

Justice D.N. Chowdhury(Retd)

9435010643(M)

Chairman

0361-2462408(O)

State Police Accountability Commission,

Assam, Ulubari

Guwahati-781 007

D.O. No. SPAC/2014

Dated, the January, 2014.

Dear

We are presenting herewith the Annual Report for the calendar year 2013.

As per statutory requirement, our recommendations amongst others are to contain as to the measures to enhance police accountability. In terms thereof, we made recommendations in each year all with the objects to enhance police accountability. Sooner these recommendations are attended to and put into practice with rigour, undoubtedly it would add to in enhancing accountability and make headway towards democratic policing.

Recently, the Supreme Court has sent directions to all the States for submitting reports to verify as to the reasons for larger number of acquittals. Right from our first report in 2008, the Commission made an attempt to impress upon the authority to focus on the crime investigation. Commission expressed its serious concern at the tardy progress of important cases pending with various police stations within the State. We pointed out that for various reasons the investigation of cases is being accorded low priority, be it because of preoccupation of law and order duties, VIP security, or operation against extremists as a result of which the following problems surface :

- (1) Arrested criminals get bail due to Case Diaries not being written in time or not having credible evidence against the accused;
- (2) Initial defects in Case Diaries like improper seizure, failure to seize the incriminating materials, non-examination of material witnesses that lead to the submission of Final Report or even subsequent acquittal by the Court thereby enabling the criminals to carry on their nefarious activities with impunity.

We accordingly advised to accord top priority in the criminal investigation by creating a separate set of highly trained police officers who would be able to pay exclusive attention in the matter of investigation of cases. The Supreme Court as far back as 2006, directed the State Governments to

separate the investigation and law & order functions of the police. We reminded these aspects in our report.

In our report we also requested the State Government to provide with independent budgetary provisions to enable it to function as an effective instrument for ensuring accountability. We also brought attention of the authority towards upgradation of the resource of the Commission for providing effective strength in the Investigating Wing of the Commission.

In the Annual Budget of 2013-14, the Commission was allocated with Rs.49,21,000/-of which, Rs.40,12,000.- goes towards salary component. Out of the budgeted amount of Rs.9,09,000/- towards non-salary component, Rs.7,27,200/- per annum is incurred on account of Rent against Rented Office accommodation alone leaving with us a meagre sum of Rs.1,81,800/-. The Commission is to also incur expenses on telephone, electricity, stationery, wages of cleaner, maintaining web-sites, expenditures on maintenance of Xerox machine, Computers. To make it meaningful, I would, therefore, request you to look into this aspect of the matter to provide us with independent budgetary provisions by allocating with workable budgetary provision to enable us to function effectively in terms of the statute. The Commission is crying hoarse for years together for according sanctions at the earliest for creating posts permanent in the Commission by eliminating adhocism.

We fervently request you to look into the matters enumerated above and take appropriate measure for remedying the situation.

Thanking you,

With regards,

Yours sincerely,

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

(Dhiresch Narayan Chowdhury)

ANNUAL REPORT 2013

The Statute and
the Practices

Assam Police Act, 2007 provides for the police accountability under Chapter-VIII with parameters as defined by Section 78(1), Sub-Section 78(1) –

- (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-registrastion of FIR

and any other case referred to it by the Government or the DGP of the State subject to the nature of such cases meriting for independent enquiry.

Section 83(1) of the Act, provides for submission of “**Annual Report**” dwelling upon –

- (i) the number and type of cases of serious misconduct enquired into it;
- (ii) the number and type of cases of misconduct referred to it by the complainant upon being dissatisfied on the departmental enquiry into his/her complaint;
- (iii) the number and type of cases including those referred to it in (b) above in which advice or direction was issued by it to the police for further action;
- (iv) the number of complaints received by the district accountability authorities and manner in which they were dealt with;
- (v) the identifiable pattern of misconduct on the part of the police personnel in the State; and
- (vi) recommendations on measures to enhance police accountability.

2. This is the Sixth Report of the State Police Accountability Commission of Assam with Justice D.N.Chowdhury (Retd) as Chairman and S/Shri D.N.Saikia, IAS (Retd), S.P. Ram, IPS (Retd), Smt Minati Choudhury whose term expired on 15.12.2012 and Mrs. N.A. Tanweer who joined on 10.04.2013 as Members during the year of the Report.

2.1 The Commission's Secretariat is headed by Shri Dimbeswar Kalita, ACS(Retd) assisted by 2(two) retired ministerial staff, 5(five) staff hired on contractual basis and one serving Junior Assistant of the Police Department, one Constable as runner, one Home Guard.

2.2 Furthermore, the Commission has inducted Shri R.K. Bania, IPS (Retd), a DIGP and Shri G.N. Duttachoudhury, APS(Retd), Addl. SP, as the Chief Investigator and Senior Investigator respectively similarly on annual contract for manning the investigating agency of the Commission..

2.3 **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, Guwahati-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 overcome the teething problem. The accommodational need is urgent in order to complete harnessing of the resources and manpower for meeting the challenge being confronted by the oversight police accountability body.

2.4 **Finance:**

Head of Account : 2070 Major Head.

Sub Head : 0434 StatePolice Accountability Commission.

Budget received for 2013-14: Salary: Rs. 40.12 lakhs.

:Non-Salary: Rs. 9.09 lakhs.

It is too inadequate to meet the expenses after paying House Rent and a paultry sum on office expenses for stationeries and books. The independent investigation as required for quick redressal of the complaint with necessary logistics is beyond the scope of the fund position which demands for early allocation to make the investigative agency of the Commission to take on the investigation/enquiry obviating the current predicament in the disposal as discussed in this report.

3. **The number and type of cases of serious misconduct enquired into it:**

The number of cases of serious misconduct enquired by the Commission during 2013 is furnished as follows:

- (a) Registered during the year: 93
- (b) Cases spilled over from the previous years : 109
- (c) Total the Number of cases enquired during 2013: 202

A tabular statement of the cases is also presented below

Table 01:
Number of cases enquired during the year :

	During 2013	Spilled over from the year			Total
		2010	2011	2012	
Registered	93	14	34	61	202
Disposed	25	14	16	15	70 +
Spilled over to 2014	68	0	18	46	132

+12 cases disposed on miscellaneous count.

3.2 The type of cases enquired into during the year 2013 is furnished below in a diagram as well as in the Table-02 :

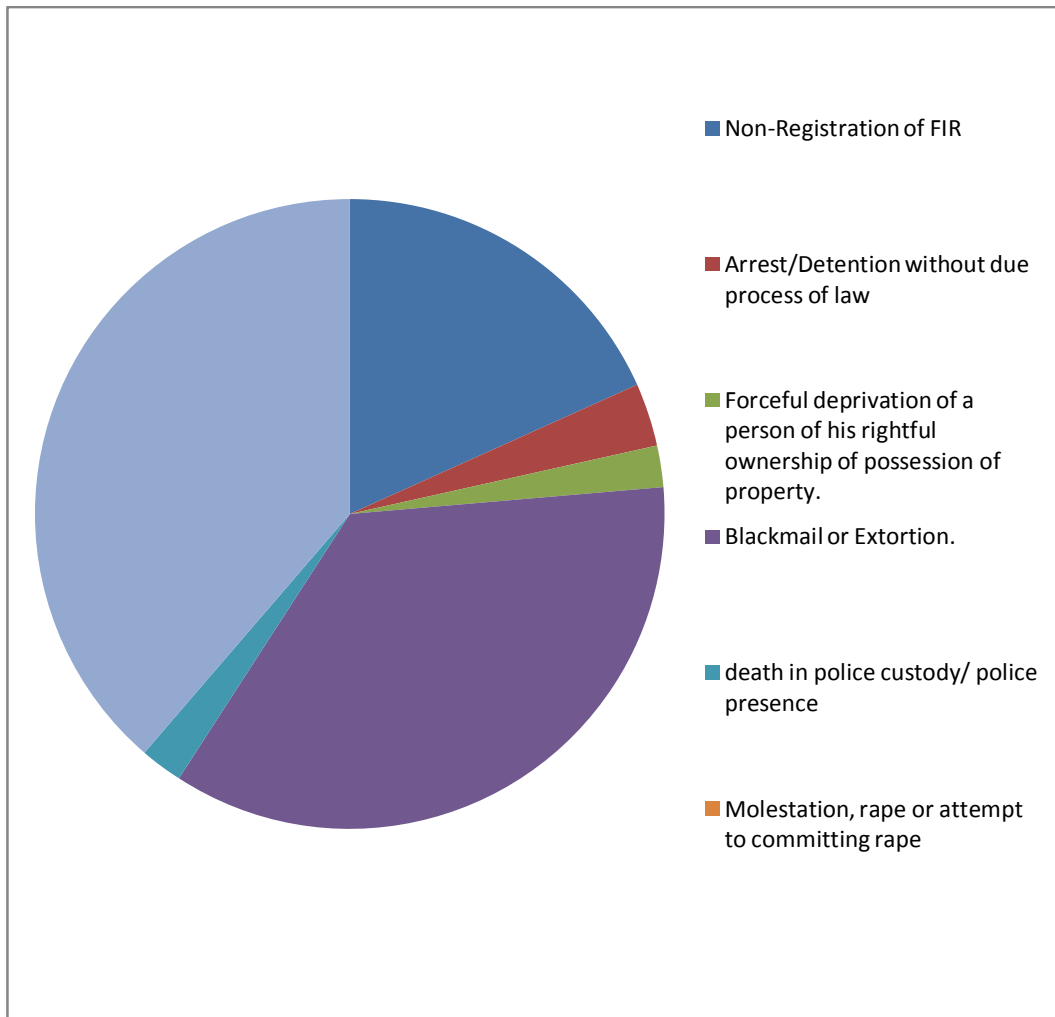
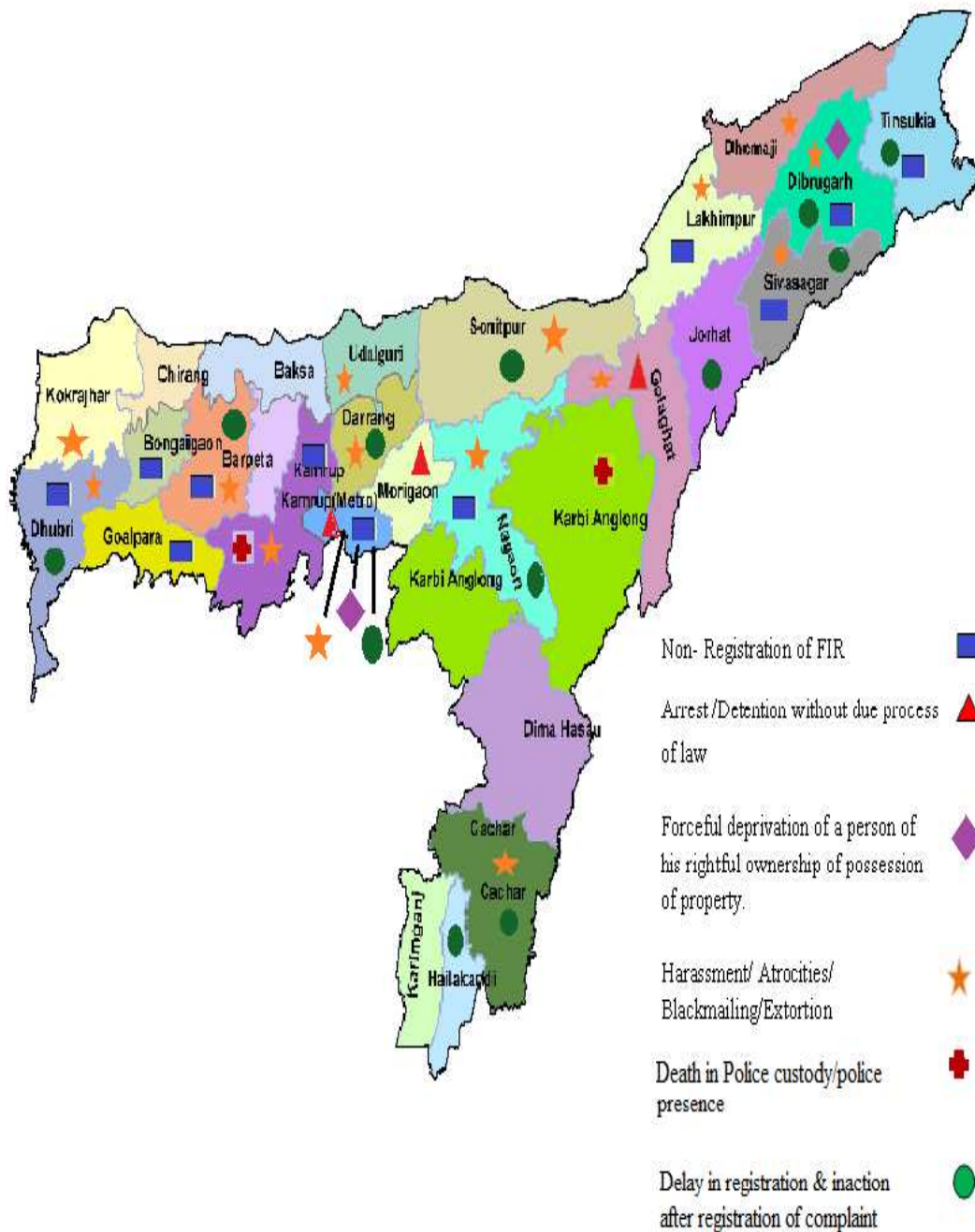


Table showing the type of cases registered during the year :

Table - 02

<u>Sl.No.</u>	<u>Type of cases of serious misconduct</u>	<u>Registered</u>
1.	Non-registration of FIR	17
2.	Arrest/detention without due process of law	03
.3.	Forceful deprivation of a person of his rightful ownership of possession of property.	02
4.	Blackmail or extortion	33
5.	Death in police custody/police presence	02
6.	Molestation, rape or attempt to committing rape.	NIL
7.	Delay in registration & inaction after registration of complaint	36

Districtwise distribution of cases indicating the type of Serious Misconduct :



3.2 ILLUSTRATIVE CASES:

The thematic structure of this report is designed to give an insight into the complaints in their own volition. Some of the complaint which are considered to be illustrative of the cases enquired by the Commission are collated for understanding of the type of the public complaints made before the Commission.

SPAC Case No. 02/2013

Complainant : Sri Mono Kr. Brahma, Dist: Kokrajhar,
-Versus-
Addl. S.P Surjit Singh Paneswar, Dist: Kokrajhar.

Complainant Sri Mono kr. Brahma of Vill- Tengapara under P.S & Dist: Kokrajhar, lodged a complaint before the Commission on 04/01/2013 alleging misconduct of Addl. S.P Kokrajhar Surjeet Singh Paneswar for forcibly entering his house and harassing him and other family members. Even the Kokrajhar PS personnel refused to register the FIR when his wife went to the P.S.

On receipt of the complaint, the Commission registered a case vide SPAC Case No. 02/2013 and called for a factual report and parawise comments along with GDE, search list & witnesses to seizure of the AK 47 rifle from the S.P Kakrajhar within 22/01/2013 vide No. SPAC/C/02/2013/2, dtd. 09/01/2013.

SPAC Case No. 03/2013

Complainant : Sri Bipradeep Deb, Dist. Kamrup (M),
-Versus-

I/C Birubari O.P, Paltanbazar PS, Dist: Kamrup (M)

One Sri Bipradeep Deb by profession an Advocate of Kamakhya Nagar, Dinesh Ojha Path, Bhangagarh, Guwahati under Birubari O.P (Paltanbazar PS) filed a complaint before the Commission on atrocity committed by police upon him on 14/11/2012. In his complaint it is alleged that he was arrested by the Birubari Police Out Post having him charged U/S 498A and locked up and beaten up and put behind the lock-up for more than 10 hour. Complainant filed a W.P(C) No. 3599 of 2010 before the Hon'ble Gauhati High Court, which is pending for final disposal and complainant believes it to be that is the reason behind torture and harassment repeatedly by the police.

Therefore, the complainant fervently requested the Commission to interfere into the matter for end of Justice and to stop the police atrocity with the innocent citizens.

The Commission registered a case and issued notice to the Sr. S.P, City, Guwahati, to submit a report before 31/01/2013 Vide SPAC/C/03/2013/2, dtd. 10/01/2013. Accordingly, SSP (City) Guwahati, who detailed DySP (HQ) City, to enquire in to the allegations made by the petitioner. The report reveals

that the petitioner was kept inside the police lock-up from 6.30pm to 9.15 on 14.11.2012 and prior to that he was arrested on 6.20pm in the same evening in connection with the Paltanbazar PS, Case No. 1106/2012.

After examination of the report and record etc Commission passed an order on 19.03.2013 disposing the case with direction issued to the police HQ need to intervene and provide in-house training to the police officer particularly O/Cs of police station in the matter of registration of a case terms of the chapter XII of Cr.PC and this has to be known that no investigation what so ever manner can be started without registration of the case. The police Headquarters should very soon take up appropriate measure for arranging training of such persons so that such lapses do not occur.

The I/C, Birubari OP failed seemingly to adhere to procedure prescribed by law for keeping the complaint in confinement wrongfully, the I/C of Birubari Out Post SI Eiyin Sinha, therefore needs to be pulled up by the department. With this the proceeding stands closed.

SPAC Case No. 04/2013

Complainant : Smti. Kabita Nath, Dist.- Darrang
-Versus-
O/C Sipajhar P.S, Dist.- Darrang

A complaint received from one Smti. Kabita Nath, W/O Sri Ramchandra Nath of Vill- Bochachuba under Sipajhar P.S Dist.- Darrang that one Shri Khirendra Mohan Nath of the same village raped her on 30/10/2012 and on the same day she filed a FIR at the Sipajhar P.S which is registered vide Sipajhar P.S Case No. 24/12 U/S 341/376 IPC, but police fails to take action against the accused persons as he freely moves around and threatening her to withdraw the case. Therefore complainant requested the Commission to issue suitable order to arrest the accused and to investigate the case through CID.

On receipt of the complaint, the Commission registered a case and issued notice to the S.P Darrang, to furnish a report within 04/02/2013 vide No. SPAC/C/4/2013/2, dtd/ 19/01/2013.

SPAC Case No. 06/2013.

Complainant: Arman Ali, Member Child Welfare Committee.
- Versus-
Sri. Biren Gogoi, O/C Azara PS.

A complaint is lodged before the Commission by Arman Ali on behalf of the Child Welfare Committee (Kamrup, Metro) against Shri Biren Gogoi, O/C Azara P.S for forceful confinement, cruelty and engaging a 12 year old girl

child namely Lakhi Das as labourer since two years back. On 03rd February of 2013 she was brutally beaten by Mr & Mrs Gogoi for which, out of fear, she ran away from their house. However the girl was rescued by the local people and handed over to the Azara P.S. The girl is presently under the protective custody of the Child Welfare Committee and is placed in the Kalyani Nivas through Child Line, Guwahati. The Child Welfare Committee already lodged FIR before the Sr. S.P, City, Guwahati on February 4, 2013 to register a case under proper section of law.

On receipt of the complaint the Commission registered a case and issued notice to the Sr. S.P, City, Guwahati, to submit a detailed report on the complaint.

As per direction of the commission, the SSP (City), Guwahati, furnished his report. On examination of the entire aspect of the matter Commission disposed the case. Commission is of the opinion that the authority concerned took the right steps in launching prosecution against the person erring. The Commission however, feels that since this matter involving police discipline, the authority concerned also ought to have initiated Departmental Proceedings against the police personnel to enforce discipline in the force. The Director General of Police is requested to take stock of the situation and take exemplary measure against the police personnel in the interest of Police Department and to maintain the rule of law.

SPAC Case No. 09/2013

Complainant:

Md. Amir Hussain

-Versus-

Officer-In- Charge, Sipajhar Police Station, Darrang.

The complainant Md. Amir Hussain of village Santi Pukhuri , PS: Sipajhar lodged a complaint petition dated 23.03.2013 before the Commission alleging laxity on the part of the Sipajhar Police on the complaint lodged by him before the Supdt. of Police, Darrang, on 27.01.2012. The complainant, a RTI worker has filed an application before the Ministry of Rural Development, Govt of India, New Delhi to enquire the corruptions occurred under the NREGA Scheme under Sipajhar development block and to make enquiry thereof. Though, complainant filed a number of applications under RTI but no action taken by the SP Darrang.

The Commission entertained the complaint and called for a report from the SP Darrang. From the report it appears that the Sipajhar Police acted upon the FIR, registered the same as Sipajhar Ps Case No. 92/2012. It seems that the FIR was not only registered, the case was investigated and accused persons were Charge Sheeted. In this set of circumstances the complainant disposed off with the proceeding stands closed.

SPAC Case No. 12/2013.

Complainant: Dr. Dharanidhar Mali, Former Director,
Indian Institute of Enterprenership, Guwahati.
-Versus-
ASI Firoji Doley, Palashbari PS.

The Complaint filed by Dr. Dharani Dhar Mali former Director, Indian Institute of Entrepreneurship, Guwahati, disclosing allegation against ASI Firuj Doley of Palashbari P.S, Mirza. He warned and threatened the Complainant and his son for disturbance of unauthorized construction made by cousin brother Sri Bhubaneswar Mali. The ASI did not care for the directions of superior Police officer, the SP or the DIG and behaved in unbecoming conduct.

The Commission registered a case in SPAC Case No. 12/2013 as ordered by call for a detailed report from S.P Kamrup (R), Amingaon, Assam on or before 12/04/2013.

SPAC Case No. 16/2013.

Complainant: Sri. Bhabesh Mishra, S/O: Lt. Tarakeswar Mishra,
R/O: Rly Qtr. No. 184/A East Maligaon,
PS: Jalukbari, Dist: Kamrup (M).

-Versus-

Smti. Pallavi Das, all women Police Station, Panbazar.

The Complaint petition is received from one Bhabesh Mishra, S/O Lt. Tarakeswar Mishra presently R/O Rly Qtr No.184 A, East Maligaon , Dist- kamrup(M) Assam, presently working in Shyambhumi High School. His wife of employee in Raliway Department was leaving the family of Railway Qtr. That the petitioner's wife filed a divorce case against her husband on false and frivolous allegations. The O/C, All women PS, Panbazar PS, Smti Pallavi Das came to the Qtr and abusesd in filthy language and threatened to register a false, non-bailable criminal case against the petitioner.

The Hon'ble Commission has called for a factual report from the Sr. Superintendent of Police, City, Guwahati.

SPAC Case No. 25/2013

Complainant :- 1. Sri. Amal Choudhury,
2. Smti. Mala Choudhury, sivasagar.

-Versus-

ASI. Puneswar Mech, Bihubar PS.

Complainant Amal Choudhury and his wife Smti. Mala Choudhury of Chantak Panch Ali PS: Bihubar, Dist: Sivasagar, filed a

complaint before the Commission stating that their daughter Miss. Nikita Choudhury met with an accident on 18.04.13 and seriously injured and referred to the Civil Hospital, Sivasagar, for better treatment. After the accident the owner of the bike was brought to the PS and later on released by the ASI Puneswar Mech without taking any legal action against him by accepting 20,000/- from the bike owner as alleged in their complaint.

