her complaint.

7.43. SPAC Case No. 48/2012

Complainant : Sri. Pradyut Ch. Dutta, s/o Lt. Prafulla Ch. Dutta.
Nazira Town, ward no. 10, PS- Nazira, Dist: Sivasagar.

-Vs-

O/C Nazira PS.

Complainant Sri. Pradyut Ch. Dutta filed a complaint before the Commission which received on 22.06.2012 against O/C Nazira PS. The brief of the case is that he lodged a complaint before the Hon'ble CJM Sivasagar, against one Sri. Dharmeswar Das, Inspector of supply for illegal seizure of 20(twenty) of APL rice from his fair price shop on 30.04.2011. Hon'ble CJM Sivasagar was pleased to forward his complaint to the O/C Nazira PS to investigate the matter and to take action and to submit FF accordingly. But the O/C, Nazira PS have not taken any positive steps, only doing routine formalities on the complaint. Being not satisfied with the action taken by O/C complainant therefore approaches the Commission to ensure substantial justice to him.

A case was registered and directed the SP, Sivasagar, to submit a comprehensive report on the matter and accordingly SP. Sivasagar, submitted his report which is under examination of the Commission.

7.44. SPAC Case No. 49/2012

Complainant :- 1) Sharaf Uddin Laskar
2) Iqbal Bahar Laskar, S/O Lt. Tayamul Ali
Laskar Vill.- Vichingeha, Pt-I, P.S &
Dist.- Hailakandi

-Vs-

Hailakandi Police Station.

The complainant brought it to the notice of the Commission that S.I Sublata Purkayastha S.I FR Barlaskar and Smti. Shilpi Begum of 21 Assam Battalion presently posted under Hailakandi P.S threatening the complainants and trespass over their land with an intention to grab their titled land. Though they submitted FIR before the authority concerned no action taken due to under influence by the said police officer.

Under the above circumstances, the complainants requested the Commission to cause a fair and impartial inquiry into the matter and to take necessary legal and departmental actions against the above named police personnel.

The Commission registered a case and examining the complaint.

7.45. SPAC Case No. 50/2012.

Complainant: Shadial Haque of Goalpara

-Vs-

Lakhimpur PS.

Shadial Haque S/O Lt. Karim Borkha of Goalpara have lodged a complaint before the Commission alleging against the investigation officer of Lakhimpur police Station Case No. 299/2011 u/s 143/447/448/427/379 IPC for willfully & malafidely non-investigation and non-arresting the accused.

Heving received the complaint the Commission has issued notice to the SP. Goalpara vide notice no. SPAC/c/50/2012/2 dtd. 03.07.2012 to submit factual report from the SP. Goalpara and accordingly SP. Goalpara submitted his report vide no. GLP/2012/crime/3652 dtd. 23.07.2012.

The report received from SP. Goalpara under examination of the Commission.

7.46. SPAC Case NO. 51/2012.

Complainant : Smti. Anima Dutta.

-Vs-

Amguri PS, Sivasagar.

Complainant Smti Anima Dutta, W/O Lt. Akanti Dutta of Vill-Kukurawowa Adarsha Gaon P.S Namti Dist.- Sivasagar filed a complaint before the Commission alleging that on 18/04/2012, Amguri police personnel went to her residence in search of his son Monoj Dutta. As she told police personnel that his son Monoj Dutta was not staying with her since long back. The police personnel assaulted/misbehaved with her. Even they tried to take her minor son to the P.S by force. So complainant approached the Commission against the involved police personnel of Amuguri P.S. to take action.

On receipt of the complaint, the Commission registered a case and directed S.P Sivasagar to furnish a factual report supported by relevant GD

Entries and case records. The S.P Sivasagar submitted his report and stated that the Police personnel of Amuguri P.S went to the residence of complainant to enquire into a written FIR submitted at Amuguri P.S by one Sri Kamal Gogoi stating that on 08/04/2012 unknown culprit stolen away his two mobile handsets. During search police recovered one mobile hand set with the sim and it was duly seized by the police in presence of witness. The accused Monoj Dutta fled from the house taking advantage of darkness, however after sustained efforts police apprehended the accused Monoj Dutta on 21/04/2012 and forwarded to the judicial custody. Police also recovered the stolen mobile phones from tea garden on being led by him. The police team has denied the allegation made by Smti. Anima Dutta and the police search the house as per provision of law. More over neighbor also stated that Sri Manoj Dutta on habitual offender. The allegation brought against the Amguri Police Station could not be proved.

The Commission examining the report and relevant records as submitted by the S.P Sivasagar.

7.47. SPAC Case No. 52/2012

Complainant: Sri Amrit Knowar, S/O Lt. Bapukan Knowar,
R/O Gandhi Nagar, Makum, Dist.- Tinsukia
-Vs-

Sri Simanta Bora, O/C Makum P.S.

Sri. Amrit Knowar of Makum filed a complaint before the Commission against torture by O/C Makum P.S upon him and his son. The brief of the complaint is that complainant was running a dhaba business as a livelihood in the name and style of "Arunachal Dhaba" standing over the plot of land belongs to PWD by the side of NH 37 at Makum since last 15 years. The O/C of Makum police station put pressure upon the complainant to remove the said dhaba from the location, otherwise he will implicate him in false criminal case upon complainant's son. The complainant stated that in active support of O/C Makum P.S one Sri Harish Kumar Agarwal and others trying to evict him from the land whereupon his dhaba is standing on. The said O/C of Makun P.S wrongfully detained complainant and his son on 07/07/2012 for more than 3 hrs., misbehaved them by using slang language. Thereafter the said O/C continuously was harassing them in the interest of his own gain.

On receipt of the complaint, the Commission registered a case and directed SP Tinsukia, to furnish a report against the allegation brought against the police. The report does not address the complaint on the fact and deviations of police action from rules and law. It is primarily an issue to be dealt with by the Civil Court. The OC, Makum PS appears to have acted on the behest of the land lord but not on law.

7.48. SPAC Case No. 53/2012

Complainant : Smti. Himani Barua, Baihata Chariali.
 -Vs-
 O/C Baihata Chariali.

Smti. Himani Barua, W/O Girin Baruah vill- Bhihdia under Baihata P.S of Kamrup (Rural) District filed a complaint against Officer-in-Charge Baihata P.S for non-registration of her complaint.

The Commission registered a case and called for a report from the Superintendent of Police, Kamrup (Rural) and accordingly S.P submitted his report clearly indicated the lapses on the part of the O/C Baihata Chariali P.S. for not registering the complaint at the appropriate time. The report also apprised the Commission that action has already been initiated against the O/C.

As the S.P already taken action on the matter, the Commission decided not to proceed further with direction to the S.P to furnish action taken report against the concerned officer.

The proceeding thus stands closed.

7.49. SPAC CASE NO. 54/2012

Complainant: Md. Majiruddin Ali, Udalguri (BTAD)
 -Vs-
 Udalguri Police station.

On receipt of the complaint from Md. Majiruddin Ali of Udalguri against police inaction to arrest the accused person Commission called for a detailed report from the Supdt. of Police Udalguri. Supdt. of police submitted his report along with supported documents. The police acted upon the Hon'ble High Court order. The accused get bail from the Hon'ble High Court. The Commission do not find any justification to continue with the proceeding, hence the proceeding stands closed as there is no mis-conduct in the part of the police.

7.50. SPAC Case No. 56/2012

Complainant : Govinda Paul, S/O Sri. Rabindra Paul, Ushamati

Doom-Dooma, Town, Dist: Tinsukia
-Vs-
Doom-Dooma Police.

The brief of the complaint is that Doom-Dooma Town Committee with the help of Doom-Dooma Police forcefully demolished his boundary wall and also digging trench in his land in his absence. Commission registered a case and having examined the matter and finding it not within the purview of the Commission did not process. Hence, the case is filed.

7.51. SPAC Case No. 57/2012

Complainant: Sri. Dulal Bora, Basistha, Guwahati.
-Vs-
O/C Basistha PS.

Shri. Dulal Bora of Basistha , Guwahati lodged a complaint before the Commission alleging inaction of Basistha Police Station Personnel int the FIR submitted by him on 10.01.2012 and 19.06.2012 respectively.

Having received the complaint, the Commission has issued notice to the SSP Guwahati City for filing his report in response to the complaint copy or which has also been sent to the SSP. Guwahati City vide Commission notice no- SPAC/C/57/2012/2 dtd. 06.08.2012. as per direction SSP Guwahati City submitted his report vide no. V/LC-2/17.12-SPAC)/2/9786 dtd. 03.09.2012.

The SSP's report has not addressed the complaint. It is a common ploy of the OC to register a case to obviate the serious misconduct but investigation is neither done nor grounds are made under the provision of Cr.PC 157(2)

7.52. SPAC Case No. 58/2012

Complainant : Mustt Saira Begum Borbhuyan
Vill.- Manikpur, P.O Rajnagar
P.S- Silchar, Dist.- Cachar
-Vs-
S.I Abul Kalam Azad,
I/C Arunachal Police O.P, under Silcar Sadar P.S

Complainant lodged a complaint before the Commission against S.I Abul Kalam Azad, In-charge of Arunachal Police O.P under Silchar Sadar P.S for refusing to register FIR, demanding bribe publicly by and threatening the witnesses and mis-utilization of power as a police officer.

The Commission registered a case and issued to notice to the S.P Cachar to submit a detail report on her allegation lodged.

Complainant Saira Begum Barbhuyan lodged a written FIR on 03/03/2011 at Silchar P.S, through the Hon'ble Court against her husband interalia alleging that she had been subjected to mental and physical torture by her husband demanding dowry and another complaint that she had lodged on 13/05/2012 to S.I Abdul Kalam Azad I/C Arunachal O.P against her husband and other for criminally trespassing into her house and assaulting her son and daughter in law but the I/C Arunachal O.P did not take any appropriate steps into her FIR and demanding bribe of Rs. 2 (two) Lakhs to take strong action against the named accused persons and if she fail to do so he will register a false case against her.

The S.P Cachar, submitted his report as called for by the Commission intimating that departmental action was initiated against the delinquent SI, I/C of the Out Post for non-registering the case on verbal information which ought to have been reduced to writing u/s 154 Cr.PC.

7.53. SPAC Case No. 59/2012

Complainant : Miss. Maromi Gogoi,
D/O Sri Krishna Kanta Gogoi,
R/O Patharkuchi, Koinadhara
P.S- Basistha, Guwahati
Dist. Kamrup (Metro).
-Vs-
O/C Basistha Police Station.

Complainant Miss. Maromi Gogoi filed a complaint before the Commission that one Sri Nityananda Mili resident of Uday Nagar Khanapara P.S Basistha is trying to harass her family and her brother by lodging a false case against her nephew Sri Sumoni Gogoi aged about 8 (eight) years old stolen laptop and Mobile phone. The Basistha police detained the minor boy his mother Smti. Dulumoni Gogoi and his father Sri Parashmoni Gogoi at the P.S for the whole day and later on her brother was sent to the jail custody through Court. When complainant went to the P.S on 13/08/2012 to lodge complaint for inhuman physical torture of a 8 (eight) years minor boy Sri P.K. Das, ASI, Basistha Police Station refused to accept her FIR and got her out from his office room.

Hence the complainant approached the Commission to make a high level enquiry into the matter seriously where her brother Sri Parashmoni Gogoi

was illegally detained and illegal inhuman physical torture meted upon her nephew Sri Soumoni Gogoi and refusal to accept her FIR stated 13/08/2012 and to appropriate necessary action against the officer-in-charge and ASI Sri P.K Das.

The Commission on receipt of the complaint registered a case and the case is under investigation.

7.54. SPAC Case No. 60/2012

Complainant :- Sri Roshanlal Agarwalla
S/O Lt. Banowarilal Agarwalla
Jayhing Koilman Tea Estate, North Lakhimpur
-Vs-
I/C Jayhiing O.P, North Lakhimpur.

Shri Roshanlal Agarwalla, a Fair Price Shop dealer lodged a complaint before this Commission that I/C Jayhing O.P under North Lakhimpur P.S harassing and seized shop articles i.e stock registers, bags of rice, Atta and Sugar illegally against the provisions of law laid down in the Essential Commodities Act. The brief of the case is that about 5 months back a group of youths demanded Rs. 10,000/- from him and on refusal to pay the amount they threatened him with dire consequences. The same group of people on 05/08/2012 came to his shop and forcefully tried to obtain register book and to open the godown. As per advice of the F&CS officials he lodged an FIR at Jayhing Out Post, and the North Lakhimpur police registered a case vide No. 525/2012 U/S 385 IPC corresponding to GDE No. 69 dtd. 05/08/2012 and arrested two persons and were released on bail. But to his utter surprise on the same day at the instruction of O/C North Lakhimpur P.S, the I/C Jayhing O.P locked the shop and seized the noted articles.

Under the circumstances stated above, the complainant made prayers before the Commission to look into the matter so that the concerning police officers who crossed the limit of their duties by doing illegal acts be punished accordingly.

The Commission registered a case vide No. SPAC Case No. 60/2012 and directed S.P North Lakhimpur to submit a factual report.

The complaint was enquired into by the Addl. S.P (HQ), Lakhimpur and submitted to the Commission by the S.P North Lakhimpur. In his report it is stated that on a complaint received against illegal supply materials being stored in the shop of complainant and as per direction of Circle Officer North Lakhimpur police seized the materials from the shop and to verify the same in consultation with the Food & Civil Supplies Department for taking further necessary action.

The Commission is examining the report whether due procedure under the relevant Act was followed and pending for further order.

7.55. SPAC Case No. 61/2012

Complainant :- Sri Jayanta Kr. Das, S/O Lt. Prasanna Kr. Das
Polo Field, Bamungaon, P.S Tezpur, Dist.- Sonitpur
-Vs-
S.I Ranjit Kakati (TSI), I/O of Tezpur P.S Case No. 1233/2011

Sri Jayanta Kr. Das of Tezpur lodged an FIR at the Tezpur P.S in regard to his Maruti 800 vehicle NO. AR-01-B-3577 which was stolen during the night of 05/11/2011. The Tezpur P.S registered a case vide No. 1233/2011 U/S 379 IPC. Complainant thereafter visited a number of times and met the I.O of the case to enquire about the stolen vehicle but the vehicle could not be recovered. As the vehicle could not be recovered, the complainant requested the I.O to issue a copy of Final Report of the case so that he can approach the Insurance Corporation with his claim. Though he brought it to the notice of the S.P Sonitpur but failed to evoke any response for which complainant filed a complaint before the Commission for justice in the matter.

On receipt of the complaint the Commission registered a case vide NO. SPAC 61/2012 and directed S.P Sonitpur to submit a report and also to ascertain as whether he had received the complaint.

S.P Sonitpur submitted his report and stated that allegation made by the complainant that he filed a petition in his office but no such record was been found at his office. However as per case registered vide Tezpur P.S Case No. 1233/11 U/S 379 IPC the I/O S.I Ranjit Kakati (TSI) has made every possible effort to nab the culprits and to recover the stolen vehicle. Commission directed S.P Sonitpur to furnish specific status report. The report indicates that the FR was submitted to the Court on 27.9.12 taking long almost nine months after the case was returned in FR on 31.12.2011 by the I.O.

7.56. SPAC Case No. 62/2012.

Complainant : Smti. Puja Devi, D/O Sri. Santa Raj Chouhan of Dharma Nagar, PS :
Bokoliaghat, Dist: Karbi Anglong
-Vs-
O/C Hojai PS, Nogaon District.

Brief of the complaint: Complainant Smti. Puja Devi filed a complaint before the Commission against the O/C Hojai PS for dereliction of duty in failing to register the FIR she lodged at the police station. On receipt of the complaint, the Commission called for a report from the Superintendent of Police, Nogaon who submitted his report. At the intervention of Superintendent of Police Nogaon, one case has been registered. After examining the report the Commission directed SP Nogaon to take appropriate measure against O/C Hojai PS for non-registration of the case in violation of provision u/s 154(1) and to inform the Commission about action taken.

7.57. SPAC Case No. 63/2012

Complainant : Kumar Amrit Sarkar, D/O Shri Bijoy Krishna
Sarkar, Uzanbazar Col Road, Guwahati, Dist.- Kamrup
(Metro).

&

Smti. Sanalembi Devi, District Coordinator,
Women in Governance, SDS, C/O Rajib Hazarika, House
No.- 4, Madhuban end Govt. Press Road, Guwahati-21, Dist.- Kamrup (Metro)

-Vs-

District Police and Silchar P.S. officials

A complaint submitted before the Commission by the above named complainant against negligence in performing duty as well as non cooperation, misuse of competent power, refusal to register the complaint on 12th August, 2012, after registration of the said case lethargic casual and inhuman way of investigation of a gang rape incident at Silchar.

The brief of the case is that an 11th August, 2012 at around 5 P.M, Kumar Sonia Sarkar, D/O Shri Bijoy Krishna Sarkar, aged about 16 Yrs Younger sister of complainant No. 1 was kidnapped, put in a vehicle & thereafter raped and badly beaten and thrown from the moving car by Shri Dibyendu Jyoti Kar and other three unknown persons. Later on she was found by source local people near Sadar Ghat Bridge, Silchar in a naked and senseless condition and given her cloth to cover her naked body. The victim there after went to her aunt's home but did not disclose to any one that she had been gang raped out of fear. However her aunty informed the guardian at Guwahati that something has happened to her but she is not disclosing in front of them.

Next day on 12th August, 2012 her sister came to Silchar from Guwahati and went to the Silchar Sadar P.S with the victim and other relating to register a case, but the police officials present at the Police Station instead of

registering the case demoralized them by asking unnecessary questions. Later on 13/08/2012 in the late evening hours they with the victim girl went to the Silchar Sadar P.S and filed a written FIR which was registered vide Silchar P.S Case No. 1603/2012 and investigation is on.

The Commission registered a case on receipt of the complaint and directed the Director General of Police, Assam to furnish him factual report and accordingly Deputy Inspector General of Police (SR), Assam, Cachar enquired into the matter and submitted his enquiry report to the Commission on 16/10/2012.

The report indicates that the investigation of the case has almost been completed and ready for charge sheet. Police arrested Shri Dibyendu Jyoti Kar and other three accused persons who committed the sexual assaults on roadside along Udarbandh road viz. Latu Miyan, Bulbul Laskar, Md. Sebuluddin Gazi and recovered the personal belonging.

7.58. SPAC Case No. 64/2012.

Complainant : Md. Safikul Islam, S/O Md. Jamsher Ali.
Vill- Nadir kash PS. Dolga, Dist: Darang.
-Vs-
Incharge Lalpool OP.

The brief of the complaint is that the complainant running a Video Cinema Hall at Lalpool Chowk as per permission granted by the Darang District Authority subject to the Condition and restriction of Assam Cinema Regulation Act.1913. In spite of having all valid documents, the I/C of Lalpool OP. very frequently visited his Cinema Hall and demanding money on day to day basis otherwise he will stop running of the Video Cinema Hall. On refusal to pay the amount as demanded by the I/C, he locked the Cinema Hall for which complainant suffered heavy loss. On receipt of the complaint, Commission registered the case and directed the Supdt. of Police to submit a detailed report. On examining the complaint and the report, the Commission dropped the complaint for further proceeding in view of the intervention of the Hon'ble High Court in the issue.

The case is pending for examination.

7.59. SPAC Case No. 65/2012

Complainant : Bibhu Bhushan Deb Roy,

President, Sri Sri Shani Mandir, Parichalana Committee, Ambikapatty, College Road, Silchar.

-VS-

Officer-in-Charge Silchar Police Station.

The complainant Shri Bibhu Bhushan Deb Roy stated in his complaint that some anti-social elements made effort to grab the land of Shani Mandir by demolishing the RCC structure of the Shani Mandir on 02/03/2012 with the intention to remove the deity there from and in the process while moving the deity forcibly, one of the arms of the deity was broken. The local people raised their voice of protest against such illegal activities of the accused persons and filed FIR against accused persons and his associates. But the police neither visited the spot and cause any investigation and rather patronized the accused persons for obtaining anticipatory bail from the Hon'ble Gauhati High Court.

In the light of above facts and circumstances the complainant filed petition before the Commission to look into the matter and direct the investigating officer & O/C Silchar P.S to investigate the cases impartially so that the culprits cannot escape punishment for the offence committed by them.

Commission registered a case and directed Supdt. of Police, Cachar to submit report. The report indicates that the Police had been taking action at the right earnest and investigation of the cases registered in the issue is nearing to their end.

7.60. SPAC Case No. 66/2012

Shri. Jitu Dutta of vill Deogharia , PS. Gaurisagar, Dist. Sivasagar have lodged a complaint before the Commission alleging harassment/blackmailing/forwarding him to the judicial custody without any reason. He was released on bail as per order of the Hon'ble High Court, Gauhati. Later on it has come to his knowledge that he was arrested against an FIR lodged at Gaurisagar PS. by members of the AASU. Though complainant filed an FIR at the PS no action was taken. Therefore the complainant has approached the Commission to cause an enquiry into his complaint and to take action against the O/C Rupjyoti Dutta.

Having received the complaint the Commission has issued notice to the SP. Sivasagar for filing his report and in response to the complaint copy of which has also been sent to the SP. and accordingly SP. Sivasagar submitted his report vide his memo no.SVR/CB/12/SPAC/575 dtd. 19.10.2012. It is a case of defying dictat of a group of AASU activist blocking the National

Highway 37 by the complainant and the OC illegally taking him into custody and confinement.

7.61. SPAC Case No. 67/2012

Complainant :- Nurjahan Begum, D/O Nur Hussain Alo of Tulamati
P.S Baihata Chariali, Dist.- Kamrup (Rural).

-Vs-

O/C, Baihata Chariali PS.

A complaint received from Mustt. Nurjahan Begum of Tulamati under Baihata Chariali P.S. to the effect that accused persons namely... assaulted her husband causing grievous injuries. Though she lodged FIR at Baihata Chariali P.S on 26/07/2012, Police had neither investigated nor arrested the accused persons for which accused persons moving around freely threatening them with dire consequences. Under the circumstances complainant approached the Commission to initiate action against the erring police officials of Baihata Chariali P.S. and appropriate relief to the complainant.

On receipt of the complaint a case was registered and issued notice to the S.P Kamrup (Rural) to furnish a report on the complaint as submitted by Smti. Nurjahan Begum.

The S.P Kamrup (rural) submitted a report which was enquired by the Sub Divisional Police Officer, Rangia informing that the allegations made by Nurjahan Begum have not been found to be based on fact and O/C of the Baihata Chariali P.S has taken all legal actions on the complaints made by the complainant.

The matter havng been examined appears to be violative of the provisions u/s 154 (1) Cr.PC for non-registering the case at the first point of time besides faulting by the OC in non-registering a case of 'a frey' before he left for the place of occurrence.

7.62. SPAC Case No. 68/2012

Complainant : Md. Abdul Munnaf
S/O Lt. Sirajl Islam, R/O Amolapatty Mirzabag, P.S &
Dist.- Dibrugarh.

-VS-

Police Personnel of Amolapatty Police Out Post.

Complainant Md. Abdul Munnaf filed a complaint petition before the Commission that 09/09/2012 five police personnel of Amolapatty Out Post, Dibrugarh took him to the Out Post and assaulted him right and left with the rifle causing fracture to his hand and finger. The police personnel also assaulted his son on his arrival at the O.P right and left causing grievous injuries on his son and threatened to lodge a false case against them. Though he lodged FIR at Dibrugarh P.S and informed the Supdt. Of Police, Dibrugarh no action was taken. Therefore, the complainant requested the Commission to take necessary action against the aforesaid personnel.

Hence, on receipt of the complaint, the Commission registered a case and issue notice to the Supdt. of Police, Dibrugarh to submit report. The Commission has observed that the police personnel of Amalapaty O.P., Dibrugarh Traffic Police Unit have abused their position which the SP, Dibrugarh has failed to appreciate in terms of the provisions of law and procedures. The matter is under close examination.

7.63. SPAC Case No. 69/2012

Complainant: Subhas Ch. Deb Roy, Hailakandi

Complainant brought certain allegation against DI. of school Hailakandi. The complaint petition is returned to the complainant to move with the appropriate forum as the complaint is beyond the pale of the Commission.

7.64. SPAC Case No. 70/2012

Complainant :- Sri Amit Prasad/S/O Sri Lalan Prasad,
R/O A.T. Road, Panitola P.S & Dist.- Tinsukia

-Vs-

S.I Bhaskar Kalita, I/S Panitola O.P

Complainant lodged a complaint before the Commission stating that on 17/18/2012 at about 7 P.M S.I Bhaskar Kalita came to his grocery shop with one of his associates and asked him to put signature on a blank paper and they forcefully obtained my signature but after some time the said S.I went back to his shop and slapped him and tried to take him out with them in their car. But because of the presence of neighbours, the police official failed to do so – though the complainant complained it to the S.P Tinsukia no action was taken against the S.I Bhaskar Kalita for which complainant filed this complaint to take necessary action from the Commission.

The Commission registered case SPAC Case No. 70/2012 and asked S.P Tinsukia to submit a detailed report.

The complaint was enquired into by the Dy. S.P (HQ) Tinsukia and S.P submitted his enquiry report to the Commission denying all the allegations made by the complainant against the S.I Bhaskar Kalita, I/C Panitola O.P.

The Commission has considered the S.P's report to be incomplete and in haste, it failed to address the material part of the complaint and directed the S.P to submit a comprehensive report along with the relevant documents.

The report of the S.P, Tinsukia having been examined has denied once again the allegations, although the action of the SI Bhaskar Kalita is seemingly a gross irregular, illegal to have acted without registration of case. The I/C of the Police Out Post cannot search for things merely acting on "a secret information" without laid down procedure and rules framed under the law. The matter is ready for disposal. submitted comprehensive report along with the relevant documents.

The case is pending for order of the Commission.

7.65. SPAC Case No. 71/2012

Sri. Nanda Ram Gogoi, a retired police personnel of Rachipathar PS. Moran, Dist: Dibrugarah, filed a complaint petition against Sanjiv Kr. Barhai SDC, Moran and staff of the Circle Office on in different attitude shown to him when he approached, the Circle Office on landed property matter. Commission advised the complainant to approach the appropriate forum as the complaint is not under preview of the Commission. The original complaint has been returned to the complainant.