Complainant Sri. Amal Choudhury is a daily wage earner for which he could not provide required medical facilities to her daughter and hence prayed to the Commission to look upon their complaint and to take action against the ASI and to direct him to pay the entire amount of treatment to the complainant.

Commission, having registered the case, directed the SP. Sivasagar, to furnish report.

SPAC/ Misc Case No. IX/2013.

Complainant: Najmul Haque Tapadar, Vice president Student's Union NE College, Badarpur.

-Versus-

Katigora Police Officials.

Najmul Haque Tapadar, Vice President, Badarpur has lodged a complaint against Police inaction of Katigora PS. officials, who failed to arrest the gang of culprits who molested a college girl on 06.02.2013 because of the culprit is relative of affluent and influential family for which the culprit/accused are still roaming freely. Hence, complainant requested the Commission to take immediate action for providing justice to the victim girl.

On receipt of the complaint, the Commission registered a case. The Commission conveyed the displeasure on failure to arrest the accused persons and directed SP, Cacher, to take steps to arrest the accused persons and to complete the investigation vide Commission letter No. SPAC/Misc Part IX/2013/5 dtd. 22.04.13.

In response of the Commission's direction SP, Cacher, vide his letter No. CR/SPAC/FTG/C/57/2013/3367 dtd 20.05.13 reported that FIR named accused Manjur Ahmed Borbhuyan, was arrested and forwarded to the judicial custody. The investigation of the case has been completed and charge sheet has been submitted u/s 341/354/352/511 IPC vide Katigora PS. CS No. 67/2013 dtd. 20.04.2013.

SPAC Case No. 39/2013

Complainant: Sri. Gautam Nath, Duliajan, Dibrugarh.

-Versus-

Sri. Binoy Kr. Barman, O/C Duliajan PS.

Sri. Gautam Nath, Tipling, Duliajan has lodged a complaint before the Commission alleging harassment/ implicating him in a false case of Duliajan PS. Case No. 54/2012 and forwarded him to jail custody on 14.03.2012 by the officer-in-charge Duliajan PS. Sri. Binoy Kr. Barman at the intimidation from 5 youths. He was released on bail on 16.06.2012 from the custody. After released from bail he met the Supdt. of Police, of Dibrugarah and as per his advice he lodged a FIR against the 5 youths, but instead of taking any action against the accused persons, the O/C threatened him with dire consequences. Out of fear he fled to Dimapur, and living there at present.

Having received the complaint, the Commission has issued notice to the SP. Dibrugarah, vide No. SPAC/C/39/2013/2 dtd. 28.06.2013 for filing his report.

SPAC Case No. 40/2013

Complainant: Md. Alias Ali, New Market, Kalibari Road, Dibrugarah.

-Versus-

SI Birendra Kumer Das, Dibrugarah PS.

Md. Alias of New Market, Kalibari Road Dibrugarah has lodged a complaint before the Commission on 24.06.2013 against SI. Briendra Kr. Das of Dibrugarah PS. for submitting different reports to different Courts on the same matter/threatening/harassment/ indifferent attitude by the Dibgarah Police officials for which he feels insecured. Therefore, he requested the Commission to make an enquiry and to save him from the alleged harassment of the police.

Having registered a case and after examination of the complaint, the Commission forwarded the complaint to the Director General Of Police, Assam for redressal of the grievances of the complainant by causing appropriate enquiry into the allegation with direction to submit the out come of the enquiry to the Commission at the earliest.

SPAC Case No. 41/2013

Complainant: Smti. Inderpal Kaur

-Versus-

Basistha Police officials

The case is initiated on a complaint filed on 26.06.2013 by Smti. Inderpal Kaur w/o. Sri. Gurmeet Singh permanent resident of ward No. 1 near Dashmesh Public School, Chattha Bhour Camp, Jammu, now at Guwahati, alleging serious custodial violence of 3rd degree torture/brutal assault/threatening with dire consequences to her husband Sri. Gurmeet Singh

huge amount for it and the said Bodo Crops is ready of harvesting. On 05.06.2013. Sri. Hari Ch. Nath I/C, Kawaimari OP accompanied by police men and members of muscleman cut all the paddy from the field. On seeing his action, when he protested and demanded to show any order for his action, the said police officer told him that he can do everything as he like as he is the monarch of the area and no order is required for him.

Complainant then approached the SP. Nogaon, and filed a complaint against the action of I/C Kawaimari OP. Thereafter, the I/C Kawaimari, kept continuously threatening him and his family members with dire consequences. Police has not taken any action against his complaint lodged before the SP. Nagaon and O/C Rupahihat PS.

Hence, the complainant requested the Commission, by filing his complaint to make an enquiry into his allegation and to take action against the police officer, so, that the law abiding citizen like him can live peacefully out of fear from police.

On receipt of the complaint, the Commission registered a case and issued notice and directed the SP. Nagaon to furnish a detail report into the matter vide No. SPAC/C/44/2013/2 dated. 01.07.2013.

SPAC Case No. 46/2013

Complainant: Sri. Nripendra Ch. Kalita, S/O: Lt. Boga Ram Kalita,
Vill: Kekerikuchi, Rangia, Dist: Kamrup (R).

-Versus-

Officer-In-Charge , Rangia.

One Sri. Nripendra Chandra Kalita s/o Lt. Boga Ram Kalita of village Kekerikuchi under Kamrup (Rural) district, an employee of SDO (Civil) office, Rangia has lodged a complaint before the Commission on 08.07.2013 that after availing Earned Leave w.e.f. 01.06.2013 to 30.06.2013 he joined his duties on 01.07.2013 with fitness certificate from the Doctor on 02.07.2013. Dr. Karuna Kumari, Sub Divisional Officer (Civil) Rangia called him at her office chamber and not only misbehaved with him in presence of other staff also confined him into a room for the whole day on 04.07.2013. While he was in confinement in the said room due to hot summer temperature he became unconscious. The staff of the office managed him to send to Rangia Civil Hospital for treatment and later on referred to GMCH for better treatment. Attending doctor advised him to take complete bed rest for 4days.

Though, his wife Smti. Mamoni Kalita went to the Rangia PS. to lodge an FIR in connection with the incident against SDO(C) Rangia, the Rangia PS. staff refused to accept the FIR. Hence, the complainant requested the Commission to make an enquiry into the matter and the reason for not accepting the FIR from his wife on 06.07.2013.

The Commission registered a case and directed the Superintendent Of Police, Kamrup(R), to submit a report as to the allegations of refusal/ non-registration of FIR vide Notice No.SPAC/C/46/2013/2 dtd. 09.07.2012.

SPAC Case No.49/2013

Complainant: Sri. Pramesh Baidya, Silapathar, Dhemaji.

-Versus-

SP and other Police Officials of Dhemaji PS.

Complainant Sri. Pramesh Baidya S/o Sri. Saritra Baidya of Silapathar, District: Dhemaji has filed a complaint against the Superintendent of Police Dhemaji, and other police officers involved in forcing the petitioner and other traders to kneel down in public and to admit their alleged guilt illegally holding a Kangaroo Court and for this act of police had hurt the dignity of the complainant and other traders. The said Kangaroo Court organized at the behest of the police and civil administration officials. By their aforesaid act the police and civil administration officials failed to discharge their duty in a fair manner and has failed to perform their Constitutional obligations towards citizens of the country and as such appropriate action should be taken against the police and civil administration authority is infringing upon complainant's fundamental right and that of other co-traders and as such they are required to be adequately compensated.

As the action of the authority being in violation of the Constitution and other laws framed there- under and hence the complainant on behalf of co-traders requested the Commission to interfere in to the matter and to enquire in to the incident and to direct the Government to take necessary action against erring police officials in the illegal act. Complainant annexed photograph of holding Kangaroo Court in presence of police personnel and other public and CD as a documentary proof.

On being heard, Sri. Vikram Rajkhowa, Advocate, and on perusal of the complaint petition, the Commission registered a case and issued notice to the Supdt. Of Police, Dhemaji, for a factual report and directed the SP concerned to provide all the necessary protective measures to the complainant and the persons named and to submit the report for their vide Commission's letter No. SPAC/ C/49/2013/2 dated 18.07.2013.

SPAC Case No. 51/2013

Complainant: Shri. Ghanashyam Deka, General Secretary,
Diphu Bar Association, Karbi Anglong.

-Versus-

1. ASI Ramesh Nath.

2. Sheikh Harun Bora, Havilder cum driver Diphu PS.

Sri. Ghanashyam Deka, General Secretary, Diphu Bar Association, has lodged a complaint on behalf of one of their members advocate Sri. Harun Saikia whose son Sri. Jhankar Saikia died because of the injuries sustained by him due to gang attack mercilessly, ruthlessly beaten the Advocate and his son on 25.06.2013 at Diphu in presence of said police personnel and due to police inaction leading to the brutal assaults to Shri. Jhonkar Saikia who succumbed to his injuries on 01.07.2013 at the Dispur Hospital, Guwahati.

The brief fact of the case is that due to differences over auto fare between the auto driver and the Advocate and his son followed by a gang attack on them which caused extensive injuries to their whole body and in the process vital body organs were damaged beyond restitution. The whole incident occurred in front of police officials who were mere spectators for about 45 minutes.

Though advocate Shri. Harun Ch. Saikia, father of Jhankar Saikia, filed FIR having video footage of the occurrence of the whole incident showing the gang involved in the incident, the police are yet to trace out and arrest all the culprits involved in the incident. Therefore, the Diphu Bar Association, filed this complaint in the interest of justice.

On receipt of the complaint, the Commission registered the case and issued notice to the Superintendent of Police, Karbi Anglong, Diphu to furnish a factual report to be accompanied by certified copies of relevant FIR, GDE references, investigation details, arrest memo, seizure list, medical report etc vide Commission notice No. SPAC/C/51/2013/2 dated 19.07.2013.

SPAC Case No. 52/2013

Complainant: Hare Ram Das of Barhajan, Doom-dooma, Tinsukia.
-Versus-
Doom-Dooma Police.

A complaint received from a helpless family on a threat of forceful deprivation of their rightful ownership of property. As per the complaint an FIR was lodged against the persons who were described by the complainant as persons who are rich, influential and resourceful persons with a view to cause wrongful loss to him and his mother forged his signature and thumb impression of his mother in making/ preparing forged document. The said case was registered as Doom-dooma PS Case No. 389/2009 u/s 468/471/209/120 (B) IPC.

On receipt of the complaint having registered a case, the Commission called for a report from SP Tinsukia. The SP's report dated 20.03.2013 disclosed that he entrusted Dy. SP(HQ) Innamuddin Ahmed, APS, to conduct enquiry in to the matter and in connection with the Case No. 389/2009.

The Commission by its order passed on 26.04.2013 directed the Director General of Police to cause an effective enquiry and fix responsibilities on the persons concerned who were involved in the connivance and delaying the investigation by way of causing to be missing of a vital documentary evidence of the case. Director General of Police shall take appropriate measure for completion of the investigation of the matter expeditiously and submit report to this Commission. With this observation Commission close the proceedings with the direction to all concerned to intimate as to the progress of the matter.

SPAC Case No. 59/2013

Complainant: Smti. Bhabani Sarma, Hojai Nogaon.

-Versus-

O/C Hojai Police Station.

A complaint was received from Smti. Bhabani Sarma of Hojai, Nogaon, stating that she filed a case before Ld. SDJM, Hojai, which was referred to the O/C Hojai PS, for registering a case and to investigate the allegation of the complainant. Accordingly, a case was registered vide Hojai PS Case No. 121/13 U/S 447/384/506/34 IPC. The Hojai PS served a notice upon the complainant to appear before the Police Station for recording her statement. Though she went to the PS for recording her statement several times but not recorded her statement as the police remained busy otherwise. On the other hand, she was detained at the police station on 13.05.2013 and forwarded her to the court of Ld. SDJM, Hojai, against a case registered with Hojai PS Case No. 120/13 u/s 406/420/294/506 IPC. Her case registered vide Case No. 121/13 is ignored by the police and without recording her statement, taking any action against the accused person sent to the court only because she refused to comply police demand to pay an amount of Rs. 10,00,000/- (ten lakhs) for compromise of the case. The police also threatened that if their demand was not fulfilled she would be again taken to police custody and will be forwarded to judicial custody.

On receipt of the complaint, Commission issued notice to the Superintendent of Police, Nagaon, to furnish a report along with all relevant records vide No. SPAC/C/59/2013/2 dated 14.08.2013.

SPAC Case No.60/2013

Complainant: Shri. Sanjoy Goswami Baruah, Morigaon.

-Versus-

O/C Moirabari PS.

Complainant Shri. Sanjoy Goswami alias Mainul Haque S/o. Lt. Bhupendra Kr. Baruah of village Hatimura, Police Station Moirabari, Dist: Morigaon, has lodged a complaint before the Commission alleging police harassment/ unlawful detention/ forwarding him for judicial custody by initiating false case against him by Shri. Debajit Mahanta, O/C and SI Badri Prasad Barawati of Moirabari police station. Though complainant lodged a several of complaints at the Moirabari police station against some antisocial elements who destroyed his household properties and looted properties including cash/gold ornaments etc, but police failed to apprehend and to take action against the accused persons and also not yet recovered the household properties in spite of complainant giving the address of the involved culprits. Therefore, the complainant requested the Commission to take action against the alleged police officials.

The Commission has registered a case and directed the Superintendent of Police to submit a report into the matter vide notice No. SPAC/C/60/2 dated 14.08.2013.

SPAC Case No.61/2013

Complainant: Abdul Ali, S/o: Lt. Hamid Ali, R/O: Greenwood TE,
PS: Lahoal, Dist: Dibrugarh.

-Versus-

Officer In- Charge Borbari Out Post, Dibrugarh.

Complainant Shri. Abdul Ali has stated in his complaint that he is owner of a Shop situated at Paltan Bazar, Maijan Road, Dibrugarh. On 02.02.2013, one Smti. Rehena Begum along with her two sons namely, Safiqul Ahmed and Mazibul Rahman broke down the pucca wall of the aforesaid shop and lifted some household properties from the shop. When both the sons were caught red-handed, they threatened the complainant with dire consequences. Though, complainant lodged a complaint at the Borbari Out Post, under Dibrugarh police station, but the police neither arrested the culprit nor recovered the belongings of the shop.

Hence, the complaint.

On receipt of the complaint, the Commission registered a case and directed the Superintendent of Police, Dibrugarh to furnish a report urgently vide Commission's Notice No. SPAC/C/61/2013/2 dated 16.08.2013.

SPAC Case No. 62/2013.

Complainant: Mrs. Aziban Bibi, W/o Lt. Ibrahim Ali,
R/o: 1 No Jalah (Bhanguri Chupa),
PS: Kamalpur, Dist: Kamrup (R).

-Versus-

SI Balabhadra Patgiri, O/C Sangsari PS.

Complainant, Mrs. Aziban Bibi filed a complaint before the Commission alleging police inaction on her FIR filed on 05.08.2013 at the concerned Police Station. The brief fact of the case is that the FIR named accused persons charged complainant and her family members that their poultry destroyed their paddy field. Though, the complainant told accused persons that the poultry not belonged to them, but the accused persons attacked them and as a result her daughter-in-law namely Sontara Bibi, sustained grievously hurt.

Though, she lodged complaint in the police station. Police neither registered the case nor took any action to arrest the culprit involved in the incident. Instead, the said police officer put pressure on her to withdraw the complaint and to compromise the case with the accused persons. Else, police will register false dacoity case /Bangladeshi National case upon her and the family members with intention to harass them.

The Commission has registered a case and directed the SP Kamrup (R), to submit report urgently vide Commission notice No. SPAC/C/62/2013/2 dated 17.08.2013.

SPAC Case No. 63/2013

Complainant: Abdul Hatim, S/o: Lt. Kutubuddin,
Vill: Banachapa, PS: Fakirganj, Dist: Dhubri.
-Versus-
Officer -In-Charge Fakirganj Police Station.

Complainant Abdul Hatim has filed a complaint before the Commission against the Officer-in-Charge, Fakirganj Police Station under Dhubri district, for non-registration of case and inaction on his FIR submitted on 25.04.2010 only of because he could not pay money as demanded by the O/C in the name of investigation. The brief fact of the case is that his sons were tortured and assaulted by the accused Sanowar Khandakar and fourteen (14) others. On 24.04.2010 and 25.04.2010 at Poravita (Banachapa) Bazar under Fakirganj police station. On submission of the FIR upon the matter, the concerned O/C assured him that action will be taken against the accused persons and would be arrested very soon. But as the accused persons moving freely on enquires it was learnt that the FIR filed by him actually not yet registered as he collected information from the PI of police in the Court, Dhubri. Due to his ignorance he neither obtained any receipt nor concerned PS issued receipt to him at the time of filing FIR and denied to issue receipt.

Therefore, complainant requested the Commission to take action against the police officer for negligence in performing his duties and to issue direction to register the FIR and to investigate the case.

On receipt of the complaint, the Commission registered a case and issued notice to the SP Dhubri, to furnish report urgently vide No. SPAC/C/63/2013/2 dated 17.08.2013.

SPAC Case No. 65/2013

Complainant: Sri. Bidya Rajbhor, S/O Lt. Ramchandra Rajbhor.
Vill: Janghalbori, PS& Dist: Udalguri.
-Versus-
ASI Md. Amir Islam, Udalguri PS.

The Commission received a complaint from one Sri. Bidya Rajbhor of Udalguri alleging police harassment by ASI Amirul Islam of Udalguri PS.

The brief fact of the complaint is that on 12.09.2013 at about 11 pm police personnel under command of ASI Amir Islam entered his house and arrested him in a case registered at the Udalguri PS. As his wife wanted to know the reason of arrest of her husband police assaulted his wife and for which she got severely injured and fractured in her hand. In his complaint, complainant stated that as he has failed to pay Rs. 10,000/- demanded by the said police personnel for which a false case was registered against him and harassing him since then. Though, he approached the DC/SP of the district but no action seems to have been taken by them.

The Commission on receipt of the complaint registered a case and called for a report from SP Udalguri, vide notice under Memo No. SPAC/C/65/2013/2 dated 23.08.2013 and accordingly SP Udalguri, furnished his report vide his letter Memo No. UDL/crime/65/2013/3654 dated 16.09.2013. The Commission is making enquiry into it

SPAC Case No. 69/2013

Complainant: Sri. Manoranjan Das
-Versus-
O/C Patacharkuchi PS

Complainant Sri. Manoranjan Das S/O Lt. Dhruba Das of Tuply Panbari PS: Patacharkuchi, Dist: Barpeta has lodged a complaint before the Commission alleging police harassment/ wrongful confinement at the PS without any reason/threatening and initiating false case against him by Sri. Binod Barman, O/C and other police officials of Patacharkuchi PS.

The brief fact of the complaint is that he went to the PS to file a complaint to the effect that some anti social elements entered his house on 23.08.2012 at about 11.30 pm and snatched away his Pulser Bike No. AS-15-D-4247 and also Rs. 15,000/- by force from him. Since then on the pretext of enquiry of the case police officials of the concerned PS harassing him instead of taking any action against the named culprits. In his complaint, allegation is

made against Sri. Binod Barman, O/C Patacharkuchi, of being a most corrupt police official and harassing people in general for his personal gain/interest. Therefore, the complainant seeking for justice in the Commission and to take action against the corrupt police officials Sri. Binod Barman and others of the PS.

The Commission on receipt of the complaint registered a case and issued notice to the SP Barpeta, to furnish detail report on the complaint of Sri. Moanoranjan Das.

SPAC Case No. 70/2013

Complainant:

Mukhtar Ahmed, Bongaigaon.

-Versus-

O/C Jogighopa.

Mr. Mukhtar Ahmed of Chalantapara Dist: Bongaigaon filed a complaint against O/C Jogighopa and also district police of Bongaigaon on police inaction to recover his eldest son from the kidnapper in spite of given sufficient clues/materials/callers phone numbers demanding ransoms.

The brief fact of the complaint is that he went to the Jogighopa PS, and met the O/C at the PS on 25.06.2013 to file an FIR regarding missing of Reyaz Ahmed, his elder son since last 24th June 2013. But the O/C Jogighopa PS neither registered any case nor investigated the matter till 3rd July 2013. On 2nd July 2013 he received phone calls from Phone no- 98591-86983 and 97063-15176 from unidentified persons demanding ransoms for release of his son. After getting the call, he immediately informs the SP Bongaigaon about the matter on 02.07.2013. On 03.07.2013 O/C Jogighopa PS call him to the PS and asked him to file a fresh FIR and registered a case vide No. 154/2013 U/S 364 (A)/387/34 IPC and subsequently arrested culprits on the basis of phone calls. But at the direction from higher police official, the O/C Jogighopa released the main suspect namely Mofidul. Moreover, the Addl. SP advised him to pay some money to secure release of his son from the kidnappers and accordingly he paid RS.7.00 lacs to the kidnappers on 5th July 2013. In spite, paying the amount the kidnappers not release his son till date. Till date he went to the SP's office, quite a number of times for secure release of his son from the culprits of kidnappers. But the district police did not take the matter seriously and has failed to recover his son from the kidnappers till date. Hence, finding no ways the complainant has approached the Commission.

On receipt of the complaint, the Commission registered a case and issued notice to the SP Bongaigaon, to furnish detail/factual report on the complaint.

SPAC Case No. 71/2013

Complainant:

Sri.. Tapan Das, S/O: Lt. Dehram Das,

Vill: Bijulibari, PS: Sipajhar, Dist: Darrang.

-Versus-

Md. Abdus Samad, O/C Sipajhar PS.

Complainant Sri. Tapan Das has lodged a complaint before the Commission alleging assault inside the PS, misbehaviour and detained him at the PS by Md. Abdus Samad, O/C Sipajhar PS, while he went to the PS on 19.09.2013 to file a complaint against one Sri. Jiten Das, teacher Maroi LP School. The O/C slapped him without any reason threatening him with dire consequences. According to the complaint, the O/C violated the norms of police accountability. Therefore, the complainant requested the Commission to take action against the corrupt police official and seeking justice in the interest of public in general.

The Commission on receipt of the complaint registered a case and issued notice to the SP Darang, to furnish report along with connected records to examine the complaint.

SPAC Case No. 75/2013

Complainant: Mustt. Wahida Begum, W/O: Habibur Rahman, Pitambar Hatbajali, Rangia, Dist: Kamrup(R).

-Versus-

Insp. Himangshu Das, O/C Rangia PS.
SI R.B. Dey, Rangia PS.

Complainant Mustt. Wahida Begum in her complaint brought allegation against the O/C and SI of Rangia PS to the effect that her brother-in-law Md. Khalilur Rahman died on 03.10.2013 during police remand/custody at the GMCH due to lethal torture meted upon him by the police. The brief fact of the case is that her brother-in-law was arrested with two other persons in a case registered against them at the Rangia PS. The Hon'ble SDJM Court Rangia remanded all the three accused persons into the police custody for 3 (three) days. The I/O of the case SI R.B. Dey of Rangia PS, demanded Rs. 30,000/- from the family members on 01.10.2013. When police fails to produce Khalilur Rahman before the court, on enquiry police let the family members know that he was referred to GMCH for severe illness and police later on 03.10.2013 informed them about the death of Khalilur Rahman. Therefore the complainant suspects foul play in the incident and prays before the Commission to investigate the matter and to take action against two erring police official.