7.66. SPAC Case No. 73/2012

Smti. Banani Goswami, Legal Coordinator, wing-Assam, Shivi Development Society, C/O Purva Bharati Education Trust Torajan, Kakotigaon, Jorhat filed a complaint against Durlov Medhi O/C Lichubari for negligent attitude and changing section from 326 IPC to 323 IPC.

Commission after examining the complaint and other related police records and as the police have already charge sheeted the case, advised the complainant to move before the Court for corrective measure. The complaint along with the documents returned to the complainant.

7.67. SPAC Case No. 74/2012

One Smti. Bipul Kr. Das of Dokhin Dolijolia, Dergaon of Golaghat district by enclosing a paper cutting of news published in Asomiya Pratidin in Dibrugarah edition dtd. 24.09.2012 under caption “Jaminor namot dolilot likhai lole bidhoba matriri mati veti” and requested the Commission to make enquiry into the matter against O/C Borholla PS.

The Commission on examining the complaint is of the view that the complaint does not fulfill the legal requirement for intervention by the State Police Accountability Commission. The informant may seek for corrective measure before the Court, the Commission has observed

7.68. SPAC Case No. 75/2012

Md. Harejuddin Ahmed,
P.S Dhula, Darrang
-Vs-
O/C Dhula P.S.

Complainant Md. Harejuddin Ahmed filed a complaint before the Commission alleging that her daughter Hasnara Yasmin committed suicide after being raped by 8 (eight) accused. Before the death her daughter made dying declaration, police has not taken any action to arrest the accused persons. Having received the complaint Commission registered a case and directed the S.P Darrang to furnish detail report Vide No. SPAC/Misc/Part III/2012/4 dtd. 24/08/2012 and accordingly S.P Darrang furnished his report vide No. V/SPAC/2012/7029 dtd. 28/08/2012. The report is incomplete

The report is under examination of the Commission

7.69. SPAC Case No. 76/2012

Complainant :- Smti. Jili Bhuyan of Kakapather, P.S- Kakapather,
Dist.- Tinsukia.

Complainant Smti. Jili Bhuyan filed a complaint before the Commission that her son Sri Indrajit Bhuyan was taken into custody by O/C Kakapather on 05/09/2012 at 3 A.M without showing any reasons, in the name of interrogation. The O/C Kakapather P.S took her son on police remand for other

three days as ordered by the Ld. CJM Tinsukia. Complainant in her complaint alleged that the innocent youths like her son are unnecessarily harassed and tortured by the police in the name of militants under the command of O/C Kakapather P.S and the Addl. S.P Tinsukia. The complainant also moved before the Hon'ble High Court, Gauhati, with prayer for bail for his son and accordingly Hon'ble High Court observed that the forwarding report is totally silent to reflect that the accused himself is a militant. No arms and ammunition or any documentary evidence like demand note etc. was recovered from his possession etc, etc. in view of the prayer for bail is accepted.

Though her son had not committed any offence even after that he had been made a criminal by police. Not even only his son but so many innocent youths have been facing physical, mental and financial tortures due to wrongful acts, conducts and behavior of the police officers like O/C Kakapather P.S and the Addl. S.P, Tinsukia.

Therefore the complainant humbly prays to the Commission to do the needful so that no innocent person will be harassed in future and to take legal action against the police officers.

Complaint has been registered and the S.P Tinsukia, is directed for furnishing a detailed report into the allegations brought against the Police officials.

On receipt of the complaint from the Commission, the S.P Tinsukia, conducted an enquiry into the allegations brought against O/C Kakapather & other official by Addl. S.P (s) Tinsukia and submitted his findings to the Commission. The enquiry officer submitted his report that the allegations made against police officials had no corroboration with ground realities and seem to be fabricated to serve some ulterior designs. The growing menace of ULFA specially that of Rohendra Moran @ Guli Asom, has been made possible due to the active involvement of individuals like Sri Indrajit Bhuyan and his associates who victimize innocent citizens by working with ULFA while posing as ordinary citizens.

The issue is under examination of the Commission.

7.70. SPAC Case No. 77/2012

Complainant :- Sri Jogen Das, S/O Lt. Khata Ram Das, R/O
Rukmininagar, H. No.- 88, Dist. Kamrup (Metro).

-Vs-

Dispur Police officials.

Sri Jogen Das of Rukmininagar, Guwahati filed a complaint before the Commission alleging that on 27/10/2012 police personnel from Dispur Police Station came to his house and took away his daughter namely Rima Das (22 yrs) Rinku Das (19 yrs) and minor daughter's namely Kritismita Das (16 yrs) Juktamukhi Das (12 yrs) and other relatives present including a pregnant lady to the police station and locked the house and the entrance gate of the house. Later on his minor daughters were released on 28/10/2012 after being detained for more than 30 hrs. the house is still kept under lock & key by the police of Dispur P.S.

On receipt of the complaint the Commission registered a case and directed the Sr. S.P, City, Guwahati, to submit a factual report within 3 (three) days along with personnel appearance before the Commission on 05/11/2012.

As per direction, the Sr. S.P personally appeared before the Commission and also furnished a status report as called for. The report indicates that complaint submitted by the complainant is not based on facts and the police has acted on an order of the Court. No.3 I/C, Civil Nazarat Kamrup, Guwahati in connection with Case No. T. Ex 7/12 where the O/C Dispur was directed to depute S.I of the P.S for assisting in delivering Khash possession of land and in presence of staff of Dist. & Session Judge Court & other police officials the possession was given to Sri Sadhan Das.

The complaint is under enquiry and examination.

7.71. SPAC Case No. 79/2012

Complainant:- Shipra Dey
V/S
O/C Haflong Police Station, Dist:- Dima Hasao.

Brief Of The Complaint : On 28/03/2012 at about 6pm the complainant's son Liton Dey of Haflong Dima Hasau Assam made an accident near Dima Hasao Autonomous Council, Rotary Point without any damage to public property hurting any human being he fell down from the bike and got up at own. When he is about to move to his home the police rider with escorts who arrived on the spot and took him to the police station and put into lockup. The complainant Smti.Shipra Dey with her family member on receipt of the information went to Haflong Police Station, and wanted to know about the incident and wanted her son in their custody. But the O/C, of Haflong Police Station, and SI did not release on bail her son as requested. Her son Liton Dey fell unconscious while in police custody and died on the following day at

6.10am in Haflong Civil Hospital after being admitted by police. Hence the complaint.

It is seemingly a case of custodial death having refused to enlarge the deceased to his father when approached to the OC who ought to have released the boy receiving head injury in a motorbike accident. The complainant is being pursued for detail investigation.

8 : COMMISSION'S DIRECTIONS/OBSERVATIONS (TO THE POLICE DEPARTMENT/GOVT.)

During the year under report, the State Police Accountability Commission disposed 40 (forty) complaints and issued directions for 5 (five) Criminal Proceedings involving 16 police officers and 9 (nine) Departmental Action involving 14 (fourteen) police officers. The list of the police officials is Annexed at 8 (a) and 8(b).—

8 (a) Criminal Proceedings

Sl. No.	SPAC Cases	Name of Police officers
1	15/2008	1)S.I (UB) Saidul Islam 2) S.I (UB) Lalit Buragohain 3) Inspector of Police and O.C Geetaagar P.S. 4) DSP (Chandmari Dvn) 5) Addl. S.P (Crime) City, Police 6) Sr. S.P, City, Ghy.
2	Case No. 07/2009	1)S.I M.C Nath, O/C Tangla P.S 2) ASI H.C Nath I/C Tangla P.S 3) Hv. C.K. Handique 4) Const. Dhanraj Chetri 5) Const. N.R Biswas 6) Const. Prahlad Kalita 7) Const. Chandra Gogoi.
3	Case No. 23/2010) S.I D.K Saikia
4	Case No. 50/2010)Sri B.K. Mishra, IPS IGP(P)
5	Case No. 43/2012	1)S.I B.K. Barman.

Total number of cases 5 Nos.	Total numbers of police officers involved 16 Nos.-
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8(b) Departmental Action

Sl. No	Departmental Action	Name of police officers
1	Case No.15/2008	1)S.I(UB) Saidul Islam 2) S.I(UB) Lalit Buragohain 3) Addl. S.P (Crime) City, Ghy. 4)DSP Chandmari Dvn. 5) Inspector of Police.
2	Case No. 47/2008	1)S.I D.N. Dev, I/C Satgaon O.P
3	Case No. 07/2009	1)S.I M.C Nath, O/C Tangla P.S 2)ASI H.C Nath, I/C Tangla P.S
4	Case No. 23/2009	1)ASI K.C Das, I/C Panbari O.P
5	Case No. 18/2010	1)S.I Pradip Baruah, O/C Baihata Chariali P.S
6	Case No. 23/2010	1)S.I D.K Saikia, I/C Bebejia O.P (Tezpur).
7	Case No. 50/2010	1)Sri B.K. Mishra, IPS IGP(P)
8	Case No. 05/2011	1)Dr. P.R Das, IPS (since Retd.)
9	Case No. 26/2011	1)S.I Ajamil Bora, O/C Sivasagar P.S
	Total numbers of Cases 9 Nos.	Total numbers of police officers involved 14 Nos.

8.1 The orders passed by the Commission are reproduced below chronologically. [8.1 to 8.40].

8:1. Case No. SPAC/C/35/2008

Md. Dulaluddin resident of village Mikir Ati
PO & PS Doboka, Dist-Nagaon

-Vs-

Md. Hanifuddin Ahmed, OC, Batadrawa PS, Nagaon Dist.

The issue pertains to allegations of serious misconduct against OC, Batadrawa Police Station, Nagaon district for not registering an FIR at Batadrawa PS against 4 accused persons namely (1) Abul Hussain s/o Mofizuddin (2) Mofizuddin s/o Somiruddin Munshi (3) Fazar Ali s/o Raza Ali and (4) Inamul Haque s/o Fazar Ali and others of village Rampur Satra under

Batadrawa Police Station, Dist- Nagaon, Assam. In the complaint it was inter alia alleged that Md. Dulaluddin lodged an FIR to Batadrawa PS through Superintendent of Police (Crime Branch), Nagaon against the accused persons stating that his married daughter Rahila Khatun was believed to have been killed and concealed the dead body after torturing by the said accused persons and that the Batadrawa PS demanded money from him in the name of registering case while lodging the ejahar and that on 2.6.08 when the OC of Batadrawa PS over phone was contacted regarding registration of the ejahar, the OC threatened him with dire consequences, hence the complaint.

On receipt of the complaint, the Commission initially called for the report and also heard the OC in person. Not being satisfied the Commission put into service its own investigating agency to ascertain the actual facts. In course of time investigating agency submitted a report. The Commission perused the investigative report and the other materials on record. On perusal it was found that the complainant Md. Dulaluddin, who was examined by the investigator of the Commission, stated that his daughter Mrs. Rahila Khatun was married to Md. Abdul Hussain 11 years back and his son in law demanded money from him and his daughter from time to time. Md. Dulaluddin once paid Rs. 8,000.00 against the demand of Rs. 50,000.00 by Abdul Hussain and yet the assault and torture of his daughter did not diminish. His daughter disappeared from the house of her husband at which he lodged a complaint through the Superintendent of Police Nagaon.

The materials on record further established that Rahila Khatun was recovered by police from Dimapur after one and half year and local villagers deposed before the investigator that Rahila Khatun went away with her husband's cousin Md. Mainul Haque and later on she married Md. Mainul Haque and was living at Mayang. Materials on record also indicated that police has chargesheeted the Batadrawa PS Case No. 50/08 u/s 498(A)/302/201 IPC vide CS No. 76/09 dtd 31.12.09 u/s 498(A) IPC against the accused Md. Abdul Hussain and the case is under trial. From the report of the investigating agency it further appears that complainant Md. Dulaluddin lodged FIR on 26.5.09 through Superintendent of Police, Nagaon but the OC Batadrawa PS did not register the case endorsed to him by his superior officer. The OC was compelled to register the complaint after one month. The concerned authority drew up Departmental Proceedings against the OC concerned. The said SI was transferred to Sonitpur and awarded punishment on the basis of the DP.

The Commission expressed its dissatisfaction for the leniency shown to concerned SI Md Hanifuddin Ahmed in the departmental proceeding for delay in registering a case which finally ended in chargesheet. The punishment meted out for the grave delinquency did not commensurate with the gravity of the

misconduct. However, because of the long lapse of time, the Commission was not inclined to intercede. The Commission hopes and trusts that in future the authority concerned will act with more tact and responsibility. With this the proceeding stands closed.

8:2. SPAC CASE NO. 47/2008

Smti. Junu Das Bora - Complainant

The matter relates to a complaint against the police personnel for failure in conducting fair and impartial enquiry and to act as an efficient instrument of crime prevention and detection. A thumbnail sketch is set out below :

The State Police Accountability Commission received a complaint from Smti. Junu Das Bora alleging that on 15.1.2004 at about 9.00 A.M her husband Sri R. K. Bora was taken to Satgaon Police Outpost by S.I D.N, Deb of Satgaon Out Post and arrested him on the basis of FIR lodged by one Dulal Barman stating that her husband and his two brothers set fire into his house and outrage modesty of his wife. The complainant states that the FIR was fabricated and the house in question was not owned by Shri Dulal Barman who was in fact allowed to stay by Mrs. Junu Das Bora who is physically handicapped person for her immediate help and assistance. The complainant made several complaints to SI D.N Deb of Satgaon OP for trying to expropriate her household property by Shri Barman. But the SI of Police did not take any action and for this she appeared before the Sr. Superintendent of Police (City) on 21.1.200 and submitted an application for taking necessary action at which SI D.N. Deb visited the place of occurrence. But it did not take any action against the offender and alleged that instead misbehaved her and demanded Rs. 20,000.00 from her husband.

The Commission called for report from the police and having not satisfied with the report submitted by the Sr. S.P (City), the Commission entrusted its own investigating agency for investigation into the complaint.

The Commission perused the investigative report and also heard the SI of Police in person. The investigation reveals that SI D.N. Deb i/c Satgaon OP investigated the Noonmati PS Case No. 10/2004 u/s 436/34 IPC. On receipt of FIR forwarded by the OC, Noonmati PS, accused Ramani Bora, Bhaiti Bora and Maina Bora alleging that they had set fire on his house. The SI D.N. Deb after investigation submitted charge sheet No. 33/2004 and the case is reportedly sub juiced.

The case was registered in Noonmati P.S vide No. 11/204 u/s 294/326/506/34 IPC on the complaint lodged by Smti. Junu Das Bora on 15.1.2004 against Charitra Braman, R.L Barman and others. During investigation of the FIR named persons were arrested and forwarded to judicial custody and submitted C/S No. 64/2004 dated 17.4.2004 but it was not laid before the investigating agency as to the offence against which the charge sheet was submitted and in course of examination of the relevant witnesses, more particularly, the daughter of Dulal Roy, Smt. Jasoda Roy w/o Lalait Roy c/o Binod Talukar, Batahguli Tiniali. The investigating agency of the Commission could gather that she went to satgaon OP for informing police that her father Dulal Barman was assaulted by sharp weapon by the family members of the Dulal Roy during the night of 15.1.2004 and her father had to be admitted in medical college hospital. S.I Deb did not register the information of assault of her father stating that the same was included in FIR submitted by Smti. Junu Das Bora. She further stated that the arsoning of the house for which the members of Smti. Junu Das Bora were arrested was false. Her father died in the mean time.

The Commission considered the materials on record including the report of the investigating agency. On close consideration of the materials it is apparent that the concerned SI D.N. Deb, the then i/c of the Satgaon OP defaulted in discharging duty as incharge of the OP which impaired fair and effective investigation. Needless to state that the investigation is required to proceed in the right direction in consonance with the gist of the offence. The charge sheet enclosed in the case in hand was not accompanied by the medical report. As per the complaint, the case was that of an offence u/s 326 IPC. The victims were admitted in the Medical College Hospital for treatment and they were administered medical aid in the Medical College Hospital. It was an essential duty of the investigating agency to collect the medical report. That apart the investigating agency's duty was first of them to examine the injured persons on their own superficially and ascertain the nature of the injury. This aspect was totally ignored by the investigating agency. The charge sheet was submitted to the Court in a mechanical fashion without making an endeavour to indicate the nature of the injury to a Court where alleging was that of causing hurt by a knife. In that event it should have been accompanied by the medical report. More so, when the injured was examined in the Medical College Hospital to enable the Court to give the right findings. The materials on record indicate, more particularly the charge sheet submitted in the Court mentioning the name of Shri Sanjay Goswami s/o P.N. Goswami in the witness column and whereas Shri Goswami deposed before the investigator of the Commission and stated that he was never examined by police. Shri Goswami was not examined by the investigating agency but his name was shown examined as witness. The column 5 of the charge sheet was totally blank.

It is pertinent to note that the order sheet of GR Case No. 204/04 which relates to the Case No. 11/04 and returned in C/S indicates “On critical analysis and evaluation of the facts and circumstance on the record, I am satisfied to hold that the prosecution side has failed to prove the offence U/S 294/506/323 IPC against the accused persons beyond all reasonable doubt. I find them not guilty and acquit them forthwith. They were set at liberty and their bail binds stood cancelled.” Sd/- CJM, Kamrup. Thus the complaint reported before the SI Deb by the daughter of grievously injured Dulal Roy at the hands of Dulal Braman, Upen Barman, Charitra Kalita should have been accepted and a case accordingly registered. The SI of Police is therefore, guilty of not doing justice at the gate way of the criminal justice system as a result of which the victim who died, was robbed of justice.

Registration of FIR is not an empty formality; it has its own meaning. The first informant, who lodges the first information Report in the Police Station does not melt away with the lodging of the FIR. The informant is vitally interested as to what action is taken by the police on receipt of the First Information Report as well as any subsequent proceeding to ascertain if any offence has been committed and if so what action should be taken against the offender. The Criminal Procedure Code laid down in the statute the provisions to keep the informant informed at various stages, for example -

- (a) The informant is entitled to get a copy of the First Information Report free of cost as soon as First Information Report is lodged [Section 154 (2)]
- (b) If the Officer Incharge of the Police Station on receipt the FIR decides not to investigate the case, that there is not sufficient ground for entering on an investigation, the Officer Incharge must notify to the informant that he would not investigate the case or cause it to be investigated [157(2)]
- (c) After investigation is complete, the Officer Incharge shall forward to the Magistrate his report. At the stage he must communicate to the informant the action taken by him [Section 173(2) (ii)] which means that a copy of the report made under section 173(2)(1) must be supplied to the informant.

These are the legal requirements which are required to be adhered to as per the mandate of the statute. The object behind the directives as set out above has its own meaning.

The action taken by the Officer Incharge of a Police Station on the First Information report is required to be communicated and the report forwarded to the Magistrate under sub-section (2) (i) of Section 173 required to be supplied to the informant. Obviously, the reason is that the informant who sets the machinery of investigation into motion by filling the First Information Report must know what is the result of the investigation initiated on the basis of the

First Information Report. *The informant having taken the initiative in lodging the First Information Report with a view to initiating investigation by the police for the purpose of ascertaining whether any offence has been committed and, if so, by whom, is vitally interested in the result of the investigation and hence the law requires that the action taken by the officer-in-charge of a police station on the First Information Report should be communicated to him and the report forwarded by such officer to the Magistrate under sub-section (2) (i) of Section 173 should also be supplied to him [Bhagwant Singh v. Commissioner of Police and others (1985) 2SC cases 537, para 3, page 541].*

But seemingly the sine qua non of the statutory requirement was ignored. The First Information set on the investigative machinery of the criminal justice system. A mere registration of First Information Report without fair and proper investigation bring the criminal justice machinery into a mockery.

The Commission deliberated upon the matter. On consideration of the materials and after giving anxious consideration found serious lapses on the part of Shri D.N. Deb, i/c Satgaon OP. The Commission also thought it to be an appropriate case for directing the concerned authority for initiating departmental measure. The Commission also found that there were lapses on the part of the superior officer of the local jurisdiction within the meaning of Section 36 of the CrPC, who also cannot avoid its responsibility. But due to rareness of the wherewithal, the Commission could nor embark upon that task. In these circumstances the Commission refrains from doing so. The Commission therefore, thought it appropriate to forebear from such action against the senior officer/officers mentioned above.

Since the Commission found Shri Deb the then i/c Satgaon OP at fault for serious dereliction of duty, it thought it appropriate to communicate its findings to the Director General of Police and the State Government with the direction to initiate departmental action based on such finding against the officer concerned. The Director General of Police of the State is given an opportunity under the first proviso of Section 82 of the Assam Police Act, 2007 to present the Department's view and the additional facts if any, not already in the notice of the Commission within three weeks.

(This has the reference to SPAC Case No. 47/2008 passed on 11.01.2012)

8:3.

Shri Dulal Bora, S/O Deben Bora

-Vs-

Officer Incharge, Basistha P.S

The Commission received the complaint dated 28/11/2011 lodged by the complainant Shri Dulal Bora. On receipt of the complaint the Commission called the concerned authority Sr. S.P (City) for submitting detailed report on it. On receipt of the notice the Sr.S.P(City) caused an enquiry through the Addl. S.P(HQ) City and forwarded the report along with his memo dated 22.12.11. The Commission examined the materials on record in depth and provide its findings herein below :

Before entering into the merits of the matter, the Commission would like to express its dissatisfaction in the way the direction of the Commission was taken note of by the Sr. S.P (City). It was expected that Sr.S.P would have looked into it and assess the report of Addl. S.P and thereafter forwarded it with his own comment. Such action only reveals utter callousness. The Commission looked into the complaint. After looking into the complaint and the report of the Addl. S.P it found that police acted upon the FIR lodged by the complainant, registered the case against the persons and conducted the investigation. We did not find any discernable to that extent. But we would impress upon all concerned particularly the Sr. S.P to see that police become people **friendly to** avoid such sort of complaint. The OC of the Police Station must be responsive and receptive to the public complaint and come to the rescue of the victim. Since no police serious misconduct is disenable, the proceeding thus stands closed. The complainant also be informed about the fate of the complaint.

(This has the reference to SPAC Case No. 60/2011 and order passed on 13.01.2012)

8:4.

Smt. Protima Singh of Silchar

Vs

Shri K.K. Basumatary, SI, Silchar Sadar Thana, Dist. Cachar

The matter arises out of a complaint lodged by Smt. Protima Singh alleging police partiality against the SI of Assam Police posted at National Highway Patrol Out Post, Silchar. The commission called for a report from the Superintendent of Police, Cachar. In course of time the district police submitted its report. The Commission also summoned the SP, OC, Silchar PS as well as the K.K. Basumatary SI of Police posted at National Highway Patrol Post Out Post. Our resource constraint also did not permit us to cause investigation from our own source. Report indicates that the police registered the case, started investigation and chargesheeted the accused persons.

It appears that the police authority had to be prompted and propelled by the Commission for taking action in the matter. A complaint is to be received

with all seriousness and with utmost promptitude. Here this aspect of the matter was lacking. Things moved only after intervention of the Commission. This does not augur well for the institution. The function of the police is to be people friendly to help the victim with utmost rapidity in the area of investigation. Materials on record unerringly pointed out to the lapses on the police personnel. We hope and trust that these things will be taken up with utmost care by the district police, more particularly the Superintendent of Police to earn public confidence and show their allegiance to the police accountability. With this the proceeding stands closed.

(This has the referenceto SPAC Case No. 14/2011 and order passed on 13.01.2012)

8:5.

Shri Ajay Das of Silchar
-Vs-
Officer Incharge, Silchar P.S, Dist.- Cachar

This matter arises out of the complaint received from one Ajay Das alleging police inaction in respect of Silchar P.S Case No. 548/2011. We called for a report. Since this related to alleged offence committed against the minor girl, we took cognizance of offence asking for affidavit from the parties. The Silchar Police immediately responded and submitted its return. By the first report it intimated about the status of the case and by the reports dated 29.11.2012 is has intimated that the accused Shri Bhuban Das and Nipesh Das were arrested and remanded to judicial custody in connection with Silchar P.S Case No. 548/2011 under Section 366(A) IPC and also intimated that one of the accused Nikhil Das was absconding. It was also reported that Shri Bhuban Das, Shri Nipesh Das and Nikhin Das who was found to be absconding at the time were all arrested and the case was charge sheeted with the charge sheet No. 168/11 against the accused three persons u/s 366/34 of the IPC.

In the set of circumstances we do not find any infirmity requiring any interference from the Commission. It will be pertinent to add that the complainant like Ajay das and other complainants have expressed their fear and retaliation from the accused person.

We hope and trust that the district police will be able to take appropriate care to allay such apprehension from the victims. With this the proceeding stands closed.

(This has the reference to SPAC Case No.27/2011 and order passed on 13.01.2012)

8: 6.

Shri Ananta Smith of Sivasagar
-Vs-
S.I Ajamil Bora, Sivasagar P.S, Dist. Sivasagar

The matter emerged from a complaint received from the complainant Shri Ananta Smith of Sivasagar town against the police harassment amounting to assault and restraint by the police personnel viz by SI Ajamil bora of Sivasagar Police HQ on 8.7.2011 at the SBI premises at Sivasagar. According to the complainant, while he happened to be in State Bank of India along with his old mother for receiving family pension, ABSI of Police Shri Ajamil Bora assaulted him following an altercation relating to answering a phone call in full public view. The complainant Shri Smith has also complained of not registering his complaint at the first instance soon after the incident with insistence from the Sivasagar PS staff on him not to file the FIR, but he was called upon to file the same on the following day after registering a case against him.