On receipt of the complaint, the Commission has registered a case and directed SP Kamrup(R), to submit report with connected records urgently.

SPAC Case No. 77/2013

Complainant: Sri. Samir Saikia, Rupkalia (Garigaon),
PS& Dist: Golaghat.

-Versus-
Golaghat Police Officials.

Complainant Sri. Samir Saikia lodged a complaint to the effect that on 13.10.2013 he along with his friend Sri. Santosh Saikia went to Golaghat Town riding Motorcycle to see the Durga puja. While they were returning at 9pm to their house they were stopped at Golaghat PS, Chariali, by one traffic constable and misbehaved with them uttering slang languages. At this, they objected and requested him not to misbehave with them as they were law abiding citizen. At this the said traffic constable namely Sri. Ritu Kumar Bora with the help of one home guard namely "Bhim" by force had taken them to the Golaghat PS along with the motorcycle. At the police Station they were severely beaten up by one Md. Sahabuddin Barbhuyan, police officer and detained at the police lock up and later on, sent to the jail custody on a non-bailable case. After remaining at the Jail custody they were released on 19.10.2013 at the initiative by their family members & friends.

Hence, the case and the complainant requested the Commission, to take action against the involved police officials for harassing them without any cause. The Commission has registered a case and directed SP Golaghat, to furnish detail report urgently.

SPAC Case No. 79/2013

Complainant: 1. Sri. Hari Prasad Chouhan
2. Sri. Dinanath Chouhan both are
S/O: Lt. Ram Bali Chouhan, vill: Ampukhuri,
PS: Lanka, Dist: Nogaon.

-Versus-
SDPO Hojai, O/C Kaki Police Station.

Complainant Sri. Hari Prasad Chouhan and Sri. Dinanath Chouhan by profession agriculturist lodged a complaint before the Commission to the effect that they were restrained from harvesting Sali crop in their land by the SDPO Hojai and O/C Kaki Police Station only of because non-fulfillment of their illegal demand for Rs. 1,00,000/-(One lakh) over telephone. The matter arose out of civil suit pending for disposal in the court between complainant and one Sri. Nani Gopal Das and others. The said police official instigated to the opposite party to file a false theft case against complainants, with an intention to harass them. Hence the case, the complainants requested the Commission against illegal extortion and blackmail of police and to restrain them that they will not cut the standing paddy crops through their men.

The Commission registered a case and directed SP Nogaon, to furnish report urgently.

SPAC Case No: 88/2013

Complainant: Ganesh Gogoi, Rachipather Gaon,
PS: Moran, Dist: Dibrugarah.

-Versus-

O/C Moran Police Station.

Complainant Sri. Ganesh Gogoi of Rachipather Gaon, PS: Moran under Dibrugarah district, filed a complaint before the Commission alleging harassment by the Moran PS officials in connection with false cases lodged against him by Sri. Rohini Sensua and others and thereafter undue harassment started by the O/C.

The brief fact of the complaint is that complainant is running business of collection of green tea leaves from small tea growers on commission basis. At this, one Sri. Rohini Sensua & his friends with an intention to harass the complainant lodged false dacoity cases against him on 11.11.2013. Accordingly, on the strength of FIR lodged against him, Moran PS officials detained him at the PS and tortured upon him physically and mentally which continued till 27.11.2013. Due to frequent police disturbance with the help of said culprit, the complainant could not run his business properly for which he was incurring loss. Therefore, complainant requested the Commission to make an early enquiry into the facts stated above and to take action against the police personnel involved.

The Commission registered a case and issued notice to the SP Dibrugarah to furnish detail report into the complaint filed by complainant Sri. Ganesh Gogoi.

SPAC Case No: 91/2013.

Complainant: 1. Raju Ali, Tatipather Gaon.
2. Rabin Gogoi, Lebang Kola Gaon.
3. Md. Hanif Ali, Malipather Gaon
all are from Dibrugarah district.

-Versus-

O/C Joypur PS, Dist: Dibrugarah.

Complainant lodged a complaint before this Commission on 20.11.2013 stating that their minor sons namely Rahul Ali (age 15 years), Kalpajyoti Gogoi (age 15 years) and Md. Azad Ali (age 22 years) were arrested by the O/C Joypur PS, on a mobile hand set theft case and detained all the minors at police station for 36 hours without sending them to Juvenile home and subsequently the boys were released from the police custody on payment of Rs. 12,000/- by the father (Rs. 4000/-) paid for each of the boys. The gurdains were under the blackmailing that if the amount not paid, their sons will be forwarded to the jail

custody. Therefore, the complainant requested for an enquiry into the matter and to take action against the police officers.

The Commission has registered a case and issued notice to the SP, Dibrugarah, to furnish report with relevant case records.

SPAC Case No. 92/2013

Complainant :

Lilianan Corrieri, Programme Assistant
Urgent Appeals Programme.
Asian Human Rights Commission

-Vs-

Assam Police in general and SSP CID and Sonari Police in particular

The Asian Human Rights Commission (AHRC) is writing with deep concern regarding the arrest of Mr. Pranob Hazarika and Mr. Ramen Konwar. On October 6, 2013 at around 2:30 P.M, two constables from Tingalibam Outpost, Sonari, arrived on a motorbile at the residence of Mr. Pranob Hazarika, 39 years. Mr. Hazarika, the son of Mr. Durgadhar Hazarika, and living in Kanubari Balijan grant Village, Police Station Sonari, Post office Ouguri Shyam, District Sibassagar, Assam, is an activist with Manab Adhikari Sangram Samiti (MASS), an Assam based human rights organization. He was served a Central Investigation Department (CID) notice by the constables to appear before the it's officers stationed at Sonari Inspector Bunglow the nest day, for interrogation regarding the killing of another activist of MASS Mr. Manoj Konwar. Mr. Konwar was killed last year on September 22, 2012, allegation by the police.

Two police constables also visited Mr. Ramen Konwar' s residence. Mr. Ramen Konwar, 25 years, is the son of Mr. Rikheswar Konwar, and lives in Lukhuwakhon Village, which falls under the jurisdiction of Sonari Police Station as well. He was served a similar notice to appear at the Inspection Bunglow at Sonari for interrogation by CID officials. Mr. Ramen Konwar is a relative of Manoj Konwar. Next day, when Mr. Ramen Konwar and Mr. Pranob Hazarika reached the Inspection Bunglow at Sonari, both of them were interrogated for a prolonged period by Mr. Debraj Upadhaya, Gauhati-based Special Superintendent of Police of CID. It is alleged that the CID officers pressured both the men to admit that Mr. Manoj Konwar was killed by members of United Liberation Front of Assam (ULFA, an Assam based insurgent group). It is alleged that on refusal, CID filed a fabricated case against them in Sonari Police Station under section 302 of Indian Penal Code read with Section 259(i)(A)/27 of Arms Act read with Section 10/13 of Unlawful Activities (Prevention) Act. Sonari Police followed suit by arresting both of them and sending them to jail.

It is also mentionable that Mr. Pranob Hazarika, was one of the leading activists who was campaigning for justice for Mr. Konwar. Earlier, he too had been allegedly falsely charged for sharing a nexus with the ULFA by Sonari Police under section 122(B)/121(A)/122 Indian Penal Code read with Section. 3

read with 10/13 Unlawful Activities (Prevention) Act and was sent to jail on 18th February 2013.

Human rights activists in Assam have alleged that Mr. Pranob Hazarika and Mr. Ramen Konwar have been arrested on fabricated charges so the police can hide its own involvement in the murder of Mr. Manoj Konwar. The Women in Governance Network of Assam has provided further background information related to the case.

On September 21, 2012, at around 9:30 a.m., Mr. Manoj Konwar was getting ready to shop in a local market for the wedding ceremony of a relative. At that moment, a group of police officer, along with a commando group called 'Black Panther', arrived at his house and asked for the direction to Mr. Ramen Konwar's residence. Manoj provided them the information asked for and the team also had tea in his house. Later, Manoj informed his family that the police were asking for his help him in capturing some ULFA activists, apparently about to come down from the nearby hillside. Soon after that Manoj left for the local market on a bicycle. Meanwhile, the team of 'Black Panthers' met Mr. Ramen Konwar and also talked to his father Mr. Rikheswar Konwar for some time. In the evening, when it was dark, members of the 'Black Panther' were seen loitering in the area. The family of Manoj decided not to go out due to fear.

On the next day, on September 22, 2012, at around 8 a.m., the family came to know from a journalist that Mr. Manoj Konwar had been killed and that his dead body had been found at the nearby paddy field called Ouguri Pathat, near Kharkhuwa Road. The dead body carried eight bullet injuries and his head was soiled. On September 26, 2012, the family filed an FIR at the police station. It is alleged by the family that on September 30, 2012 the police approached them with an offer of compensation of 7,00,000/- INR (approximately 1120 USD). It is also alleged by the family that the post-mortem was not done as per the guidelines and no recording was done.

Manoj's brother, Mr. Purnananda Konwar, has said that as a family member he, along with the secretary of a local vigil group, Mr. Avani Gogoi, went to file FIR at the Sonari Police Station. Since he was emotionally shattered, Mr. Avani Gogoi wrote the FIR as dictated by a police personnel. However, he was also asked to sign a blank paper on the pretext that there being mistakes in his FIR. Police registered a case under section 302 Indian Penal Code read with section 25(1) (A)/27 of Arms Act and 10/13 of Unlawful Activities(Prevention) Act and made ULFA activists Rupantar Kakoty and Ganesh Lahon as accused on the basis of the FIR.

As a result of his activities as a whistleblower in Sonari, the police had earlier threatened Mr. Manoj Konwar with dire consequences if he did not desist from his rights activities. Mr. Manoj Konwar was even arrested several times in 2010 and also in 2012. The family believes that the police are involved in the killing of Mr. Manoj Konwar.

It must be noted here that the Assam police actively took part in carrying out a series of secret killings in the state in between 1998 and 2004. An enquiry commission headed by retired justice Mr. K.N. Saikia revealed active police roles in carrying out secret killings of civilians in the state under the pretext of countering insurgency. However, no accountability has been fixed and nobody has been prosecuted for the same. A culture of impunity for torture and brutality by the police prevails in the state.

A AHRC, thereby, urges you to :

1. Order an impartial investigation into role played by police in connection with the murder of Mr. Manoj Konwar.
2. Compensate the family.
3. Release Mr. Pranob Hazarika and Mr. Ramen Konwar.
4. Investigate the role of police and CID officials in the harassment and intimidation of Mr. Pranob Hazarika and Mr. Ramen Konwar.

SPAC Case No. 93/2013

Complainant:

Shri Vijoy Pandey, Advocate
Chiring Chapori, P.S and P.O- Dibrugarh.

-Vs-

S.P Dibrugarh and O/C Dibrugarh P.S

The complainant has made a complaint before the Commission alleging non-registering of his FIR against Shri Bhaskar Malla Patowari S.I of Police Dibrugarh P.S on 25/11/2013 enclosing a copy thereof. His intention has filed the written complaint before the S.P Dibrugarh with a prayer to direct O/C Dibrugarh P.S to register the case.

The petitioner has further enquired as to the matter in both places of Dibrugarh P.S and S.P's office and he was informed by the S.P's office that his complaint has been endorsed to O/C Dibrugarh P.S on 27/11/2013. He then enquired at Dibrugarh P.S informing him that they were not going to register the case. Hence, the complaint before the Commission.

3.3 A comparative graph of the cases registered, enquired and disposed since commencement of the Commission is presented below:

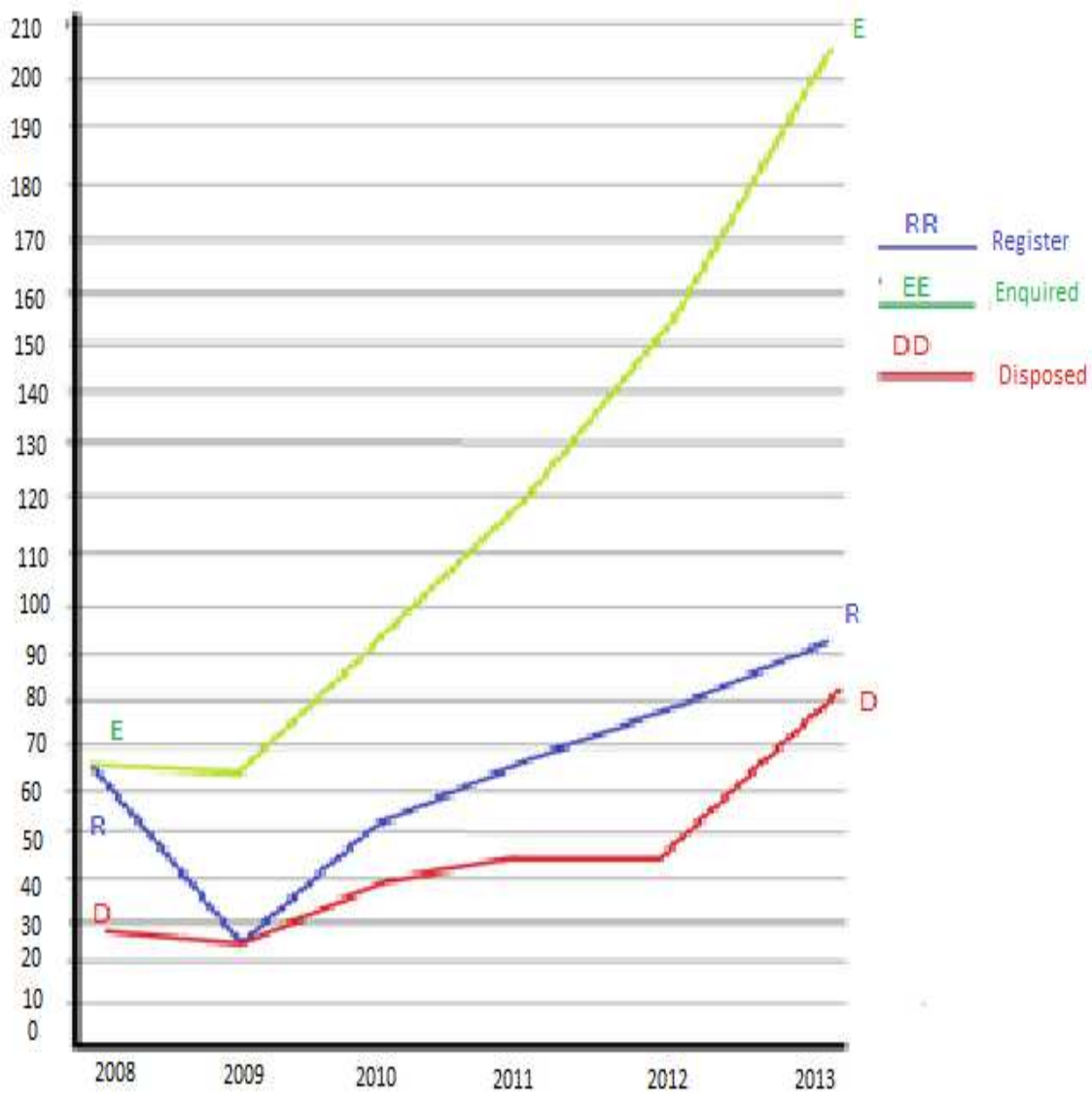


Table No: 03

Year	Registered	Enquired	Disposed
2008	67	67	27
2009	26	66	26
2010	52	92	39
2011	66	119	43
2012	79	155	43
2013	93	205	82

The comparative graph reveals the number of registration, enquiries increased over the years except a fall in registration during the second year 2009 but rising gradually. The disposal has registered an increase but not commensurate to the registration and enquiries. The Commission is worried. The disposal figure is staggering between 39 to 43 for three last consecutive years. In the current year, 82 cases have been disposed. In spite of the disposal being double the rate staggering in the preceding three consecutive years has left a backlog of 132 cases at different level of progress in the enquiries. As though substantial progress has been achieved in the enquiries, the pendency of 112 cases has been carried over from 2012. The remarkable progress of disposal in the current year chasing close to the number of registration has been overshadowed by the increasing trend of complaints.

The practice followed in the enquiries, the production of records, statement of facts by the Police Departmental Authorities have caused the delay in disposal with the telling effects in an increased number of pendency of the cases every year. An independent investigative agency is the answer to the question as to how the complaints can be expeditiously and timely disposed of. Of course, borrowed and managed investigations which are sizeable now may also be very sparingly used to arrest the increasing trend of pendency coupled with registration of the complaints. The future of the Commission as seen from the current activities demands for an increase in the strength of the Investigative Agency equipped with the modern investigative equipments for quicker field investigation with the focus on the evidence gathering and fact-finding in a fair and transparent manner.

Setting up of the group of District Accountability Authorities at the regional levels may also contribute to arrest the trend by addressing the complaints conjointly having initiated the enquires within the local limits with precision of time and resources as provided in the statute in participatory action of the Departmental District Authorities with the local police authorities. The Superintendent of Police and the supervisory police officers thus stand to reason for exercising the provisions of Departmental Accountability as envisaged under the provisions of section 69 of the Assam Police Act 2007 sharing the major burden of the accountability with the Commission which is mandated as an additional oversight to Police Accountability.

4. THE COMPLAINTS DISPOSED

The Commission has disposed the complaints during the year as indicated in the **Table-01, Table-02** and the Comparative graph. The cases which have been disposed also reveal the type of misconducts, serious misconduct of the police as churned out of the complaints being enquired. Some of the cases disposed are furnished here for giving an insight into the type of the police misconducts per se:

SPAC Case No. 04/2012

Mustt. Afiya Begum
Vs
SI G.C. Nath, Silchar PS, Dist. Cachar

ORDER

Date-16.01.2013

Ms Afiya Begum Mazumdar of Bidrohipar, Sonai of Cachar District alleges that her husband Habibur Rahman Mazumdar being brutally assaulted on 26.5.2011 at 8.30 AM by Tajmul Ali, Mainul Haque Borbhuya and 10 other assailants, died at Silchar Medical College on 29.5.11. A case was lodged at Sonai PS on 26.5.11. Police registered case No. 202/11 and arrested three accused persons and sent them to jail. The rest of the assailants were threatening her with dire consequences and are at large.

She asked for her protection from the SP, Cachar. The Commission called for a report from the concerned SP. The SP in his report intimated that four persons namely Tajmul, Ajmal, Saharul and Saidul were involved in the case and all of them were arrested except Sahidul who was absconding. The case was duly investigated by police. Police submitted a Non-FIR case for binding the persons hurling threats to the complainant and also taking action by police in the preventive watch/patrol in the area.

Having examined all the aspects of the matter it reveals serious lapses on the part of the police for investigation of the case No. 202/2011 registered at Sonai PS for assault and harassment of the complainant that caused death of her husband in the Hospital. It is a heinous crime, police should have investigated the case with right earnest and took prompt measure in apprehending the culprit to allay the fear and anxiety of the complainant since the complainant was apprehensive of further assault from the assailants. Police submitted charge sheet after a year in a serious crime which should have submitted within six months. A non-FIR case for finding the alleged assailant against the crime, sharp police action in collecting evidence ought to have submitted for their good behaviour. Police is to act in a free and fair manner in their investigation which should only be able to protect the complainant and to apprehend the assailant from the group of persons directly or indirectly in abetting the crime of murder and harassment.

The materials on record failed to convince the Commission that the investigation was conducted in a fair and professional manner. We are of the opinion that the SP concerned need to examine afresh as to whether

investigation was going on in the right direction to restore public confidence in the matter of investigation of crime.

All things considered, the Commission therefore, advises SP, Cachar, Silchar to have a re-look to the entire matter pertaining to the investigation of the case. With this, proceeding stands closed.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No. 19/2012

Md. Abdul Aziz

Vs

SI Sahjahan Ali, I/C, Panbari OP

ORDER

Date- 16.01.2013

A complaint has been received from Md. Abdul Aziz against alleged misconduct of I/C of Panbari Outpost under Dhula Police Station. Reports were called for accordingly from the Superintendent of Police, Darrang. The SP concerned in course of time submitted his comments along with the records called for by the Commission. On examination of documents on record it now appears that the SI Sahjahan Ali failed to act as per law in rendering justice to the complainant in Dhula PS Case No. 228/11. The Commission examined the matter in depth. The subject matter pertains to public interest and cause of education in a primary school, as well. On examination of documents on record it is apparent that SI Sahjahan Ali faltered in investigation of the matter and failed to impartially investigate the matter. The report of the SP itself indicated that Sahjahan Ali flawed in investigating Dhula PS Case No. 228/11. On the other hand the report itself indicated that SI Sahjahan Ali was indicted for the perfunctory investigation of Dhula PS Case No. 228/11. The serious misconduct committed by Sahjahan Ali was later on taken care of by his successor I.O. N.M. Das, who submitted the charge sheet and arrested the accused persons also. Though Departmental Proceeding ought to have been taken by the SP concerned against Sahjahan Ali for his fault in conducting Dhula PS Case No. 228/11, from the report it appears that DP was initiated against SI Sahjahan Ali in another matter vide DP No. 5/11 and punishment

was meted out to him. In addition the SP, Darrang also reprimanded Sahjahan Ali for his perfunctory investigation.

Since a DP has already been initiated against the SI Ali, we do not find it apposite to recommend any action against Sahjahan Ali. Before concluding we however feel it appropriate to note that the concerned SP Darrang, Shri Doley failed in discharging his duty impartially. In his report he tried to provide safeguard to Sahjahan Ali and reported to us that SI Sahjahan Ali was reprimanded in all cases including Dhula PS Case No. 228/11. If so, why he severely reprimanded SI Sahjahan Ali for perfunctory investigation in Dhula PS Case No. 228/11? Blasé and indifferent report of this nature, reveals lack of clarity and sends a wrong message. With this we close the proceeding.

Sd/-
CHAIRMAN

Sd/-
MEMBER

sd/-
MEMBER

SPAC Case No.06/2013
Mr. Arman Ali, CWC, Kamrup (M)
Vs
Officer-in-charge, Azara Police Station, Kamrup

ORDER

Date-23.04-2013

On a complaint received from the complainant, this proceeding was initiated. In the complaint it was alleged inter alia against the officer-in-charge of Azara Police Station for wrongful confinement and for engaging child labour, etc. The Commission called for a report from the concerned authority. The authority concerned in its report narrated that “the girl was always locked out of their house wherever Mr. Biren Gogoi and Smti. Rita Kakoti went out from the house and she was made to wait for hour’s together outside the veranda of their house. Accordingly, on receipt of the FIR, a case vide Azara PS Case No. 31/13 u/s 344/323/34 IPC, R/W sec. 23/26 of J.J. Act and R/W Sec 14 of Child Labour (P) Act was registered and endorsed the same in the name of Inspector, Pradeep Kr. Das, OC Jalukbari PS for investigation”. It seems that the police authority has taken note of the complaint and registered the same and took right measure in investigating the case and promptly

submitted the charge sheet. As per the report the OC of the Police Station Biren Gogoi and Rita Kakoti were charge sheeted and sent up for trial.