The Commission took cognizance of the complaint and called for report from the Superintendent of Police along with GDEs, etc. The Superintendent of Police, Sivasagar in his report informed the Commission about two police cases have been registered. The report mentioned that ABSI Ajamil Borah who was on duty at that time had lodged an FIR against the complainant and a group of persons. The complainant lodged FIR against ABSI Ajamil Borah. The earlier case was registered as Sivasagar PS Case No. 343/11 under Section 143/353/332 IPC while the complain of Shri Smith was registered against the ABSI which refers to Sivasagar PS case No. 344/11 u/s 341/323/506 IPC. A part of the text of the SP's report on the issue reads as follows :

“ABSI Ajamil Borah of Sivasagar DEF was present at the SBI Sivasagar Branch for official duty. He was wearing the official uniform and anyone could make out that he is a Police Sub-Inspector. Under the circumstances, as per section 66 of Assam Police Act, 2007 he was a police officer on duty, empowered to exercise all the powers and functions of a police officer. The SBI authorities have placed notice boards at certain places in the bank premises regarding prohibition of use of mobile phone. At about 3 PM Shri Ananta Smith S/O Lt. Vivian Smith of K.P Chariali Ward No. 09, PS & Dist. Sivasagar was found to be speaking over mobile phone. At that moment as a responsible Police Officer ABSI Ajamil Borah asked Shri Ananta Saikia to not to speak over phone as it was prohibited. Shri Ananta Smith did not pay any heed to the

request of ABSI Ajamil Borah and this finally resulted in hot altercation between the two. Shti Ananta Smith claims that ABSI Ajamil Borah tried to hit him with his fist but Shri Smith never received any such injury. Shri Smith again violating the rules called his friends over phone. The friends of Shri Ananta Smith entered the campus of the bank in large number and misbehaved with Hav. Amjed Ali **who was on duty for protection of bank assets**. They also snatched the mobile of Hav. Amjed Ali which they returned subsequently. After that they went to the 1st Floor of the building and dragged ABSI Ajamil Borah from the guard room where Ajamil Borah had taken shelter to protect himself these rowdy elements. The rowdy elements dragged ABSI Ajamil Borah from the guard room and took him out of the building. The uniform of the police officer was torn in this process which has been duly seized as a piece of evidence. The group thoroughly misbehaved with the police officer on duty and hit him with fist and blows. This incident shows the utter disregard to the Rule of Law by this unruly mob led by and motivated by Shri Ananta Smith”.

The report is silent on the version of the complainant. The S.P failed to address to the assertions and allegation of the complainant. It is seemingly one side. The Commission also perused the statement of the cases u/s 164 in Sivasagar PS Case No. 343/11. The SP sought to justify the action of the erring police personnel and sought the protection of section 66 of the Police Act.

We have given our anxious consideration on the matter. Reliance on Section 66 of Assam Police Act, 2007 for screening the police personnel is facile, fragile and mismatched. Section 66 provides that every police officer who is not on leave or under suspension for all purpose of the Act is always to be considered as on duty and may at any time be deployed at any part of the State. Meaning is obvious. A police officer, who is not on leave or suspension is always to be considered as on duty and may be deployed at any part. A police officer at any time is to remain accountable to law and responsible for protection of rights of the people. A police personnel shall observe codes of ethical conduct and integrity, that is the minimum requirement of a police personnel reposed u/s 4 of the Assam Police Act. He is not free to use force, assault and use demeaning words. The materials on record exhibit sheer ignorance of law displayed by the police officer in a public place, which is purely misconduct, instead of administering the law, the SP, Sivasagar here, made a bold endeavour to shield the guilty officer. The police personnel concerned were like any other customer in the bank has gone there in discharge of his official duty relating to drawal of fund of the District Police. The concerned police personnel who is under the law was responsible for protection of rights of the people instead acted imperiously and sullied the reputation of the force.

The GDE No. 319 dt. 8.7.2011 which is first in point of time, does not disclose any offence which the OC, Sivasagar having visited the place of occurrence made the entry in the GD of the PS. Had there been any substance in the incident against the complainant Shri Smith it must have been reflected in the GDE and police was free to proceed in taking action against Shri Smith. Police records clearly pointed out that the complainant Sri Smith appeared before the O.C of the P.S and O.C in turn referred him to the Sivasagar Civil hospital. Reasons for forwarding Smith for medical examination on the contrary are disclosed in the GD. First thing the O.C should have recorded his statement in terms of section 154 CrPC. The information given by the informant was recorded only the very next day, that too after, registering a case against him. Instead, the case against the complainant Shri Smith seems to have contrived is as a fall out of the reported meeting between the S.P and ABSI Bora after lapse of considerable time of the incident. Interestingly it appears that the complainant Mr. Smith was sent to hospital for medical examination/aid vide GDE No. 321 at 6 PM and with him the police official also was sent to the hospital. It itself indicates suppression of facts leading to non-registration of case against the police official at the first instance as complained of. How can a police officer felt the necessity of referring the injured person without a case reference. In forwarding an injured person to hospital one is required to adhere the procedure prescribed by law and having not registered cases or making suitable entries as prescribed by law before reference to medical examination/treatment indicates that the police action was not unbiased and fair. The O.C acted with impertinence & imprudence. The SP's report is incoherent, incomplete, inept, if not misleading. Law became a casualty in the hands of the concerned police personnel.

The progress of investigation of the case registered on the FIR of the complainant has also become tardy. The case is pending for investigation. To the contrary, the case registered against the complainant has been charge sheeted as reported by the SP, Sivasagar. It is an unhappy state of affair. The S.P faltered in ensuring free, fair and impartial investigation of the reported incident, rather he sided with the erring Police Personnel. The Commission is constrained to record its displeasure and unhappiness in the conduct of the Superintendent of Police. The GDE No. 319 dt. 8.7.2011 as discussed above being the findings of the O.C, Sivasagar Police Station at the first point of time appears either manipulated or interpolated and in either of the cases, the police action is reprehensible.

Departmental action against the O.C, Sivasagar is recommended for his lapses in making entries in the G.D.E relating to the incident. The order is passed accordingly. The Director General of Police of the State in consonance with Proviso on of Section 82 of the Assam Police Act., 2007 is hereby afforded an opportunity to present the Department's view and additional facts, if any, not

already in the notice of the Commission, within three weeks from the receipt of the order. *(This has the reference to SPAC Case No. 26/2011 and order passed on 27.01.2012)*

8: 7

Shri Harinarayan Pathak, Padumphukhuri, uzanbazar

-Vs-

Officer Incharge, Chandmari Police Station.

The commission took up the entire matter for consideration. It appears that the Secretary erroneously onward transmitted a communication from a draft which was in an embryonic form No. Order so far was passed by the Commission. The Office committed error in sending the communication bearing No. SPAC/C/12/2011/20 dated 22nd November, 2011. The Commission also received the communication from the Assam Police Headquarters bearing No. APHQrs/SPAC/12/2011/14 dated 12th December, 2011 and then only came to know about the inaptness of our office. The Commission took up the matter for consideration for appropriate order accordingly.

A complaint was received from the complainant Shri Harinarayan Pathak dated 12.04.2011 wherein it was alleged that FIR dated 09.4.11 addressed to the Officer-in-Charge, Chandmari Police Station Shri Mridul Baruah at 11:30 A.M dated 09.4.11 was not accepted and the same was returned to him. The Commission took cognizance of the offence and called for the report from the Superintendent of Police, Guwahati (City) along with the GD Entries of the concerned Police Station.

On examination of the materials on record including the FIR and the GDEs, unerringly disclosed offence under section 440,447,448 and 506 IPC. The language of section 154 is clear and specific. On receipt of FIR disclosing a cognizable offence, the police officer concerned is duty bound to register a case. At this stage he cannot embark upon an enquiry whether the information/informations laid by the informant is reliable and genuine or not and refuse to register a case on the ground that the information is not reliable or acceptable. He is statutorily obliged to register case and then proceed on with the investigation if he has reason to suspect the Commission of an offence, which he is empowered u/s 156 of the Code to investigate subject to S 157. If the officer-in-charge of the Police Station on receipt of the FIR decides not to investigate the case, because it appears to him that there is no sufficient ground for entering in an investigation, the officer-in-charge must notify to the informant that he would not investigate the case [S. 157(2) of the Cr.P.C]. In Section 154, the Legislature in its wisdom had clearly used the expression – ‘information’ without qualifying the same as in section 41(1)(a) and (g) of the code wherein the expression ‘reasonable complaint and credible information are

used”. It is thus before that if any information disclosing a cognizable offence laid before the officer-in-charge of a Police Station satisfying the requirement u/s 154(1) of the Code, the said police officer has no other option but to enter the substance thereof in the prescribed form, that is to say to register a case on the basis of such information. The allegation in the FIR dated 9.4.2011 recounted inter alia “again started afresh illegal and unauthorized construction atop (sic) my existing brick boundary wall by demolish (sic) of RCC boundary pillar in apart to previous illegal and unauthorized construction”. Since it disclosed cognizable offence, the OC of the Police Station was duty bound to register the FIR. He cannot adjudicate as to whether it is a civil dispute.

All this considered, the Commission is of the view that OC concerned while discharging the duty flawed in by not registering the FIR, which amounted to serious misconduct. Non-registration of FIR amounted to dereliction of duty.

It now appears that the FIR has already been registered as Chandmari PS Case No. 388/2011 u/s 447/427 and 506 IPC vide APHQR communication dated 12.12.2011. there is also a mismatch committed in the offence of the Commission. What is done cannot be undone, no use of crying over the split milk – two wrongs do not make a right.

All things considered, the Commission considered it appropriate to refrain from making any direction for initiating any disciplinary measure against the officer concerned. Subject to the observations made above the proceeding stands closed.

(This has the reference to SPAC Case No. 12/2011 and order passed on 02.02.2012)

8:8.

M/S Bharali Kerosene Depot
-Vs-
Officer Incharge, Rangia Police Station

A complaint was received from a partner of M/S Bharali Kerosene Depot alleging blackmailing and extortion against Shri Himangshu Das, Officer-In-Charge of Rangia Police Station. On receipt of the complaint the Commission took cognizance of the matter. Report was called for from the Superintendent of Police, Kamrup (R). In course of time S.P submitted his report along with the relevant documents. The Superintendent of Police, Kamrup (R) was summoned to appear in person and submit his say. The materials on record indicated that when the oil tanker was proceeding towards Bhutan from Guwahati with 6000 litres of diesel met with an accident at

Bangalikhuchi under Rangia Police Station and capsized besides NH-31 on 16th May, 2011. The vehicle was seized by the police and the seized vehicle was released on 30.09.2010 after completion of MVI's investigation. apparently, police action of seizure of the vehicle is wholly unauthorized. Seizure can be made only as per procedure prescribed by law. Section 102 of CrPC which empowered the police officer to seize any property which may be allegedly suspected to be stolen, may be undertaken on suspicion of any offence. Seizure is a serious matter. Therefore, law insists that the seizure of any article has to be forthwith reported to Magistrate having jurisdiction. Section 102 of the CrPC provided the procedure. Admittedly the concerned authority, particularly the OC did not follow the procedure prescribed by law. His action is wholly unauthorized. No case was also registered by the police. All these amounted to serious misconduct. After the cognizance was taken by the Commission. District Police appeared to have taken some action when the matter was in consideration of the Commission, the steps taken by the S.P concerned was not proper when the matter was under examination of the Commission. That apart the action taken against the officer by giving warning will not have been taken to ensure accountability on the officer concerned. The S.P has taken right steps in issuing office order but such office order also should have contained the reference of the case as to make the standing order effective. Subject to observation made above, the proceeding stands disposed.

(This has the reference to SPAC Case No. 52/2011 and order passed on 15.12.2012)

8: 9.

MD Fakrul Islam Mazumdar & nine ors.

-Vs-

Officer Incharge, Kachudaram OP under Sonai PS, Dist. Cachar

On a complaint received from the complainants, the Commission initiated its proceeding against serious police misconduct. According to the complainants, though their complaint was registered vide Sonai Police Station case No. 33/11, the case was neither properly investigated nor the accused persons were arrested.

The Commission in course of time obtained report from the Superintendent of Police, Cachar. It appears that Sonai PS registered the case and made investigation. The IO arrested and then enlarged the accused persons as per the order of the Gauhati High Court.

We have given our anxious consideration on the complaint. However, on perusal of the materials on record, we do not find any material to intervene in this

matter. It is expected that police shall proceed with the investigation and take appropriate measure as per law with expedition. It is also expected that the concerned authority will proceed with the investigation as per law. Expeditious and proficient investigation is the guiding factor of professional investigation. With this the proceeding stands closed.

(This has the reference to SPAC Case No. 53/2011 and order passed on 24.02.2012)

8:10.

SUO Motu Case on Killing of Truck Driver.

This matter was initiated on the basis of newspaper clipping about a case indicating serious misconduct in regard to police person. Considering serious nature of the crime as adduced from the newspaper reports in "Asomiya Pratidin" dated 10th July, 2009 as to the police culpability and lack of accountability, the Commission took cognizance of the matter and asked for a detailed report from the Director General of Police, Assam.

The incident concerned was about killing of a truck driver and the causing of injury of the handyman by the PSO of the SP, CID on 09.7.2009. Concerned authority submitted its report. From the report it came to the notice of the Commission that Constable Gadadhar Roy, PSO was arrested in connection with Basistha PS Case No. 333/09 u/s 302/326 IPC R/W Section 27 of the Arms Act and the matter was under police investigation. The Commission was also informed that the aforesaid PSO was dealt departmentally for his misconduct and found him guilty of serious misconduct, high handedness and remissness and the person concerned was punished by the disciplinary authority. The punishment meted to the PSO was found to be none too adequate vis-à-vis the misconduct. The Commission was also informed by the office of the DGP that a DP was held against the police officer and enquiry was completed and on completion of the enquiry findings were forwarded to the Government for taking appropriate action.

The commission gave an anxious consideration of the matter and found that the police personnel were involved in serious misconduct. The Commission however feels that time has come that the Police HQ as well as the Government should adopt fool-proof policy in the matter of personal security. Job of personal security is to protect, safeguard and defend the person concerned from vulnerability as assessed by the police authority with determined plan of action calling for a regulated instrument of drill, discipline and supervision. The Commission desires that the outcome of the departmental enquiry against Shri

Mriduleananda sarma, APS, be intimated in due course. Likewise the authority is advised to keep abreast the Commission about the criminal prosecution initiated against the PSO from time to time. The PSO concerned was under no circumstance could take law in hand. The Commission so far found in two cases about the lapses, serious misconduct and remissness on the part of the PSOs. Authority concerned must take all out measures to insulate an effective and accountable security system. With this the proceeding stands closed.

(This has the reference to SPAC Case No. 19/2009 and order passed on 01.03.2012)

8: 11

Sandhyachal Nagar Mahila Samiti, Lalmati, Guwahati-29

-Vs-

Basistha Police Station

On receipt of a complaint dated 03.01.2012 from the Sandhyachal Nagar Mahila Samati, Lalmati, Guwahati-29 alleging misconduct on the part of the Basistha Police, the Commission called for a detailed report from the Sr. Superintendent of Police, Guwahati City and accordingly the Sr.SP, City submitted a report.

The Commission perused the reports dated 08.02.2012 and 21.02.2012 received from the Sr. SP, City. As per report it is found that the accused persons are arrested and the matter is under investigation.

In the set of circumstances the proceeding stands closed with a direction to the Department to intimate the Commission from time to time as to the development/ progress of the case.

(This has the reference to SPAC Case No. 02/2012 and order passed on 01.03.2012)

8:12

Mr. Badrul Islam Borbhuyan, Vill-Dakhin Mohanpur Pt. IV,
Cachar District - Complainant

Perused the complaint submitted by Mr. Badrul Islam Borbhuyan, Vill-Dakhin Mohanpur Pr.- IV, Cachar district. The Commission is of the view that no serious misconduct for examination by the Commission is discernable. The complaint is returned to the complainant.

(This has the reference to SPAC Case No. 13/2012 and order passed on 05.03.2012)

8:13.

Shri Biswa Baruah, President, Gaurisagar BCC, Sivasagar
 -Vs-
 Officer-Incharge, Gaurisagar Police Station, Sivasagar

Perused the complaint as well as the respective reports from the concerned authority. The report of the DIG(ER) unerringly pointed out that the OC concerned fell into error in not adhering the procedure prescribed by law. The statutory safeguard provided under section 41 of the Cr.PC in preparing memo of arrest was not provided to the accused. Likewise persons arrested were not medically examined. Obviously these are misconduct on the part of the OC, Gaurisagar P.S. The Commission expects that the Police Authority will take appropriate measure instructing the thana level police officers for avoiding such lapses. Likewise middle level supervisory officers are also be instructed to monitor and enforce the guidelines from time to time. Action taken report be communicated to the Commission. With this proceeding stands closed.

(This has the reference to SPAC Case No. 33/2011 and order passed on 06.03.2012)

8:14.

Dorai Swamy Rahul Iyengar
 -Vs-
 Constable Faizul Haque Mazumdar, Dibrugarh PS

A complaint was received from one Dorai Swami Rahul Iyengar alleging serious misconduct against one Faizul Haque Mazumdar, a police constable posted in Dibrugarh Police Station. Report was called for from the Superintendent of Police, Dibrugarh along with Police report. The constable concerned Faizul Haque Mazumdar was arrested in connection with Dibrugarh PS Case and in course of time he was charge sheeted u/s 453/409 IPC vide Dibrugarh PS CS No. 226/10 on 25.08/2010 after completion of the investigation. It was also reported that person concerned was suspended on 25.7.2010 and a Departmental Proceeding has been drawn up against him vide DP No. 1/2011 for dereliction of duty. The Commission also called for a report from the SP, Dibrugarh and the report dated 05.03.2012 has been received by the Commission to the following effect.

“ At present the house property is occupied by the complainant Sri Dorai Swami Rahul Iyenger, s/o Late K.M. Dorai Swami Iyenger of Kahlihamari Red Cross Road, P.S. Dibrugarh. The said house is in his possession which was countersigned by the Circle Officer, Dibrugarh East Circle. In this regard, the copy of acknowledgement from Sri Dorai Swami Rahul Iyenger is enclosed herewith. To allay the fear and apprehension of the complainant Const/840 Faijul Haque Mazumdar has already been transferred out from Dibrugarh P.S. to Tingkhong P.S. which is located 86 Km away from Dibrugarh. No complaint has been received from the complainant against the alleged constable so far.”

The Commission also received a communication from Shri Dorai Swami Rahul Iyenger dated. 29.02.2012 wherein he intimated to the effect that he is staying in his house with his sister. The Circle Officer, Dibrugarh submitted field verification report indicating that the complainant Shri Dorai Swami Rahul Iyenger was in possession of the land on 02.03.2012.

The materials on record establishes that the Superintendent of Police, Dibrugarh has taken right initiative in the right direction. The Possession of the house property was also restored to Shri Dorai Swami. In the set of circumstances the proceeding needs to be closed and the same is thus closed.

A copy of this order be sent to the complainant.

(This has the reference to SPAC Case No. 05/2012 and order passed on 16.03.2012)

8:15.

Syeda Matima Kazi

-Vs-

Shri Susanta Biswa Sarmah, Dy.S.P. &
Shri K. Baruah, Inspector, Chandmari PS

On a complaint received from Syeda Matima Kazi against two police officers (one Dy. Superintendent of Police and the other Inspector of Police of Chandmari Police Station) alleging serious misconduct, this proceeding was initiated. In course of time the Commission decided to probe the matter through its own Investigating Agency. When the investigation reached the closing stage at that time the Investigating Agency came to know about a judgment of the Hon'ble High Court. In course of time a copy of the judgment was collected from the High Court bearing No. No. WP(CRL) 15/2008 disposed on 24.2.2009.

The High Court by judgment and order mentioned above quashed the FIR lodged at Chandmari Police Station Case No. 108/2008, 177/2008, 151/2008 u/s 366/373/34 IPC.

Legality and validity of the aforementioned criminal prosecution initiated against the petitioner and her family members were also the subject matter of the Writ Petition. The allegations raised in the complaint were also the subject matter of the Writ Petition lodged before the Hon'ble High Court pertaining to abuse of the process of law. The thematic content of the complaint and the High Court proceedings were almost one and the same. Since the competent authority, the High Court dealt with the matter and which is of binding nature, it would not be appropriate for the Commission to proceed with the matter further.

Keeping in mind the High Court's order and principles of the comity of proceeding, the Commission closes the matter. The proceeding thus stands closed.

(This has the reference to SPAC Case No. 12/ 008 and order passed on 30.03.2012)

8: 16.

Md. Eyakub Ali

-Vs-

Officer-in-Charge Chandmari P.S

On receipt of the complaint from the complainant, the Commission called for report from the Sr. S.P (City). On perusal of the report along with the copy of the affidavit submitted before the Hon'ble High Court in connection with the WP(C) No. 6500/2011. It appears that on the same issue is Write Petition is pending before the Hon'ble High Court. The matter in issue is under examination by the Hon'ble High Court.

In the set of circumstances, it would not be appropriate for the Commission to proceed with the matter. The Commission does consider it appropriate to drop the proceeding.

(This has the reference to SPAC Case No. 62/2011 and order passed on 11.04.2012)

8: 17.

Smt. Manju Dutta, Udalbakra, Guwahati- Complainant

Smt. Manju Dutta of Udalbakra, Guwahati lodged a complaint to the State Police Accountability Commission, Assam against the Officer Incharge, Dispur Police Station to the effect that the complainant lodged a complaint with the Dispur PS. Dispur Police registered the complaint vide Dispur PS Case No. 1899C/11 and sent for investigation by the OC, Odalbakra OP as the offence committed within the jurisdiction of Odalbakra OP.

The complainant alleged that in spite of cooperation by the complainant the case could not get proper investigation. Thereafter she filed a petition before the CJM, Kamrup for redressal of her complaint.

On perusal of the complaint and the materials on record it is discerned that the case is Subjudice.

The Commission is of the view that since the matter is Subjudice, it will not be appropriate for the Commission to entertain the complaint, due to the embargo in view of proviso of Section 88 of the Assam Police Act, 2007. The complaint be returned to the complainant for seeking appropriate remedy in the appropriate forum.

(This has the reference to SPAC Case No. 26/2012 and order passed on 02.05.2012)

8:18.

Shri Amarendra Kumar Das of IIT, Guwahati

-Vs-

Officer Incharge, Paltanbazar Police Station

A complaint has been received from Sri Amarendra Kr. Das, Professor and Head of the Department of Design and Centre of Mass Communication, IIT, Guwahati to the effect that SI Bhaskar Jyoti Nath of Paltanbazar Police Station made an attempt for illegal detention and thereby causing mental harassment to him and his extended family. In first week of March, 2011 it was stated in the complaint that SI B.J Nath called up the complainant's father-in-law Maj.(Retd) Pulin Das Kakati in his residence and enquired about the complainant and when his father-in-law asked who he was and why he was calling. S.I Nath told him that he called to inform that it was regarding the complainant's passport verification and the father-in-law of the complainant met him in the evening in the Police Station alone. This has raised suspicion as the issue renewal of his passport was over more than a year ago and no verification was pending as known to him and as he was at IIT, Mumbai, he could not follow it up but on his return he enquired regarding the issue by sending his brother-in-law to the Police Station as he was staying in IIT, Guwahati campus and it was

inconvenient for him to go to Guwahati. also at that time his daughter was appearing for the 10th standard of CBSE exam, the complainant learnt that there was no enquiry pending for his passport and he immediately could not understand the reason for the call to his father-in-law and thought that it might have been a mistake. So he did not pay heed to that call any more. But on Sunday, the 27th March, 2011 SI Nath again called up his father-in-law's brother Dr. Debdas Kakati on telephone and enquired as to whether he knew him or he had to report to Paltanbazar Police Station in the evening. The complainant stated that the moment he heard from Dr. Debdas Kakati he apprehended that the call from the SI Nath was an contrivance and the passport issue was a mere pretence to call him to the Police Station for detaining him illegally and frame some false charge against him. This is because Dt. Debdas Kakati's son Mr. Kaustav Kakati and his mother was implicated in Paltanbazar PS case No. 133/2009 u/s 498 IPC and in their absence the complainant was looking after their interest. The complainant felt that the passport verification exercise was a contrivance. Finding the complainant as a hurdle the father of the girl the first information engaged Mr. B.J. Nath in his official capacity without the notice of his senior officer to threaten the complainant and attempting to detain him illegally and frame up charges so that the complainant and him family would give in to the opposite party and the matter became important since there was a date of divorce petition on 2nd April, 2011 and in case the complainant cannot appear on that date the case may be decided exparte.

The Commission took cognizance of the complaint and called for a report from the Sr. S.P, Guwahati City. The OC of Paltanbazar Police Station and SI of Police Bhaskarjyoti Nath were also heard in person by the investigating agency of the Commission. The SI in his own admission in a statement while examined by the investigating agency of the Commission disclosed that he was called by the Sr. S.P, City Police and questioned him as to why he contacted Dr. Kakati over phone, following which he contacted Dr. Kakati over phone and begged for apology in doing so. He verified the endorsed documents at the Police Station before making the phone call to Dr. Kakati. He also admitted that in the first week of March, 2011 he rang up Maj. (Retd) Pulin Das Kakati for informing the applicant Mr. Das (Amarendra Kumar Das) as the latter was not found over telephone. The SI denied to have harassed Shri Amarendra Kr. Das.

Dy. S.P Panbazar Division Dr. Rubul Gogoi was also heard in person. The Dy. S.P submitted a self-statement. He in the statement disclosed that he took up an enquiry as endorsed by the Sr. S.P, City vide memo No. V/4-15/11/2643 dtd. 04/05/11 and went through the contents of the allegation lodged by Shri A.K. Das. The officer stated that a passport verification in respect o Shri A.K. Das received by OC Paltanbazar PS on 23.08.2012 from the Sr. SP, City with endorsement for necessary verification. The passport verification paper

was immediately endorsed to SI K. Mandal for verification by OC Paltanbazar PS as SI K. Mandal was transferred from City DEF, again the passport verification was re-endorsed to SI Bhaskar Jyoti Nath on 13.3.11. SI Nath as indicated on the report locally enquired about Shri A.K. Das at Rehabari and could not trace out his house as he did not mention the address in passport from submitted by him. The SI also could not trace out Dr. Deb Das Kakoti and Major (Retd) Pulin Das Kakoti who have been mentioned as responsible persons of applicant's locally and finding no way out SI Nath tried to contact all the connected persons in a passport verification over phone. Shri A.K. Das was contacted over his land time phone to co-operate with enquiry but the petitioner Shri A.K. Das did not contact and hence the verification was kept pending. The Dy. SP opined that during his enquiry nothing was found to suggest that SI Nath was trying to harass the petitioner as alleged.

The OC Paltanbazar PS was also heard in person who stated that a passport verification was received by him on 23.8.10 and the same was endorsed to SI K. Mandal and when he was transferred the same was re-endorsed to SI Bhaskar Jyoti Nath on 13.3.11.

On examination of the passport verification communication as received by the O/C Paltanbazar Police Station vide his receipt dated 23/08/2010, it reveals that the stipulated time of six weeks has expired by the time it was endorsed. Passport office issued the identity verification of passport in the objective manner on 17/06/2010 and the same was re-endorsed to Sub-Inspector B.J. Nath on 13/03/2011. As such the entrusted work to the S.I lost its force. The apprehension of the complainant of detaining him at the Police Station under the circumstances is therefore not without substance and the actions of S.I, B.J Nath amounts to harassment and construed as black mailing. In this context it is worthwhile to mention that Paltanbazar Police Station Case No. 133/2009 u/s 498 IPC at the relevant time was under investigation. On the other hand the case relating to passport verification spent its force so much so that six months period had already expired. The complainant's apprehension in the action of SI B.J. Nath cannot be said to be groundless. Considered the materials on record including the matters relied by the investigating agency in its report the Commission finds the complainant's version trustworthy. None of the officers could restrain the Sub-Inspector to call up Shri Amarendra Kr. Das his referees to the police station. Nor did they follow the time limit of the verification which expired before the job was entrusted to the SI B.J. Nath was on probation and needed constant guidance for grooming in the police job by his superior officers. The superior officers namely the OC, and the Divisional Dy. S.P ought to have provided the probationary SI with the necessary guidance. The Commission is of the view that the probationary police officer should be closely guided in enforcing the law along with the procedures so that

the new entrants to police service are oriented to serve people with their paramount responsibility to keep security to individual and the country as well. Sr. S.P, City, Guwahati has also stuttered in apprising the Commission of the modalities/procedures followed in the verification of passport particulars. The Sr. SP's report does not indicate specific action to be followed by police expert ensuring the verification action by the police station level officers. The responsiveness of verifying action is not discernible in the report. For obvious reasons verification should be done discreetly with civility and without invading the personnel liberty and dignity of the individual.

The passport verification is a serious business and it is to be taken up with utmost caution keeping in mind personal liberty of a citizen vis-a-vis national security. The period prescribed for verification is to be assiduously adhered to and when the time limit prescribed expires it was the duty of the issuing authority to take follow up action.

The Commission is also of the opinion that in such matter District Superintendents need to take extra care and caution and make every endeavour to gear up the process of verification and take effective measure by fine tuning the existing mechanism of inspection at the Police Station. Time has come for the concerned authority to take note of the situation and review the existing procedure in befitting manner and arrange appropriate guidelines to the police in such matter keeping in mind the liberty and dignity of the citizen.

Subject to the observations made above the proceedings stands closed.

(This has the reference to SPAC Case No. 10.2011 and order passed on 11.05.2012)

8:19.

Smti. Surabala Das, Dist. Udalguri, Tangla

-Vs-

State of Assam & ors.

The proceeding has arisen on the basis of a directive issued by the Hon'ble Gauhati High Court on a Writ Petition to the State Government for causing an enquiry into the incident that resulted in the death of Anil Das by the State Police Accountability Commission vide judgment dated 01.02.09 passed in WP (C) No. 7574/2002.

The applicant Smt. Surabala Das is the mother of one Anil Das (since deceased) presented the Writ Petition before the Hon'ble High Court praying

for a judicial enquiry pertaining to the death of her son and for payment of compensation on account of un-natural death in the following circumstances.

On 21.4.2000 at about 11-30 PM Police personnel belonging to 15 IRBn visited the house of Smt. Surabala Das with a bailable warrant in connection with FR Case No. 760/99 u/s 353/307 IPC wherein Anil Das (since deceased) son of Surabala Das was accused. As the son of the petitioner Anil Das was in sleep the police personnel Shri H.C. Nath, SI and another police personnel Constable Dhanraj Chetri fired upon and consequently her son died.

An FIR was lodged on 22.04.2000 by ASI Nath, in the midnight relating to the incident which was registered and numbered as Tangla.

P.S Case No. 20/2000 U/S 353/307 IPC, against Anil Das (deceased) as an accused. As per the FIR when the police personnel went to the house of the deceased who was an accused in GR Case No. 760/99 pending in the Court of the CJM, Darrang, Mangaldoi with a warrant of arrest and called upon him to come out, he jumped upon the constable Dhanraj Chetri with a Khukri in his hand and said Dhanraj shot at him as a result of which he died.

In disposing the writ petition, the Hon'ble High court amongst others observed as follows:

“The Commission is empowered to enquire into allegations of serious misconduct which means and includes any act or commission of police officer that ‘ leads or amounts to death’ into police custody. This Court in Harendra Kumar Deka Vs. State of Assam and others reported in (2009) 2 GLR 263, upon interpretation of the term “ amounts to death in police custody” had held that on the facts like the one on hand, the deceased may not have been technically in the custody of the police but in the circumstances the death of the deceased amounts to death in police custody. It has been held that any other interpretation would be inconsistent with the scheme of 78 as an action of a police officer leading to the grievous hurt or death in police custody is a serious misconduct within the meaning of Section 78 but not the death of a person who was not technically in the custody of the police”

Keeping in mind the facts and situation the Hon'ble High Court opined that “ since the facts alleged to have not been conclusively established in the report of the Executive Magistrate, Mangaldoi, we are of the opinion that the Commission under the Assam Police Act, 2007 would be the best forum to cause an enquiry into the incident which resulted in death of Shri Anil Das, son of the petitioner. Depending upon the finding of the Commission and its recommendation, consequential action would follow. The petitioner would also

be entitled to compensation etc. depending on the outcome of the enquiry now to be conducted by the Commission”.

In due course the matter reached the Commission for enquiry in terms of the direction. The Commission caused an investigation through its own investigating agency headed by the Chief Investigator, a former IPS officer. In course of time the Investigator initiated investigation. Since the petitioner could not come to Guwahati for examination the investigating agency went to Odalguri for hearing personally. There the investigating agency examined Kajal Das and Smt. Surabala Das. Kajal Das is the brother of deceased Anil Das submitted photocopies of Post Mortem report, the Court order passed by the Hon'ble CJM in case No. 20/2000, copy of FIR lodged by Shri N.D. Patowari, Executive Magistrate, Mangaldoi in Tangla PS Case No. 31/2000, the copy of the report submitted by the Superintendent of Police, Mangaldoi to the Human Rights Commission. The investigating agency made a local visit to the PO which is located at a village in the suburban Tangla Township in the district of Odalguri.

From the investigating report and the records and statements of the witnesses and other materials on record it is found that Anil Das was aged about 16 years, the son of the complainant, Smt. Surabala Das died in police firing on 21.4.2000 at about 11.45 PM when a police contingent headed by the then ASI H.C. Nath of Tangla PS raided the house of the complainant and the accompanied armed police opened fire on Anil Das resulting in injuries with profuse bleeding and the doctor of Tangla Civil Hospital declared him brought dead to the hospital in the midnight of April 21/22 in the year 2000.

The SP had informed the Commission that a case was registered at Tangla PS on 1.6.2000 at 8.00 AM on the complaint of Shri D.N. Patowari, Executive Magistrate, Darrang, Mangaldoi to the effect that on 21.4.2000 at 11.30 PM ASI H.C. Nath of Tangla PD who with 15 IRBn personnel visited the house of the petitioner with aailable warrant in connection with GR Case No.760/99 u/c 394 IPC issued by CJM, Darrang, Mangaldoi in order to arrest Anil Das and fired on Anil Das at his residence at about 11.45 PM by Const. No. 191 – Dhanraj Chetry (of 15 IR Bn.) who got frightened and shot at Anil Das “ reportedly finding Anil Das jumped from the house and fell down near the constable.” Accordingly Tangla PS Case No. 31/2000 u/s 304 IPC was registered and investigated.

Materials on record including the facts relied upon by the investigating agency and other information received from the District Police namely report of the SP, Odalguri, Post Mortem report of the doctor, police record comprising the FIR and progress report and statement of witnesses including that of the

investigating agency's visit of the PO it appears that ASI H.C. Nath cordoned the house of Anil Das who was at the relevant time sleeping in his house. According to police Anil Das at the call of police chopped/pierced the wall of dry jute birch/twig and jumped with Khukri from the house and fell down near the constable. Constable Dhanraj Chetri fired one round of bullet. There was no whisper even as to whether he came to attack any of them with the alleged weapons in hand. Similarly all other members of the 15 IR Bn. Hv. C.K. Handique, Const. Dhanraj Chetri, Const. N.R. Biswas, Const. Prahlad Kalita, Const. Chandra Gogoi made a categorical statement through their deposition before the Executive Magistrate and also in course of investigation of the case by the concerned police IO that Const. Dhanraj Chetry fired only one round (bullet) which caused injuries to Anil Das who later on succumbed to his injuries. Police investigation also reveals that one empty Cartridges of 7.62 calibre was seized in connection with Tangla PS Case No. 20/2000 u/s 353/307 IPC along with 49 rounds of live ammunitions of 7.62 caliber in a seizure list having MR No. 31/2000, Zimma No. 7/2000.

Police records reveal numerous flaws in discerning the circumstances leading to the death of the son of the complainant. These are (1) Registration of Case No. 20/2000 u/s 353/307 IPC (2) anomalies in GDEs (3) use of Subsidiary Case Diary (4) inconsistency in reports (5) Post Mortem Report not used as a means to investigation and evidence gathering thereof.

The SP's report indicates that Anil Das died on way to hospital. The CI's report indicated that the deceased died on the spot. SP's report cited the name of const. as Dhiraj all throughout in the report whereas the constable was Dhanraj Chetri. This is nothing but utter callousness. No reason was discernable for not appealing against the acquittal of the accused in Case No. 31/2000. The SP's report suffered from factual variance as to the deceased's conduct just before he was shot at. In the investigation of Case No. 31/2000, the reported fall was on the constable who fired while it is "near" the constable in respect of case No. 20/2000. The report does not indicate as to the approval of the final PR of the case which suffered from lack of details and no discussion the PM report as to how the two bullet injuries were on the body of the deceased. The investigative report reveals that senior district level officer have either withdrawn or omitted to have made use of the provisions of law and procedures in the prosecution of the case no. 31/2000. The whole exercise including submission of charge-sheet seemed to be an empty formality.

Likewise the OC, CI who visited PO soon after being informed by ASI. The OC admitted in his statement to have visited the PO. SI Manik Nath, the then officer incharge of Tangla PS stated that the ASI Haren Nath informed him over phone of the incident and he along with the then Circle Inspector Nomal

Taye inspected the place of occurrence besides sending the injured to the hospital along with police personnel and he also accompanied the injured person. He also stated that Shri N.D. Patowary, Executive Magistrate performed inquest over the dead body on the truck at Mangaldoi while the PM was done at Mangaldoi Civil Hospital. Police failed to explain as to why the Inquest could not be conducted at Tangla, since the Doctor of Tangla hospital informed the police about the death of Anil Das. He saw one SLR bullet injury by the side of the chest of the dead person. He took over investigation of a case registered on the FIR submitted by the ASI Haren Nath. The then CI Nomal Taye supervised the cases. He further stated that he could not complete investigation as he was transferred from Tangla. The CI in his first progress report has indicated under sub-head " PO visit" that he closely supervised the case and described the place of occurrence. He stated that Anil Das died at the spot.

The first hand information and the circumstances leading to the death of Anil Das as revealed in the statement of OC Manik Nath and PR of CI and the facts associated thereto called for registration of a case u/s 302 IPC or at least for registration of an unnatural death case as per the established procedure. Instead the police registered the case No. 31/2000 after more than a month at the instance of the Executive Magistrate. The matter was taken very casually so that the material evidences are defaced. The facts and circumstances reveal that the police constables who were detailed for the duty belonged to one of the Indian Reserve Bns. having been well trained in handling and firing bullets from the sophisticated weapon.

The facts, situation and the surrounding circumstances lead one to a conclusion that it was a case of murder with the intention to cause death within the meaning of secondly, thirdly and fourthly of section 300 of the IPC by the Constable in question. Curiously the police registered the case on 31.5.2000 after a lapse of more than a month that too at the instance of the Executive Magistrate. It may be mentioned herein that the Magisterial enquiry was conducted at the direction of the District magistrate, Darrang, who also instructed to register a case against the Constable Dhanraj Chetry and initiate criminal prosecution against Dhanraj Chetry. The case was conducted in lackadaisical manner throwing to the winds the procedure prescribed by law. Materials on record unerringly established that the constable belonging to one of the Indian Bn. well trained in firing bullets from sophisticated weapon shot at an unarmed person from a close range without any cause. The registration of a case u/s 353/300 IPC that too against "late Anil Das" is a sad commentary on police accountability. The whole exercise was meant for creating confusion to cover up the crime committed by the police. The statement of complainant and her witnesses including that of her son are trustworthy. The deceased was killed cold blooded by a sophisticated weapon like self-loading rifle from close range

while he stood up and had fallen beyond the fragile jute stick wall collapsed under the impact of his body. As per the norms known in civilized State, the police ought to have registered a case instantly against the police personnel. Instead the police preferred to file case No. 20/2000 u/s 353/307 IPC against a dead person.

The police investigated the case in perfunctory manner that stared on the face of the record. The Post Mortem report also indicated that the OC H.C. Nath and CI N. Taye (since retired) failed to take legal action under the laid down procedure.

We have given our anxious consideration on the matter and taking all the aspects of the matter into consideration including the relevant laws we are of the opinion that protectors of law faltered in discharging their duties and Anil Das died in the police custody. Deceased and his mother and other inmates of the house were taken into custody by the persons/personnel who were entrusted the duty to serve a warrant of arrest. The whole actions were taken in an arbitrary and unlawful manner in a hole and corner fashion.

The Commission duly considered the findings of the investigating agency of the Commission and agreed with its conclusion to the effect that police investigation was sloven and indifferent. We are of the opinion that the OC H.C. Nath and also the then Circle Inspector N. Taye (now retired) failed to take action under the laid down procedure of law.

The Commission endorsed the findings of the investigating report (copy enclosed) and has found glaring default and act of serious negligence against the SI H. C. Nath along with the attending personnel of 15 IRBn not only for their inept and unprofessional work. Facts situations exhibited that all of them together entered into conspiracy in the manipulation of facts and circumstances leading to the death of Anil Das.

The Commission also evaluated the report of SP, Odalguri, comprising in- coherent incidents and glaring mistakes in citing the name of the Constable sent for trial along with facts contradicting each other without due application of mind. The matter which involved gross violation of right of life guaranteed by the Constitution was insouciantly taken away by those in charge of preserving the rights of the citizens. The Commission expressed its deep anguish and displeasure at the attitude of the SP Shri Debojit Deuri. The Protectors of law who are meant to safeguard interest of the people committed a crime under the seal of uniform and authority. A citizen is not bereft of his fundamental right to life when police goes to arrest him with a warrant of arrest. Right to life and dignity cannot be taken in a casual fashion.

“Custodial death is perhaps one the worst crimes in a civilized society governed by the rule of law. The rights are inherent in Art 21 and 22 (1) of the Constitution require to be jealously and scrupulously protected. The expression “ life of personal liberty” in Article 21 includes the right to live with human dignity and thus it would also include within itself a guarantee against torture and assault by the State or its functionaries.....If the functionaries of the Government become law-breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchy. No civilized nation can permit that to happen..... The Latin maxim *salus populi suprema lex* (the safety of the people is the supreme law) and *salus republicae suprema lex* (safety of the people is the supreme law) coexist and are not only important and relevant but lie at the heart of the doctrine that the welfare of an individual must yield to that of the community.” (*Recalled – D.K. Basu Vs. State of West Bengal 1997 (1) SCC 416*).

In the conspectus and in the light of the observations made by the Hon’ble High court, the Commission renders the following findings along with its recommendations.

1. The evidence on record, the fact situation read with the High Courts findings establish that Anil Das son of Smt. Surabala Das died in police custody. The registration of criminal case u/s 304/34 IPC against Dhanraj Chetry also lends support to our conclusion. Though the accused Shri Chetry was charge-sheeted but due to lapses in prosecution the accused was acquitted on trial.

2. Flaws in police investigation lend a hand in acquittal of the accused.

3. The police action infringed the constitutional right guaranteed under Art. 21 of the Constitution in a brazen fashion. Needless to state that rights protected to the citizens of India by the Constitution was contravened since the right protected by the Constitution taken in an arbitrary fashion, it needed to be redressed. One of the settled mode of redress is by way of payment of compensation, when a right protected had been infringed. This can be done by the responsible Government which ought to have been done long back. The Constitutional Courts in India as the protector of Civil Liberties of the citizen forged new tools and granted relief to repair the damage done by the State machineries. The commission can only hope and pray that all concerned shall do the needful palliate the old afflicted mother. The Commission expresses its strong feeling in this regard and trust that Governmental agency and other appropriate authorities will undoubtedly take measure in this regard to provide complainant Smt. Surabala Das and her family some form of relief and palliate. The Commission also recommends Governmental agency to initiate criminal

proceedings against all the police officers headed by Shri M.C. Nath the then OC of Tangla PS and Shri H.C. Nath, incharge of the Police Station along with the members of the contingent u/s 302/34 IPC. In addition thereto the Commission also recommends for initiation of departmental proceedings against Shri M.C. Nath, the then OC, Tangla PS and Shri H.C. Nath, Incharge of the Police Station and take appropriate measure under the law. *Ne maleficia remaneant impunita*- that every wrong doer are not left unpunished

Before concluding we could not leave without our acknowledgment for the delay. Nothing has gone according to plan. Holding over the relevant records coupled with resource constraints impaired our progress in this regard. The Commission is however, committed to fulfil its statutory obligations in the area of complaint redressal mechanism. It is a sad tale where an old afflicted mother who lost her son at his prime age at the hand of law enforcing agency. *'Quod hominess conserventaur'*, - *that human life to be preserved*. The case is still a sore point to our republic.

The proceeding thus stands closed.

(This has the reference to SPAC Case No.07/2009 and order passed on 15.5.2012)

8: 20.

Md. Abdul Sattar – Complainant

The complaint is initiated at the instance of complainant Abdul Sattar alleging harassment and serious misconduct against the Incharge of Panbari Police Out Post under Kalaigaon Police Station and one Sahajan Ali, Constable. The complainant inter alia asserted that while he and his family members were ploughing in their land on 29.8.09 at 9.30 AM, ASI Kali Charan Das and Md. Sahajan Ali Constable and others wrongfully restrained the complainant party, assaulted the complainant and the members of his family along with his staff accompanied by Md. Abdul Rashid, Imdadul, Habibur Rahman, Kutub Ali adn others. The complainant also averred that he had filed a complaint case before the Chief Judicial Magistrate, Darrang on 31.8.09 which is numbered as 1372/09 u/s 143/147/148/447/323/354/394/379/506/34 IPC on the incident which took place on 29.8.09 following which the ASI K.C Das along with his staff accompanied by Md. Abdul Rashid, Imdadul, Habibur Rahman, Kutub Ali and others raided his house by breaking open the torja door and wall of the house and dragged out all the family members and mercilessly beaten all of them. ASI K.C. Das wrongfully apprehended the complainant and Dorbes Ali, near relative and had taken all of them to Panbari Police O.P. it was further alleged that at the instance of the ASI K.C Das Md. Abdul Rashid lodged an FIR against the family members showing the date of filing DIR as on

28.8.09 and having the FIR registered as Kalaigaon PS Case No. 113/09 u/s 147/148/149/506 IPC on 31/8/09 and all the arrested person were remanded to Court on 01.09.09.

It was also affirmed that ASI K.C. Das instigated MD. Amir Hamja to initiate proceeding before the Addl. District Magistrate, Darrang u/s 145 Cr.PC and threatened the complainant to withdraw the court case No. 1273/09 failing which the complainant would be implicated in criminal cases. The complainant apprehended that he might be falsely entangled in criminal cases and harassed by ASI K.C Das by engaging snit-social elements.

The complaint has been duly examined and a report from the SP, Odalguri has also been called for. The SP's report reveals that an FIR was received at Panbari OP against Abdul Sattar s/o Abdul Latif and seven others accusing them for criminal trespass into the land of Amir Hamja equipped with deadly weapons and forcibly ploughed ten bighas of land by tractor on 20.8.09. The GD Entry of the relevant Thana does not indicate that such an incident took place on 20.8.09. On examination of GDE it is found that the incident related to 29.8.09 as per report of the Superintendent of Police.

In the complaint the complainant asseverated that Shri K.C Das ASI concerned all throughout acted hand in glove with Amir Hamja and his group and incited them to initiate a proceeding before the Addl. District Magistrate, Darrang u/s 145 Cr.PC in respect of petitioner's land. The said proceeding was instituted against his father. It further alleged that the ASI concerned himself issued notice under his seal and signature to the other party and the proceeding which was annexed to the petition as annexure- H.

The SP concerned in reply to this allegation asserted that he would make further investigation into the matter in respect of issue of notice by the i/c concerned. The SP concerned submitted its report on 24.9.2011. But unfortunately he did not make any whisper in this respect. The registration of case No. 113/09 on 31.8.09 was also not appeared in the report of SP which should have undoubtedly drawn his attention. The SP brushed aside the allegation of arrest and the activities relating to investigation made on 29.8.09 flagrantly violating the norms. The SP's report did not address as to how these activities could be done without registering a case by the ASI concerned.

The Commission considered the report of the SP as indiscreet and imprudent. The action of the SP was aimed at protecting ASI K.C Das in respect of unlawful act.

We have given out anxious consideration in the entire matter and materials available on record leads to the conclusion that action of the ASI K.C

Das and his companion appears to be one sided, partisan to favour the opposite party who took various unlawful steps before the Case No. 113/09 was registered for which he was not authorized or detailed. The said case was registered at Kalaigaon PS by OC on 31.8.09 and authorized the ASI K.C Das for investigation and then only not before. The distance between the Put Post and the Police Station was not very far. The ASI very well could have directed the complainant of the Case No. 113/09 to file FIR at Kalaigaon PS and he could have waited till he received a direction from the OC concerned but his action in investigating the case suo-motu violates the provisions u/s 157 Cr.PC. This purported action of the ASI in entering in to the land, restraining them in their work and therefore arresting the persons being accompanied by the opposite party on 29.8.09 and then again on 31.8.09 – smacked of highhandedness and tyrannical.

The case No. 113/09 seems to be a after thought following the court case presented by the complainant. The ASI concerned joined his hands with one group of litigants and participated in the wrongful act in blatant violation of law. The ASI is, guilty of illegal arrest, restraint and assault of the complainant and his family members.

The ASI concerned instead of upholding the law impartially and protect life, liberty, property and dignity of the members of public landed himself to create chaos and violate the law that brought indiscipline among the police force.

The Commission viewed the matter with serious note and considered it appropriate to direct the DGP, Assam to initiate Departmental action against the ASI K.C Das and to take appropriate measure as per law. The Constable Sahajan Ali is said to be a Home Guard, therefore, the Commission refrained from passing any order against him. The Commission is also perturbed in the conduct of SP, Odalguri, Debojit Deuri, APS who faltered in taking any lawful steps in an impartial manner in this case. The SP omitted to have probed the notice served by the ASI with his seal and signature and also as to why the ASI accompanied a group of people on 29.8.09 in indulging lawlessness act and take appropriate measure as per law.

The Commission feels it appropriate to suggest Director General of Police to cause an appropriate enquiry into the conduct of the SP concerned in this matter and take appropriate remedial measure to ensure accountability and probity.

In the set of circumstances, the Commission thought it appropriate to provide the Director General of Police of the State to furnish the department's

view and additional facts if any, not already in the notice of the Commission within three weeks from the date of receipt of the order to enable the Commission in finalizing its opinion.

Before concluding it would be appropriate to explain for delay in disposal of the case. The Commission received the complaint on 23.9.09. The first notice was served by the Commission vide letter No. SPAC/C/24/2009/2 dtd. 21.10.09. In the meanwhile there was change of territorial jurisdiction because of the advent of BTAD. The Commission was to issue response of the district authority, the Commission also approached the Police Headquarters. The concerned Superintendent of Police responded on 14th March, 2011. The Commission regrets for the delay due to the competing situation and since it failed in its task of attending complaints promptly.

(This has the reference to SPAC Case No. 23/2009 and order passed on 25.05.2012)

8: 21

No. SPAC/C/38/2012/2

Dated Guwahati the 25th May, 2012

From : Shri G.N. Borah,
Secretary, SPAC, Assam

To : The Director General of Police,
Assam, Ulubari, Guwahati-7.

Sub :- Allegation against officer-in-Charge Simaluguri Police Station.

Sir,

I am directed to inform you that on perusal of the application received from Sri Debabrata Saikia, MLA, 104, Nazira LAC, Assam, the Commission is of the opinion that "Director General of Police is the best person to look into the matter. Let the application along with the documents be forwarded to the DGP for enquiry and to take appropriate measure. The Commission be kept abreast".

Your faithfully,

Sd/-

Secretary,

State Police Accountability Commission,
Assam : Ulubari : Guwahati.

8: 22.

Md. Abdul Haque

-Vs-

Md. Samsul Haque of Kalain ME Madrassa
under Katigorah P.S, Dist.- Cachar.

Perused the complaint petition along with the materials on record. Vide our communication dated 16th February, 2012 the complainant was asked to submit specific complaint as the complaint petition submitted was vague and without specifying the alleged misconduct. The complainant was also asked to furnish affidavit as required by our procedure. The complainant was given an opportunity but he failed to comply with our direction. Instead the complainant forwarded a communication dated 1.6.2012, wherein he submitted that the case was already charge sheeted in the appropriate Court.

In the set of circumstances, it would be appropriate to close the proceeding. Police misconduct is not discernable. With this, the complainant stands dismissed and closed.

(This has the reference to SPAC Case No.09/2012 and order passed on 22.06.2012)

8: 23.

Smti Juri Saikia, Dist. Sivasagar

-Vs-

Officer Incharge, Amguri Police Station, Sivasagar dist.

Perused the complaint dated 25.5.2012 and also perused the report submitted by the Superintendent of Police, Sivasagar dated 4th June, 2012. On consideration of the facts it appears that the matter pertains to disputes between the two rival parties regarding functioning of poultry farm. The aggrieved party approached the appropriate forum for the remedy as indicated in the report of the Superintendent of Police, Sivasagar. It also appears that concerned ASI in discharge of the duties submitted report to the Executive Magistrate in a non-FIR (Pt.-I) Case No. 47/2011 u/s 107 Cr.PC. Considered all the aspects of the matter and also perused the report of SP including the report of the Circle Officer as well as communication dated 19.9.11 in case no.15/2011-12/40 of the Addl. Deputy Commissioner, Sivasagar.

We have given our anxious consideration of the matter. No materials of police misconduct are discernable. The party has already approached for appropriate remedy in the appropriate forum. We do not find any justification to continue with the proceeding. The proceeding thus stands closed. The parties may be intimated accordingly.