On examination of the entire aspect of the matter we are of the opinion that the authority concerned took the right steps in launching prosecution against the person arraigned. The Commission however, feels that since this matter involving police discipline, the authority concerned also ought to have initiated Departmental Proceeding against the police personnel to enforce discipline in the force. The OC concerned undoubtedly brought disreputation to the police force and caused embarrassment to the department. In such a situation, the authority ought to have also concurrently suspended the police personnel instead of transferring him from one Police Station to another Police Station. Such responsible steps on the part of the authority would have enhanced the credibility of the institution in enforcing rule of law.

One should not have forgotten that one of the persons concerned was a police man. As a police man he owes a duty to protect and preserve the right of the child and enforce the rule of law. Instead in the instant case, the police personnel acted in gross defiance of law, which did not behave of a police personnel. We hope and trust that the persons those who matters, more particularly the Director General of Police is requested to take stock of the situation and take exemplary measure against the police personnel in the interest of Police Department and to maintain the rule of law. With this the proceeding stands closed.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No.10/2013
Mr. Arman Ali, CWC, Kamrup (M)
Vs

Shri Nihar Kanti Nag, ASI, Bharalumukh Police Station (Traffic Branch)

ORDER

Date-29.04.2013

It is again the same old story. We are not inclined to learn a lesson from the past event. The nature of complaint is same the whole to that of SPAC Case No. 06/2013 that we disposed few days back. One more instance where the police personnel instead of upholding and enforcing the law and protecting life,

liberty, property, human rights and dignity of the people and prevent crimes, a police personnel itself involved in disobeying the direction of the law causing injury to the person and the society.

A complaint dated 26th March, 2013 was received by the Commission against one Nihar Kanti Nag, ASI Bharalumukh Police Station for engaging child labour and also for torturing and grievous hurt to the 13 year's girl. The complainant alleged that on the complaint of the Child Welfare Committee, Kamrup, the police registered a case vide Jalukbari PS Case No.130/2013.

A report was called for from the concerned authority. From the report it was apparent that the police personnel and his family members had engaged the victim girl as domestic help last six months back. The girl was traumatised and also tortured regularly for which she had to run away from her keeper's house. On receipt of the information Jalukbari Police rescued the girl and brought her to the Police Station who later on informed the matter to Child line, Guwahati.

From the report received it appears that victim girl was examined by the Doctor of the Gauhati Medical College and recorded her statement where she narrated the painful story of physical and mental assault meted out to her. The actions committed by the police personnel and his wife to the girl amounted to grave cruelty which caused grievous injuries on her. The relevant materials which came to our notice clearly indicated about causing serious injuries on the victim. The Doctor of Medical College found 38 injury marks on the persons of the victim of which 26 injuries were inflicted within 2/3 months, 4 within 4 days, five within 7/10 days and six injuries were caused by blunt objects. Besides, multiple abrasions with depigmentation on both sides of the neck are 4/7 days old and nail marks were also found. Burn injuries, abrasions and scars of different shapes and sizes were found from the chin, neck, arms, right fingers, both palms, back, abdomen buttocks to the thighs and calves of the victim's person.

The above observation reflects the conduct which was not be expected from any human being not to speak of policeman. Like most other cases, here also we are informed that accused persons are absconding and steps are on to apprehend the accused. It is not understood as to why it took so much time to apprehend the accused persons. Such move only weakens the prosecution. It is also a reflection of the control and command structure of the disciplined force.

According to the report, the final report will be submitted immediately after arrest and follow up action. From the report it was clear that police personnel is unauthorisedly remaining absent from the duty since 27.02.2013. The report also indicated that the man was placed under suspension and DP initiated vide DO No. 1392 dated 12.04.2013. We are not aware as to whether DP was also initiated for the lawless act and grave dereliction of duty of the police personnel. A member of the law enforcing agency, instead of upholding and enforcing the law and protecting life, liberty of the person engaged itself in

lawless act bringing disreputation to the police force. The authority also must ponder as to why such things are happening in a quick succession. We hope and trust that all the persons those who matter including the Director General of Police would take serious note of such lapses that too in a quick succession. The Director General of Police needs to take strong steps to avoid lawlessness in the force and issue circulars to this extent. We are yet to be apprised as to whether any disciplinary measures were taken for dereliction of duty of the police personnel in defiance of law. The case calls upon the authority to initiate disciplinary proceeding after due notification and take prompt steps to complete the DP as per law. The action taken should be of exemplary nature so that such acts do not resurface. We hope and trust that the authority will take prompt measures and keep the Commission abreast of the developments from time to time.

The proceeding thus stands closed.

Sd/-
CHAIRMAN

Sd/-
MEMBER

sd/-
MEMBER

SPAC Misc. Case Part II
Shri Durlabh Chandra Mahanta
Vs
Officer in-charge, Panbazar Police Station

ORDER

Date-12.04.2013

The complainant Shri Durlabh Ch. Mahanta is a senior Advocate – a conscientious citizen deeply engaged in public activities made an application in writing on 28.1.2013. By the complaint he intimated about the disorderly and lawless act of a section of members of the force creating a messy and chaotic state in the Guwahati Rly station on 27.01.2012. The complainant inter alia alleged that he went to see off one Shri Dwijen Sarma of Karanga, Jorhat, an authorized passenger of 15605 Intercity Express. Shri Sarma was allotted berth No. 15 of the Sleeper Coach No. 5 of the Intercity Express and when he went to occupy the seat in the reserved compartment it was found that the reserved compartment was occupied by constables of APBn. Failing to board the train, the complainant along with Sri. Sarma went to meet the Commanding Officer of the Battalion. The complainant requested the Commanding Officer to take care of the situation; instead he was rebuffed by two Jawans who “attempted to manhandle the petitioner”, somehow he escaped. It was also narrated in the complaint that the petitioner approached the Guard of the train, who advised

him to report to the Station Master and Officer-in-charge of the GRPF of the Rly Station. “when the Station Master and Officer-in-charge of the GRPF. arrived on the spot” the furious constable at first surrounded them and threatened the Officer-in-charge, GRPF The officer incharge reported the matter to the O/C Panbazar P.S over phone and realising the seriousness of the matter the battalion constables vacated the reserved compartment by raising hulla”. The complainant asserted that the Officer-in-charge of the Panbazar Police Station arrived at Platform No. 2 of the Rly Station and controlled the situation.

The complaint in brief was as to the lawlessness conduct of the members of the force. Keeping in mind the fact situation the Commission thought it appropriate to forward the complaint petition to be examined by the Police Chief and for report from the Director General of Police within a time frame.

By communication dated 5th April, 2013 the DGP submitted its report along with the two reports received from the SSP (City), Guwahati and SP Rly Police, Pandu.

From the reports sent from the concerned SP and the SP Rly Police force as well as the report from the Police Headquarters it was apparent that an “unpleasant situation” was created by the Home Guard Personnel. According to the report of the Police Headquarters, the Home Guard personnel behaved in unruly manner and created hue and cry situation in the Rly Station”. The Divisional DySP, Panbazar and OC, Panbazar Police Station, however could bring the situation under control with the assistance of GRPF and RPF personnel. Fair assessment of the situation was reported by the SP Rly Police, Pandu vide communication sent to the IGP (L), Assam dated 13.2.2013, which is extracted below:

“On 27.01.2013 @ 07.30PM, Up Intercity Exp. Train No. 15605 started from Kamakhya Railway Station which as many as 240 Home Guards (Goalpara -210 and Udalguri-30) boarded and unauthorizedly occupied the reservation compartments. They were directed to proceed to Jorhat for Panchayat Election by the Superintendents of Police Goalpara and Udalguri respectively. The Home Guards were issued passage warrants for their train journey from Kamakhya Railway Station to Jorhat Railway Station and on the strength of the passage warrants they collected the sleeper Railway tickets without reservation of berths. As there were only few passengers in the train at the starting point at Kamakhya Railway Station, the HGs boarded the train and occupied the seats of bonafide passengers. When the train reached Guwahati Railway Station, the passengers having confirmed reservation tickets demanded their seats for which they approached the Railway authority as well as the police. The Home Guards occupying the reserved berths of bonafide passengers were taken out and the genuine passengers were facilitated against their allotted berths. At that time there was a hue and cry among the Home Guards and the Commander (ABSI) of the HGs failed to control and contains them. They behaved in an unruly manner at PF No. 2 of Guwahati Railway

Station. In the meantime, on receipt of the information, the Divisional DySP, Panbazar and OC, Panbazar Police Station arrived at the station and the situation was controlled in co-ordination with local police, RPF and GRP.

The GRP HQ was not intimated about the aforesaid movement of Home Guards for Election Duty from Goalpara and Udalguri Districts. Otherwise, the unpleasant situation could have been averted by making alternative arrangement.”

From the facts enumerated above, it appears that unruly situation was created by the 240 numbers of Home Guards in the Guwahati Rly Station. These persons boarded the Up Intercity Express Train No. 15605 started from Kamakhya Rly Station and unauthorizedly occupied the reserved compartment. From the reports it is apparent that the erring personnel were Home Guard personnel not APBn personnel. The invidious and disgusting situation created by the Home Guards could have been averted. The SP Rly Police rightly pointed out that the unpleasant situation could have been averted with little care and attention. A little heedfulness of the Rly police would have saved the situation. A lesson is learnt. We hope and trust that all those who matters including the Police Headquarters should take this lesson seriously and take appropriate measure so that such situation does not recur. It would be fit and proper for the Police Chief to issue appropriate order/direction and office instruction accordingly.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Misc Case No. SPAC/ Misc. Part. I/2010 (52/2013)

Hare Ram Das of Barhapjan, Doomdooma, Tinsukia

Vs

Doomdooma Police

ORDER

Date-26.04.2013

A complaint received from a hapless family on a threat of forceful deprivation of their rightful ownership of property. As per the complaint an FIR was lodged as per back as on 16th of August, 2009 against the persons who were described by the complainant as “persons who are rich, influential and resourceful persons” with a view to cause wrongful loss to him and his mother,

forged his signature and thumb impression of his mother in making/ preparing forged document. The said case was registered as Doomdooma PS Case No. 389/2009 u/s 468/471/209/120(B) IPC. According to the complainant instead of police moving into right direction and bring to a logical end with utmost expedition police was dragging its feet with oblique motive.

On receipt of the complaint we called for a report. The report revealed a sorry state of affairs, i.e. more or less supporting the complaint. The report itself indicated that the process of procrastination in dealing with a serious matter of an individual citizen. An extract of the report is quoted below:

- *“That on 17.10.09 complt. Shri Hareram Das of Borhapjan lodged a written FIR at Doomdooma PS through Hon’ble CJM Court, Tinsukia stating that he had come to know that the accused persons namely (1) Shri Sitaram Gupta (2) Shri Bikash Gupta and (3) Shri Tapan Shah, all from Borhapjan PS Doomdooma, had forged his signature and his mother’s left thumb impression (LTI) and forged a memorandum of understanding dtd. 30.5.2009 elating to a land deal and on the basis of the same has instituted a Misc/ (arbitration) case No. 1/2009 in the court of District Judge, Tinsukia on 15.9.2009 to cheat the complainant.*
- *Accordingly, Doomdooma PS case No. 389/2009 u/s 468/471/209/120 (B) IPC was registered and entrusted to SI Bapukan Morang for investigation. Accordingly the following actions are found to have beentaken by the IO.*

Steps taken by the Investigating officers:

- *IO has examined the complainant and his mother and recorded their statement u/s 161 Cr.PC.*
- *IO has seized the original memorandum of understanding from the Hon’ble court of Tinsukia.*
- *IO has obtained the specimen signature of the complainant and left thumb impression of the complainant’s mother Smti Tileswar Das.*
- ❖ *IO has collected the present status of the Misc. Case No. 1/2009 (Arbitration) which is already disposed off in favour of the complainant from the Hon’ble court and Session Judge, Tinsukia.*
 - *The then IO SI Prabin Baruah has sent the specimen signature of the complinant and the LTI of his mother along with the original memorandum of understanding to the CID HQrs.*
 - *Again the IO SI Prabin Baruah has collected fresh specimen signature and thumb impression of the complainant Shri Hareram Das and also collected the specimen signature of all 3 (three) accused persons namely (1) Shri Sitaram Gupta (2) Shri Bikash Gupta and (3) Shri Tapan Shah along with memorandum and sent to the Director FSL for examination, which was duly received by the Director FSL, vide FSL slip No. 1241/12 dtd 13.7.2012. But the Director FSL informed after 5*

(five) days of receipt of the sealed packet containing documents (both disputed and specimen handwriting and signature) that when the packet was opened the main document of the original Memorandum of Understanding was not found. Accordingly the matter was taken up with FSL with information to Police Headquarter. Guwahati.

- *Now the case is pending for non-receipt of FSL report.*

Accordingly after receipt of the report from Jayanta Sarathi Borah, ASP (HQ), an enquiry was marked to Shri Innamuddin Ahmed, APS, Dy. Supdt. Of Police (HQ), Tinsukia into the disappearance of Memorandum of understanding and the matter was duly informed to Hon'ble Court of CJM, Tinsukia.

*The enquiry officer Shri Innamuddin Ahmed, APS DySP (HQ), Tinsukia during enquiry took the statements of all concerned that is Police Officials and the FSL authority. He submitted his report to the undersigned with the conclusion that **"it is very difficult to fix up responsibility as to the loss of the documents and requires a very thorough investigation after registering case"**.*

In this regard matter was discussed with Hon'ble Chief Judicial Magistrate, Tinsukia and finally a case vide Doomdooma PS Case No. 106/2013 u/s 201/34 IPC has been registered and Shri Jayanta Sarathi Borah, APS, Addl. Supdt. Of Police (HQ), Tinsukia was entrusted with the investigation of the case under the direct supervision of the undersigned to find out the documents and simultaneously search for true copy of the said documents from the office of the Deputy Commissioner and Sub-Deputy Collector, Tinsukia. The investigation of the case is going on.

A Departmental Proceeding has been drawn up against the previous investigating officers viz. SI Bapukan Morang for his gross negligence of duty for the unjustified delay of investigation and secondly SI Prabin Baruah, who had received investigation of the case after transfer of SI Bapukan Morang, for not taking initiative to trace out the lost document (original memorandum of understanding) even after coming to know that the document was missing and thereby amounting to being grossly negligent and irresponsible in investigating the case."

The report portrayed a painful state of affairs not conducive of a fair investigation. The report of the Addl. SP seemingly tried to protect the inaction of the police officer.

As per the report Addl. SP visited the PO, examined the complainant and investigating officer failed to ascertain the real facts and cause of delay of investigation of the case, as of 17.4.2009 on the relevant aspect of the matter namely date of starting, date of initiation of the enquiry/commencement of the investigation, the date of seizure, the date of collecting of the specimen signature, forwarding the article to CID and FSL on July, 2012. Nothing was mentioned in the initial investigation of accused persons. The Addl. SP is the supervising officer of the Tinsukia PS, failed to supervise and pin point the

defect in investigation of long pending case. The case was kept pending on the pretext of FSL report. Whereas the case was disposed by the learned Civil Court on the arbitration matter in favour of the complainant. No reasons were assigned as to why the articles were sent to CID, instead of sending it to FSL towards an extraordinary move. The SP's report dated 20.3.2013 disclosed that he entrusted DySP (HQ) Innamuddin Ahmed, APS to conduct enquiry into missing of exhibits sent to FSL in connection with Case No. 389/2009 u/s 468/471/209/120(B) IPC, who failed to fix up responsibility as to the loss of exhibit. What was the use of entrusting a person to conduct enquiry who even did not care to fix up the responsibility for loss of exhibits? He was to ascertain the facts from IO concerned, as to the manner of forwarding the exhibits, who himself was responsible for sending exhibits for examination and there was a clear guide line given under APM Rule (Pt. V) for packing, sealing and dispatching of exhibits. At the receiving end FSL used to issue receipt of the exhibits on receipt of the same. The lamentable delay would only provide advantage to the accused and cause disadvantage to the complainant and the prosecution. These are serious lapses on the part of the Doomdooma Police. These bring disreputation to the police and impede criminal Justice System. We hope and trust the Police HQ will take appropriate remedial measure on this matter and see that such lapses do not recur.

We also direct the Director General of Police to cause an effective enquiry and fix responsibility on the persons concerned who were involved in the connivance and delaying the investigation. Director General of Police shall take appropriate measure for completion of the investigation of the matter expeditiously and submit report to this Commission. With this observation we close the proceeding with the direction to all concerned to intimate as to the progress of the matter.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No. C/09/2010

Smt. Mira Mitra

-Vs-

Dispur Police Station

ORDER

Date-10.4.2013

Yet another complaint against the Police for acting in disobedience of law and dereliction of duty by police personnel.

The complainant, in this matter, inter-alia, alleged that she lodged an FIR on 4th of April 2010. Despite lodging FIR for alleged trespass on her land, the Dispur Police Station refused to register her FIR. The complainant further alleged that on 11.04.2010 she again went to the Police Station to lodge FIR. The Dispur Police Station asked her to wait. She waited, but the Dispur Police Station declined to accept the FIR. She also asserted that she went to the City SP, Guwahati to lodge the FIR, but she was not allowed to enter the Office of the City SP, Guwahati. She further alleged that the trespassers even dropped the name of a high ranking police officer, who, they claimed was backing them. She alleged that the Dispur Police was helping the land grabbers.

On receipt of the complaint, the Commission called for report from the SSP City, Guwahati. The Commission also conducted an investigation on its own and the party, namely, the complainant Mira Mitra and Smt. Mandira Chetri submitted some records before the Commission. On examination of the materials on record, the following facts emerged –

- (i) ASI B. Kalita received an information in writing from the complainant Mira Mitra on 04.04.2010. Instead of entering the information in the GD and registering the same, ASI Kalita went for inquiry/investigation of the matter. This refers to GDE 62 dated 10.04.2010. The conduct of Kalita runs counter to the provisions of Law.
- (ii) GDE No.65 dated 04.04.2010 at 2-05 pm pertains to the return of ASI Kalita. On return, ASI B. Kalita informed I/C Dutta that there was a case in the Court relating to dispute between Smt. Mira Mitra and Mandira Chetri and some labourers were working on the land. The report also revealed that labourers working there on the land in question stated that the land belonged to one Mr. Sarma who had engaged them for the work. ASI Kalita stopped them from working saying that dispute was subjudice in the Court. SI PK Dutta entered this in the GDE and kept a note.
- (iii) The action of SI PK Dutta and ASI B Kalita were improper. The FIR submitted by the complainant remained unattended, which disclosed cognizable offences.
- (iv) On 10.04.2010, Mira Mitra lodged FIR before the I/C Odalbakra PS, but the same was also ignored. Later on, OC, Dispur Police Station registered case No. 472 dated 22.04.2010 U/Ss 447/323/427/506/34 IPC and ASI Balabhadra Kalita was detailed to take investigation of the

case on 22.04.2010 whereas, the complainant submitted FIR – one on 04.04.2010 and one on 10.04.2010.

- (v) Admittedly, the case was registered after the complainant approached this Commission on 12.04.2010.
- (vi) ASI B Kalita submitted non FIR case No. 4/10 U/S 107 CrPC on 25.4.10 and case No. 5/10 u/s 107 Cr.PCon 8.05.2010 and both cases were forwarded by I/C, Odalbakra PS. FIR of the complainant was not registered in time without any discernible reason.
- (vii) SI PK Dutta and ASI B Kalita and O/C Dispur PA are, therefore, found to be guilty of dereliction of duty. There was no justifiable reason for non-registration of the FIR submitted by the complainant at first in point of time.

Section 154 of the CrPC has its own meaning. When an FIR is lodged before the Officer-in-Charge of Police Station that disclosed a cognizable offence, he cannot refuse to record it. He is duty bound to record without the least delay. It cannot be refused on extraneous ground. Once an FIR is lodged before the Police Officer, in compliance with the requirement of Section 154, the Police Officer is bound to enter in the prescribed form and register it and investigate the case.

Non-registration of FIR by Officer-in-Charge of Police Station amounts to dereliction of duty because he is duty bound to register it. It may also be reminded that no formal or informal inquiry can be made by the police without registering the case and, thereafter only he is authorized to duly investigate in accordance with law.

The police is duty bound to register the case if the FIR discloses a cognizable offence. He cannot look into the genuineness or credibility of the complainant. Genuineness or credibility of the case is not a condition precedent to registration of the case.

All things considered, the Commission is of the view that DP needs to be initiated against SI PK Dutta, ASI B Kalita and the then OC of Dispur PS for dereliction of duty.

In the state of circumstances, the Commission is of the opinion that the DGP of the State needs to be provided with an opportunity to present the department's view and additional facts, if any, not already in notice of the Commission. Hence, direction needs to be issued to the DGP of the State to present his view within three weeks from receipt of this order and thus it is ordered accordingly.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No.09/2010*Smt Mira Mitra**-Versus-**Dispur Police Station***ORDER**Date: 11.09.2013

1. The Commission passed its order on 10.04.2013 on the complaint of Smt Mira Mitra in terms of Section 82 of the Assam Police Act 2007. The Commission, by the aforesaid order also asked for department's view and additional facts, if any, not already in the notice of the Commission. Instead of presenting the department's view and additional facts, the Police Headquarters forwarded its communication vide Police Headquarters' letter No.SPAC/APHQRs/09/2010/71 dated 08th August, 2013 which is reproduced below :-

“With reference to the above, I am directed to furnish the “Department's views and additional facts” in SPAC Case No. 09/2010 as follows.

- (1)*The complainant Smt. Mira Mitra did not submit any written complaint regarding grabbing before I/C Udalbakra P.P SI(UB) Pradip Kr. Dutta or ASI Balabhadra Kalita. The General Diary writer UBC/1666 Rana Medhi made the entry by mistake.*
- (2)*It is also found that on 10-04-2010 at 10:00 AM Inspector Rahul Amin, O/C Dispur PS left the PS for route lining duty vide GDE No.566 dated 10-04-2010 and returned to PS at 3.20 PM vide GDE No. 59 dated 10-04-2012 (copy enclosed as Annexure 'A').*

After that he availed 2(two) days Casual Leave from 3.35 PM dated 10-04-2010 vide GDE No.593 dated 10-04-2010 to 13-04-2010 AM vide GDE No.747 dated 13-04-2010 (copy enclosed as Annexure 'B'). Hence, refusal by O/C Dispur PS to accept the FIR dated 10-04-2010 and 11-04-2010 lodged by complainant Smti Mira Mitra is not true.

- (3)*As per Received and Despatch Register of Dispur PS, the FIR of the complainant was received at PS on 22-04-2010 by post and same day the Dispur PS Case No. 472/2010 U/S 447/323/427/506/34 IPC was registered and investigated into. Submitted for favour of kind perusal.”*

2. We are pained to note that the Police Headquarters failed to appreciate the true contents and meaning of Section 82 of the AP Act, and in a most mechanical fashion communicated the purported “Department’s view and additional facts” as indicated above. By the first two paragraphs, the department made a feeble attempt to shield the erring officials and thereby evade the requirement of law. It is feeble because a police station cannot remain unmanned without the Officer-in-Charge of the police station. Section 2(o) of the CrPC defined “officer-in-charge of the police station” which read as follows :-

“2(o)-“officer in charge of a police station” includes, when the officer in charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when the State Government so directs, any other police officer so present.”