(This has the reference to SPAC Case No. 31/2012 and order passed on 22.06/2012)

8: 24.

Suo Motu Case against SI Dilip Kumar Saikia, I/C, Bebejia OP, Tezpur

This suo motu action was initiated on the basis of news published in “Asomiya Pratidin” dated 17.5.2010 reporting about the widespread public out pouring against police personnel. “Thief/dacoit- apprehended by people let off on allurement and agitated people came to the street shouting slogan-condemning police for the incidents of burglaries at Balipukhuri Tiniali under Bebejia Police Out Post. Crowd condemned police for breaking the rules and indulging in corruption” so announced in the caption. The news report revealed that about ten shops were burgled by thieves/burglars. Two local persons namely Babul Das and Bipul Nath – acknowledged thieves were handed over by members of the public at Bebejia police OP. The burglars secured liberty by bribing the in-charge of the OP. The burglars again indulged in the crime at Balipukhuri Tiniali. Local people apprehended the thieves in mid night on 15th of May, 2010. Incharge of the OP SI Dilip Kumar Saikia obstructed in the filing of FIR against the burglars for their act of burglaries involving several shops. Hundreds of people gheraoed the police OP demanding action against the i/c for his leniency to the criminals. On the same day i.e. on 15th May, OC Abul Hussain of Tezpur PS arrived at the OP and took Babul Das in his custody. Babul Das was earlier released before three days having received Rs. 3000.00 by i/c D.K. Saikia which infuriated the public. The report further alleged that SI D.K. Saikia collects money from each vehicle passing through NH 52.”

A report was called for from the SP, Sonitpur, The newspaper report was forwarded to the SP. SP’s report revealed that on 12.5.10 two rickshaw pullers of Bebejia OP namely Babul Das and Bipul Nath were handed over by members of public of Balipukhuri Tiniali at about 11.00 AM on 12.5.10 suspecting their involvement in theft cases in Balipukhuri area. This relates to GDE No. 209 dtd 12.5.10. SI D.K. Saikia i/c/ Bebejia OP interrogated them and conducted search in their houses and another suspect Chandra Sekhar of Balipukhuri Tiniali being led by Shri Babul Das. Police could not recover any thing incriminating and there was no specific case against them. Hence both of them were released by i/c, Bebejia OP on the same day.

The report further revealed that on the night of 15.5.10 some members of the public of the Bebejia area apprehended one minor boy while he was stealing chickens by breaking a shop of Balipukhuri Tiniali and on his disclosure three other minor boys were apprehended and handed over to Bebejia OP. A case was registered at Tezpur PS vide Case No. 444/2010 u/s 457/380 IPC and investigated into. All four minor boys were arrested and forwarded to Juvenile Justice Board, Tezpur. The Board released the minor boys and handed over to their parents. This led further dissatisfaction to the public.

On 16.5.10 at about 2 PM Shri Babul Das aged 29 years s/o Lt. Khirod Das of Gatonga Pathar Chuburi, a rickshaw puller who was handed over by the members of public at Bebejia OP on 12.5.10 by public from Bindaguri market and was taken to Balipukhuri Tiniali and thereafter assaulted him and removed his hair by tying him at tree. On receipt of the information i/c of the Bebejia OP along with his staff rushed to the Balipukhuri Tiniali. Meanwhile Bipul Nath s/o P. Nath of Kaoimari and Maina Nath s/o Mahendra Nath of Baseria Bogai under Bebejia OP were apprehended by public and created an unruly mob comprising 200 male and females at Balipukhuri Tiniali shouting slogan against i/c of Bebejia OP. Then OC Tezpur PS arrived at the Op and brought the situation under control.

The report also indicated that the public of Balipukhuri Tiniali area created the unruly situation on 16.5.10 because of not taking action against the alleged suspects by the i/c of Bebejia OP SI D.K. Saikia. However, the report refuted the allegation of taking bribe of Rs. 3000.00 by the i/c. Local witnesses stated during the enquiry by the Addl. SP of the district that Babul Das, who gave statement in front of electronic and print media on 16.5.10 of paying a bribe of Rs. 3000.00 did not have the capability to give Rs. 3000.00 to i/c Bebejia OP. The allegations brought out against the i/c in a news paper report could not be substantiated. The report added that the SI D.K. Saikia was transferred from the Bebejia Police OP to ASEB Sub-Police Station located at Mission Chariali, Tezpur as OC vide district order No. 1191 dated 28.5.10 and accordingly the SI handed over charge of Bebejia OP on 4.6.10.

The report was duly considered by the Commission. The Commission thereafter decided to enquire the matter on its own through its investigating agency and accordingly entrusted Chief Investigating Officer, Shri R.K. Bania, IPS (Retd) for investigation. The CI visited the PO and examined the material witnesses.

- (1) Shri Kamal Handique s/o Late Chanaram Handique, Balipukhuri Tiniali, Bebejia

- (2) Shri Bibek Saikia s/o Shri Golap Saikia, Kundurabari
- (3) Shri Phatik Saikia s/o Late Premananda Saikia, Balipukhuri Tinali, Bebejia.

The investigating agency in course of investigation also took into account the relevant police record including the General Diary. The investigating agency on thorough probe gave his comment on the GDE.

The Commission has gone through the investigation report along with the materials relied upon. Investigation was done professionally and in a fair manner which make our enquiry useful. The Commission approved and accepted the report.

On consideration of the investigative report as well as the materials on record, the Commission found that the concerned i/c SI D.K. Saikia recklessly fabricated the police record to suit his illegitimate design. GDs were maintained in imprudent and clumsy fashion by the officer concerned and manoeuvred to shield the accused persons. He even initialled relevant GDEs after the visit of the investigating agency of the Commission. He could not have signed the GDEs before he was transferred. Admittedly he signed in January/ February, 2012 during which time he was posted at Special Branch, Kahilipara. Records indicate that thana level officer failed to address the grievance of the people and allowed crime to continue. The police at the OP, Thana and district level remained silent spectators. The investigating agency rightly commented that concerned i/c SI D.K. Saikia had taken the senior layer of the police at police Station and district HQ for a ride and negligently refusing to take action as per law and procedure. The criminals who were apprehended by the complainant were set at liberty wantonly by the concerned SI in case no. 444/10. Thana record also revealed that in total violation of the law kept confined four minor boys as arrested. Explanations were not furnished why these juvenile were taken into custody and who were shown to be taken in to custody twice. As police officer, who was responsible for protection of rights of the people and to create a feeling of security in the community made people panic-stricken. On the other hand the officer indulged in manipulation of records ignoring the public complaints and allowed crime to continue. Police at OP, Police Station and District level remained a silent spectator. The concerned officer brazenly disobeyed his legal obligation entrusted by law and allowed the burglars to decamp the Police Station. Laws are to be followed not to be disobeyed. The above two persons thereafter were recaptured by the public and handed over to the police. Already we have indicated that amongst the persons arrested some of them were also juvenile offenders. The action so far taken in the instant case by the police authority has not only lowered the image of the police but has also shaken the public confidence.

On perusal of materials on record it transpires that the SI D.K. Saikia sought to screen the offender from punishment and witnesses alleged that his hands were greased for the purpose. Materials also disclosed that the above mentioned officer concerned committed dereliction of duty and wilfully and intentionally disobeyed the very intention of law to screen the persons from legal punishment. The evidence further disclosed that the officer failed to register the case. Likewise materials disclosed that he used as genuine forged document fraudulently and dishonestly which he knew or had reason to believe to be forged document. The law demands that police excess to be thoroughly investigated and the police personnel responsible for unlawful action is prosecuted and punished. It is essential to fulfill the State's obligation to bring forth accountability in the individual case and justice for the victim to avoid future recurrence. In the instant case the society was the victim. If the violators are allowed to go unpunished, it will undoubtedly generate a culture of impunity, which in its train emboldens the law breaker and the wrong doer.

In the set of circumstances, we issue following directions:

The competent authority is directed to lodge FIR u/s 213/217/471 IPC read with Section 99(1), (3) & (4) of the Assam Police Act, 200, apart from the departmental proceeding and in addition also take steps for initiating departmental action against the said officer. The Commission also expresses its deep anguish about the conduct of the then Superintendent of Police, Shri Jeetmal Doley, IPS who was incharge of the Sonitpur district.

The Commission thus advises the Director General of Police, Assam to

(A) Institute Departmental action against SI D.K. Saikia based on the findings of the Commission.

A N D

(B) Register a First Information Report against SI D.K. Saikia u/s 213/217/471 IPC read with Section 99 (1), (3) & (4) of the Assam Police Act, 2007.

The Director General of Police is accordingly given an opportunity to present the departmental view if any, in addition to the facts not already in the notice of the Commission in terms of first provider to Section 82 of the Assam Police Act, 2007 within four weeks from the date of receipt of this order.

The records including the evidence collected by the Commission, the findings are to be sent down forthwith to the authority concerned for appropriate action.

(This has the reference to SPAC suo motu Case No. 23/2010 and order passed on 09.07.2012)

8: 25.

Shri Dhiren Dutta of Morangi Chariali, Golaghat
-Vs-
Dergaon Police Station

Perused the note of the Investigating Agency of the State Police Accountability Commission. Also the report of the Superintendent of Police, Golaghat as well as the complaint the girl is released on PR by the Court. No misconduct or breach on the part of the police personnel is discernable. Thus, the proceeding is closed.

(This has the reference to SPAC Case No. 23/07/2012 and order passed on 23.07.2012)

8:26.

Md. Majiruddin Ali , Mazbat, Udalguri district- Complainant

On receipt of a complaint from Md. Majiruddin Ahmed alleging police lapses, this proceeding was initiated. According to the complainant a minor girl was kidnapped by the accused, to that effect he lodged an FIR in the Police Station and a case was registered u/s 363 (A)/385/506/34 IPC. His grievance was to the effect that the police deliberately was sitting over the matter instead of taking lawful action.

A report was called for from the concerned Superintendent of Police. As per the report it appears that the accused was granted bail from the High Court. A copy of the High Court's order was also forwarded. The report is also accompanied by the statement recorded u/s 164 of the Cr.PC along with the report of the concerned Medical Officer. Investigation is nearing completion

We have given our anxious consideration on the matter and all things considered, the Commission do not find any justification to continue with the proceeding. No police misconduct is discernible. Subject to observation made above, the proceeding stands disposed.

(This has the reference to SPAC Case No. 54/2012 and order passed on 01.08.2012)

8:27.

Shri Jasodaranjan Das, Uzan Bazar Guwahati
Vs
O/C Geetanagar Police Station

A complaint dated 30.4.2008 was received by the Commission to the effect that the Officer incharge of the Geetanagar Police Station defaulted in taking action on FIRs lodged before the Geetanagar Police Station alleging forceful dispossession of rightful ownership and possession of his property comprising land and building situated in Anil Nagar under Geetanagar PS in the city. The complainant narrated that he submitted four written FIRs which he had enclosed with the complaint.

In the FIR dated 1.12.06 the complainant alleged that on 01.12.06 (Friday) in the early hours of the day 50/60 on 01/12/2006 (Friday), 50/06 people male, female along with three trucks and 7 other vehicles came to the plot of land measuring 3 bighas, 4 katha and 10 lechas covered by patta No. 106 (old)/ 156 (new) of village Japorigog, Kamrup, Assam and having two house with Municipal holding No. 120 and 130, entered there by force breaking open the gate and then started beating up the inmates of the houses with dire consequence. The miscreants brought down all the belongings of the family members residing in the houses into the trucks and took away after chasing family members out from the premises.

The complainant further stated in the FIR dated 8.5.07 that on 8.5.07 a group of 100 men and women led by Kusum Das again attacked the families staying in the two houses and got them out by force then and there they started occupying the two houses and persisted with the transgression till filing of the complaint.

The complainant inter alia also alleged that further FIR was lodged at Geetanagar PS along with orders of the court restraining the trespassers who felled many valuable trees but it was found that the OC, Geetanagar PS was dragging his feet instead of taking any legal action against the trespassers and abetted the transgressors in carrying out the transgression and illegal activities.

On receipt of the complaint, the Commission at the first instance asked the OC Geetanagar PS to furnish status report vide communication dated 12th May, 2008. The Commission had to send subsequent reminder on 24th June, 2008 with a copy to SSP (City), Guwahati. A detailed report was received from the OC Geetanagar PS on 27.6.08 wherein it was inter alia indicated that on 01/12/2006 S.I Lalit Buragohain of Geetanagar P.S submitted a proceeding under section 144/107 CrPC vide Geetanagar P.S Non-FIR Case No. 20/06/Pt-I making Jasoda Ranjan Das of Rajgarh Link Road and Shri Surajit Bhuyan, S/O

Sukumar Bhuyan of Bhogerpar, District Barpeta as parties stating that both parties were claimants and in possession of the legal documents being the owners of the disputed land which was a matter of civil dispute and police anticipated violence. It was also stated in the report that on 3.12.09 a case vide Geetanagar P.S Case No. 209 U/S 147/448/427/325/201/304 IPC was registered and returned in FR on 31/01/2007 vide FR No. 08/07 as civil dispute. The report also indicated that on 08/05/2007, a Non-FIR Case No. 07/08 U/S 107 CrPC was submitted against Smti. Kusum Das, wife of late Dwijendra Ranjan Das by Geetanagar P.S as first party and Shri J.R Das, S/O Late Dwijendra Ranjan Das as second party considering the dispute of a civil nature.

Again on 16/05/2007, Geetanagar P.S Non-FIR Case No. 09/2007 U/S 107 CrPC was submitted against both the parties by S.I G.K Bora of Geetanagar P.S. The report has denied receiving of FIR in the regard as per the P.S records.

The Commission also received a report from the SSP. In his report the SSP stated that a complaint dated 01/12/2006 was duly received by the Geetanagar Police Station. Accordingly, S.I Lalit Buragohain of Geetanagar P.S was entrusted to verify the matter and to do the needful as per the provision of law. It is further stated that though, there is no cognizance to police in the complaint petition, however, the matter was scrutinised and submitted a proceeding U/S 144/107 CrPC vide Geetanagar P.S Non-FIR Case NO. 20/2006 Part-I between 1st party Shri Jasoda Ranjan Das, S/O Late Dwijendra Ranjan Das, Rajgarh Road, Anil Nagar and 2nd party Shri Surajit Bhuyan, S/O Late Sukumar Bhuyan of Bhogerpar, Barpeta, Dist.- Barpeta stating the fact that both the parties are the claimant. Both the parties were in possession of legal documents for being the owner of the disputed land. The Non-FIR case was submitted for maintaining peace between the parties. Besides, both the parties were suggested to move the appropriate court for redress as the nature of dispute is civil matter.

On the basis of FIR dated 03/12/2006, a case was registered at Geetanagar Police Station vide No. 209/2006 U/S 147/448/427/325/201/304 IPC. The case was duly investigated. On investigation, it was found that the matter was of civil dispute. Accordingly, the investigating officer has submitted final report on 31/01/2007 vide Geetanagar P.S FR No. 08/2007 as a matter of civil dispute. However, the suggestion was not accepted by the learned court and passed an order for re-investigation, which is still going on. ***(assertion of police is palpably in court which will be discussed later on. The record of the case diary and Court Order was feigned to be missing so much so that the record of the case along with the court order was pretended to be missing)***
(Mysterious missing of the record will be discussed in due course of time – Guwahati Police has earned the opprobrium in missing record)

Likewise in respect of the FIR dated 8.5.07 the SSP asserted that since the offences were of non-cognizable nature the police did not register the case and the matter was verified and submitted as non-FIR against both the parties forwarded to the court for necessary action. Smt. Kusum Das, W/O Late Dwijendra Ranjan Das as 1st Party and Shri Sisir Ranjan Das, S/O Late Dwijendra Ranjan Das on 2nd party in the said Non-FIR proceeding. Again on 16/05/2007, S.I Giri Kt. Bora of Geetanagar P.S has submitted a Non-FIR proceeding before the concerned court against both the parties on the same issue to avoid untoward incident and maintenance of peace.

The Commission in course of time, had to take recourse to investigation through its own agency. The Commission at that stage since was in an evolving stage, it took time in gaining grounds which held over the progress. In due course of time the Commission took up the investigation in right earnest but faltered because of apathy and inactivity of the PS concerned. The OC, Geetanagar PS was summoned by the Commission with all relevant records at the first instance. The O/C on his appearance before the Commission stated he came to understand that the SSP, City issued order to re-investigate the case on the FIR dated 03/12/2006 of Geetanagar P.S Case No. 209/06. He could not find case diary and the order issued for re-investigation. The Commission took a serious view on the matter and ordered calling for explanation by the SSP, City and immediately probe into the circumstances leading to the disappearance of the court order as well as the case diary of the said case. The Commission therefore, called for a report from the SSP, City on specific queries in its communication to the SSP. The SSP in his report admitted that CD of the case remained ***untraced from P.S record room after the order dated 22.2.07 for re-investigation passed by the Chief Judicial Magistrate.***

The SSP's report pointed a story of random disregard at the PS level in the area conducting of investigation of criminal case in right earnest. The SSP's report also alluded that the SI of Satgaon PS, the then OC Geetanagar PS proclaimed that there was no hope to trace out the CD, etc.

The SSPs report laid bare as to the lapses of the successive OCs concerned. Some of the observations from the report of the SSP is paraphrased herein below:

“I also perused the report submitted by the Addl. S.P, City, Guwahati on 08/02/2010 and found that the present I/O had not taken any steps as directed by me. Considering the inaction of the I/O, I passed an order of suspension for his deliberate disobedience of the instruction given to him.”

It is further stated that “though the Hon'ble Court passed an order way back on 22/02/2007 and communicated on 01/03/2007 but the re-investigation

could not proceed due to disappearance of the C.Ds. The re-investigation of the case could be started only from 16/12/2009 i.e after the C.Ds of the case could be retrieved from the record room.”

The report of the SSP does not give a good account of itself. The SSP City seemingly failed to cause proper investigation in right earnest keeping in mind the nature and urgency of the case. The PS level faltered in investigation of the cases out smarted him and *hurriedly* returned the case No. 209/06 in FR on 31.1.07. Whereas SSP's office brought to him the case records for treating SR three days after disposal of the case. It is not understood as to why SR numbered in the bygone year 2006 while the actual treatment to the case has been done on 3rd February, 2007. SSP's office itself comes under the shadow.

We have fully considered the materials on record including the report of the CI and the Commission fully endorses the report of the Investigating Officer. We agree with the CI to the effect that the SSP faltered to rejuvenate the instrument of Special Report Cases (SR Cases).

The materials on record point that Circle Inspector had acted in a casual manner and the SSP concerned failed to activate and energize the system of investigation of special report cases. The OC of the Geetanagar PS was sitting over the matter of re-investigation by keeping CD and PS record to gather dust. The written statement submitted to the SSP brought ridicule to the police team who were engaged in record keeping and accountability by professing that there was no hope of tracing out the CD etc. SI Saidul Islam has been severely reprimanded for his gross dereliction of duty without calling for a departmental proceeding with a view to avoid a major punishment.

Re-investigation of Case No. 209/06 has not progressed in spite of goading by the SSP, City. Examination of records relating to the case reveals that the police officers namely the then O/C Saidul Islam and investigation officer Lalit Buragohain have perfunctorily dealt with the case. Both the officers have been summoned and heard them in person.

S.I Lalit Buragohain stated that he investigated Case No. 209/06 U/S 147/447/427/325/304 IPC that was registered on 01/12/06 on receipt of a FIR from Jasoda Ranjan Das of Anil Nagar, Guwahati. O/C Saidul Islam registered the case and endorsed to him for investigation and returned the case in FR as civil dispute. He stated further that Jasoda Ranjan Ranjan Das and Sisir Ranjan Das told him that Smti Arati Goswami died but then could not furnish address of the dead person. He did not also get witnesses in the neighbourhood who could tell him of the dead person. S.I Lalit Buragohain in his statement stated that Jasoda and Sisir did not want to tell him in spite of his repeated request about the dead person.

The officer further disclosed that he investigated the case under close supervision of the O/C and the Divisional Dy. S.P of Chandmari and all actions taken were under instructions of both the senior officers. The O/C visited the P.O 2/3 times along with him during investigation. The O/C himself forwarded the FR as civil dispute.

SI Saidul Islam, the then OC stated before the investigating agency of the Commission to the effect that he had registered the Case No. 209/06 and received FIR from Shri Jasoda Ranjan Das and endorsed the case to Si Lalit Buragohain for investigation. SI Saidul Islam stated that the complainant did not cooperate with the IO and omitted to state that one Kusum Das was engaged for helping his father, in course of time married his father Lt. Dwijendra Ranjan Das and bore two children from his father and then were residing in the house and landed property in question mentioned in the FIR. The IO returned the case in FR as civil dispute. The OC also stated that Jasoda Ranjan Das did not produce the injured woman/ deceased Arati Goswami for sending her for medical examination. He also stated that FR was rejected by the Court and ordered for re-investigation.

The court order and the C.D of the case did not reach him. But Dy. S.P, Chandmari Mr. Rubul Gogoi and O/C Chandmari Rukman Gohain traced out the missing C.D and court order and he also submitted a photocopy of the court order dated 27/02/2007.

S.I Saidul Islam having been further examined with specific queries - stated that offence under Section 201 IPC was incorporated in the Case No. 209/06 by mistake. The mistake came to his notice only on the day he was re-examined by the Commission on 08/05/2012.

Admittedly there was no initial/ endorsement in volume 18 of the General Diary of Geetanagar PS w.e.f. 19.11.2006 to 06.12.2006. The SI explained that because of the busy schedule initials were not put. He did not initial the entries in Volume. 18 of the General Diary of Geetanagar PS w.e.f 19/11/2006 to 06/12/2006 because of pressure of work. He stated that six women were taken into custody in connection with Case NO. 207/06 and 209/06 (GDE No. 94 dtd. 04.12.2006 and time 1-15 A.M) and arrested vide GDE NO. 109 dtd. 04.12.2006 at 12-30 P.M and released by the I/O in consultation with the Dy. S.P, Chandmari Division. But there is no entry in the GD as to the release of six women.

Because of absence of any progress in the re-investigation of the case and for want of any headway for redressal of the complaints/FIRs of the

complainant of this SPAC Case, the Commission summoned the Dy. S.P, Chandmari Division and the I/O of the Case No. 209/06 (Re-investigation) and heard them in person as to the progress of investigation, which was the central point of the complaint. The Dy. S.P having appeared before the Commission on 06/01/2012 assured the Commission to appraise the progress urgently.

The complaint received by the State Police Accountability Commission disclosed that Shri Jasoda Ranjan Das lodged complaint/information at Geetanagar P.S one after another beginning December 1, 2006 till May 8, 2007 to the effect that his house and landed property measuring 3 Bighas 4 Kath 10 Lechas covered by K.P Patta No. 160 (old)/156 (new) situated in village Japorigog, District Kamrup owned by his late father Dwijendra Nath and the complainant being his legal heir, was criminally trespassed and his tenants were evicted and then occupied the two houses by miscreants . In the process belongings of the occupants were stolen, one Arati Goswami sustained injuries and died. Police refused to act legally and professionally with the result that the complainant suffered loss that gave rise to forceful deprivation of his rightful ownership and possession of property. The act or omission of the police officers that has led to or amounted to forceful deprivation of the complainant and members of his family of their rightful ownership or possession of the house and landed properties therefore amounted to serious misconduct under Section 78 (i)(e) of the Assam Police Act, 2007. The documents as discussed and annexed to the Investigative Report are the testimonies of serious malfeasant transgression, misdemeanor and indiscretion on the part of the police.

The materials on record unerringly laid bare grave and damning indiscretion at the police station level. Officer i/c SI Saidul Islam and IO SI L. Buragohain failed to exert just and right initiative as per law in appropriate and impartial manner. These officers were indulging procrastination. Although there was no whisper of any offence under section 201 IPC in the case No. 209/06 which was registered under section 201 and also u/s 154 Cr. PC. When confronted SI Saidul Islam sought to brush aside and ascribed as a mistake.

We have perused FIR in question which disclosed offences u/s 147/149/447/448/302IPC, but there was no whisper as to the offences u/s 201 of the IPC, disappearance or committing offences etc. Mentioning section 201 IPC itself is however, at the end appears to be very meaningful.

Facts situation disclosed that information were poured one after another from December 1, 2006 with the onset and onrush of process of dispossession from the property with a big army of miscreants and despite police visited to the PO, there was no move or activity to prevent the unlawful acts of the miscreants and to protect and preserve the property of the complainant. It seems, as if the

police moved in a planned and concerted manner to retard the progress of detection and prevention of the crime and instead allowed the miscreants to take over the property. By procrastinating the matter police allowed evidences to disappear. Smt. Arati Goswami who was peacefully residing in the property succumbed to death, acquiesced the corpse thereby caused disappearance of evidence of commission of the offence. Obviously the officers conjointly acquiesce need towards disappearance of evidence to screen the offenders. All these aspects lost sight of even by the supervisory officers in case No. 209/06. The same is also in the case of case No. 207/06.

All these cases were taken very casually only with a view to divest the complainant from the rightful ownership and possession of the property and allowed the miscreants to forcefully deprive the complainant of his rights.

The final report of case No. 209/06 is the testimony of serious blemish on the part of the police. The police obviously sought to protect the miscreants, allowed the evidences to flitter away more particularly to cause disappearance of Arati Goswami and set the blame on the complainant for not ferreting the deceased. It is unbecoming of the senior Superintendent of Police to blame squarely on the complainant for not producing the injured Arati Goswami or her dead body by her sons for the investigation.

We have examined the materials on record including CD No. 3. All these did not indicate that the IO made any serious effort to ascertain the where about of deceased /injured person Smt. Arati Goswami. CD No. 3 dtd 31.1.07 conform the essence of the provision of section 201 IPC. Instead of discharging their lawful duty these officers engaged themselves in blaming the complainant for not providing of the evidences. The officer in charge of Police Station who registered the FIR failed to even examine and question the complainant as required under the law at the time of receipt and registration of the case all the facts. As an officer i/c of the PS the duty was cast on the OC to examine Jasoda Ranjan Das and record his statement as to where about of Smt. Arati Goswami including the essential lead on embarking investigation. Police record and GD did not indicate of any such steps in this regard were undertaken. The investigating agency failed to focus in to the real issues. It was the duty of the police to collect, collate and procure evidences. It was the duty and obligation of the police to investigate in right earnest and to ferret out the evidences. The complainant should not be entrusted to collect and provide evidence to police which is a strenuous job for gathering evidences for police, more so in the matter of property of the complainant was allowed to be occupied by illegal means by the miscreants. The complainant at a stage was in stress and strain and hardly was in a position to spoon feed the investigation by taking extra legal measure. The complainant did not have the power to seize and arrest in order to

trace the woman. It is the power of police. He probably informed the police for which section 201 IPC was added in the case No. 209/06 conjointly with Section 304 IPC. It is the task of the police to investigate the case and take the case to a logical end. If the investigation has proved that the complainant has resorted to falsehood, he should have been counter prosecuted, but should not have made inference that Arati Goswami died somewhere sometime between 1/12/2006 and 3/12/2006 and investigating officer and the OC who registered the case had nothing to do with the case.