3. Rule 32 of the Assam Police Manual, Part-V also clearly indicates about manning of the police station through the officer-in-charge. For the purpose of information, we are rehearsing the relevant extract of Rule 32 of the AP Manual – “32. **Officer-in-charge of police station.** – *Officer-in-charge of a police station is defined in the Criminal Procedure Code (Act V of 1898), section 4, clause (p). The definition excludes constables but the State Government is given the power of including in the definition any police officer present at the station. Under clause(s) of the same section the definition of a police station includes an outpost, so that the definition contained in clause (p) includes an officer-in-charge of an outpost. No orders having been passed by State Government under this clause, the officer appointed by a Superintendent of Police to have charge of a station, so long as he is present at the station house and fit for duty, is the only officer who has the power of an officer-in-charge of a police station. When he is absent from the station house on duty, or is incapacitated by illness, the officer next in rank, whether a Sub-Inspector, Assistant Sub-Inspector or a head constable becomes the officer-in-charge of the police station and if he, in turn, leaves the station house, the next senior officer remaining at the station house becomes the Officer-incharge of the police station. It must again be noted that a constable can never be an officer-in-charge of a police station.*” The Police Headquarters in discharging its duty and function as a Police Headquarters, from time to time, issues instructions for guidance of the police officers. It is not too much in expecting from the APHQ to honour its own instructions and to have taken appropriate measure instead of trying to deviate from the norms and standards prescribed by the APHQ itself.

4. The General Diary is a very important piece of record. It is an important indicator in the matter of police performance. Part-V of the Assam Police Manual prescribed the methodology of maintaining the General or Station Diary in Form No. 135 of Schedule XL(A), Part I as provided in Rule 53. The General Diary is to be kept at police stations, outposts and beat houses. The officer-in-charge is responsible that it is punctually and correctly written. He must himself make all but the routine entries. The diary should be written in duplicate with carbon paper. Every occurrence of the police station which is to be brought to the knowledge of the police officers should be entered in the general diary at the time at which it is communicated to the stations, and if no incident be communicated during the day, this fact should be noted in the diary before it is closed and despatched. The law of maintaining and recording General Diary is fool proof. There cannot be any mistake as now sought to be pleaded in the General Diary.

5. Needless to reiterate that “the officer-in-charge of the police station will be responsible for making himself aware of what has taken place in his jurisdiction during his absence on duty from the police station. On his return to the station, he will carefully peruse the general diary for period of his absence and then certify by an entry in the general diary that he has read all the entries made in the general diary during his absence and also note further that he is satisfied that all actions relating to those entries have been taken or that any action that has not been taken by his subordinates will be taken by him.” It cannot be ignored that as per the law of the land, the General Diary need to be completed and a copy be dispatched in a cover in the address of the CI. Therefore, question of mistake in entry of the General Diary does not arise in any circumstances.

6. After rendering our findings, we directed the Police Headquarters to initiate Departmental Proceedings against SI P.K. Dutta, ASI B Kalita and the then OC of Dispur PS. We did not name the O/C of Dispur PS. Under Section 2(o) of the CrPC, the “officer-in-charge of a police station” means “officer-in-charge of a police station includes when the officer in charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when the State Government so directs, any other police officer so present.” The General Diary was made available to us. It is the General Diary which disclosed the names of ASI B Kalita and SI PK Dutta. We are unhappy, the way the Police Headquarters was desperately trying to keep back the artful manoeuvring. The Commission acted upon the records of the department. The records did speak itself. One cannot disown its own documents.

7. Subject to the observations made above, the order passed by this Commission on 10.04.2013 is made absolute. The concerned authority is accordingly liable to keep abreast this Commission about the action taken in this matter. The proceedings stand closed.

Sd/-

CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

Sd/-
MEMBERT

SPAC Case No.03/2010

Mustt. Rabuja Khatoon

Vs

SI Dwijendra Barua & Gakul Ch. Borah of Rupahihat PS, Nagaon

ORDER

Date-04.04.2013

This is a complaint from the wife alleging death of her husband Md. Fakaruddin Ali due to police torture. She inter alia alleged that the SI Gokul Ch. Borah and SI Dwijendra Nath Barman, two officers of the Rupahihat Police Station threw her husband to the water of Jarathani Fishery on 29.8.2007 and an ejahar was lodged on the following day at Rupahihat Police Station and thereafter the dead body of her husband was recovered from the fishery pond in presence of Magistrate and after the Post Mortem was done, the dead body was handed over to the family.

Since police did not take any action she also lodged a complaint at the court on 05.09.2007 – narrated the complaint. Thereafter also police did not take appropriate measure to find out the truth; instead protected two police officers and statement of eye witnesses were not recorded. The Commission, on perusal of the complaint called for a report from the district police, Nagaon. SP's report revealed that the police party consisting of SI Gokul Ch. Bora, Const. 1033 Prasanta Bora, Const. 1274 Thaneswar Saikia and half section of 16 IRBn armed police personnel were detailed by the OC Rupahihat PS to execute non-bailable warrants pending against some accused men. The police contingent could not find the warrantees of Jeumari village at their houses, left for Jarathani village and on way they received information that some people were indulging in gambling at a temporary house on the bank of Jarathani Fishery. The house was searched and apprehended three persons namely Md. Idrish Ali s/o Md. Abdul Hussain, Md. Maqbul Hussain s/o Md. Sultan

Mahamed, Md. Jainuddin s/o Late Abdul Gofur – all of them of Jarathani village. Few others managed to run away. A case was registered u/s 13 Public Gambling Act vide Rupahihat PS case No. 146/07. The report also indicated that at about 7.00 PM On 30.8.07 one Rekat Ali presented a petition to Rupahihat PS to the effect that his brother Md. Fakaruddin along with some other persons were gambling at a hut on the bank of the fishery on the previous night and a police party from Rupahihat PS raided the place and apprehended three persons but Md. Fakaruddin fled away from the spot. At about 3.00 PM on 30.8.07 a dead body was seen floating in the pond and the body was identified as that of Fakaruddin. A UD case was registered vide No.10/07. Inquest was done by the Executive Magistrate on 31.8.07 at 7.10 AM . No external injury marks were found on the dead body. PM was done at Nagaon Civil Hospital. In the PM report the Doctor opined that the death was due to asphyxia as a result of drowning.

The SP's report also mentioned about the FIR lodged by one Mustt. R. Khatoon on 17.9.07 through court vide CR No. 242/07. There she alleged that her husband Fakaruddin who was doing business of fish was beaten up by the police party led by SI Dwijendra Nath Barman and SI K. Borah on the night of 29.8.07 itself. The dead body was recovered by local men next day.

On receipt of the FIR , Rupahihat PS registered a case vide No. 168/07 u/s 302 IPC and the then OC SI M. Ali took up the investigation of the case and during investigation no evidence could be collected. On the other hand PM report indicated that the death was due to drowning, therefore, the case was returned in FR. The SP in his report also mentioned that on receipt of the notice from this Commission, the witnesses mentioned in the petition submitted by the complainant before the Commission were examined. In the said enquiry also none of the witnesses ever stated that they saw Fakaruddin being assaulted by the police party. According to report when the police party raided the gambling den Fakaruddin tried to evade arrest and jumped into the pond and in the process he drowned.

The Commission examined the police persons and perused the following materials furnished by the district police:

1. Copy of FIR of Rupahihat PS Case No. 146/07u/s 13 Public Gambling Act
2. Copy of PR of Rupahihat Case No. 168/07 u/s 302 IPC
3. Copy of inquest report of Fakaruddin s/o Asad Ali of Gerhua PS Rupahihat, Nagaon.
4. Copy of PM Report of Fakaruddin
5. Copy of GDE No. 632 dt. 29.8.07
6. GDE relating to endorsement of non-bailable warrants.

Having received the photocopy of documents listed at 1 to 5 sans the document at sl. 6, the Commission further advised the SP, Nagaon to examine the witnesses whose names were mentioned in the FIR as well as

in the complaint petition, but were not examined by any of the investigating officers of the cases and did not/could not furnish their recorded statements. The Commission also considered that the accused of the Rupahihat Case No. 146/07 u/s 13 Public Gambling Act were to be examined in the context whether the deceased Fakaruddin was present in the said gambling or not. Accordingly the certified copy of the recorded statements were called for. It may also be mentioned that these three accused persons of the Case No. 146/07 who also jumped to the water were not examined as witnesses in Case No. 168/09 U/S 302 IPC as their statements were essential materials in the investigation of the case.

From the statements recorded by the District Police at the instance of the Commission and sent to the Commission, it could be found that Md. Jainuddin s/o Abdul Gafoor, Md. Maqbul Hussain s/o Sultan, Md. Imran Ali s/o Md. A. Hussain of village Jarathani, who were in the gambling site on the bank of a fishery known as Jorathani Fishery on 29.08.07, a police party raided the gambling site at about 11 PM. in the night. All of them were found engaged in the gambling in cards jumped into the water in order to escape from the police dragnet. The three persons were apprehended by police after they were removed from water. Fakaruddin, who was also at the gambling site jumped into the water. The statements recorded by the District Police on 12/11/2010 have not clearly indicated as to how these persons could be apprehended after they jumped into water nor any whereabouts of Fakaruddin from them and at what time the police party left the place of occurrence and whether search was made in water for the others including Fakaruddin who jumped into the water. This is a very pertinent point but remained unanswered in the report of the SP and other police records including the progress report of Case No. 186/07 u/s 302 which was returned in FR on 31/05/2008. Also the police report did not indicate at what stage the UD Case No. 10/07 was disposed of. Nothing was mentioned as to the progress of the UD case in the SP's report as well as in progress report which ought to have been discussed as a natural corollary to the investigation. Under the set of circumstances, the case diary of the UD case has to be automatically merged with the case No. 168/07 u/s 302 IPC. On SPAC's query, the District Police informed the Commission vide their communication No.IV/SPAC/11/3329 dt. 17.3.11 that FR submitted by IO in Rupahihat PS Case No. 168/07 was not accepted by the Hon'ble Court and was returned for re-investigation and the case is pending for completion of investigation.

The Commission examined the following personnel in connection with the complaint:

1. Dr. Syed M. Rahman, the then SDM and Health Officer,
Bhogeswai Phookanni Hospital, Nagaon

2. Complainant:- Rabuja Khatun
3. Md. Khazahuddin Ahmed
4. Md. Muksed Ali
5. Md. Ilias Ahmed
6. Md. Idris Ali
7. S.I Nirod Ram Das
O/C Rupahihat P.S

The complaint has been locally enquired by Sr. Investigator of the Commission and salient points of his report has been incorporated herein below:.

Sr. Investigator has made enquiry locally and recorded statements of the complainant, Md. Khazahuddin Ahmed, Md. Muksed Ali, Md. Ilias Ahmed, Md. Idris Ali, S.I N.R. Das statements of the witnesses are enclosed.

The witnesses disclosed that a police contingent raided in the night of 29/08/2007 the tangi ghar of Jarathani Fishery where few persons were gambling with playing cards and jumped to the water of the fishery having seen police. Md. Idrish Ali and two other persons were removed from the water and arrested. Fakaruddin, who was in the gambling party also jumped but his dead body was sighted next day afternoon (30/08/07) and the dead body was removed from water on 31/8/07 on arrival of the Executive Magistrate who conducted inquest and arranged for P.M.

S.I N.R Das is the I.O of the Case No. 168/07 U/S 302 IPC. The case was earlier returned in FR but the court rejected and sent back for re-investigation. S.I N.R Das states that his predecessor S.I Jiaur Rahman submitted FR NO. 38 dtd. 30/05/2008 and he is re-investigating the case as per the court order and the case is pending investigation.

5.2 Sr. Investigator of the SPAC in his finding has submitted that the allegation of torturing Fakaruddin by S.I Dwijendra Nath Barman and Gakul Bora and then threw him to the water was without substance. However, it has been observed that the police officers were found negligent in their duty to recover Fakaruddin from the water before they left the place with three of the persons who were recovered from the water.

We have given our anxious consideration on the entire matter. We did not find any convincing materials to hold that the SI Gokul Ch. Borah and SI Dwijendra Nath Barman committed torture on the person and thereafter threw him in the fishery. Materials on record unerringly point out that investigating officer SI M. Ali and SI J.. Rahman of the case No. 168/07 u/s 302 IPC did not examine any of the witnesses whose names were referred in the FIR. Md. Jainuddin/Idrish Ali/Maquebull Hussain who have been arrested after they tried to escape by jumping into water in connection with case No. 146/07 u/s 13 of the Public Gambling Act were

not examined by any of the IOs including SI Dwijendra Barman to ascertain as to whether the deceased Fakaruddin was in the gambling and jumped into the water as Fakaruddin was the person acting as watchman of the Fishery and the hut where the gambling was conducted was his place of duty.

Facts situations and the surrounding circumstances only revealed that Fakaruddin died due to the negligence of police. We found that police failed to work with due care and caution while raided in the gambling site on the bank of Jarathani fishery. It was indeed a risky proposition, in view of the location of the gambling site being positioned in a water logged bamboo machang, leaving only a watery escape route. With a view to avoid the police net the poor fellow jumped into the watery grave. It happened in the mid night in the site and raiding the same with a contingent of armed police undoubtedly called for abundant care and caution.

A procedure is prescribed by law for searching or inspecting a closed place. The police party failed to adhere to take due and reasonable care in conducting the raid with a contingent of armed police.

Two SIs of Police who led the contingent should have ascertained the number and composition of the gamblers and ought to have taken all measures to take them out from water in order to ensure that those who jumped into the water do not have the watery grave.

The allegation of torture by SI Dwijendra Nath Barman and SI Gokul Ch. Borah that led to the death and throwing Fakaruddin's body to the water of fishery was not established. At the same time the police officers raided the gambling site without any precaution, considering the fact situation it was found to be an act of sheer negligence. Three gamblers were removed from the water except Fakaruddin. As the gambling den (bamboo machang) perched over the water in three sides, one side being on the bank of the fishery by which police made the entry making the water only option to escape.

The police SI naturally accountable to the law who faltered to adhere procedure prescribed by law while conducting search keeping in mind the location and site of gambling to be raided by them and the negligent manner in which they had acted without ascertaining the fate of Fakaruddin from three of his accomplices removed from the water. The police officers should not have taken a spiral contour in their action without taking stock of the situations and the surrounding circumstances. The FIR of Case No. 146/07 u/s 13 of public Gambling Act and the GDE No. 634 dtd. 30.8.2007 did not reveal that the three of the gamblers were recovered from the water except indicating that the gamblers ran for escaping police apprehension. Si Gokul Borah and SI Dwijendra Nath Barman are guilty of negligent conduct in conducting a search/raid that

led to the death of Fakaruddin. They cannot escape liability of misconduct.

We also heard SI Gokul Borah and SI Dwijendra Nath Barman who failed to account for their negligent conduct as discussed above. Having considered all the aspects of the matter we are of the view that these two persons are accountable to law in conducting the search in a rash and negligent manner.

In the set of circumstances we are of the view that SI Gokul Ch. Borah and SI Dwijendra Nath Barman were guilty of negligence of duty. Departmental Proceeding need to be initiated against the above two SIs for their alleged misconduct.

The Director General of Police is accordingly advised to present department's view with additional facts if any, not already in the notice of the Commission before finalization of its opinion within three weeks.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No.03/2010
Mustt. Rabuja Khatoon

Vs
SI Dwijendra Barua & Gakul Ch. Borah of Rupahihat PS, Nagaon

ORDER

Date-16.05.2013

Perused the communication submitted by the Assam Police Headquarters dated 9.5.2013. The report did not contain any additional facts nor the view of the department, it simply concluded as "the police party should have taken due care in conducting the raid to prevent such mishap". Our finding are rehearsed below:

"Facts situations and the surrounding circumstances only revealed that Fakaruddin died due to the negligence of police. We found that police failed to work with due care and caution while raided in the gambling site on the bank of Jarathani fishery. It was indeed a risky proposition, in view of the location of the gambling site being positioned in a water logged bamboo machang, leaving

only a watery escape route. With a view to avoid the police net the poor fellow jumped into the watery grave. It happened in the mid night in the site and raiding the same with a contingent of armed police undoubtedly called for abundant care and caution.

A procedure is prescribed by law for searching or inspecting a closed place. The police party failed to adhere to take due and reasonable care in conducting the raid with a contingent of armed police.

Two SIs of Police who led the contingent should have ascertained the number and composition of the gamblers and ought to have taken all measures to take them out from water in order to ensure that those who jumped into the water do not have the watery grave.

The allegation of torture by SI Dwijendra Nath Barman and SI Gokul Ch. Borah that led to the death and throwing Fakaruddin's body to the water of fishery was not established. At the same time the police officers raided the gambling site without any precaution, considering the fact situation it was found to be an act of sheer negligence. Three gamblers were removed from the water except Fakaruddin. As the gambling den (bamboo machang) perched over the water in three sides, one side being on the bank of the fishery by which police made the entry making the water only option to escape.

The police SI naturally accountable to the law who faltered to adhere procedure prescribed by law while conducting search keeping in mind the location and site of gambling to be raided by them and the negligent manner in which they had acted without ascertaining the fate of Fakaruddin from three of his accomplices removed from the water. The police officers should not have taken a spiral contour in their action without taking stock of the situations and the surrounding circumstances. The FIR of Case No. 146/07 u/s 13 of public Gambling Act and the GDE No. 634 dtd. 30.8.2007 did not reveal that the three of the gamblers were recovered from the water except indicating that the gamblers ran for escaping police apprehension. Si Gokul Borah and SI Dwijendra Nath Barman are guilty of negligent conduct in conducting a search/raid that led to the death of Fakaruddin. They cannot escape liability of misconduct.

We also heard SI Gokul Borah and SI Dwijendra Nath Barman who failed to account for their negligent conduct as discussed above. Having considered all the aspects of the matter we are of the view that these two persons are accountable to law in conducting the search in a rash and negligent manner".

Materials on record unerringly pointed out to the gross negligence of SI Gokul Ch. Borah and SI Dwijendra Nath Barman bearing criminal conduct.

All things considered the Commission therefore, directs the Director General of Police to initiate departmental proceeding against the above two police personnel. Needless to state that such events are recurring intermittently. It is high time for persons those who matter to stop such reckless approach leading to the death of the common men. For the reasons stated above, the order passed by the Commission dated 4th April, 2013 is made absolute. The concerned authority is directed to initiate proceeding promptly and submit report from time to time about the progress of the case. The proceeding thus stands closed.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No.03/2013

Shri Bipradeep Deb

Vs

I/C Birubari OP, Paltanbazar PS, Guwahati City

ORDER

Date-19.03.2013

One more case of lapse on the part of the police in addressing the complaint of the complainant. Materials on record revealed that the police arrested a person without following the due procedure of law. It was taken up in most unprofessional way where the i/c Birubari OP SI Eiy Sinha on receiving telephonic information from another police officer went to the house of former wife of the complainant and thereafter brought the complainant to the police station and confined him in its custody. In-Charge of the OP did not even record anything in the GD nor did he register a case against the person who was brought to the OP. The follow up actions were taken after the complainant was kept in police custody. Admittedly, the complainant had some injuries in his head. Materials on record could not convince that such injury was self-inflicted. Incidentally, the complainant is an advocate by profession.

The case in hand as well as some other cases commission has so far noted warrant that the Police Headquarters need to intervene and provide in-house training to the police officer particularly OCs of Police Station in the matter of registration of a case in terms of the Chapter XII of Cr.PC and this has to be made known that no investigation whatsoever manner can be started without registration of the case. The Police Headquarters should very soon take up appropriate measure for arranging training of such person so that such lapses do not recur.

The I/C, Birubari OP failed seemingly to adhere to procedure prescribed by law for keeping the complainant in confinement wrongfully. The I/C of Birubari OP SI Eiyin Sinha, therefore, needs to be pulled up by the department. With this the proceeding stands closed.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No. 17/2012

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

Vs

SI Binod Barman, OC, Patacharkuchi PS

ORDER

Date-29.-01.2013

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 Patacharkuchi 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.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No. 19/2010
Syed Nakib Kazi (Press Reporter)
V/S
O/C Baihata Chariali P.S.

ORDER

Date-04.04.2013

Syed Nekib Kazi, a press reporter from Baihata Chariali filed a complaint at the Commission alleging that SI Pradip Baruah, O/C Baihata PS accosted him on 14.08.2009 when he was on way to Goreswar. O/C Pradip Baruah suddenly stopped him with a posse of policemen and gave him thundering slap followed by kicks and blows at his stomach and dragged him inside the police vehicle. The O/C threatened to send him to jail as a member of the outlawed ULFA and punched on his ear causing bleeding injury while he was inside the police vehicle. It was also alleged that the OC had compelled him to sign a blank paper when he was released from the PS and also got another blank paper signed from him assuring not to make any news against him in future. He was tortured in the lock up and a gold ring, mobile phone, a purse containing Rs. 2,000/- (two thousand) and a sim card were snatched from him. Those were never returned, it was so alleged. The O/C sent a young lecturer Sri. Nripen Deka on the next day to make compromise –he was also asked not to open his mouth before the media, alleged in the complaint. The false FIR was framed up in connivance of a anti-camp correspondents, nefarious timber traders and local elements made a public announcement that he was arrested at the night of 14th of August, 2009. The O/C Pradip Baruah was alleged to have implicated the complainant in creating of communal situation by the news item he authored regarding JEHADI in Asomiya Pratidin and the O/C was instrumental in organizing a campaign against him for his news regarding corrupt practice of SI Pradip Baruah. He further alleged that the signatures in the FIR except two of them were false.

The Commission on receipt of the complaint called for a factual report from SP Kamrup who in turn forwarded an enquiry report conducted by Addl.SP Kamrup Sri.H.Nath. The report indicated that Syed Nekib Kazi, a press reporter of the Asomiya Pratidin, Baihata Chariali, Kamrup was arrested in connection with Baihata Chariali PS case no 124/2009 U/S 153(A)IPC. The report disclosed that Syed Nekib

Kaji was arrested, observing all formalities at 11pm. on 14/08/2009 and after interrogation the arrested person was released on bail at 12pm. The arrested person was not tortured in police custody and his all belongings were returned to him.

The report was sketchy and without addressing the facts and circumstances as alleged in the complaint. The SP Kamrup, thereafter was further requested for a factual report. The second report received indicated that Md. Tafik Choudhury, President of greater Baihata Nagarik Samity and other leading people of the area organized a meeting at Baihata Chariali to discuss about the news item under caption “Namoni Asomot Jehadi Uthan-Durdharsa Hudur Netritot Prakhishon” published in the Asomiya Pratidin dtd.14.08.2009 and the meeting decided that Syed Nekib Kazi created animosity between different communities and passed a resolution requesting the local police station for taking necessary action against the said local reporter Syed Nekib Kazi.

On the complaint dtd.14.08.2009 at 6pm. SI Pradip Baruah O/C Baihata Chariali PS registered a case vide case no 124/2009 U/S 153(A) IPC and he himself took up investigation. The SI seized a copy of the news paper dtd.14.08.2009, examined the complainant Tafik Choudhury and other witnesses and “brought” the FIR named accused Syed Nekib Kazi to Baihata Chariali PS and interrogated him thoroughly to ascertain his involvement to the allegation. He was allowed to go due to **“Shortage Of Evidence”** against him at the stage of investigation. The report further indicated that the case was pending for examination of the Editor of the newspaper and to ascertain the person named Hudu who was alleged to have imparted training to the Muslim youths and as to whether any incident on communal disharmony occurred just after the publication of the news item.

The Circle Inspector of the area had also supervised the case and called with the up-to-date case diary. The supervision note revealed that Nekib Kazi was medically examined by doctor who opined that there was injury in the left ear which was of simple nature caused by blunt weapon. The same report also revealed that the I/O, SI Pradip Baruah allowed the accused to leave on 14.08.2009 since there was no enough evidence collected by the I/O at that time.

The Commission has observed that SP’s report no I. Dtd-25.01.2010 is categorical as to the arrest Syed Nekib Kazi in Baihata Chariali PS case no 124/2009 U/S 153(A) IPC and after arrest Nekib Kazi was released on PR Bond. The report however, did not indicate as to the allegation of the injury inflicted due to alleged ‘slap’ by SI Pradip Baruah to the complainant (Nekib Kazi). The report also did not indicate the ground for releasing Nekib Kazi on PR Bond in a case with non-bail able offence U/S 153(A) of IPC.

The report no II. dtd. 23.09.2011 of the SP Kamrup reveals a complete contradictory report to the effect that Syed Nekib Kazi being the FIR named accused was brought to Baihata Chariali PS and interrogated him and then he was allowed to go due to shortage of evidence at the first point of time of investigating the case.

The second report further indicated the reason for the pending of the case being for arrest of the accused and submission of final form. The report was terribly clumsy. The narration of the report to the effect that Mr. Kazi all of a sudden became excited during the course of interrogation at about 10.40 pm. by the SDPO and the I/O and he hit his head on the wall of the room resulting injury near his left ear with bleeding and therefore he was sent to the Hospital are bewildering and inexplicable. Medical report did not answer intended queries of the I/O as to whether Nekib Kazi was under the influence of drugs and was not able to take care of himself. The medical report opined that the injury in the left ear was simple and caused by blunt weapon without answering the above queries. In contradiction to the SP's report and what is more intriguing is that the C/I has manufactured the word "brought" in lieu of "taken into custody" of the accused person to the PS for interrogation and allowed to go since there was not enough evidence mustered by the I/O at that time. The I/O was therefore directed to arrest the accused person after collection of more evidence without specifying which of the evidences he should gather having bearing on the alleged offence and which action of the CI amounts to blackmailing Nekib Kazi keeping him in tenterhook so as to gag his mouth and fear from being assaulted.

The Commission has noted that the reports of the SP Kamrup, that have portrayed diametrically opposite versions making the entire issue more confusing and these come handy in favour of the complainant that police had acted with vengeance against the complainant Nekib Kazi for his report as to the illegal and corrupt practices harped on the conduct of SI Pradip Baruah.

We have given our anxious consideration on the entire subject. Materials on record unerringly pointed at the culpability of Sri Pradip Barua in wrongfully restraining and confining the complainant and voluntarily causing hurt to the complaint – Materials on record also revealed that Sri Barua has also disobeyed the direction of the law as to the way he was to conduct himself as such public servant, intending to cause or knowing it likely that he would by such disobedience cause injury to any person. By his acts he also involved himself in unlawful detention of the complainant.

The Commission is of the opinion that SI Pradip Baruah should be criminally prosecuted U/S 341/342 /323 read with section 166 of the IPC and Section 98/99 of AP Act 2007 for restraint, wrongful confinement

and injuries sustained by the complainant in police custody. The Director General of Police is thus advised to take appropriate measures for causing filing of an FIR against the police officer. The Commission also considers it to be a fit case to request the DGP to pull up the Addl. SP and the SP Kamrup for the contradictory and misleading and insouciant reports. The C/I and the SDPO should also equally to be taken into task for their perfunctory and unbecoming conduct having deviated from rules and procedures of law which they omitted in the supervision of the case. The very act of the OC in releasing Nekib Kazi for want of evidence at the same time keeping the Case pending, thereby keeping the Damocles sword hanging over the head itself tantamounted to blackmailing the named accused in the FIR.

The DGP is thus advised directed to present the department's view and additional facts, if any not already in the notice of the Commission within 30 (thirty) days from the receipt of the order.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No.22/2010

Mr. Gaurav Bhora

Vs

Dy.SP, Chandmari Division and OC Chandmari PS, Guwahati (City)

ORDER

Date-07.03.2013

It is a case revealing one more incident of police partiality in the area of investigation, the protector of citizens instead of protecting a citizen unlawfully confined and detained in gross abuse of the powers vested on it.

The Commission received a complaint on 12.5.2010 wherein he complained that on 7.5.10 (Saturday) night at 10.00 PM he was coming in his Chevrolet Beat car bearing No. AS 01 AW 4535 that was driven by his friend Nabin Jain towards Zoo road, Vehicle No. AS 01 AK 6534 an i10 car was driving ahead of his car in the same direction. The i10 car came to an abrupt halt without any indication/warning. The car of the complainant dashed against the i.10 car which damaged both the vehicles.

The incident took place in front of Geetanagar Police Station. The police took both the vehicles along with the drivers to the Geetanagar PS. On entering

the Police Station the occupant of i10 car introduced himself to the OC Debeswar Das that he was the brother-in-law of DySP Sanjib Saikia at that time attached to the CM's Security. Dy.SP, Chandmari Division Rubul Gogoi also visited Geetanagar PS at that time and immediately the complainant and the driver were kept in the Police Station. The complainant informed his family members at 11.00 PM and they came to Police Station but on duty SO J.N. Sharma did not allow any member to meet Mr. Bhora and he was kept whole night in the Police Station. On the next day morning at about 9.30 AM the member of the family went up to the higher level of the Home Department and thereafter he was kept confined upto 12.00 o'clock. The SP was also intimated about the matter and thereafter at about 1.00 O'clock he was released.

On receipt of the complaint and perusal thereto, the Commission called for report from SSP (City) vide communication dated 1st May, 2010. The Commission received the report of the SP dated 3.8.10 on the next day. The report submitted by police was incomplete and was not supported by the relevant documents. The SSP's report did not address the allegations about not allowing the family members to meet them and following the procedure prescribed by law. The SSP's report indicated that a case u/s 279/337/427 IPC was registered as per GDE No. 30 dtd. 1.5.2010 on FIR lodged by the complainant (name not noted) on 1st May, 2010 mentioning travelling of complainant's son without naming them and brother-in-law that too without naming and sustaining the injury by the traveler of the i10 car (name not mentioned). The SSP's report omitted the case reference, name and particulars of traveling occupants of vehicle No. AS 01 AK 6534 and the person who dashed the vehicle bearing No.AS 01AW 4535, etc.

The Commission heard the complainant and his statement was recorded which corroborated the complaint petition to reiterate the statement made in the complaint. He also stated that he was verbally tortured by SI J.N. Sharma and abused in the Police Station and using slang language. The copies of GDE furnished by SSP were examined. Both the individuals Nabin Jain and occupant Gaurab Bhora were taken to the Police Station with the vehicle at 11.15 PM on 1st May, 2010. OC Geetanagar Police Station received FIR from Mr. Tilak Ch. Sharma s/o M.L. Sharma to the effect that on the night of 1st May, 2010 at about 10.00 AM that his son and broher-in-law along with the driver while coming from Narikal Basti, Zoo-Tiniali all of a sudden the vehicle No. AS 01 AN 3545 rashly and negligently knocked his car in front of the Geetanagar Police Station as a result the right side of his car was badly damaged and the driver of his car sustained injury. On the FIR OC, Geetanagar PS registered vide Geetanagar PS Case No. 62/10 u/s 279/337/427 IPC and endorsed the case to ASI Gobindra Kalita. As per Traffic Branch GDE No. 25 dtd. 01.05.10 (7.20 AM) ASI Gobinda Kalita received the ejahar of Geetanagar PS Case No. 62/10 and accused driver Nabin Jain was handed over

along with involved vehicle Chevrolet car. ASI G. Kalita started preliminary investigation of the case.

The report further indicated that Geetanagar PS Traffic Branch maintained a separate GD for matter relating to movement of traffic staff and motor accident case investigation but seems that OC Geetanagar PS used to register cases with General Diary reference maintained by the OC in PS. The instant case was registered with the reference to Geetanagar PS vide GDE No. 30 dated 1.5.10 whereas IO ASI Gobinda Kalita received the ejarah of Geetanagar PS Case No. 62/2010 (7.20 AM). SSP's report via memo No. V/LC-2/(16)/2010/4811 dtd. 03.5.10 found incomplete and without supporting documents like GD reference of arrest, medical examination of accused, MVI examination of involved vehicle and also found silent regarding detaining complainant Gaurab Bhora and Nabin Jain whole night and not allowing to meet their family members.

We have perused the materials on record where from it transpires biased investigation as it will be apparent from the facts that are enumerated below:

- (A) An accident took place on 01/05/2010 @ 10 P.M in between i10 Car No.AS- 01AK 6534 and Chevrolet car No. AS -01AN 4535.
- (B) Both the vehicles with the drivers were taken to P.S by O/C & his staff as it took place in front of the P.S and in their presence. But driver of Chevrolet car found detained.
- © Action initiated against the driver of Chevrolet Car No. AS-01-AN-4535 Nabin Jain and innocent complainant Gaurab Bhora was confined in the police custody for whole night as per P.S G.D.
- (C) P.S General Diary is seen over writing on entry Nos. 20, 21, 22, 23 on 01/05/2010 and entry No. 20 relates to O.C's going out from the P.S whereas entry No. 20 at 8:30 P.M on the same date relate to a compromise matter in between Islam and Babul Ali. This overwriting and bearing some nos. proved manipulation of General Diary by O/C Geetanagar P.S.
- (D) General Diary maintain in Traffic Branch of Geetanagar P.S not connected with the Police Station GD gave a separate version and is not legal.
- (E) I/O S.I J.N. Dev. Sarmah received the C.D from ASI G. Kalita and not cared to ascertain cause of the accident as both the vehicles came in the same direction and completed the investigation perfunctorily and submitted F/F negligently. Both the drivers were to be medically examined but only driver Phanidhar Barman was sent for medical examination.
- (F) Both Sri Nabin Jain and complainant were not allowed to meet their family members by S.I J.N. Dev Sarmah on the night of 01-02/05/2010.

From the materials made available, the Commission found that detention and confinement of Gaurab Bhora is illegal and unlawful. Gaurab Bhora was not in any way connected with the alleged offence. Despite that he was unlawfully confined by the Geetanagar Police on 1st of May, 2010 and released on the next day at noon. Likewise even Nabin Jain was unlawfully detained in the Police Station as per the police he was arraigning offence under section 279/337 and 427 IPC. All these offence were bailable. No reasons are ascribed not even materials for keeping confined also Nabin Jain for such an offence. The protectors of the citizens committed crime under the shield of uniformed authority. Two persons were unnecessarily confined in the four walls of the Police Station which is a matter of deep concern for all concerned. All these will reveal nothing but a custodial torture causing breach of human dignity and reputation. If the functionaries and protectors of law become law breakers it is bound to breed contempt for law and would encourage lawlessness.

All things considered, the Commission found the conduct of OC, Inspector D. Das and ASI Dev Sharma in breach of law and acted in a high handed manner. The Commission is of the opinion that the concerned authority need to initiate disciplinary measure against the OC Inspector D. Das and ASI Dev Sharma for disobedience of law and procedure.

With these observations our enquiry comes to an end. 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 within four weeks from the date of receipt of this order along with materials.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No.28/2011

Smt. Rina pathak

Vs

SI Bipin Medhi, OC, Khetri Police Station, Dist. Kamrup ®

ORDER

Date-04.04.2013

It is a sad tale relating to death of a police personnel who are exposed to all sorts of danger. These people are to work under constant stress and strain. It is a case where a Police person died while discharging the duty on 5.11.2006.

The family members of the deceased came with a feeling that the department for whom he worked and the fellow policemen failed to rally round them and assuage their woes. Rina Pathak wife of Indrajit Pathak, constable of police (since deceased) was working in the Khetri Police Station submitted this complaint before the Commission on 19.7.2011. She alleged that her husband died in the Police Station while on duty under mysterious circumstances on 5.11.2006. The case was registered after two months and submitted FR concealing the truth for the death of her husband, who suspected malevolence in OC Bipin Kr. Medhi. She also alleged that SI Prafulla Deka along with SI Bipin Kr. Medhi OC, ASI Lakhi Patgiri, Sankar Das, Constable Hareswar Das, Constable Ramesh Sarmah, Dilip Bhuyan, HG of Khetri Police Station were involved in committing the murder of her husband.

The Commission called for the report to furnish the same within ten days time from the SSP (City). The SSP failed to submit its report in time and after numerous reminders the SSP submitted a report that was received on 31.10.2011 vide Memo No. V/LC-2(14.11-SPAC/11/8651 dated 29.10.2011.

As per the report of the SSP (City) it is revealed that on 05.11.2006 S.I Prafulla Kr. Deka of Khetri P.S along with UBC/167 Sankar Das, UBC/403 Indrajit Pathak, H.G Dilip Bhuyan and ASRF C/261 Pulin Dihingia and C/702 Kamal Balari were detailed for Naka Checking and Night Super Parking duty on National Highway 37 in front of Khetri Police Station. Accordingly they performed duty and this refers to GDE No. 117, dtd. 05/11/2006.

On the same night at 11:35 P.M, S.I P.K. Deka came back to P.S and reported O/C Bipin Ch. Medhi that UBC 403 Indrajit Pathak suddenly fell down on the road and became unconscious and was sent to Sonapur PHC for treatment being escorted by UBC/ 167 Sankar Das and H.G Dilip Bhuyan. This refers to GDE NO. 118 dtd. 05/11/2006. But attending doctor Das informed O/C over phone at 12:15 A.M (06/11/2006) that Indrajit Pathak already expired due to the injury sustained on his person. The body of Indrajit was brought to P.S at 01:00 Hrs. (06/11/2006) for further necessary action.

Inquest was held over the dead body of Indrajit Pathak and sent to Guwahati Medical College & Hospital for Post Mortem examination and it was done through ASI Lakhi Patgiri of Khetri P.S who was sent along with UBC/3107 Gobinda Choudhury to GMCH on 06/11/2006 at 09:30 A.M vide GDE No. 131 dtd. 06/11/2006.

S.P's report dated 29/10/2011 also indicated that ASI L. Patgiri collected P.M Exam. Report of the deceased dtd. 28/12/2006 and ASI L. Patgiri submitted FIR on 10/01/2007 after receipt of P.M. Exam. Report and Khetri P.S U/D Case No. 01/2007 vide GDE No. 247 registered where M.O opined that "Death is due to coma as a result of the injuries to the head, described the injuries are ante mortem being caused by blunt force". O/C Khetri P.S endorsed ASI L. Patgiri for investigation of the U/D Case No. 01/2007 on 10/01/2007. The Final Report of the case submitted by ASI L. Patgiri on 20/01/2007 stated

that the deceased had suddenly fell down on the road for which he received head injuries. The S.P's report is found non-committal on the result of submission of FR of the U.D Case.

But S.P's report dated 29/10/2011 revealed that on 23/11/2010 the Addl. District Magistrate, Kamrup Metro, Guwahati perused the FR submitted by ASI Lakhi Patgiri and rejected it on the ground that "The death of the person in question is due to head injury but the I/O has not described that how the person sustained head injury". ADC, Kamrup Metro directed the Sr. S.P, City, Ghy for taking lawful action and in compliance of the aforesaid direction O/C Khetri P.S was ordered for re-investigation of the case detailing some other officer and to submit Final Form Vide S.P's Memo No. V/IV-I(J.O)/2011/425, dtd. 01/02/2011. Accordingly O/C khetri P.S endorsed the case to ASI Hemanta Kalita for investigation. ASI Kalita investigated the case and examined witnesses viz. H/C Ramesh Sarmah, H/G Dilip Bhuyan, Smti. Rina Pathak W/O Late Indrajit Pathak and Harmohan Phukan, S/O Nabin Phukan of Chatai Pathar, Khetri, a Pan Shopkeeper located in front of Khetri Police Station. Sri Phukan stated that he saw an unknown truck knocked down constable Indrajit Pathak as a result of which he fell down. He came to the spot and saw taking him away in a police van towards Guwahati for treatment.

Again on 25/05/2011, the U.D Case was endorsed to S.I Krishnanu Pathak of Khetri P.S for investigation and in course of investigation, Sri Pathak examined UBC/ 167 Sankar Lal Das, C/702 Kamal Balori, Const Pulun Dihingia, H/G Dilip Bhuyan, S.I Bipin Ch. Medhi, the then O/C Khetri P.S.

On re-investigation of U.D Case No. 01/2007, O/C Khetri P.S S.I Anil Kr. Bora found that on 05/11/2006 at 11 P.M, S.I Prafulla Kr. Deka along with staff including C/403 Indrajit Pathak were on vehicle Checking duty and parking duty in front of Khetri Police Station on N.H. 37. At about 11:30 P.M one unknown Truck coming from Jagiroad side towards Guwahati knocked down Indrajit Pathak and fled away towards Guwahati side. As a result, Indrajit Pathak sustained grievous injuries to his person. He was shifted to Sonapur PHC, where he succumbed to his injuries. Hence S.I Anil Bora O/C Khetri P.S lodged an FIR to this effect and the U.D Case turned to a regular case and was registered a case vide Case No. 116/2011, U/S 279/304(A) IPC and endorsed S.I A.H Laskar of Khetri P.S for investigation.

The Commission examined the connected documents that Commission called for including duplicate case diary of case No. 116/11 registered under section 279/304(A) IPC and also heard SI Bipin Ch. Medhi, OC Khetri PS (as on 5.11.06) ASI Lakhi Patgiri, SI Prafulla Kr. Deka, SI Anil Kr. Bora, who registered the case No. 116/2011 and Head Constable Sankarlal Das and recorded their statements. On assessment of the report the Commission examined materials on record including SSPs report, the statement of concerned officers which indicated the following features:

- (1) On 05/11/2006 at 11:30 P.M O/C Khetri P.S received information about UB Constable Indrajit Pathak who fell on road and became unconscious who was on duty in front of Police Station and was sent for treatment at Sonapur PHC.
- (2) On 06/11/2006 at 00:15hrs O/C Khetri P.S received information of death of Constable Indrajit Pathak. No case was registered.
- (3) On 06/11/2006 at 02:00 hrs dead body of deceased constable Pathak brought to police station and was kept in the campus by O/C. No action was initiated to ascertain the circumstances of his death by O/C.
- (4) On 06/11/2006 at 08:30 A.M ASI Lakhi Patgiri of Khetri P.S held inquest over the dead body after more than six hours of death and sent for P.M Exam. No case was registered. The body was sent on the GD reference which related to sending of the injured for treatment at Sonapur PHC. Action like visit to the P.O & examination of witnesses etc by the O/C were not taken.
- (4) On 10/01/2007 ASI Lakhi Patgiri of Khetri P.S submitted a report to O/C Khetri P.S and UD Case No. 01/2007 registered by O/C Khetri P.S after a lapse of 2 months 4 days. No investigation was done since 06/11/2006 till 10/01/2007 by ASI Patgiri or the O/C either.
- (5) On 20/01/2007 ASI Lakhi Patgiri submitted FR into the UD Case No. 01/2007 which was forwarded by O/C Khetri P.S. The UD case was returned in FR without any investigation as well as action like visit to the P.O, examination of witnesses etc by I/O ASI Patgiri were not discernible.
- (6) On 01/10/2011 S.I Anil Borah O/C Khetri P.S lodged FIR after enquiry stating that UB C/403 Indrajit Pathak was knocked down by some unknown vehicle and as a result succumbed to his injuries. Case No. 116/2011 U/S 279/304(A) IPC registered but it was returned in FR on 18/11/2011 Vide FR No. 47/11 for no clue. The fate of the UD Case as returned was not known.
- (7) O/C Khetri P.S S.I B.K Medhi informed his superior officer the Dy. S.P Dvn about death of UB Constable Indrajit Pathak who was on duty but being a Senior Supervising officer did not feel it necessary to visit P.O and make an enquiry into the matter/circumstances of death.
- (8) No Superior Officer visited and enquired into the incident on 06/11/2006.

Section 174 of Cr.PC provided the procedure to enquire and report a suicide, etc. As per the provision, an UD case is to be registered when an information is received that a person has committed suicide or has been killed by another person or by animal or by machinery or by an accident or has died under circumstance arising a reasonable suspicion with some other person has committed an offence, he shall immediately give intimation thereto to the nearest Executive Magistrate prescribed by the State Government or by general

or special order of the District or Sub-divisional Magistrate empowered to inquest into.

Rule 229 of the Assam Police Manual provided the procedure for enquiry into UD and suspicious death. Assam Police Manual Part V also provided guidelines for conducting enquiry in the accident case. SI Bipin Kr. Medhi OC failed to comply the direction of law and procedure laid down in Cr.PC and Assam Police Manual into the unnatural death of UB Constable Indrajit Pathak who died under suspicious circumstances, conducted the inquest of the dead body of Indrajit Pathak without registering the case. He also failed to investigate and probe into the matter as required under law. His act of omission also amounts to serious misconduct as defined u/s 78(g), Assam Police Act, 2007 for non-compliance of law and procedure and thereby neglecting in discharge of his responsibility made him liable for serious misconduct u/s 98 of the Assam Police Act, 2007 as the police and peers failed to look into the matter in proper perspective of the matter which came to light only after long five years when report of the investigation submitted on 2.10.11. It is a sad commentary of the police personnel.

In the set of circumstances the Commission is of the opinion that instead of criminal proceeding, the Director General of Police need to take appropriate measure for conducting DP against the then Dy.SP, Dispur Division, ASI Lakhi Patgiri, Khetri PS, OC SI Bipin Kr. Medhi, Khetri PS.

We could not find any justification for initiating any action against SI Anil Kr. Bora, the then OC of Khetri PS who after enquiry came to know that UB/C/403 Indrajit Pathak was knocked down by an unknown vehicle and suffered injuries, registered the case No. 116/2011 u/s 279/304 IPC and thereafter submitted FR for having no materials. The Commission appreciated his act for registering the police case.

The Director General of Police is accordingly directed to present 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 to finalise its opinion.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No.28/2011*Smt Rina Pathak**-Versus-**SI Bipin Medhi, OC Khetri PS***ORDER**Date- 09.07.2013

Seen the communication received from the Police Headquarters. The Department has concurred with the findings and the opinion. The Police Headquarters has also intimated that the department does not have “*additional fact to offer.*”

In the set of circumstances, the order passed by the Commission dated 04.04.2013 is made absolute. The authority concerned is to keep the Commission informed from time to time as to the progress of the case. The proceeding stands closed.