Materials on record provided by police including the reports of SSP did not indicate as to how OC Saidul Islam outlandishly violated provision u/s 154/156/157 Cr.PC and advised SI Lalit Buragohain to enquire into verbal complaint for appropriate action. Where is the power of police to embark upon enquiry and submit a non FIR case? The column in the format for the Non-FIR case clearly indicated under the Sub-head- "case reference". In the instant case, S.I Lalit Buragohain acting under the illegal order of the OC visited the place of occurrence at the earliest and at the first point of time and found no case of cognizable nature as recorded in the GDE No. 12 dtd. 01/12/2006 and submitted a Non-FIR case dismissing the verbal complaint which could have been reduced into writing under the provision U/S 154 CrPC. But the same information as received in writing has expressed itself in a Case No. 207/06 within 2 hours of the verbal information at 1.45 P.M and hardly 40 minutes after report of the Enquiry Officer S.I Lalit Buragohain at 1-05 P.M that no cognizable offence disclosed and making a Non-FIR Case No. 20/06 It is highly intriguing a stand that the O/C and the S.I Lalit Buragohain have taken. They contradicted and created a confusionary state. S.I Lalit Buragohain found 6/7 women and could so quickly have examined the documents in claim and counterclaim and ended in a Non-FIR case directing the claimants to approach the court. On registration of another Case No. 209/06 U/S 147/448/427/325/201/304 IPC on 03/12/2006 on a complaint with reference to the complaint dated 01/12/2006, the O/C Saidul Islam along with IO, L. Buragohain took six women in custody from the place of occurrence in the dead of night and dismissed a cognizable case on ground of the "land and building as disputed" barely a day before and arrested them in Case No. 207/06 and case No. 209/06. Police records so far discussed including the reports of the SSP did not indicate as to the release of the arrested women. As discussed, the FR of case No. 209/06 also did not indicate to the steps/ action taken in the arrest and release of the arrested accused women. Why this arrest escaped attention of the supervisory officers of the police? No explanations came forth.

SSP has taken action to treat the case as a special report case (SR case) on 03/02/2007 after the case was returned in FR on 31/01/2007 with the message that the SSP has no control over investigation of cases of heinous

nature calling for pointed attention and supervision. The SSP has misinformed the Commission of the Case No. 209/06 as being under re-investigation but as a matter of fact the case was not under re-investigation as the court order and the CD in original were reportedly missing and untraced ever since it was ordered for re-investigation till 16/12/2009. The O/C Saidul Islam intimated in his report to the SSP that there was no hope of tracing the C.D. The Commission had to take painstaking effort in tracking down the C.D and court order in course of examining the extent of police accountability in the issue. Whether the missing CD could have been recovered and the case could be put to re-investigation if the Commission would not have come to the picture? The answer would be a lemon. This act attracts provisions of Section 204/217/218 IPC against the police officers right from the level of O/C, C.I, Dy. S.P and SSP. It is interesting to note here that the relevant entries in the G.D of Geetanagar P.S remained without being signed by the O/C and this lapse has escaped attention of all the police personnel conveniently in a glaring manner. More interesting development in the aftermath of registration of the Cases 207&209 in the first and third of December, 2006 is the manifestation of building up of records for claims by the claimants by registering the sale deeds on 19/03/2007 after about three and half months of the cases initiated. The Non-FIR case and FR in cases in quick succession and no re-investigation not taken up have proved a point that the police acts and omissions were seemingly engineered for facilitating the offenders. S.I Lalit Buragohain in his report 01/12/2006 submitted that he examined the records and found both parties were asserting claims on the property basing on records and he found no cognizable case to investigate. Sale deeds registered on 19/03/07 in respect of the land of the heir apparent of the land owner are a perceptible result of dereliction of duty by the police. Police reports obnoxiously put emphasis on the land right, pulling out its focus/attention from the offences of injuries and death of Arati Goswami. The complaints of Jasoda Ranjan Das embody his rightful claim founded on documentary evidence to his claim that the house belongs to him situated in the land of his late father Dwijendra Nath Das as discussed above. Complainant's information both oral and written disclosed cognizable offences and the Non-FIR case was a mismatch, discordant and has deliberately disregarded the procedure prescribed by law. As a law enforcing officer and IO, SI L. Buragohain, was to undertake his first and foremost task to search for the offenders and taken them in custody in order to locate the old lady sustaining injuries in the process of illegal eviction by the miscreants. Things burgled, should have been recovered and seized. Facts speak for themselves. The IO failed to take the minimal action and police report or records have not revealed any action in this direction. The mandatory PR has not been initiated and acted upon Police in all hue have preferred to blame the complainant all the time rather than becoming themselves professionally activated. Such conduct attracts punitive action as discussed above.

There is no mention at all of the progress report of investigation of a SR case in the report and it may be conveniently done away with in order to take cover of the biased and unprofessional investigative action. Why not the latest report does explain offence by offence in the two cases? What about offences U/S 147/201/304/325 IPC? Should police not account for these offences in their investigation? Should IO of the Cases No. 207/60 & 209/06 prioritize offences U/S 447/427 having questioned to the bonafide of the complainant to complain of injuries, and death thereof and rioting and omit the investigation of offences U/S 325/304/201 ? Why no reference to GDE No. 13 dt. 1.12.06 registering case No. 207/06 u/s 427/379 IPC? Are offences u/s 325/304/201 IPC not to be investigated if taken place in a disputed place?

The police report is crafty, deceitful and devious. The successive SSPs, of the City cannot escape from their culpability. All the incumbents SSPs are therefore, answerable for the flawed police action in supervision, investigation and registration of the Case No. 207/06 and 209/06. The Case No. 207/06 has figured in the last leg of the report to the Commission. All the previous reports were guileful and wily and omitted to mention this case which laid bare the effort to conceal facts from the Commission.

The author of the reports also omitted to examine as to whether the procedure adopted of enquiry by the O/C Saidul Islam on receipt of information of a cognizable offence on 01/12/2006 was lawful and procedurally sound. The complaint received from Shri Jasoda Ranjan Das disclosed cognizable offences. Instead of moving heaven and earth towards prevention and detection of crime the law enforcing agency reported in dilly dallying with the matter and thereby leaving a leeway to the culprits. Interestingly on the same set of informations, S.I L. Buragohain made out a Non-FIR case in the forenoon which O/C Saidul Islam also dittoed. In the same evening registered Case No. 207/06 u/s 427/379 IPC and the case was investigated by the same S.I. However, the circumstances indicated that case No. 207/06 was registered not on 1.12.06 but registered on having received the FIR dt. 3.12.06 informing death of Arati Goswami. It has been elaborately discussed. Police thus has acted with two minds – whether to proceed with procedures or circumvent to invisible pressure with perfunctory approach to safeguard the fraudulent aggressors. Preferring to a non FIR approach having visited the scene of crime/place of occurrence at the first instance, all these hustle and bustles were mere pretence so that the cases are bound to be returned in FR and no police reports and records are speaking of the classic police procedures as may be required to be followed by way of arrest, search, seizure etc. in the interest of free and fair investigation.

On a specific action by the Commission, the SSP has furnished an order of his approval on the PR of Inspector of police Taher Ali suggesting FR of Case No. 209/06 under re-investigation, along with the copy of the PR. On examination, it has been observed that the Progress Report was only a namesake and the contents are not conforming to the Rule 9 of APM Part V which stipulates - the PR to dwell on:

1. Information :-
 - (a) facts given in the FIR
2. Investigation

Facts ascertained by local Inspection with details of modus operandi

 - (a) Evidence of PW's
 - (b) Evidence of DW's
 - (c) Facts ascertained by enquiry from confidential sources, P.S
 - (d) record, etc.
 - (e) Result of house searches
 - (f) Result of co-operation with other P.S
3. Accused.
 - (a) Arrest (note date and whether on bail)
 - (b) Action regarding absconders
4. Deductions.
5. Defect, delays and omissions in the investigation.
6. Instruction given to the I/O
7. Final order
 - (a) Passed
 - (b) Recommended.

The order of acceptance of the suggestion of the CI by the Additional SP itself is diabolic and bizarre. A civil dispute is a civil dispute and cannot be swivelled/ adapted to offences U/S 149/448/427/352 IPC and factually a highly incorrect proposition. The PR in question is a non-descript superficial work. It has contravened the provisions of the APM rule 9. The investigation as revealed in the report and examination of the officials remains far short of the requirements of the progress report. PR is cryptically silent about arrest of six women. But the SSP has omitted to have acted professionally in approving the PR. This speaks volume of unprofessional and unscrupulous conduct of the police personnel giving go by to accountability to law. Six women arrested in connection with the cases No. 207/06 and 209/06 (instant case) as recorded in the GD but the formatted particulars in the PR II indicate Nil at Sl.-15 with no explanation thereto. The re-investigated Case No. 209/06 U/S 147/448/427/304 IPC artfully omitted the offence u/s 201 IPC, has been ordered for returning in

FR but the same was yet to be sent to the court. A new offence U/S 352 IPC has been incorporated in the order adding further confusion and distortion.

On careful analysis of the materials on record right from the receipt of the informations handling of the complaints and investigations from 1st December, 2006 to April 25, 2012 about six years is a disgraceful story of partisan, unfair and unprofessional police works. It is a tale replete with discrepancies, contradiction, distortion of facts, non-compliance to rules and procedures, etc. Investigation is devious and flawed. All police officers from the I/O, O/C, Circle Inspector, Divisional Dy. S.P, Addl. S.P/SSP were are deep in quagmire and oblivious of the essence and tasks of investigation. As a law enforcing agency the police officers could not have sit tight and wait as idle spectator and allowed crime to go unabated. In one hand the complainant was complaining of repeated acts of trespass, assault, etc. and on the other hand some of the police worked hand in glove with offenders. The acts and activities of OC, Saidul Islam and IO SI Lalit Buragohain pointedly indicated involvement of these two officers engaged themselves, knowingly in disobeying direction of law intending thereby to save or knowing it to be likely that he (they) would thereby save any person from legal punishment, etc. Willfully these two officers without any legal justification failed to take appropriate action under the law with corrupt motive and thereby brought disreputation to the force. In our considered opinion, apart from initiating departmental enquiry the concerned authority need to lodge FIR against these two officers u/s 217/218/342 read with section 98 and 99 of Assam Police Act, 2007, SI Saidul Islam for the reported missing of CD to stall the investigation of case No. 206/09. SI Saidul Islam is also to be prosecuted u/s 204 of the IPC.

O/C Saidul Islam, I.O Lalit Buragohain deserve stringent/deterrent action. Both of them are liable to be prosecuted for wrongful confinement of six women U/S 342 IPC in their own volition having failed to prove the case in prosecution arresting them and having no records of their release in the connected police records read with S. 99 of Assam Police Act, 2007, frivolous investigation U/S 98 of AP Act to follow legal procedures to arrest, search and seizure relating to the death of Arati Goswami and recovering her dead body in pursuant to the Case No. 209/06, for failing to register the First Information Report and preferred to enquire in violation of the provisions U/S 154 CrPC. Their inaction further amounts to offences u/s 217,218 IPC. Penal action under Section 204 IPC discernible in respect of SI Saidul Islam for the reported missing of CD resulting in stalling in re-investigation of the Case No. 209/06.

The supervisory officers including the Inspector of Police, Dy. S.P, Addl. S.P and the SSP who have submitted the reports without due care and without adherence to law and professionalism throwing to the winds the requirements of

accountability to the law are also liable for criminal proceeding u/s 217/218 IPC r/w section 98/99 of the A.P. Act 2007 u/s. They owe to the police department their respective explanations for the perfunctory investigation. Inspector Taher Ali who suggested the Case No. 209/06 U/S 147/448/427/201/304 IPC to return in FR without having discussed the re-investigation of the case conforming to the Rue 9 of APM Part V and A. Sinha, APS, Addl. S.P (crime) City Police even casually approved the suggestion of Inspector Taher Ali who suggested the case No. 209/06 u/s 147/448/427/201/304 IPC to return in FR and thereby accepting his suggestion cannot absolve himself from dereliction of duty and are also accountable and departmentally proceeded

Considering the gravity of the misconduct as elucidated from the discussion made above, the Commission, however, direct the Police Department to draw Departmental Proceeding against the concerned Additional Superintendent of Police, Dy.SP and the Inspector of Police. The SSP concerned who have acted in a most casual and unprofessional manner need to be pulled up by the Police Department.

The Commission therefore, request the DGP, Assam to present the Department's view and additional facts, if any, not already in the notice of the Commission within 30 (thirty) days, before finalizing its own opinion in the case.

Last but not the least, the Commission observes that the Case No. 209/06 calls for supervision at the senior level in the interest of justice to the complainant Shri Jasoda Ranjan Das and his family and also as a test case to prevent misconduct of the police. The instant case embraces many facets of police investigation and may be an eye opener to the police department in dealing with the menacing increase of land snatching case and indifferent and apathetic police action in the matter of forceful deprivation of land and house property in the Guwahati City in the recent time.

(This has the reference to SPAC Case No.15/2008 and order passed on 21.08.2012)

8:28.

Shri Pradyut Dutta of Sivasagar

-Vs-

O/C Nazira Police Station

Perused the complaint petition of the complainant Shri Pradyut Dutta of Sivasagar as well as the report of the Superintendent of Police concerned.

The subject matter pertains to a matter in which the Chief Judicial Magistrate's Court indicated action under Section 156(3). The case is under

investigation. The concerned authority viz Food & Civil Supplies Department is also involved. The complainant is pursuing the matter in the appropriate forum.

The Commission in the set of circumstance is not inclined to carry on the matter further, leaving the complainant to carry on the matter as per law in the appropriate forum.

The proceeding stands closed.

(This has the reference to SPAC Case No. 48/2012 and order passed on 24.08.2012)

8:29.

Smt. Kabita Das

Vs

Pradip Barua, O/C Baihata Police Station

This proceeding is initiated at the instance of a complaint alleging serious misconduct against Shri Pradip Barua, the then OC, Baihata Police Station. The complainant inter alia alleged that on 03.02.2010 at mid night OC, Baihata PS accompanied with APBn party came to her house and enquired about Shri Kamal Doley, a tenant of the complainant of Agdola village, Baihata Chariali. On her query as to the reasons for asking for Kamal Doley, the OC kicked her that caused injury in her person requiring medical treatment. Few days after the OC came back to her house and took Kamal Doley, her tenant and detained him in the Police Station's lockup. On the next day Shri Punya Das, her husband went to OC, Baihata PS, who demanded from him a sum of Rs. 50,000.00 (fifty thousand) for release of Shri Kamal Doley. On negotiation the OC agreed to release Kamal Doley against payment of Rs. 20,000.00 (twenty thousand) and Rs. 15000.00 was paid as first instalment. Kamal Doley was released and the balance money was paid to the OC through one Baharul Khandakar.

On receipt of the complaint report was called for from the Superintendent of Police, Kamrup (Rural). The SP concerned did not conduct any enquiry on his own but caused such enquiry through SDPO, Rangia. The report confirmed that Kamal Doley was staying in the house of the complainant and brought to the Police Station by the OC, Baihata PS on 28.9.09 at about 10.30 PM.

The report indicated that OC Baihata PS brought Kamal Doley to the Police Station since he had information with him that Kamal Doley was a **thug**. Therefore, he brought Kamal Doley for interrogation and kept in the Police Station. As per GDE No. 903 dtd. 29.9.09 Kamal Deka was released on PR Bond. The report denied the assault on Kamal Doley and the acceptance of any illegal money as alleged in the complaint.

Not being satisfied with the report, the Commission took up investigation on its own and a probe was conducted through its own agency. As per the probe the following facts emerged:

1. SI Pradip Baruah, OC, Baihata Chariali visited the house of complainant Kabita Das on 28.09.2009 at about 7 PM. This refers Baihata Chariali PS GDE No. 882 dtd. 28.9.2009. The SI admitted to have visited.
2. One Kamal Doley s/o Amal Doley of Tikiragaon Narayanpur presently stayed in the house of the complainant Kabita Das on rent was brought to police station by SI Pradip Baruah, OC Baihata Chariali on 28.9.09 at 8.30 PM and detained in the police station. This refers GDE No. 886 dtd 28.9.09. The SI has admitted.
3. Kamal Doley was brought on suspicion to be a thug vide GDE No. 882 dtd. 28.9.09. He was detained without registering any case. The SI admitted.
4. Kamal Doley was released on PR as per GDE No. 903 in the intervening night of 28.9.09 at 12.30 AM (0045 hrs) on 29.9.09. As per the statement of Kamal Doley OC kept him in the PS lock up on the day of bringing him and kept him in PS lock up and released on the next date taking a signature on a blank paper (statement of Kamal Doley)
5. It was also revealed that Kamal Doley was picked up by Army authority and was handed over him to OC, baihata PS on 15th August, 2009 and OC Baihata PS released him on 16.8.09 after detaining Kamal Doley from 15.8.09. This refers GDE No. 461 dtd 15.8.09 and 485 dtd 16.8.09 and E,O's report of Dr. Manabendra Gogoi SDPO, Rangia dtd 21.05.2010 also revealed the fact. No case was registered as Army had not submitted any FIR/complaint, simply handed him over to the PS.
6. OC Baihata PS SI Pradip Baruah released Kamal Doley on PR on 29.9.09 after a negotiation and agreement to release him (Kamal) for an amount of Rs. 15,000.00 (fifteen thousand). Accordingly OC Baruah was Paid first installment of Rs. 5000 through one Jagadish Deka and second installment of Rs. 5000 on next day of his release. Last installment was paid through on Md. Baharul Khandakar (as per statement of Jagadish Deka, Puna Ram Das and Prabin Deka, Kamal Doley and Baharul Khandakar)
7. SI Pradip Baruah on his visit assaulted Kabita Das, complainant and injured her. It was established from the statement of witnesses (Kabita Das w/o Puneswar Das) but there is not record in the PS maintained for assaulting the complainant by Mr. Baruah at the time of returning to PS nor any separate entry for his next visit.

SI Pradip Baruah was served with notice for appearing before the Commission. He appeared before the Commission and also rendered a self contained statement. He was also given an opportunity to clarify his position regarding the case in hand. SI Pradip Baruah admitted that he brought Kamal

Doley for interrogation on suspicion to be a thug on 28.9.09 at 8.30 PM. Kamal Doley was released on 29.9.09 at 12.30 AM. As to the question of detention of Kamal Doley by Army, the OC SI Baruah stated that he did not receive any FIR from Army when Kamal Doley was handed over to him. No explanation came forth from SI Pradip Baruah as to why he was not forthwith released when Army handed over Kamal Doley to him. Instead he admitted that Kamal Doley was released on 16.8.09 at 1.30 PM on the plea that he was busy with Independence Day. He also admitted that there was no reason why he was busy on Independence Day. OC concerned in a most arbitrary fashion wrongfully confined a citizen of India on the Independence Day. The OC also could not cite any criminal antecedent of Kamal Doley.

On assessment of evidence on record, it appears that SI Pradip Baruah, OC of Baihata Chariali in a most illegal fashion brought Kamal Doley from the house of the complainant on 28.8.09 and detained him without any lawful reason. No materials were produced for his arrest/detention assuming that he was brought to the Police Station suspected to have committed criminal offence for which he was arrested u/s 41 CrPC. It may also be mentioned that prior to his above arrest Kamal Doley was arrested by Army and handed over to OC on 15.8.09 and he was released on 16.8.09 thereby detaining him for 24 hours without any reason. As per GDE he was released on 28.9.09. As per the statement of the victim Kamal Doley, he was released on 29.08.2009 in the evening. Apparently there is manipulation of records. As to the payment of money to Pradip Baruah, the statement of witnesses and the circumstances give credence to the allegations of extortion and blackmailing against the SI. The Commission considering all aspects of the matter found that OC Pradip Baruah is guilty of arresting and detaining Kamal Doley without due process of law and thereby guilty of unlawful confinement of Kamal Doley.

All things considered, the Commission is of the view that departmental authority needs to take appropriate departmental action against SI Pradip Baruah, the then OC, Baihata Chariali for committing illegal arrest and detention without due process of law. Accordingly the DGP is given an opportunity to present department's view and additional fact if any, not already in the notice of the Commission within four weeks from the date of receipt of this order for finalization of the orders.

(This has the reference to SPAC Case No. 18/2010 and order assed on 29.08.2012)

8:30.

Suo motu Case

Perused the communication received from the Police HQrs. Also the report of the Spl. Superintendent of Police, CID. Materials so far made available

to the Commission does not disclose any serious misconduct within the meaning of the explanation provides in Section 78 of the Assam Police Act, 2007. The proceeding thus stands dropped.

(This has the reference to SPAC Suo Motu Case No. 34/2011 and order passed on 30.08.2012)

8:31.

No. SPAC/C/61/2012/2

Dated Guwahati the 29th August, 2012

From : Shri G.N. Borah,
Secretary, SPAC, Assam

To : Shri Jayanta Kr. Das,
S/O Lt. Prasanna Kr. Das,
Polo Field, Bamun Gaon
P.O & P.S – Tezpur, Dist. Sonitpur.

Sub :- Complaint against the Investigating Officer of Tezpur Police Station pertaining to Tezpur P.S Case No. 1233/2011, U/S 379 IPC.

Ref. :- Your complaint dtd. 22/08/2012.

Sir,

With reference to the above, I am directed to inform you that the matter pertains to submission of Final Report in consonance with CrPC Section 173/2. The police already submitted the Final Form. Matter is pending for orders by the Court. You may approach the Court concerned for the certified copy of the order. For the time being the police report dtd. 22/08/2012 should help you. The complaint petition is returned herewith.

Your faithfully,
Sd/-
Secretary,
State Police Accountability Commission,
Assam : Ulubari : Guwahati.

8:32.

Dr. Ranjana Chetri
Vs
Dr. P.R. Das, IPS (Since Retd.)

It is a lamentable tale of a working woman, a doctor by profession, who was exposed to experience a fate worse than death in her working place.

As far back as on 13th August, 1997 the Supreme Court of India while disposing of the case of Vishaka and ors vs State of Rajasthan and others reported in (1997) 6(SCC) 241 laid down the guidelines and norms specified for due observance in all work places and other institutions, until legislation is

enacted for the purpose for prevention of sexual harassment to woman. The guidelines and norms prescribed by the Supreme Court of India in paragraph 17 and 18 of the guidelines are set out herein below:

“17. HAVING REGARD to the definition of “human rights” in Section 2(d) of the Protection of Human Rights Aft,1993,

TAKING NOTE of the fact that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in workplaces and that enactment of such legislation will take considerable time,

It is necessary and expedient for employers in workplaces as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women:

1. Duty of the employer or other responsible persons in workplaces and other institutions:

It shall be the duty of the employer or other responsible persons in workplaces or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

2. *Definition:*

For this purpose, sexual harassment includes such unwelcome sexually determined behaviours (whether directly or by implication) as:

- (a) Physical contact and advances;
- (b) A demand or request for sexual favours;
- (c) Sexually coloured remarks;
- (d) Showing pornography;
- (e) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Where any of these acts is committed in circumstances where under the victim of such conduct has a reasonable apprehension that in relation to the victim’s employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work

environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

3. *Preventive steps:*

All employers or person in charge of workplace whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

- (a) Express prohibition of sexual harassment as defined above at the workplace should be notified, published and circulated in appropriate ways.
- (b) The rules/regulations of government and public sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
- (c) As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.
- (d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at workplaces and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

4. *Criminal Proceedings:*

Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

In particular, it should ensure that victims or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

5. *Disciplinary action:*

Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

6. *Complaint mechanism:*

Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in

the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

7. Complaints Committee:

The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counselor or other support service, including the maintenance of confidentiality.

The Complaint Committee should be headed by a woman and not less than half of its members should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

The Complaints Committee must make an annual report to the government Department concerned of the complaints and action taken by them.

The employers and person-in-charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government Department.

8. Workers' initiative:

Employees should be allowed to raise issues of sexual harassment at workers' meeting and in other appropriate forum and it should be affirmatively discussed in employer-employee meetings.

9. Awareness:

Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

10. Third-party harassment:

Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person-in-charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

11. The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in private sector.

12. These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993.

18. Accordingly, we direct that the above guidelines and norms would be strictly observed in all workplaces for the preservation and enforcement of the right to gender equality of the working women. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field. These writ petitions are disposed of accordingly.”

Despite all these, it appears that such type of harassment including criminal offences on working women are allowed to take place in the establishment as will be revealed from the complaints made by a Lady Doctor, who at the relevant time was working as Medical & Health Officer-I in 2nd ASRF Bn., Karangaon, Bokajan before the Commission vide complaint dtd 8th of February, 2011. The relevant portion of her complaint is extracted below:

“That Sir, on the fateful day of 3rd Feb 2011 Dr. P.R. Das, IPS, IG, visited our MI room 2nd ASRF Bn. Karangaon, Karbi Anglong, Assam at around 11 AM for inspection to the MI room, he was telling about measurement of his blood pressure and blood sugar. So, I told him I will do the necessary testing in the MI room itself, but he insisted me to come to guest house for medical check up and testing at 1 PM. So, accordingly, after completing my OPD duty at MI room I went to the guest house of our battalion to meet him for his testing. I went along with Mr. Dipankar Sarma, Pharmacist, MI room to guest house. So, we were sitting in drawing /sitting room and our Battalion Commandant Mr. Taramol Deka was also there in the guest house. Our IG Dr. P.R. Das, IPS came to the sitting room and I asked him to check the blood pressure in the sitting room itself, but he insisted me to come inside the room and do necessary checking so, myself and Commandant went inside the room but our IG asked Commandant to go to office and he will come after sometime. So, I was alone in the room. I checked the blood pressure and after that, I called our pharmacist to come inside and do blood sugar testing. I was sitting in the chair inside the room. After blood sugar testing pharmacist went outside. The IG asked me to check the pulse, I told him that I have already noted the pulse, but he said without touching, how you could measure the pulse. So I did pulse checking.