Sd/-

CHAIRMAN

Sd/-

MEMBER

Sd/-

MEMBER

Sd/-

MEMBER

SPAC Case No.33/2010

Mrs. Champa Das

-Vs-

Superintendent of Police, Baska, BTSAD, Mushalpur

ORDERDate-05.03.2013

A complaint was received from the complainant to the effect that police personnel were engaged themselves in taking possession of vehicle on behalf of the financier in the following circumstances. It was alleged that the Sy.SP (HQ) Baska as per the complainant as narrated in the complaint in the following paragraphs:

That the complainant states that on 25.2.2008, the then Deputy Superintendent of Police (Headquarter), Baska, namely Sri Amarjyoti Choudhury and the then Officer-In-Charge of Barbari Police Station, namely, Md. Faijul Haque Khan and other police personnel took the possession forcibly of the aforesaid complainant's vehicle in front of the house of one Md. Kudot Ali of village- Diringapur West Suba Gaon Digaldonwar at about 10 AM while the vehicle was carrying sand and bricks. The aforesaid police personnel assaulted the staff and labour without any lawful cause. The aforesaid police personnel directed the driver of the said vehicle, namely SriPralhal thBakcheari to drive the vehicle to Barbari Police Station and the said driver followed their direction. The aforesaid vehicle was kept in the police reserve for 2 to 3 months. It is pertinent to mention here that the aforesaid personnel had not communicated any written order to the complainant for taking the possession of the said vehicle. The complainant requested the said police personnel several times to release the vehicle from their custody but they refused to release the same and told the complainant, "you will get every thing in time". At present the complainant does not know where the vehicle is kept and the police personnel refused to disclose where the vehicle is kept.

That the complainant states that as it is stated in the preceding paragraph that the complainant failed to get back the said vehicle. Under such circumstances, the complainant several times submitted FIR to the Officer-In-Charge, Barbari Police Station against the aforesaid Dy.SP, OC and other police personnel. But the Officer in-charge, Barbari Police Station refused to entertain the FIR and register a case against the accused persons. Therefore, the complainant several times submitted FIR before Superintendent of Police, Baska but unfortunately, he also refused to receive the FIR. The complainant was pursuing the said SP and OC to receive the FIR and register a case against the aforesaid police personnel but it did not bring any result. Subsequently, the complainant sent the FIR to the said SP by registered post with acknowledgement due on 23.4.10.

That the complainant states that the said SP, Baska, did not register the case against the police personnel on being received the FIR. Therefore, on 4.5.10 the complainant sent the copy of the FIR to the Officer-In-Charge of Barbari Police Station by registered post with acknowledgement due for registration a case against the accused persons.

We called for a report from the authority and from the report it could not convince us to exonerate the police persons for the illegal seizure of vehicle to

assist the financier. From the materials on record it emerged lapses of District Police and who were taking steps up and doing in the interest of the financier in a matter of hire purchase of vehicle, where the financier accosted the buyer by taking out the vehicle from her possession with the connivance of police.

Materials indicated that the District Police head, the SP seemingly acted in preventing a truck engaged in business in a lawful manner. The SP ignored as to the non-registration of FIR so also the OC, the DySP. The case was subsequently registered in compelling situation but the investigation did not make any progress. While the matter was pending before the Commission, the complainant approached the Commission with a petition for allowing her to withdraw the complaint since the vehicle was recovered and the matter was amicably settled. Needless to state that the police became up and doing to address the claim of the complainant only when it reached the Commission. The actions of the officers in authority more particularly, the SP of the time and the OC for non-registering the FIR cannot escape notice of the Commission and the involvement of police in the accomplishment of the task of seizure of the vehicle, therefore, the concerned authority is directed to take appropriate action against the defaulting police officer. The Commission further directs the Director General of Police to initiate criminal proceeding by registering FIR against the then SP along with the OC and others u/s 166/384 IPC read with section 98 (b), 99(2) of the Assam Police Act, 2007 treating the complaint of the complainant before the Commission as FIR. In addition he DGP is also asked to cause a departmental proceeding against the said two officers for the misconduct as indicated above. The Director General of Police is accordingly advised to present the department's view and additional facts if any not already in the notice of the Commission within a month from the date of receipt of this order.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

Sd/-
Member

SPAC Case No.42/2010

Shri Jayanta Barman

-Vs-

Officer-in-charge, Fatasil Ambari PS, Guwahati (City)

ORDER

Date -02.03.2013

It is a case where police personnel faltered in utter disregard of law. The Fatasil police ignored the procedure prescribed by law. The police started investigation without registering the case on the basis of the diary entry where investigating officer went for a house search and seize that too at mid night without taking lady police and arrested those persons and brought to the Police Station, even before registering a case in conforming to Chapter XII.

The Commission received a complaint from Shri Jayanta Barman to the effect that the police falsely implicated him in Fatasil PS Case No. 257/2010 u/s 457/387/325/326/34 IPC where he was arrested in the mid night. He had to spend 43 days in judicial custody. The police personnel entered his bed room at 3.00 AM where he was living with his wife was along with the children and SI Pohar Mahanta used filthy language in presence of his wife. It is also alleged that he had a Micromax Mobile hand set and which the IO Pohar Mahanta taken away along with other articles without any seizure list. Even after his release on bail he was not handed over his mobile hand set or seizure list. He also alleged that the IO concerned “squeezed Rupees five thousand from my wife when I was in the jail in the name of manipulation of the case diary in my favour”.

We called for the report and examined. On examination of the materials on record we called for, the SP concerned submitted his report and denied as to the extortion of Rupees five thousand from his wife while he was in the judicial custody.

On considering the materials on record, it clearly indicates that the action of SI Pohar Mahanta was unauthorized by law. It is trite in law that investigation of cognizable offence can be started on receipt of the information relating to cognizable offence of the case u/s 154/100 of the Cr.PC. Police cannot move to investigate a case under rule 114 without registering a case. The report also indicated that even any purported telephonic information was not reduced into writing for registration of the case by SI Pohar Mahanta, OC of the Police Station. We find both OC Kushal Chandra Tamuli and IO Pohar Mahanta are even liable for criminal prosecution, but instead, the Commission considers that it would be appropriate to direct the SP to initiate departmental proceedings against them.

It is a big surprise as to why this aspect of the matter could be overlooked by the SP concerned, which is a glaring unlawful act. It should also act as a pointer to the Police Headquarters – since such dereliction by the OCs in the State has become a pattern. We hope and trust that the Police Headquarters would and issue appropriate orders/direction in this regard to prevent such serious breach of law.

All things considered we are of the view that the Departmental proceeding need to be initiated against the OC SI K.C. Tamuli for the misconduct enumerated above. The Director General of Police is therefore, advised to submit department’s view and additional facts, if any which is not in

the notice of the Commission for finalization of its opinion within three weeks from the date of receipt of this order.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No.42/2010

Shri Jayanta Barman, S/O Gunindra Nath Barman, R/o Kushal Konwar Path, Ambari, PS – Fatasil, Kamrup(Assam)

-Versus-

Officer-in-Charge, Fatasil, Ambari Police Station, Guwahati(City)

ORDER

Date- 08.07.2013

Perused the communication forwarded by the Assam Police Headquarters vide letter No. SPAC/APHQRs/42/2010/36 dated 25th June, 2013 purported to be the department's view and additional facts as contemplated in proviso one and two of Section 82. Despite opportunity granted, the DGP failed to properly present the department's view and additional facts, if any. Instead of presenting department's view, it went haywire.

An extract of department's view reads as follows :

"The allegation in the complaint that S.I. Pohar Mahanta had taken away the Micro Max Mobile handset is not true. From the records it is seen that the Micro Max Mobile handset was duly seized by S.I. Pohar Mahanta and the seizure list was seen by the CJM, Kamrup (photocopy is enclosed herewith."

In the fact situation, the above observations have no bearing. Findings of the Commission did not implicate SI Pohar Mahanta for "taking away the Micro Max Mobile handset". It seems the concerned authority failed to apply its mind to the findings of the Commission. Materials on record clearly

spelt out that SI K.C. Tamuli, the then O/C faltered in discharging his duty as O/C. Materials on record including GD clearly spelt out that the then O/C K.C. Tamuli contravened the provisions contained in Sections 154/156 of the CrPC and the provisions cited in the Assam Police Manual, Part-V. The FIR in question disclosed cognizable offences. Instead of following the procedures prescribed in Chapter-XII of the CrPC, the then O/C wilfully breached the procedures prescribed by law. In place of registering the FIR, the O/C allowed his subordinates to make a preliminary enquiry. Law does not permit to cause such preliminary enquiry. It is wholly unauthorized hence unlawful. A search or seizure can only be made in course of investigation. Here, the police officer in blatant violation of the law conducted the purported investigation. These are the basic duties of the O/C and here, the O/C concerned faltered in discharge of his duty. As the Officer-in-Charge of the police station, Sri Tamuli is accountable in law, on consideration of all the aspects Commission found the said O/C Sri Mahanta at fault and therefore, directed the DGP to also cause Departmental Proceeding because of the dereliction of duties committed by the said officer. In a departmental proceeding, he will be entitled to all the protections guaranteed by the Article 311 of the Constitution. Therefore, the plea of non-examination of SI K.C. Tamuli by the Commission has no merit. The Police HQ will definitely see that in the departmental proceeding, these officers are given a fair opportunity as per law in conducting their defence.

In the set of circumstances, the order passed by the Commission dated 02.03.2013 is made absolute. The proceeding stands closed.

A copy of the order also be furnished to the complainant.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No.43/2010

Mrs. Fazila Khatoon

Vs

Officerin-charge, Kamur Police Station, Dist. Nagaon

ORDER

Date-05.03.2013

A complaint was received from Fazila Khatoon against the then OC, Kampur Police Station for alleged police excess e.g. failure of the police in taking up the case in appropriate time and conducting the same lawfully.

We called for the report and duly examined the matter and apparently could not find any transgression on the part of the police to intervene. Certain omissions on the part of the police, however, are discernible like not handing over the seizure property to the complainant, non-report of the seizure list which is mandatory on the part of the police. Likewise police also faltered in handing over the seized property to the complainant who could come forward to take jimma of the seized property. The supervisor Dy.SP who submitted a report too, failed to take note of this glaring defect. These aspects could have been taken note of by the Dy.SP and ought to have taken appropriate measures. With these observations made above we close the proceeding.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No. 49/2010
Shri Kuldip Singh of Rangapara, Disit. Sonitpur
Vs
A.K. Azad, OC, Rangapara, Dist. Sonitpur

ORDER

Date -04.02.2013

The Complainant Shri Kuldip Singh, s/o Kashmiri Singh of Rangapara, Dist. Sonitpur in a complaint to SPAC on 9th August, 2010 stated that he submitted a written complaint to Shri S.N. Singh, IPS, IGP (NR) against the OC, Rangapara PS as to the involvement of his son in Rangapara PS Case No. 106/2010 u/s 325/379 IPC by the OC who demanded a sum of Rs.10,000/- (Ten thousand), harassing him and his son. Finding any other way his son gave rupees five thousand in cash to the OC.

His son was not involved in the case, the complainant asserted. The OC was having close nexus with local wine shops, persons connected with running of illegal gambling dens and other illegal activities to the detriment of local area and its environment. The complainant brought allegation against the OC, A.K. Azad to the notice of the Deputy Commissioner and Superintendent of Police of Sonitpur District. The DC asked the SP, Sonitpur to enquire into the

matter and submit report. The complainant also brought allegation against the DY.S.P HQ, Tezpur for humiliating and threatening him at Rangapara PS having called him there.

On perusal of the allegation, the Commission called for a report from the SP, Sonitpur. The SP, Sonitpur reported that the allegation made against Shri A.K. Azad, OC, Rangapara PS had no basis; hence not substantiated. However, the SP directed the OC, Rangapara PS for conducting raids over the illegal liquor and gambling dens and bring the culprits to book and the outcome of the raids be reported to him.

Regarding the allegation as to the payment of bribe to the OC, the Dy.SP, HQ made an enquiry into the matter and found no proof of it. SP Sonitpur made an enquiry by himself as to the allegation against the Dy SP HQ. and the O/C Rangapara and found no substance in it “**but he warned the O/C and staff of Rangapara PS against taking bribe from the public**” after he completed his enquiry at Rangapara PS on 06.12.10. The SP, Sonitpur in his report also stated that the complainant was a listed person in the VCNB entry Pt. IV having criminal background. Police report further alleged that the complainant was in the habit of collecting money in the name of police officers for the Police Station and when somebody opposed in his activities he is used to lodge false allegations against the person in different forum.

The SP's report should have dwelt more upon the investigation of Rangapara PS case no. 106/2010 u/s 325/379 IPC, instead of aiming at finding of holes in the character and conduct of the complainant. Sadly the case has been returned in FR as true of offence u/s 325 for theft of Rupees three thousand five hundred as complained by the complainant Shri Topno who was accosted by a handyman of the vehicle owned by Kuldip Singh and driven by his son Jagjit Singh. It was in the interest of investigation of the case, the I.O./OC of the Police Station should have issued notice u/s 160/41(A) Cr.PC (notice of appearance before police officer) to Kuldip Singh. The police are not empowered to call a person to the Police Station whimsically. It is unfortunate that the case has been returned in FR as the true having failed to apprehend the offender handyman simply because the driver of the vehicle feigned ignorance of the handyman whom he had employed. The Flip of the case returned in FR cast a gloomy suspicion of the O/C being silenced by the driver. The Commission views with surprise as to how the driver could escape from his liability from driving the vehicle in rash and negligent manner U/S. 279/IPC. But the report of the SP has seemingly overlooked the investigation of the case with a view to safeguard the O/C against whom the complainant Kuldip Singh approached the senior most police officer of the area Sri. S.N. Singh IPS. The case no 106/2010 of Rangapara PS having been returned in FR, as true, with the investigation of the case restricted at the police station itself except the first diary of the PO visit closed without the least effort to trace the offender is itself a strong evidence for making the O/C liable for black mailing the complainant

and his son and extorting the money and then closed the investigation. The senior police officers of the district have overlooked the perfunctory registration and investigation of the case. Dr. Abdul Quadir Arief, Dy SP (HQ) has ridiculed the very locus standi and the procedures to be followed by police by asking the complainant as to whether he has audio visual proof against the O/C, Rangapara PS of taking bribe pushing, the onus of proof on the complainant. This stand of the Dy.S.P. is seemingly extravagant and perse unprofessional. It is out and out an unbecoming conduct of police personnel – which brings disreputation to the department. Both the SP and the Dy.SP (HQ) have failed to make good the damage to the investigation of case registered on 25.06.10 and returned in FR on 30.06.10 as true. When thousands of cases are pending for investigation, for years together, not months, what has made the O/C Rangapara to return a case in FR true within six days? The Commission is not enthusiastic to look at the inner story of the case. But the Commission is constrained to have looked into the investigation of the case and finds that the Dy.SP (HQ), Dr. A.Q. Arief , APS is blameable of protecting the O/C at the cost of the case. The Dy.SP deserves to be pulled up in an exemplar, to prevent him and like personnel from working in arbitrary and unprofessional fashion. Likewise, the SP, Sonitpur needs to be awakening him about his role to be played as a leader of the District.

In the set of circumstances, the Commission feels it appropriate to advise the DGP to initiate departmental action against the concerned OC as well as against the Dy.SP (HQ) as per law. The DGP may accordingly 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.

Sd/-
CHAIRMAN

Sd/-
MEMBER

SPAC Case No.49/2010

Shri Kuldip Singh of Rangapara, Dist. Sonitpur
Vs

OC, Rangapara Police Station, Dist. Sonitpur

ORDER

Date-22.05.2013

The Commission Perused the communication dated 7th May, 2013 of the Assam Police HQ presenting the department's view and additional facts if any as required in terms of section 82 of the Assam Police Act, 2007 along with the report of the Spl. SP CID dated 18.04.2013.

The Commission has perused the same and found it to be appalling. The Commission is pained to note as to the unprofessional approach of the authority concerned. On the own showing of the authorities including that of the Director General of Police the case was returned in FR as "the case is true but evidence insufficient". The authority obviously failed to find the error in accepting the report of the investigating authority without probing into the matter. It is the duty and responsibility of the investigating agency to gather and collate evidence. The informant is not supposed to provide materials on a Platter. It is not the only case, almost in all the cases we are faced with the same situation returning case in FR as "case true but evidence insufficient". What is the use of investigating agency if they cannot probe deep into the matter? We have come across cases where it is found that the investigating agency do not look things in a proper perspective, these points are obviously not taken note of at the grass root level so also by the supervising agencies. Such act undoubtedly has affected the credibility of the police as an institution and brought down reputation of the institution as well. The observation to the effect that "Dr. Abdul Quadir Arief, Deputy Superintendent of Police (HQ) Sonitpur should not have put onus of proof on the complainant by asking the complainant whether he had audio visual proof against the then OC, Rangapara, PS SI Abul Kalam Azad regarding receipt of Rs. 5000.00 as bribe. Dr. Abdul Quadir Arief had no malafide intention in asking so and he did this only for the interest of the enquiry" is indeed amusing, if not facetious. The Police HQ copiously dittoed the observation of the Spl. SP, CID, Assam. The extract of the report of the Spl. SP, CID reads as follows:

"That Dr. Abdul Quadir Arief should not have put onus of proof on the complainant by asking the complainant as to whether he has audio visual proof against the then OC i.e. Abul Kalam Azad of receipt of Rs. 5000.00 as bribe. However, while spoken, Dr. Abdul Quadir Arief stated that he had no any malafide intention in asking so but he did it for the interest of enquiry and to proof (sic) the allegation or otherwise"

What was the basis of the authority holding act of the DySP as bonafide and the same was done for the interest of the enquiry? It is out and out an irresponsible and uncalled for remark of an officer who was entrusted with the solemn duty to enquire into the conduct of the OC, Rangapara PS. As a supervisor the DySP was equally needed to look into the fact situation, materials on record and the surrounding circumstances. The stand taken by the DySP cannot absolve him from his obvious lapses. It is a case of withdrawal of responsibility of a professional, instead of duly applying its mind in a fair, impartial and professional fashion. The report received from the Police

Headquarters including the report of Spl. SP, CID is found to be unsatisfactory. Subject to the observation made above our earlier orders are made absolute and the authority concerned is advised to initiate DP against the OC as well as the Dy.SP (HQ). The concerned authority is advised to keep the Commission informed from time to time as to the actions taken. With this the proceeding stands closed.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No.52/2010

Shri Tapan Chakraborty
Vs
Haiborgaon Police Out Post, Nagaon

ORDER

Date-20.03.2013

It is a case where Police Department faltered in taking right action as per law; instead the police resorted to partisan, biased and discriminatory way that too in a case of abduction of a young girl when she went to attend the music class.

The complainant Shri Tapan Chakraborty lodged an ejahar at Haiborgaon PS on 8.12.2010 at 13.35 AM to the effect that his niece went on missing since 11.00 AM on 07.12.10 when she went to attend her dance class. It was also alleged that he received a telephonic call from Mobile phone No. 9706470138 that she would come home. The police registered the case vide Nagaon PS Case No. 2071/10 u/s 366 IPC. The complainant alleged that the I.O. SI. Pradip Kr. Baruah, i/c of Haiborgaon PS did not take appropriate action in the investigation of the case. In course of time the Commission called for report from the SP, Nagaon. The SP's report indicated about the lodging of FIR informing about the incident on the same day. The report also indicated that Miss Priyanka rang up to her home from the mobile phone belonging to Biswajit Roy and the complainant suspected that Biswajit Roy kidnapped the girl.

On our asking vide the second report, the SP, Nagaon informed that the I.O. of the case No. 2071/10 made eleven attempts beginning from 8.12.10 till

22.5.11 to arrest the accused. It also informed that they made attempt to collect photographs of the accused for publication in CIG and P&A on 15.3.11, 11.4.11 and 22.5.11. This was reported in response to the Commission's correspondence dtd. 22.8.2012 and assurance was given by the successor SP Shri R. Singh, IPS, Nagaon on 3.9.12 that all steps have already been taken and assured that full scale measure would be taken to apprehend the accused Biswajit Roy.

From the materials made available to us reveals that the Nagaon PS case No. 2071/10 was registered, where Shri Biswajit Roy was arraigned as an accused in the FIR which was registered as Nagaon PS Case No. 2071/10.

Materials on record also indicated that the girl called from the mobile phone No. 9706470138 informing that she would come back on the same day at 7.00 PM. The said mobile phone was made use of by Biswajit Roy. The said mobile phone belongs to one Ajoy Ch. Das. The kidnapped girl was dropped from the car No. AS02B6375, admittedly owned by Haripada Roy, father of Biswajit Roy. Incidentally Haripada Roy was the then ADC of Nagaon. The kidnapped girl was sent for medical examination as well as for recording her statement u/s 164 Cr.PC on 9.12.10 by SI P.K. Baruah the IO of the case No. 2071/10. The statement was recorded on 10/12/2010 by a Judicial Magistrate. In her statement u/s 164 Cr.PC the kidnapped girl disclosed that she was shown a pistol and kidnapped at gun point. Both the parents namely Haripada Roy, father and mother of Biswajit Roy intimidated the kidnapped girl not to involve their son in the kidnap case and further told her not to come back home at Nagaon. Phone No. 9954064357 belonging to Haripada Roy and Phone No. 9706470138 used by Biswajit Roy belonging to Ajoy Ch. Das were material evidence in the case. Curiously the Nagaon police made no attempt to explore the clue of the incriminating materials. Seemingly, it was a move to protect the absconding prime accused Biswajit Roy in the investigation process by the investigator SI P.K. Baruah. Even he did not address himself into the source of the fire arms used in the kidnapping, revealed in her statement u/s 164 Cr.PC.

The charge sheet was submitted u/s 366A IPC but the investigation called for evidences on the conspiracies hatched by the parents of the accused and owner of the mobile phone in the crime of kidnapping at pistol point. In all fairness, had the case been properly and fairly investigated, the charge sheet ought to have been contained offences under the Arms Act read with Sections 120B/325 IPC, in addition to section 366A IPC.

The materials on record made us to believe that it is a case of casual and perfunctory investigation and obviously to shield the senior administrative officer of the district in disobeying the law with intent to save him and his wife from punishment. The vehicle involved in the kidnap was seized, not in the case but in a counter case having registered against the complainant Shri Tapan Chakraborty vide Nagaon PS Case No. 2084/2010. The car with registration No. AS02B6375 is owned by Shri Hari Pada Roy and used in the kidnap of Ms

Priyanka Chakraborty but the car was not seized in the case. The source of the fire arms used for threatening the kidnapped girl has not been investigated making a mockery of investigation and thereby the IO made an incorrect police record or write-up with seemingly to save Shri H.P. Roy from punishment. The complainant Shri Tapan Chakraborty and four others were promptly arrested by police on the ground that they were the main accused in the FIR on the very day itself of the registration of the case but Biswajit Roy who was also named accused in the Case No. 2071/2010 was not arrested for the reasons known to them. Biswajit Roy had a good address and it could have been easily traced out and arrested by the police if they had the intention to do it. Whole move was to protect and safeguard the accused party Shri Biswajit Roy and the persons who were associated with the crime.

On 9th December, 2010 the same Biswajit Roy returned home and the car he used in the kidnap was parked inside the ADC's residence and SI Bora and ASI R. Saikia with a CRPF contingent were dispatched to the residence of Biswajit Roy at 8.40 PM on 9.12.2010 as per GDE No. 3699. But before anything could be done by the investigating team led by SI Bora and ASI R. Saikia SI Pradip Kr. Baruah, I/C, Haiborgaon TOP left for the residence of ADC, Haripada Roy at Teliapatty having received a phone call to the effect that about 40/50 persons forcibly entered the residence of Shri H.P. Roy and damaged his Govt. Vehicle and other properties. This is indicative of highly perfunctory investigation in the case of the kidnap.