In the process of pulse checking, he was telling me that he likes me so much and he touched my left hand and left cheek and giving flying kiss. His

intention was bad, so I forced his hand out and left the guest house. If I have surrendered during his first move, he would have advanced further to destroy my modesty. The following points may be noted about the ill intention of Dr. P.R. Das, IG

1. *He refused to do blood pressure checking at MI room, as there was other staff also so he called to Guest House with bad intention.*
2. *In the guest house, I insisted to do checking at common sitting room, but there also he refused and asked me to come inside the room and do checking on the bed with lying position. It shows his bad intention.*
3. *He insisted to do pulse checking, which was not very necessary. His intention was not good, as I have noticed his way of saying and taking with me. He asked me to do second time pulse checking with watching clock.*
4. *In the room, our Commandant was there with me, but he asked Commandant to go to office and come at 2.30 PM for lunch. His intention was very bad so he asked him to go to make me alone for his ill motive.*

As a Doctor, our duty is to serve and save the human being not thinking of day or night, either male or female. I have been discharging my duties with all my abilities for the benefit of people not but due to his incident, my morale and enthusiasm to work has been degraded.”

The Commission called for a report from the concerned authority Vide communication No. SPAC/C/05/2011/4 dtd. 22.2.2011 the Commission called for a report from the Director General of Home Guard and civil Defence and the SP , Karbi Anglong. The Commission however, obtained report that too after several reminders from SP, Karbi Anglong vide letter No. IV-SPAC/2011/E/3874 dtd. 08.4.2011. As per report the Commission was informed that ***“on 04.02.2011 at 11:35 P.M complt. Dr. (Mrs) Ranjana Chetri Medical & Health Officer-I of 2nd ASRF Bn Hqr., Karagaon, Khatkhati, Karbi Anglong Dist. lodged a written FIR to the effect that on 03/2/2011 at about 11 A.M accused Dr. P.R. Das, IGP, DG Civil Defence and Commandant General of H.G. visited the M.I Room of 2nd ASRF Bn., Hqr, Karagaon for inspection. In the M.I. Room Dr. P.R Das, IPS asked her to check the blood pressure and sugar and accordingly Complt. Dr. (Mrs) told him that she will do the necessary checking and test in the M.I. room itself but Dr. P.R. Das asked her to come to Guest House of 2nd ASRF Bn., Khatkhati for his medical check-up and testing at 1.00 P.M. Accordingly after completion of OPD duty at M.I. room Dr. Ranjana Chetry along with Mr. Dipankar Sarmah, Pharmacist went to the Guest House and waited for Dr. P.R. Das in the sitting room where the C.O 2nd ASRF Bn Mr. Taramol Deka also waiting in the sitting room. After a while Mr. P.R Das arrived in the sitting room and the complt./Dr. Ranjana Chetry asked him to check his blood pressure in the drawing/sitting room but Dr. P.R. Das insisted her to check***

him in the room. Therefore, she and C.O. 2nd ASRF Bn. Shri Taramol Deka went inside the room. Dr. P.R. Das asked Shri Taramol Deka to go to his office and after some time he will join him and accordingly C.O. left the room for his office. Dr. Ranjana Chetry started checking of blood pressure of Dr. P.R. Das and after checking she called her pharmacist to do the testing of blood sugar. The pharmacist while went out of the room after doing blood sugar test Dr. P.R. Das asked Dr. Ranjana Chetry to check his pulse but Dr. Ranjana Chetry replied that she had already checked his pulse. Dr. P.R. Das asked her to check his pulse by touching him and accordingly she checked his pulse as told. While she was checking his pulse Dr. P.R. Das told the complt. that he liked her and touched her left hand and left cheek and gave her a flying kiss. The complt. immediately went out of the room. Hence the case. In this connection a case was registered at Khatkhati P.S Vide Case No. 09/11 U/S 354 IPC on 04/20/11 and investigated into.”

The report reveals that the investigating officer visited the P.O and a sketch map was drawn and 9 (nine) witnesses examined including the complaints and recorded their statement. The statement of Dr. Ranjana Chetri was recorded U/S 164. The case has been returned in charge sheet vide C.S No. 07/11 dtd. 07/4/2011. Her statement U/S 164 not only corroborate to complaint to the SPAC and report of S.P, Karbi Anglong and further reveals commission of criminal offences u/s 342 IPC.

The Commission examined the report. The report is scanty. Facts situation indicated that the complainant was compelled to come to the Guest House for medical checking as per the bidding of the arraigned officer which could have done in MI Room itself without dislocating the working of the M.I. staff. It was not proper on the part of the IGP for insisting her to come to attend him in the Guest House dislocating the work of the Department. The report also indicated that such an officer of high status ignoring his dignity and status went to the extent of insisting the Medical Officer for routine check up in the Guest House. The officer concerned seems to have made calculated approach for having physical contact with the female Doctor driving out the other persons from the room. The alleged act and conduct amounted to assault or using criminal force towards woman intending to outrage her modesty by wrongfully confining her to satisfy his lust.

The FIR dated 4.2.11 submitted to the OC, Khatkhati PS itself discloses offence u/s 354.read with S.342 IPC. The relevant extract of the FIR is set out herein below:

“In the process of pulse checking he was telling me that he likes me so much and he touched my left hand and left cheek and giving flying kiss. His

intention was bad. So I forced his hand out and left the guest house. If I have surrendered during his first move, he would have advanced further to destroy my modesty. The following points may be noted about the ill intention of Dr. P.R. Das, IG.

5. *He refused to do blood pressure checking at MI room, as there was other staff also so he called to Guest House with bad intention.*

6. *In the guest house, I insisted to do checking at common sitting room, but there also he refused and asked me to come inside the room and do checking on the bed with lying position. It shows his bad intention.*

7. *He insisted to do pulse checking, which was not very necessary. His intention was not good, as I have noticed his way of saying and taking with me. He asked me to do second time pulse checking with watching clock.*

8. *In the room, our Commandant was there with me, but he asked Commandant to go to office and come at 2.30 PM for lunch. His intention was very bad so he asked him to go to make me alone for his ill motive.*

As a Doctor, our duty is to serve and save the human being not thinking of day or night, either male or female. I have been discharging my duties with all my abilities for the benefit of people not but due to his incident, my morale and enthusiasm to work has been degraded.”

The FIR indicated that she had to forcibly release herself from his grasp and leave the Guest House. The tenor and content of the FIR read with the statement u/s 164 indicated offences u/s 354/342 of the IPC.

Using criminal force in order to commit offence may be for a short duration is an offence against the State, for no one has a right to molest another in his or her free movement. In wrongful restraint there need not be any stoppage of movement, the act of the wrong doer is sufficient. To support a charge of wrongful confinement, proof of actual physical obstruction is not essential. Any offences of such nature, the emphasis is to do on the apprehension produced on the mind of the person restrained or confined. What is important here that of the domination of the will of the complainant. A person cannot be deprived of his or her liberty of locomotion as much by exercise of force or as by expression or imply threat of it. What is of importance in such case is the reasonable apprehension of force rather than rendering of the actual use of force. The person arraigned was a superior, who at the relevant time was controlling her behaviour and therefore the facts and situation unerringly also discloses offences under section 342 IPC, apart from offence u/s 354.

It may also be mentioned that ‘Molestation, rape or attempt to commit rape’ is a serious misconduct as per the explanation under Section 78(1)(d) of the Assam Police Act, 2007. Under Section 99 (5), whoever being a police officer subjects any person in her/his custody or with whom he may come into

contact in the course of duty, to torture or to any kind of inhuman or unlawful personal violence or gross misbehaviour,.....shall on conviction be punished with imprisonment for a term which may extend to six months or shall be liable to fine not exceeding two thousand rupees or with both. Likewise under the All India Services (conduct) Rules 1968 every member of the service, at all time is to maintain absolute integrity and devotion to duty and shall do nothing which is unbecoming of a member of the Service.

Similarly under S. 47(a) of the Act, a police officer is to uphold and enforce the law impartially and to protect life, liberty, property, human rights and dignity of the members of the public.

The allegations surfaced also points out to the effect that the officer concerned knowingly disobeyed the direction of law as to the way in which he was to conduct himself intending to cause injury to any person and therefore, liable to be prosecuted u/s 166 IPC.

We have also disappointed in the conduct of the Department for not giving due importance to the case in hand. Firstly the authority miserably failed to protect its woman employee despite the positive directives of the Supreme Court enunciated in Vishaka.(Supra)

The accused in the case was in the rank of IGP of State Police. As per the law applicable in the Police Department in a case in the rank of ASI and above rank "it should invariably be regarded as special report police case" under Assam Police Manual Part II, Rule 40 with the Circle Inspector of Police to report progress of investigation of the case under rule 8 and 9 of the Assam Police Manual Part V. Interestingly the IO of the case was a mere SI. In Bokajan Sadar Sub-division is/was manned by Sub-Divisional Police Officer, Circle Inspector and OC, Khotkhati and despite these, for reasons best known to the department it conducted investigation in this lackadaisical method, through a Sub-Inspector. Leisurely, apathetic, half hearted approach itself speaks of its commitment towards accountability. No explanation came forth as to why the case was assigned to a junior officer. It is a heinous crime which ought to have treated as a special report case was handed over to a junior officer with oblique reason. No reasons are ascribed as to why at least an officer of the rank of IGP was not engaged in supervising the matter. The charge sheet along with the other records furnished to us also indicated that the statement made under S. 164 of the CrPC was not followed to the logical end. We also could not find any justification as to why he was not treated like any other accused. We could not comprehend the reason as to why the statement of accused was not recorded. In the self-statement made by the arraigned officer did not explain the reasons why he went to the MIO, how it came for his inspection. All these do not speak well

of the police department in rendering fair and effective investigation. Interrogation was seemingly conducted in an indifferent fashion as if to protect a higher level officer. Registration of the case was done only u/s 354 IPC without registering the case also u/s 342 revealed the culpability of the police personnel to save the senior level IPS officer from the dragnet of law. Even the report does not reflect any thing about his arrest.

The Commission is apprised by the Government that they are even considering it appropriate to initiate DP against the officer concerned. We are yet to get the details about the DP. We hope and trust the appropriate authority will take appropriate departmental measure as per law against the concerned officer keeping in mind the serious nature of the crime allegedly committed by a senior level officer of the law enforcing agency, as well as decision of the Apex Court, as discussed by us.

The case involves alleged infraction of the fundamental right to gender equality and the right to life ad liberty – most precious fundamental rights guaranteed by the Constitution of India. Sexual harassment of a female at the work place ill matches with the dignity and honour of feminine gender that needs to be stamped out. There cannot be any half measure with such violations. All concerned owes a duty and obligation to give due regard to International Conventions as well as the domestic Courts as declared in Vishaka (Supra) and Apparel Export Promotion Council (1999) 1 SCC 759.

Needless to state that Vishaka's case (supra) was approved and followed in (1999) 1 SCC 759 Apparel Export Promotion Council Vs A.K. Chopra in and D.S.Grewal Vs Vimmi Joshi and Others (2009 2 (SCC) 210.) In Apparel Export case Hon'ble Supreme Court observed that sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such a conduct by the female employee and unreasonably interfering with her work performance and had the effect of creating an intimidating of hostile working environment for her. Any action or gesture, whether directly or by implication, aims at or has the tendency to outrage the modesty of a female employee, must fall under the general concept of the definition of sexual harassment in a case involving charge of sexual harassment or attempt to sexually molest, the courts are required to examine the boarder probabilities of a case and not get swayed by insignificant discrepancies or narrow technicalities or the dictionary meaning of the expression "molestation". They must examine the entire material to determine the genuineness of the complaint. The statement of the victim must be appreciated in the background of the entire case. Where the evidence of the victim inspires confidence, as is the position in

the instant case, the courts are obliged to rely on it. Such cases are required to be dealt with great sensitivity. Sympathy in such cases in favour of the delinquent superior officer is wholly misplaced and mercy has no relevance.

Cases of this nature ought to have been taken with utmost seriousness. The sexual harassment of a female at the place of work is incompatible with the dignity and honour of a female and needs to be eliminated without any compromise. In the light of the Supreme Court decision the Parliament has taken up the matter- “ The Protection of Woman Against Sexual Harassment Bill was passed by the Lok Sabha recently.

In the light of discussion made above, the Commission is of the view that the concerned authority should make all endeavour to submit a supplementary charge sheet u/s 166/342 IPC read with section 99 (5) of Assam Police Act against the accused person, in addition to the charge sheet submitted u/s 354 of the IPC.

The commission accordingly directs the concerned authority to take appropriate measure as per law.

Perused the Communication No. SPAC/APHQRs/5/2011/125 dated 12th November, 2012 of the Assam Police Headquarters. The Director General of Police, the competent authority has presented its version and took steps to comply with the order of the Commission dated 10th September, 2012. Thus the order dated 10.9.2012 is made absolute.

(This has the reference to SPAC Case No. 05/2011 and order passed on 10.09.2012)

8:33.

Smt. Sadhana Singh

-Vs-

O/C Duliajan Police Station, Dist. Dibrugath

The complaint is initiated at the instance of the complainant Smt. Sadhana Singh w/o Bikram Singh alleging serious misconduct of blackmailing, extortion, intimidation, etc. against the Officer-in-charge of Duliajan Police Station.

On receipt of the complaint, the Commission called for factual report from the S.P Dibrugarh vide communication dated 8.6.2012. The SP in his report admitted that on 20.5.12 the complainant lodged a written complaint at Duliajan Police Station regarding Commission of trespass, etc. On receipt of written complaint the OC, Duliajan PS entered the complaint in GD Entry No. 717 dtd. 20.5.12 and “endorsed the complaint petition in the name of ASI Ranjit

Kumar Borah to cause an enquiry into the matter and to submit report early”. As per the direction, “the ASI R.K. Borah went to the P.O along with UB Constable Ranjit Dey and enquired into the matter and submitted a report on 1.6.12 and the OC, Duliajan PS on receipt of the report from the ASI R.K Borah registered a case u/s 143/447/163/434/506 IPC at Duliajan PS vide Case No. 133 of 2012 and endorsed the case to ASI Ranjit Kr. Borah for taking pre-steps”. The SP also reported that the enquiry was conducted by the Circle Inspector. The OC further reported to the effect ‘from the enquiry made above by the CI Duliajan, Dhaniram Bora on the allegation brought against the ASI R.K Borah is found established and DP to be initiated against R.K Borah. The SP further stated that allegation against SI B.K. Barman could not be established. The Commission was informed that a DP was initiated against ASI R.K. Borah. An Enquiry Officer was appointed advising him to submit his findings within 15 (fifteen) days. The Commission was also informed that ASI R.K Borah was suspended vide communicated dated 9.8.12. The Commission was informed that enquiry conducted against ASI R.K Borah was complete and findings were submitted. It was also informed that using unobjectionable (sic) word to the petitioner by the delinquent ASI R.K. Borah was proved and awarded punishment of stoppage of one increment and formal order to that effect was to be issued. The Commission was also informed that SI B.K. Barman Officer-in-Charge of Duliajan PS was severely reprimanded for his failure to register a case on the petition submitted by the petitioner at Duliajan PS, which was a cognizable offence and also warned him not to repeat such offence in future.

The Commission found that the ASI who acted as per the direction of the OC was awarded major punishment, whereas the OC who on the own showing of the SP, faltered and foundered in not registering the case promptly was allowed to go away without a scratch. The facts situation fully established that the OC committed a serious misconduct in nor registering the case as required under the law.

On the own saying of the SP the Duliajan PS received a written complaint on 20th May, 2012 vide GDE No. 717 dtd. 20.5.12. The First Information Report disclosed cognizable offence but instead of registering the case the OC endorsed the complaint petition in the name of R.K Borah to “enquired into the matter and to submit report”. The report of ASI R.K. Borah was received on 1.6.12 and thereafter only the FIR was registered u/s 143/447/163/43/506 IPC vide Duliajan PS Case No. 133/12 against the accused person.

Section 154 provides for prompt and proper recording of the information. By lodging FIR the informant launches the criminal law in motion whereupon

the investigating agency is to procure information about the alleged crime so as to take appropriate steps for tracing and bringing to book the guilty. “The principal object of the first information report from the point of view of the investigation authority is to set the criminal law in motion and from the point of view of the investigation authorities is to obtain information about the alleged criminal activity so as to be able to take suitable steps for tracing and bringing to book the guilty party” (*Hasib Vs the State of Bihar AIR 1972 SC 283 (p. 4 p. 286)*).

Every information is to be recorded and registered relating to Commission of a cognizable offence at once when it is given. It would be incongruous and unseemingly to wait, until it is ascertained. To permit a preliminary inquiry before recording the FIR till definite information is received is to impair and ruin the value and provide room for fabrication of cases (*P. Sirajuddin Vs. Govt. Of Madras AIR 1968 Mad 117 1968 Cr.L.J. 493. State of Kerala Vs Samuel, AIR 1961 Ker. 99: (1961) 1 C.L.J. 503*).

The provision of S. 154 of the Code is mandatory in nature and the officer concerned is duty bound to register the case on the basis of information disclosing cognizable offence (*Ramesh Kumari V. State (NCT of Delhi) 2006 Cr.LJ 1622 (1624) : AIR 2006 SC 1322*. Failure to register an FIR as required under S. 154 Cr.PC by a police officer is dereliction of duty and offence under Section 98(b) of the Police Act.

The SP in the instant case overlooked this important aspect of the matter and sought to trivialize the serious misconduct committed by the OC instead of initiating departmental action, the SP ordered for a severe reprimand of the OC.

Facts situation disclosed that the OC committed a serious misconduct by not registering FIR at once as Cr.PC provide no scope for preliminary enquiry before registering the FIR. The failure to register FIR u/s 154 of Cr.PC without lawful reason is a dereliction of duty and is an offence punishable under the law. The SP concerned failed to apply his mind to the relevant aspects of the matter which caused miscarriage of justice.

On the facts situation severe reprimandation for not registering the case is nothing but a lame excuse. The punishment imposed does not commensurate with the misconduct. The SP ought to have dealt the matter with all seriousness.

All things considered the Commission is of the view the competent authority is to forthwith register an FIR against the OC SI B.K. Barman under Section 166 of the IPC and u/s 98(5) of the Assam Police Act. The Director General of Police is afforded with an opportunity to present department's view

and additional facts, if any not already with the Commission within 30 (thirty) days to enable the Commission to finalize its opinion.

(This has the reference to SPAC Case No. 43/2012 and order passed on 11.09.2012)

8:34.

No. SPAC/C/69/2012/4 Dated Guwahati the 20th September, 2012

From :- Shri G.N. Borah,
Secretary, SPAC, Assam

To :- Shri Subhas Ch. Deb Roy
Vill-Appingrant, P.O- Rongpurboalipar,
Via- Katticherra-7881161,
Dist.- Hailakandi.

Sub :- Allegation against too Deputy Inspector of School, Hailakandi.

Ref. :- Your complaint petition dtd. 08/08/2012.

Sir,

With reference to the subject cited above, I am directed to inform you that your complaint is beyond the pale of the Commission. Complaint has nothing to do with police accountability. The complaint petition is returned herewith with the request to move the appropriate forum, if you so desire.

Your faithfully,

Sd/-
Secretary,
State Police Accountability Commission,
Assam : Ulubari : Guwahati.

8:35.

Smti. Rashmi Jha
Vs
Shri B.K. Mishra, IPS, IGP (P)

A complaint inter alia as to the perpetration of blackmailing and harassment on the complainant by the opposite party in misuse of his official position as IGP (prosecution), Assam was received by the Commission.

The complainant, recounted that she was married to Shri. Mishra and she obtained decree of divorce from the competent court as per back as on 15th September, 2008. Referring to the decree of the Family Court, Kamrup at Guwahati, the complainant asserted that the O.P. faltered in complying with the Judgment and decree of the Court instead forestalled her from pursuing the matter by her at Guwahati. He has taken all the possible steps to dissuade her from appearing before the court. The complainant stated that she along with her cardiac patient daughter was staying in Mumbai and had to travel to Guwahati to attend the court case. She listed the harassments in a complaint petition which are reproduced below:

- (1) On 22.12.2009 Mr. Mishra had lodged a baseless complaint against me at the Vasant Kunj PS in Delhi which was disposed off as it had no ground. Shri Mishra in his official capacity wrote an official memo No. IGP/(P)/PF/09 in regard to the above case to the Vasant Kunj PS to take action on me to harass me. The police again verified the facts and the complaint was dismissed. I have collected copies of all the correspondence through RTI. Attached of complaint made by Shri Mishra as annex C and police report as annex D.
- (2) Shri Mishra in order not to pay the medical bills of my daughter as per the court orders returned the same on his official memo No. IGP (P)/PF/09/305 dated 21.12.2009 (attached as annexe E).
- (3) On 3.12.2009 he wrote a official memo No. IGP(P)Misc/09 to the my travel agent Puspak Travels, Guwahati seeking personal details of my travel stating that it was required for an urgent official enquiry/ case against me and my associates which he wanted to malign me and to know about my travel dates so that he could harass me whenever I am in Guwahati. (Attached as Annex F).
- (4) Mr. Mishra also harassed me by making life threatening/obscene phone calls from mobiles and his official residence No. 0361-2465680. I have filed a complaint in the Amta Nagar PS, Mumbai on 10.6.2010 and 8.9.2010, case number is 5020/10 (attached as annexe G, H)
- (5) Mr. Mishra also is not appearing in court citing false official engagements and taking extended dates.

The commission issued notices to all concerned including Shri B.K. Mishra, the O.P. to submit its version in connection with the complaint.

The opposite party Shri Mishra refrained from making any comment on the plea that the matter was sub-judice. It must be stated that the opposite party failed to satisfy the Commission to the effect that the subject matter of the complaint is/was being examined by another Commission or any other Court. We have given our anxious consideration on the issue raised. All things considered it cannot be said that the subject matter is outside the jurisdiction of the Commission. The accusations are of serious nature, allegedly committed by

a high ranking police officer are required to be examined on merit. The judgment and order of the Family Court attained finality. The Family Court rather observed that the “conduct” of the OP was not conducive, who disobeyed the direction of the Court and faltered in observing the undertaking given by him, to the Court. The Family Court had also passed direction to his employer to deduct the amount of arrear of Rs. 35,000.00 (Rupees thirty five thousand) only and remit the same in the court in the name of the petitioner Rashmi Mishra. On reply to the Commission’s notice dated 6.5.2011 regarding a personal hearing he again put up the plea of Section 80 of the Assam Police Act, 2007 and by his response dated 19.5.11 declined to appear before the Commission. The issue or the subject matter of the complaint in question raised before us is not being examined by any Court or Commission. The Commission even extended time to the officer vide notice dated 16.6.11. The Officer was provided with an opportunity to express his stand. He declined to take the opportunity provided for, instead he wrote a letter to the Commission vide his letter dated 22.6.2011 for dispensing his personal appearance from the Commission. As alluded earlier the opposite party refused the opportunity provided to him.

Shri B.K. Mishra expressed his surprise that the Commission chosen to ignore the submission of his letter dated 19/05/2011 and stated that the Commission should refrain from exercising its powers. He went by puffing and blowing and for that purpose made reference to a speech delivered by a speaker in a workshop wherein the talker had observed that constitution of the Commission was not made as per guidelines issued by the Supreme Court of India. The contention has no bearing on the powers and jurisdiction of a Commission created under a statute.

Shri Mishra quipped as to how the SPAC registered the complaint as a case without a sworn statement and verifying veracity of her complaint following which he felt humiliating and demoralized after started receiving notices from the Commission. He also reiterated that the Commission had been prohibited from taking cognizance to the complaint, as similar complaint had been filed before the Family Court, Guwahati and Assam information Commission.

He has cited that he belongs to All India Services and his service matter, pay structure are decided by the Central Govt. He therefore claims in such matter, the Union Govt. must be kept informed.

He further claimed that as an IGP he was fully empowered to seek information from Govt. or Private on receipt of a complaint with a view to cause some preliminary enquiry.

As regards the alleged complaint of Smti. Jha, the O.P. had stated that Smti. Jha in May, 2005 forcibly entered in a flat in Vasant Kunj New Delhi and committed offence of beating, ejecting his caretaker and removing goods, forgery and cheating. Later Smti. Jha managed to obtain a report from Police saying that she was still his wife and all articles belongs to her as well. But the matter was not further pursued by him as Smti. Jha was leaving separately at Guwahati with her boy friend and constraint of time and distance. He further accused Smti. Jha as a woman of greed and she submitted bill to the tune of almost Rs. 10,00000/- which was false and fabricated. There has been no misuse of official position as alleged. The opposite party instead of addressing to the merit and accuracy of the complaint, he went on beating about the bush. He resorted to a sneering campaign and took recourse to slinging mud to the complainant.

We have given our anxious consideration on all the issues raised by the opposite party. As alluded earlier there is no legal bar for the Commission to examine the complaint on merit.

The complainant appeared before the commission. The Commission on perusal of her complaint and on assessing her assertion, thought it proper to examine her complaint on merit. The allegation of the opposite party to the effect that the complaint was not supported by sworn statement is baseless. The Commission had received the sworn statement of the complainant. His contention, on this issue, was therefore found to be unsustainable. The complainant appeared before the Commission and submitted records to the Commission. CID of State Police conducted enquiry and collected original copy of the letter by which the opposite party sought for the information against the complainant. The said letter was produced before the Commission with a report. During enquiry the official of the Travel Agency also testified and stated about receiving of official letter from Shri Mishra. It asserted that original letter in question was taken by the CID. The Travel Agency namely Puspak Travels furnished the required information as demanded by the opposite party Shri B.K. Mishra vide his official letter as alluded earlier. Shri B.K. Mishra was afforded opportunity to defend his case in the light of the allegation and to record his statement, but he declined with a letter stating that his appearance should be dispensed with and the case should be closed without causing further delay with intimation to him.

Having examined the records/documents and the representatives of the travel agency, we have found that the opposite party Shri Mishra was in ferreting personal information of Smti. Jha was seemingly an act of gross abuse

of his official position as IGP (P) by issuing without authority an official letter to a private Travel Agency on five point's charter of his demand.

Admittedly the aforesaid action has infringed the privacy of the complainant which is violative of Article 19 and 21 of the Constitution. Admittedly the opposite party at relevant point of time acted as public servant. He issued the letter knowing it well that his act will infringe the privacy of the complainant. That apart he sought to obtain information on the personal matter of the complainant although any such matter was not a subject matter of any investigation or criminal case. Admittedly at the relevant time there was no case pending for investigation. As an IGP (P) he had no business to poke his nose into it to call for such information. As a public servant, the opposite party was at all time was to maintain absolute integrity and could not have acted in an unbecoming manner. The alleged conduct invading the privacy of a woman to satisfy his personal grudge is not supported by any law. The right of privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21 of the Indian Constitution. It is a "right to be alone". A citizen has a right to safeguard her or his privacy. It can only be taken through a process of law. The purported action of the opposite party is/was wholly unauthorized. We have called for charter of duties of IGP (P) from the Police Headquarters. The concerned Department furnished to the Commission the charter of duties. His charter of duties is cited herein below:

- (i) The Director of Prosecution shall exercise and perform supervisory functions for speedy investigation of police cases.
- (ii) Supervise the working of Public Prosecutors, including Additional Public Prosecutors, Asstt. Public Prosecutors and investigating officers
- (iii) Monitoring of the progress and conduct of police cases in various courts.
- (iv) Issuance of advice/guidance to public prosecutors, Addl. Public Prosecutors for the proper conduct of cases.
- (v) The Director of Prosecution shall take all possible steps to ensure speedy trials of cases in Courts.
- (vi) Taking appropriate actions for non-appearance of accused on bail and witnesses during trial.
 1. Taking remedial steps when I/O failed to produce exhibits delayed during trial.
- (vii) The Director of Prosecution will have the liberty to scrutinize the evidences of serious nature crimes before submitting F.F.

As a Director of Prosecution the function of the IGP (P) is to monitor the disposal of cases, supervision of investigation and to monitor the function of Addl. Public Prosecutor, Asstt. Public Prosecutor.

The Commission perused the records and documents as alluded earlier. The duties and function of IGP (P) is delineated in the notification at the time of creation of the post vide Govt. notification No. HMA.669/95/Pt-1/54, dtd.

25.6.2001. The concerned officer had no business to enter in private matter of others on the specious plea of investigation as there was neither any case was registered nor any case reference was figured in his letter to Puspak Travel Agency. The checking visit of Smti. Rashmi Jha/Mishra was unwarranted and uncalled for, in the guise of IGP, Prosecution and Director of Prosecution.

The opposite party at all relevant time was acting as IGP (P) and Director of Prosecution, Assam, Guwahati. We have already indicated to the charter of his duties. Admittedly there was no case pending against the complainant. Police officer's power to investigate cognizable case under Section 156 rest on the officer-in-charge of the Police Station in exercise of power vested u/s 157 Cr.PC. The IGP (P) in the instant case was not vested with the powers to obtain the personal information of Smti. Jha. This is contrary to all law and known norms. This has amounted to an act of disobeying of law with an intent to cause injury to Smti. Jha. Law did not authorize him to issue such letter and seeking records. Information sought for was of private domain, purely relating to affairs of the complainant. The full text of the letter is reproduced below:

“Following facts are urgently required in connection with **investigation of an important cases:**

- 1) Details regarding air ticket booked in name of Smti. Rashmi Jha/Mishra w.e.f. 1.1.2008 to 31.12.2009.
- 2) Details regarding payment made towards purchase of ticket – Name of the person who booked the ticket, account No. from where payment was made through cheque/ draft and so on.
- 3) Details regarding ticket booked for undertaking a journey to Bangkok or any other foreign destination.
- 4) Details regarding air ticket booked in name of Shri Vikash Jain for the same period.
- 5) Any other information as and when required.”

In the communication the opposite party mentioned that he required the information cited at serial 1 to 5 required in connection with investigation of an important case. As we cited earlier that this is a false and incorrect statement since it is/was related to investigation of a personal matter not to in connection with any case. *The information sought had nothing of any kind relating to 'police cases', "monitoring of the progress and conduct of police cases". The impugned action infringed the liberty of the individual concerned. Privacy is defied as "the state of being free from intrusion or disturbance in one's private life (Sharda V Dharampal [2003] 4 SCC 493).* The conduct and actions of the O.P. are in defiance of law with a view to cause injury to Smti. Jha. The action of the opposite party, in our view amounts to an offence u/s 166 and 503 of IPC

and 98(a) of the Assam Police Act, 2007. The act and conduct of the opposite party was in defiance to the directions contained in Rule 3 of the All India Services Conduct Rules, 1965.

The opposite party at all time was supposed to function as a responsible police officer. The Assam Police Act itself reposed duties and responsibilities of the Police Officer u/s 47(a). As a police officer the opposite party was required to up-hold the law impartially and to protect life, liberty, property, human rights and dignity of the members of the public. As a police officer, the opposite party was duty bound to up-hold and enforce the law and to protect the life and liberty of the person. Admittedly his action amounted to violation of Article 19 and 21 of the constitution in respect of Rashmi Jha to invade her privacy. Therefore, it is an action contrary to law.

Materials on record clearly spelt out that Shri B.K. Mishra committed serious misconduct within the meaning of Section 78 (i) (f) for blackmailing the complainant by menacingly putting her in fear of life and for foregoing the medical expenses to her ailing daughter by intimidation. The charter of his duties and responsibilities as indicated earlier preclude registration and enquiry by himself. The plea of the purported plea of investigation was a mere pretence. The purported Official Memo, as cited in the complaint in question was manoeuvred to deceive the travel agency to part with vital records to divulge information of personal life of Smti. Jha, obviously to harm her reputation.

The opposite party pretended to take enquiry/investigation which is not authorized by law to do so constitute unbecoming conduct of the opposite party as per All India Services which makes him liable of the action under the Rules.

The All India Services (conduct) Rules provides a code of conduct for members of the All India Service to ensure absolute integrity and devotion to duty and responsibility and also to ensure that they do not do anything unbecoming of a member of the service. Rules are complete code by themselves. A breach of any of the Rules constitutes misconduct for which an officer is liable to be proceeded against and punished under the disciplinary and appeal Rule.

All things considered, we are of the opinion that the acts of the opposite party Shri Mishra amounted to serious misconduct of black mailing and extortion. Our findings set out earlier discloses misconduct which requires to be departmentally probed. We are unaware as to whether any departmental probe as such was initiated, if not, the authority concerned need to initiate departmental proceeding for the misconduct on the basis of the findings of the Commission. If Departmental proceeding has already been proceeding in that

case our order will have no effect. That apart the actus reus as set out earlier has also amounted to an offence against the State. The alleged offence is of serious nature raising the finger, against the person who is/was at all relevant time holding the post of Director, Prosecution – vested with the power relating to prosecution. Facts situation, therefore, demands for criminal prosecution of the officer. On consideration of all the aspects of the matter, we are of the view that the opposite party Shri Mishra is liable to be criminally prosecuted and also departmentally proceeded.

In the set of circumstances we are of the opinion that the Director General of Police should initiate appropriate steps for registering First Information Report against the opposite party treating the complaint dated 30.11.2010 submitted before the Commission by Smti. Rashmi Jha as an FIR u/s 166/506 IPC and 98(a) of the Assam Police Act. The commission is also of the opinion that Government of Assam need to initiate Departmental action based on our findings against the opposite party for breach of All India Services (Conduct) Rules, 1968 in question, if already no action as such was initiated.

In terms of the first proviso of Section 82 of the Assam Police Act, 2007, the Director General of Police, is therefore advised to present the Department's view and additional facts, if any, not already in the notice of the Commission.

The Government of Assam may also to present its view to enable the Commission to pass final appropriate order. It is expected that the concerned authority shall submit its views within a month from the date of receipt of the order to enable the Commission to pass appropriate order/direction as per law.

(This has the reference to SPAC Case No.50/2010 and order passed on 21.09.2012)

8:36.

No. SPAC/C/71/2012/2

Dated Guwahati the 24th Sept, 2012

From :- Shri G.N. Borah,
Secretary, SPAC, Assam

To :- Sri Nanda Ram Gogoi (Retd. Police Personnel),
Vill.- Rachipathar, P.O- Gaspuriakhowag,
P.S- Moran, Dist.- Dibrugarh.

Sub :- Moran P.S Case No. 100/04.

Ref. :- Your complaint petition dtd. 11/09/2012.

Sir,

With reference to the subject quoted above, I am directed to inform you that the Commission is of the view that the complaint cannot be addressed by the Commission. You are advised to approach the appropriate forum. The complaint petition in original is returned herewith along with C.D.

Your faithfully,

Sd/-

Secretary,

State Police Accountability Commission,

Assam : Ulubari : Guwahati.

8:37

No. SPAC/C/73/2012/3

Dated Guwahati the 27th Sept, 2012

From :- Shri G.N. Borah,
Secretary, SPAC, Assam

To :- Smti. Bonani Goswami,
Legal Coordinator,
Wing-Assam, Shivi Development Society,
C/O Purva Bharati Educational Trust,
Torajan, Kakoti Gaon, Jorhat 785001

Sub :- complaint against Durlov Medhi, O/C lichubari.

Ref. :- Your letter dtd. 18/09/2012.

Madam,

With reference to the above, I am directed to inform you that the Commission has received your complaint along with sworn affidavit on 24/09/2012. The Commission has examined your complaint along with the FIR, Charge Sheet etc. The police has already charge sheeted the case. In regard to the issue of toning down the charge from 326 to 323 IPC in the charge sheet, police said to have acted upon the injury report.

The informant may seek for corrective measure before the Court if so advised. The complaint along with the documents that you submitted are returned to you accordingly.

Your faithfully,
Sd/-
Secretary,
State Police Accountability Commission,
Assam : Ulubari : Guwahati.

8:38.

Md. Saiful Islam
-Vs-
Officer-in-Charge, Lalpool O.P, District Darrang.

The Commission perused the complaint petition accompanied by an affidavit as well as the SP's report. The subject matter of the complaint pertains to rights to exhibit cinema, which is regulated by the Assam Cinema Regulation Act, 1953 and the Rules framed there under. It appears that the complainant has already approached the Hon'ble High Court seeking appropriate remedy. The Hon'ble High Court has already passed some interim order in favour of the complainant. According to the complainant the order of the Hon'ble High Court is yet to be honoured. He is to approach the Hon'ble High Court for the appropriate remedy. It will not be apt for the Commission to proceed with the matter in the circumstances. Subject to the observations made above, the proceeding stands closed.

The complainant be informed accordingly.

(This has the reference to SPAC Case No.64/2012 and order passed on 03.10.2012)

8:39.

Shri Pranat Kumar Dey
Vs
Officer in Charge of Paltanbazar Police Station

On a complaint dated 3.11.2011 for alleged persecution of the complainant, this proceeding was initiated. The enclosed notice by the Officer in Charge of Paltanbazar Police Station added to the apprehension to the complainant. We called for the report from the authority concerned and from

the report it appears that Paltanbazar PS case No. 906/2011 u/s 406/420 IPC has initiated criminal case at the instance of Manager Hotel Hornbill, Paltanbazar alleging that the cheque of Rs. 34,000.00 (Rupees thirty four thousand) that was deposited by him in the Gitanagar Branch of the SBI was not credited in its account. The police authorities were informed by the Gitanagar Branch of the SBI. In course of proceeding it appears that the police started investigation and after completion of investigation it submitted charge sheet against accused Mridu Pawan Neog vide CS No.14/2012 dated 27.2.2012. In the situation we do not find that the complainant has any ground to apprehend of harassment from the police.

In the set of circumstances, the proceeding stands closed. A copy of the order may be communicated to the complainant.

(This has the reference to SPAC Case No.57/2011 and order passed on 26.10.2012)

8:40.

Hasina Begum Laskar

-Vs-

Officer in Charge, Silchar Police Station, Dist.- Cachar.

This proceeding came to fore on a complaint against alleged police misconduct. A report was called for. On perusal of the report it appears that at the instance of the learned Chief Judicial Magistrate, Silchar, a case was registered which was numbered as Silchar Police Station Case No. 284/12 u/s 498(A) against her husband Faruque Ahmed Laskar and six other. The SP, Cachar also intimated that charge sheet was submitted against Faruque Ahmed Laskar u/s 498 IPC showing him as absconder. We have examined the complaint as well as the police report. The Commission is not happy with the conduct of the police. The report did not indicate any reason as to why the IO failed to apprehend the accused. The report also did not cite any instance as to whether the procedure established by law was followed for effecting arrest of the accused. The Commission expects that the District Police authority will take all effective measures by taking the aid of law, as provided by the Code in the matter of investigation for infusing public confidence. With this proceeding stands closed. *(This has the reference to SPAC Case No. SPAC/Misc/Part VIII/2012 and order passed on 31.10.2012).*

9. **The number of complaints received by the District Accountability Authorities, and the manner in which they were dealt with:**

The District Accountability Authorities are non-functional and have not been set up. Hence the report on this count goes nil for the consecutive fifth year.

10. The identifiable patterns of mis-conduct on the part of police personnel in the State:

The complaints received and provided in the report themselves are portraying the patterns of police misconduct in a comprehensive manner and some of them have been enumerated below:

- (a) Ruthless behavior towards the complainants and instigation to the opposite parties for filing counter case relating to certain offences occurring most commonly blackmailing the complainant approaching the police at the first point of time.
- (b) Non-registration of offences and preferring enquiry prior to registration of case in violation of the provisions u/s 154(1) CrPC. Illiterate and poor section of the complainants become scapegoat as a result of no credence and invoking on the laid down procedure of law relating to the oral complaints u/s 154(1) Cr.PC. It delays the onset of law and aborts the justice delivery.
- (c) Non-FIR proceedings without the directions from the concerned authorities – Civil and Judicial and also without the fallout of investigation. A victim of a crime is also bound down in the proceeding in brazenly ignoring the conflict resolution through justice delivery mechanism.
- (d) Cases registered but not investigated in violation of the law u/s 157 Cr.PC. Women and girls are called up rather than the police officer moves out to the place/residence of women, girls and minors for investigation.
- (e) **Record related issues** : (i)The General Diary is not maintained according to the provisions of the Law and the rules as an account of translucent, transgressing the legal limit in the service to the individual as well as to the people at large. GDEs are not authenticated by the Officers- in-charges in some PS. Entries are seen more on defending action than a flow of actions transparently executed.
- (ii) Progress Report of investigation of cases is not prepared in conformity with the provisions of rules and procedure and it is more as a routine matter than the required supervision in the interest of rule and procedures confirming to law.

The supervising police brackets themselves indulge in the mis-conduct by way of omission and withdrawal in enforcing the rule of law

It is seen that the senior echelon are acting like a mere forwarding agency of issues having larger ramifications of law, rule and procedures without the superintendence percolating wrong message to the cutting edge level of police. This is fraught with the danger of legitimizing illegitimate action of the subordinates who grow and get groomed to a virulent and unfathomable working zone to the dis-service to the people.

(f) Tacit Act :

Extortion is a tacit act of the police personnel with powers provided by the law and being abused and conveniently positioned to over-awe common person who is quagmire having no alternative way out in the redressal to his complaint as referred to the complaints and disposal orders as discussed in the examination, investigation of the complaints.

11. Recommendations On Measures to Enhance Police Accountability:

The Commission has made a number of recommendations in the earlier reports. None of the recommendations made so far to enhance the police accountability and efficiency are put into effect. The Commission has now prioritised its recommendations ad seriatim which are set out below:

1. To amend the Assam Police Act 2007 empowering the Investigating Agency of the Commission to investigate the offences committed by police;
2. To empower the Commission to engage prosecutor for conducting prosecution of cases Charge-Sheeted against police officers in Criminal Proceedings;
3. To set up the regional Police Accountability Authorities without delay;
4. To submit quarterly reports of the departmental enquiry/directions to the Commission by the DGP as required as per the law;
5. To bring out the Police Rule Book/Manual conforming to the New Police Act inclusive of the General Diary re-designed to make police work transparent and accountable to law and rules;
6. To set up Organization of Research for purposes of undertaking researches into matter relating to the efficiency of the police services;
7. Immediate steps to be taken to exercise the Statutory Power under Section 115(1) of the Assam Police Act to make rules for carrying the purpose of the Act.

Sd/-

CHAIRMAN

Sd/-
MEMBERSd/-
MEMBER**Post Script**

The Assam Police Act, 2007 provided a great opportunity to make the police professionally organised, service oriented and accountable to the law to function as an efficient, effective people friendly and responsive agency. Instead of seizing the opportunity by both the hands, those who matters most failed to take advantage of the situation. It is painful to take note that with every passing day our police is losing the confidence of the people off and on, media reports about the attack at the police station or assault on the police personnel. Curiously, such types of attacks are taken on the chain by persons, those who matters. The reported assault of police personnel or attack at police station is an onslaught on sovereignty. The existence of law enforcing agency is a symbol of supremacy of law. Instead of taking hint from the act and taking a plunge to bring effective reforms to the institution, the authority has taken the matter in an easy fashion as it waiting till the cows come home. All these had to be rehearsed under extreme pain, years after years for the last five years, the Commission, after due deliberation recommended measures to enhance police accountability and advised the authority to bring accountability by taking appropriate measures on the erring personnel. Needless to state that the investigation of crime is in poor stage. Most of the police investigations ended in FR by letting out the perpetrator of crime by way of discharge of the accused, After laborious investigation and enquiry the Commission in a number of cases, recommended for prosecution. Not many of the perpetrators of the crime are charge-sheeted. The cues or the investigative materials provided by the Commission after investigation are totally ignored, obviously to shield the crime doers. In a number of cases, the Commission advised the authority, namely, the Police Headquarters to cause investigation with senior level officer. We did not find any instance where those cases were ever monitored by the Assam Police HQ. Instead the matter is left to the wisdom of the Superintendents of Police and Superintendent of Police on their own leave the matter for supervision to the Circle Inspectors.

Pursuant to a Government notification dated 2009, the Commission was handed over by the Government of Assam a case relating to the circumstances leading to the death of Manoj Deka, A CPI Leader of Morigaon in police custody on 4th July, 2004. Despite all limitations proceeded with the enquiry and concluded the same. The commission, on enquiry found that the two police officials were culpable for causing the death of Manoj Deka. In a very normal situation in the name of searching, Manoj Deka was such brutally assaulted, that he soon succumbed to his injuries, as a result of the said assault. This was totally an act of irresponsible policing. On assessment of factual situation, we found that the OC of the Police Station and the PSO concerned on whose hands the man died to be booked under sections 193, 471 read with 203 of the IPC in addition to the offences under Section 341, 427, 307 added with Section 302 of the IPC with direction to the police.

We made the following recommendations:

“While investigating the case, police ought to have probed the angle of criminal conspiracy within the meaning of Section 120- B of the IPC. As is evident from the facts and circumstances of the case, both OC Bora and Constable Rafiqul hatched a criminal conspiracy to assault Manoj Deka. In fact they both got inside one vehicle and on reaching the particular point, Bora dropped Rafiqul – and instructed the later to conduct the purported search. No materials are discernible as to why Manoj Deka, a Secretary of a political party needed to be searched in the manner alleged. The situation was quite peaceful – where there was no untoward incident and the victim himself volunteered to co-operate in the search operation.

OC Bora under whose very nose this assault took place did not make any endeavour in whatsoever manner to prevent the assault. Instead both melted away when their help was necessary to save the life of Manoj Deka. The omission to prevent is also an “act” within the meaning of Section 34 of the IPC read with Section 33 IPC. Those who stand also serve. Here Bora’s role cannot be said to be innocuous, rather his omission to prevent Rafiqul from indulging in an unlawful act amounts to an act under Section 33 of the Indian Penal Code. This angle should be probed by the Investigating Agency and rope the Sub Inspector Kamal Bora under Section 302 read with Section 120B/ 34 IPC amongst others. An accountable police need to act promptly in such matter to restore and inspire public confidence. Indulgence to law breakers will not only affect the credibility of the peace keeping force but also damage democratic fabric. Likewise an accountable police authority ought to have completed the departmental proceedings and punish the guilty persons by this time instead of keeping every one guessing.

Our investigation reveals that the supervision of the case as referred to above at the senior level of the Police Department appears having no telling effect on the investigation. As a matter of fact, the gravity of the case should have attracted sharp attention of the divisional/state level senior police officers who ought to have guided the investigation logically.

The latest status report in the investigation of the case No. 180/08 of Marigaon PS as submitted by the Superintendent of Police, Marigaon on 14th March, 2010 indicates that the progress of investigation needs to be augmented and accelerated. Senior level police officers of the Range / CID may guide the District Police. The medico- legal aspect of the case which could not be pursued in view of constraints in the resources of the Commission may also be looked into at the senior level supervision and the case be concluded without further delay.

The erring police officers in the investigation and supervision of the case in hand need to be pulled up by suitable departmental action to restore public confidence in the system.”

Our recommendations were made as far back as in the year 2010 and the guilty persons are yet to be prosecuted effectively. On the other hand, we found that due to dishonest investigation, the CI with oblique motive commended the court for the discharge of the accused. The Court however, did not accept the discharge of the PSO but accepted the final report against the prime accused. Our direction to conduct the investigation with senior level officer was taken no account in the process of investigation even SP was not in the loop. It was left to the wisdom of the CI, who in a most casual manner submitted the final report. This sort of activities, not alone bring disreputation to the institution, but also affects their credibility, and lowers the esteem of the people. We however, again wrote to the concerned authority to beef up the investigation and bring to book the guilty police official who was discharged in a devious method. We hope and trust that the Assam Police will soon try to retrieve the respect and credence of the police by providing proper guidance.

The State Government, which had instituted the investigation seems to have achieved the goal in sending the findings/direction of the Commission to the Police Department. It was also equally the solemn responsibility of the Government to oversee the investigation of the case, which met the end as discussed above.

Crime victims and victims groups give a human face to the problem of unaccountable policing.

Applying and enforcing laws is also the primary duties of the State. The Enforcement of law is the obligation of the State Govt. the Constitution of India make to premises of the great significance in articles 14 and 21.

1. No persons shall be deprived of his life or personal liberty except according to the procedure establish by law (Article 21).
2. The State shall not deny to any persons equality before the law or the equal protection of the laws within the territory of India. Tyranny of citizen is unconstitutional, for it is violation of article 21.

In this context, it would be apt to relate the case of Stephen Lawrence, a black youth killed in an unprovoked racist attack in the United Kindom in 1993. For years, the Metropolitan Police of London appeared to pay little attention to his murder and provided little or no information to the family members.

The family persuaded the matter. They made complaint to the Police Complaint Authority that the first police investigation had been bungled, and then took it to the Home Secretary. A special inquiry in 1999 made wide-ranging recommendations to increase the responsiveness and accountability of the police and the Crown Prosecution Service. The police publicly apologized to Stephen's parents, and admitted to faulty investigation.

We are downcast and dejected but not losing our nerves.

(II)

Needless to state that the Commission is yet to meet the challenges effectively in disposing the complaints at the earliest instance. This is basically because of the infrastructure problems. As far back as October, 2009, the following is the staff sanctioned by the Govt. of Assam. The particulars along with the designations, number of posts are set up below:-

<u>Designation</u>	<u>Nos. of post</u>
1. Secretary	1(one)
2. Sr. Assistant(Accountant)	1(one)
3. Jr. Assistant	1(one)
4. Typist	1(one)
5. Steno Grade-II	1(one)
6. Peon	2(two)
7. Chowkidar	1(one)

To make effective investigation, the Commission needs its own investigating staff and the Home Department sanctioned the following three Investigating Officers :-

<u>Designation</u>	<u>Nos. of post</u>
1. Chief Investigator	1(one)
2. Sr. Investigator	1(one)
3. Investigator	1(one)

Presently, the investigating staff consists of one Chief Investigator and one Senior Investigator. The Commission has obtained the services of a retired police officer of DIG level and a person of retired Addl. SP who is posted as Senior Investigator.

The works of the Commission's Secretariat are largely dependent on hired, retired and inexperienced staff engaging on contractual basis. The Commission finds it difficult to engage quality staff as no one is willing to work against such payment of pittance in the name of remuneration. The Commission sent its proposal for enhancement of pay structure and increase of strength from March, 2011 and also asked for creation of permanent posts for the Commission which was submitted as far back as in March, 2011. Till now these are yet to be considered by the Government. Our jobs require urgent response but because of the constraints, the Commission is yet to discharge its duties at the earliest because of the shortage of the staff. All these are crippling the effective functioning of the Commission. We hope and trust that adequate remedial measures will be taken to make the Commission effective so that it can meet the challenges. Till the date of presenting the report, the Commission is yet to be placed with sufficient resources. Delay in disposing the cases is worrying the Commission.

(III)

The provisions as enunciated in the Police Act 2007 presuppose the "already existing mechanisms, duties and responsibilities of the departmental authorities" in matters of accountability of the police. The external oversight by the Accountability Commission is an additional arrangement. The departmental authorities are, therefore, in the forefront. But these authorities appear to have positioned themselves with those who have come under the accountability scanner.

There can never be dearth of complaints. The Commission has come across a plethora of complaints of refusing to register FIR, wrongful confinement, instigation for counter-case and blackmailing, inaction in investigation. The local Gazetted Police Officers in the Sub Divisions who are pretty closed to the complainants are not rising to the occasion. The Circle Inspector of Police having a considerable supervisory action seems most inactive in addressing the complaints.

The Supdt of Police, the district police authorities, are seldom exercising their authorities in matters of accountability such as refusal to register FIR, wrongful arrest, search, seizure – the most common and rampant breach of law, procedure and rules. Standing Orders as a learning point from mistakes have become matters of the past. Many good practices seem waned. The accountability issue has been ingrained itself in these good practices of the police in the colonial era without having the necessity to redefine it. Now it has emerged as a crying need. The onus is heavily on the shoulders of the departmental authorities more than it is with the Commission to keep the accountability measure in good stead. Else, the burden would be too heavy on the Commission. Departmental authorities would tend to pass on the buck to the external oversight body repudiating their mandated function. This would mean a strong delineating sense distancing the police from the common man with complete collapse and nosedive of the trajectory of the reform from a ruler to people police.

The Annual Report of the Commission for 2012 concludes with a positive note in recommending that the departmental authorities of the police in Assam would rally behind, fine tuned and rise to take on the task of the internal instrument to steer up the police accountability with the external oversight as an additional but sparingly used body.

“HOPE” springs eternal in the human breast.

	SD/- CHAIRMAN	
SD/- MEMBER		SD/- MEMBER

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