This is entirely an upshot of the partisan nature of the investigation. The police were totally oblivious of kidnapping of a girl at gun point and no action was taken, instead attempts were made to save the accused persons by the police. Obviously the police were squarely blamable for the sluggish action and disobeying the rule of law. However, instead of looking into the proper perspective, police immediately arrested Tapan Chakraborty and four others of the locality. If similar prompt action in the investigation of the kidnapping case could have done, it would not happen.

The then SP, Nagaon supervised police action dealing with vandalism at the residence of Haripada Roy, the ADC of Nagaon district directing SI P.K. Baruah to arrest all named accused in the FIR of case No. 2084/10 obviously a biased attitude of the district police when he failed to effect the arrest of the son of the ADC, who was involved in the kidnap, threat and intimidation to a girl by his son. We have not discerned any effective steps that was taken by the then SP Nitul Gogoi. How such an accused could run away to avoid arrest and seizure of the vehicle is itself amusing. The action of the police did not indicate any discernible measure as to prevent the damage of the car and household by the police. His report did not indicate as to why the car used in the kidnapping was not seized and the steps to trace out the source of fire arm and take up the investigation for kidnapping. Such dereliction and negligence of the police brings disrepute to the police organization. The police failed to adhere to the

provision of the APM Rule 36 of Pt. II Rule 8,9,11 of Part V due to which the concerned Circle Inspector of Nagaon PS Inspector Sasadhar Pasani himself ordered disposal of the Case No. 2071/10 instead of the order being passed by the SP, Nagaon on the final progress report of the Circle Inspector. It is a serious deviation overlooked by the SP and needs to be brought to the notice of the DGP and Govt. for necessary remedial action. We hope and trust the Police HQ will take such thing seriously.

The view expressed is of exploratory nature. We felt it appropriate to express our deep sense of resentment in a matter which dwelt with one serious inroad in a case in liberty and dignity of young woman. Mere registration of information does not give to an end. Information to the police also involves investigation of a case in a just and fair manner so that justice is done. In examining a complaint on the face of the situation indicated above, which reveals serious lapses on the part of the police left to ourselves would have done for re-investigation of the matter and fix responsibility upon the person concerned and also would have ordered for criminal prosecution as well as DP against the erring officials.

All things considered we are of the opinion that the entire matter need to be looked into by the police who is in charge of overall direction and supervision of the case. We felt it awkward as to why the vehicle in which a young girl kidnapped was not seized. We also could not fathom the reason for non recording the statement of witnesses as to the use of fire arm by the accused in kidnapping the girl. Likewise we could not appreciate as to why the police did not collect CDR of phone Nos.9954064357 and 9706470138 used by the accused. There is no discernible reason as to why the police also did not look into the conspiracy while addressing the complaint. The sloppy nature of investigation is indeed a matter of grave concern.

Considering all the aspects of the matter, the Police Chief is directed for proper investigation of the matter and take appropriate measure for remedying the situation keeping in mind the observation made by us. To leave the matter to the Director General of Police for causing a thorough probe into the whole matter and take appropriate remedial measure to book the guilty person according to law.

We hope and trust that the concerned authority will undoubtedly take all the necessary steps by rendering justice and bringing accountability and making the police force professionally organised, service oriented and accountable to law. The Police Chief while causing a probe into the issue of re-investigating the matter under the direct supervision of a senior officer to investigate the matter may be through an officer of Inspector level to instill confidence in the matter. The authority may take aid of senior officers in the matter of investigation should be supervised by Superintendent of Police directly, which would aid to the confidence to the police action. We have already indicated the failure to arrest of the accused for long in this case is a matter of concern.

We hope and trust all these events should have been rightly addressed by now by all those who are responsible for managing the affair. Subject to observations made above, we close this matter expecting that the authority will take appropriate measure as per law as far as possible preferably within a month of receipt of this order.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No. 53/2012
Mrs. Himani Baruah w/o Sri Girin Baruah, vill- Bihdia
Vs
OC, Baihata Chariali Police Station, Dist. Kamrup ®

ORDER

Date-29.01.2013

Perused the complaint and the report received from the Superintendent of Police, Kamrup (R). It is a matter of non-registration of FIR. The police report clearly indicates the lapses on the part of the OC, Baihata Chariali Police Station for not registering the complaint at the appropriate time. It is a clear breach of section 154 of the Cr.PC.

It appears from the record that action has already been initiated against the SI Balabhadra Patgiri, OC, Baihata Chariali PS. We are not inclined to proceed further. The concerned authority is however, directed to keep the Commission abreast with the action taken against the concerned officer.

The Superintendent of Police, Kamrup ® is also advised to furnish the Commission with the statement of allegations along with the charges. With this the proceeding stands closed for the time being.

Sd/-
CHAIRMAN

Sd/-
MEMBER

SPAC Case No. 62/2012
Smti. Puja Devi D/O Shri Santa Raj Chouhan
Vs
OC, Hojai Police Station, Dist. Nagaon

ORDER

Date-29.01.2013

Perused the complaint as well as the report of the Superintendent of Police, Nagaon. The materials on record clearly spelt out that the concerned OC of Hojai Police Station committed dereliction of duty in failing to register the FIR without lawful reason as required under Section 154 of the Cr. PC. Subsequent registration of the case at the intervention of Superintendent of Police, Nagaon will not exonerate him. The Superintendent of Police, Nagaon is now to take appropriate measure against the OC, Hojai PS and inform the Commission. The proceeding stands closed.

Sd/-
CHAIRMAN

Sd/-
MEMBER

SPAC Case No. 24/2012
Smti. Meghali Rajput
Vs
OC Dispur Police Station & I.O. Dy.SP, Dispur Divn.

ORDER

Date-04.02.2013

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.

Sd/-
CHAIRMAN

Sd/-
MEMBER

SPAC Suo-Motu Case No. 41/2010
**Suo-Motu Case against Shri M.C. Sarmah, APS, Superintendent of
Police, Hailakandi district**

ORDER

Date- 07.03.2013

The State Police Accountability Commission has registered a Suo-Motu case on a news report captioned "S.Pr Marat Garisalakor Mrityu" (death of a driver due to the beating of S.P) published in the "Asomiya Pratidin" dated 15/09/2010. The news in brief was to the effect that Shri Mahesh Chand Sarma, S.P Hailakandi along with his security personnel beat up one Nur Ahmed, a car

driver and pushed him to water after he fell down having been beaten which resulted in death for not using dipper of the headlight of the car that the driver drove (Car No. AS-11-9494) at about 8:30 P.M on 13/09/2010 at Bakrihaor on Panchgram- Hailakandi N.H. Way 154. Flood waters swept the unconscious driver and his dead body was recovered on the following day near the place of occurrence. The neighbouring public became agitated and did not allow police to remove the dead body at the first instance. Later on, the district authority intervened and the public relented with demand to arrest Shri M.C Sarma, APS, S.P, Hailakandi. A serious law and order situation prevailed due to the incident of death of the car driver on 14/09/2010 at Hailakandi District HQ. The news report also referred to the police version of the incident where it was asserted that the car driver died due to drowning while running car to avoid the police when asked to stop his car by the Supdt. of Police. But the public was not convinced with the police version and demanded urgent action against the S.P.

The Commission having registered the case Suo-Motu on the above news report asked for a report from the Police; engaged its own investigation agency, which examined the then O/C, C.I, S.I, the relevant entries in the G.D examining witnesses, escort personnel, the constable bringing the car to Algapur P.S, seizure of the car, use of MCD/SCD in course of investigation of the SPAC Case No 41/2010.

The Police Report as received from the Supdt. of Police, Hailakandi, the DIG (SR) Silchar have revealed that – the driver of the car No. AS-11-9494 Fakrul Islam Mazumdar, a resident of Hailakandi town fled having stopped his car with occupants at Bakrihaor on National High Way 154 on 13/10/2010 sometimes before 7:30 P.M when the then S.P Shri Mahesh Chand Sharma, APS, Hailakandi directed his accompanying Police Personnel to signal the car to stop and when not obeyed the signal, the car was chased by escort personnel in vehicle. The abandoned car with occupants were taken to Algapur Police Station at 7:30 P.M; seized the car and examined the occupants U/S 161 CrPC and then allowed them to go. The dead body of driver Fakrul Islam Mazumdar was seen at road side in water the following day (14/10/2010) from the place where reportedly he fled to escape from police.

A case was registered on receipt of a written ejahar from the father of the deceased on 16/10/2010 against Shri M.C Sharma APS and his security personnel. This refers to Case No. 230/2010 U/S 302/34 IPC of Algapur P.S of Hailakandi District. The case has been returned in FR vide FR No. 14 dated 20/03/2011.

The First and the Final Progress Report of the case as submitted by the then C.I Ashim Kr. Dey suggesting FR has contradicted the versions of M.C Sharma and his security personnel as to the time of the car sighted, signalled, chased and found without the driver. The P.R indicates the time between 8 and 8-30 P.M and it happened while the driver did not respond to the dipper to pass the car of the S.P coming from Panchgram side to Hailakandi. Yet the

investigation did not address it and without it, the Progress Report hurriedly has agreed the out-come of the investigation as no offence against the FIR named accused and his associate security personnel in the case.

Commission's own investigation reveals that the place where the car halted is on the N.H Way 154 Bakrihaor flooded both sides leaving no escaping option except the N.H. Way itself. At the point of time, both ends of the road centering the P.O in its proximity were manned by police. Nayak Anamuddin Laskar with his 6/7 personnel were on the south while the S.P and his personnel on the north. Under the given circumstances, the driver could have escaped from the police. Alternatively, he would have to escape to the high flooding waters of Bakrihaor on either of the sides which mean he has gone to the deep sea of waters to die.

Examination of Nayak Anamuddin discloses that the S.P's movement timings are different than stated by him and his personnel in the particular evening across Bakrihaor. The Nayak ruled out any searches made to trace the driver by police except asking him to hand over the car with occupants to Algapur P.S. He took over the car from a security personnel while it was being driven by one of the occupants and sent as per one UB Constable to the police station.

Our investigation reveals further that both the reports of the Senior Officers overlooked pertinent legal procedures which ought to have been followed usually: these are **(i)** Registration of a UD Case soon after the dead body was recovered and taken investigative actions citing the UD Case number.

- (ii)** Non-registration of a case against the driver of Car No. AS-11-9494 for disobeying police signal, rash and negligent driving etc. and seized the car with reference to a General Diary Entry under the given situation which precludes accident. The car was allowed to be taken from the P.S having no reference to police records.
- (iii)** O.C Algapur P.S, SI F.R. Barlaskar left the P.S within 5 minutes after he reportedly receiving a phone call from the S.P who happened to talk to him personally and came back after a considerable time with two auto-rickshaws and devoting his action on the two autos being completely nonchalant and inattentive to the case of the car and occupants brought to the P.S as per the direction of the S.P.
- (iv)** S.P, M.C Sharma in his examination stated that the legal action regarding the car driver disobeying signal, in rash and negligent manner was left to the O/C Algapur P.S. But the O/C wrapped up the action, which the S.P had failed to ensure and left at the whims of his subordinate giving rise to colluding nexus of inaction and indulgence to the breach of rule of law consciously.
- (v)** Post Mortem Report as a means to explore the medico-legal evidences for ascertaining the circumstances to collate and collect evidences under which the deceased died not made use of in the prosecution of the case.

In the set of circumstances, the Commission is of the view that the Algapur P.S Case No. 230/10 U/S 302/34 IPC, which was returned in FR but not accepted by the learned Court, should be re-investigated under supervision of an officer of the rank of DIGP looking into, among others, the doubts that have shrouded the circumstances leading to the allegation of torture and death of the driver Fakrul Islam Mazumdar as complained by his father in the ejahar and findings as above enumerated i, ii, iii, iv, v.

The Commission may be posted with the progress of investigation till its logical conclusion.

The Suo-motu case is disposed.

Sd/-=
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No. 27/2013
Mustt Khursid Begum Ahmed
-Versus-
OC, Nagaon Police Station, Dist. Nagaon

O R D E R

Date-08.07.2013

A complaint was received from Smt Khursid Begum Ahmed by the Commission expressing dissatisfaction on the police performance.

A report was called for, from the Supdt of Police, Nagaon. The SP submitted a detailed report. The Commission examined the report and found that the District Police took appropriate steps in prosecuting the case. We have also been informed that FF is likely to be submitted forthwith. The police has taken the appropriate measure, we do not find any justification to proceed with the matter. The proceeding stands closed. The District Police is advised to intimate further development of the proceedings to the Commission.

A copy of the order may also be sent to the complainant.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No.29/2013
Md. Elius Khan of Dibrugarh

Vs

OC, Dibrugarh Police Station, Dist. Dibrugarh

ORDER

Date-24.05.2013

The complaint is duly numbered and registered. On consideration of the materials on record and SP's report it is found that the OC concerned has registered the case vide Dibrugarh PS case No. 462/13 u/s 468/474/34 IPC. Under the circumstances there is no necessity to pursue the matter. The case stands closed.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No.20/2011

Shri Gautam Deka

-Versus-

OC, Fatasil Ambari Police Station

ORDER

Date:19.08.2013

The complaint is basically against unlawful arrest of the complainant by the Fatasil Ambari Police Station. The complainant narrated that on 20.04.2011 he was first brought to the police station, kept there in detention for long and thereafter he was arrested at the behest of the informant one Sushila Devi Sarma. He also alleged demand of illegal gratification by the O/C of the police station from his wife to favour him in the criminal offence. The complainant also alleged that a top level police officer also used his influence upon the O/C for his arrest.

We called for the report and enquired the matter. We also perused the records furnished by the authority.

On consideration of the matter, we found that the arrest of the complainant on 20.04.2011 itself was unjustified. This aspect of the matter was,

however, also pointed by the then SSP in his report. Since a criminal case is pending before the Court, we do not like to make any comments on the merits of the case.

Section 41 of the CrPC confers a very wide powers in order that police may act swiftly for the prevention and detention of cognizable offences without the formality and delay of having to reach Magistrate for order of the arrest. Description is wide, so also is the responsibility. The police officer must act cautiously with circumspection. To arrest persons without just cause is a serious encroachments upon the liberty of an individual. The police should act on the assumption that their prima-facie suspicion may turn to be ill-founded. (*Dumbell v Roberts* (1994) 1 All. ER 326 C.A). Arrests are not to be made in as routine manner - *“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 the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person..... Denying a person of his liberty is a serious matterA person is not liable to be arrested merely on the suspicion of complicity in an offence. There must be some justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences an arrest must be avoided if a police officer issues notices to person to attend the station house and not to leave the station house without permission would do.”* – *Joginder Kumar Vs State of UP & Ors* : (1994) 4 SCC 260. In pursuance to the above decision, the Police HQ, as far back as on 25th April, 1997 also issued guidelines vide IGP(CID) Memo No. CID XI/I-93/338. The guidelines observed that no arrest can be made in a routine manner with a mere allegation of commission of offence. There must be some reasonable justifications and necessity to arrest that person. Except on heinous offences, arrest must be avoided. The Commission also deprecates the hasty arrest in number of cases decided by it including one such case ordered by this Commission dated 07.01.2013 in SPAC Case No. SPAC/C/33/2012 : *Aditya Mundhra Vs SI Chitta Ranjan Buragohain*. We urge upon the Director General of Police to issue fresh directives calling upon all concerned to take appropriate measure as per law. The Officers-in-Charge, I.Os. are also to be instructed the requirement of recording the reasons for the arrest in the General Diaries, Case Diaries as well as in the arrest memo failing which the same shall be treated as misconduct.

Materials on record also did not indicate as to the necessity of the arrest of the person in this case. On the other hand, the report of the SP dated 05th August, 2011 rather indicated that it was a hasty action on the part of the I.O. On consideration of all aspects of the matter, we find that the then O/C of Fatasil Ambari PS Inspector Utpal Kumar Das was not justified in arresting the complainant. In order to bring accountability, we find it is a fit case for initiating a Departmental Proceeding against the erring police officer. The other

allegations of the complainant to the effect of demand of illegal gratification of the O/C from the wife of the complainant as well as involvement of a top police official for his arrest are not proved.

In the set of circumstances, the DGP is afforded an opportunity to present the department's view and additional facts, if any, not already in the notice of the Commission within 3(three) weeks from the receipt of this order.

Sd/-
CHAIRMAN

Sd/
MEMBER

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No.20/2011

Shri Gautam Deka

-Versus-

OC, Fatasil Ambari Police Station

ORDER

Date-27.09.2013

1. On completion of inquiry pertaining to unlawful arrest of complainant Gautam Deka by the Fatasil Ambari police, the Commission communicated its findings to the appropriate authority under proviso one of Section 82 of the AP Act. By our order dated 19.08.2013, we held that the action of the police personnel, namely, O/C Fatasil Ambari PS to be unlawful and unjustified on consideration of all aspects of the matter. In order to bring accountability, the Commission found it a fit case for initiating Departmental Proceeding against the erring police official. The Commission, therefore, considered it appropriate to advise the authority to initiate such measure.

2. By communication vide letter No. SPAC/APHQRs/20/2011/22 dated 21.09.2013, the Police Headquarters conveys the department's view agreeing with the decision of the Commission.

3. In the set of circumstances, the order passed by the Commission dated 19.08.2013 is made absolute. The Police Headquarters is advised to intimate about the progress of the matter from time to time. The proceeding thus stands closed.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No.37/2010

Shri Anil Kumar Agarwal

Vs

Panbazar Police Station

ORDERDate -17.04.2013

The complaint is relating to serious misconduct of police for non-registration of FIR by the Panbazar Police Station. The complainant alleged police partiality in registering the complaints.

The complainant inter alia alleged that on 04.11.2007 he lodged FIR before the OC of Panbazar Police Station complaining about the trespass and use of force to throw out his guards from the rightful possession of land by his brother Sushil Agarwal and Manoj Agarwal. The complainant alleged that despite repeated information lodged to Panbazar Police Station, the police failed to register the case and arrest the culprits. The complainant also alleged that a telephone call was received from a police officer namely Tiken Chandra Das of Panbazar PS at late hours, who advised his wife Navaneeta Agarwal to report before the Police Station. It is also alleged that the complainant refused to report at Thana at night. ASI Tiken Ch. Das arrested his wife Navaneeta Agarwal in Panbazar PS Case No. 412/07 u/s 341/323/34 IPC. According to the complainant it was a cooked up complaint but despite all these the police charge sheeted them and forwarded the case to the court that too when he was bed ridden due to his ailment.

The Commission called for a factual report from the SSP (City) vide communication dated 02.09.2010. The Commission received the report from the SSP (City) on 3.12.2010 wherein he stated that the possession of the land in question was handed over by Civil Nazir on 11.10.2007 and for maintaining law and order on the eviction on 11.10.2007, ASI T.C. Das was detailed from Panbazar PS during the process of handing over and taking over the disputed land in question by Civil Nazir. SSP's report also revealed that on 20.10.2007 Shri Anil Agarwal informed the OC, Panbazar PS after taking over the land for engaging of security guard on his plot of the land and issuing authority for entry to authorized persons only. He also requested Panbazar PS for deputing police personnel to protect the land as is revealed from the GDE No. 809 dtd. 20.10.2007 of Panbazar PS. The report also indicated that on the FIR submitted by Smt. Navaneeta Agarwal, the wife of the complainant on 4.11.2007 at 7.45 PM at Panbazar PS, Case No. 413/07 u/s 447/506/34 IPC was registered against Sri Promod Pandey, an employee of Sushil Agarwal for trespassing. The case was returned in FR vide FR No. 164/2009 with the assessment of insufficient evidence against the accused person.

The Commission issued notice to SI Hari Charan Kalit and ASI T.C. Das. The Commission also heard SI H.C. Kalita and ASI T.C. Das in person. ASI T.C. Das was promoted to the rank of SI and he was detailed as I/C Rani OP. He stated that he was posted in Panbazar Police Station for the period from 2006 to 2008 as ASI of Police. On 11.10.07 he was accompanied by Munsiff/staff of Civil Court as per order of the OC, Panbazar PS in connection with an eviction to be carried out over a plot of land under jurisdiction of Panbazar PS. This refers to Panbazar PS GDE No. 463 dtd. 11.10.07 and returned after execution of law and order duty vide GDE No. 465 dtd. 11.10.07. On 03.11.07 OC Panbazar PS registered case No. 411/07 u/s 411/506/34 IPC on the FIR received from Sushil Agarwal and endorsed the case to him. He took steps accordingly and handed over the case diary to OC Panbazar PS for further action to complete the case. On 4.11.07 Satish Kumar Deb Nath lodged FIR at Panbazar PS and the police case bearing No. 412/2007 u/s 341/323/34 IPC was registered and was endorsed to him for investigation. In course of investigation he informed FIR named accused Nabaneeta Agarwal at her residence over phone about registration of case in the evening of 3.11.07 and requested for appearing at PS in connection with the case. She came to the PS on the next day i.e. on 4.11.07. He interrogated and released her on bail. He handed over the case diary to OC Panbazar PS for completion of the case.

SI Hari Charan Kalita appeared before the Commission. The commission also examined SI H.C. Kalita who was later on posted as OC Kampur PS for a period from 2006 to 2009. On 4.11.07 Panbazar PS Case No. 413/07 u/s 447/506/34 IPC was entrusted for investigation by OC Panbazar PS. He took up investigation, visited PO, examined witnesses and FIR named accused person. No arrest was effected and it was kept pending for further investigation till 10.02.09 and the CD was handed over to Mahandra Rajkhowa OC Panbazar PS on 10.02.09 on his transfer from Panbazar PS. The reason for keeping of case pending was not explained. Md. Suleman Ali, APS, OC, Panbazar PS, now DySP, CID office was issued notice to appear before the Commission. The then OC Panbazar was promoted to DySP in CID office also appeared before the Commission and he was heard in person. His evidence disclosed that he was promoted from OC Panbazar. While he was OC Panbazar PS he received the case diary No. 413/07 u/s 447/506/34 IPC from SI R.C. Saikia. On his transfer he handed over all these to his successor. He could not recall the date and time of handing over of the CD to R.C. Saikia. On receiving the case diary he perused the same and submitted FF in the form of FR vide Fr No. 169/09 dtd. 11.09.09 as civil dispute and forwarded the case to the court.

In course of examination of the records and the other materials and also SP's report it was revealed that;

1. On 03.11.07 at 10.30 PM Shri Sushil Agarwal s/o Lt.Hari Ram Agarwal lodged FIR against Anil Agarwal and Navaneeta Agarwal and Panbazar PS case No. 411/07 u/s 447/506/34 IPC registered and

after investigation submitted FR vide No. 124 dt. 24.06.08. Initial investigation was done by ASI TikenCh. Das.

2. On 04.11.07 at 4.30 PM Shri Satish Kr. Deb Nath security staff of Kamala Devi Agarwal lodged FIR against Anil Kr. Agarwal and his wife Nabaneeta Agarwal for entering into the land of Kamala Devi Agarwal and beaten him. Panbazar PS Case No. 412/2007 u/s 341/323/34 IPC was registered. ASI T.C. Das took preliminary investigation and the case was charge sheeted vide case No. 67 dt. 21.06.08 against accused Nabaneeta Agarwal.
3. On 04.11.07 at 7.45 PM Nabaneeta Agarwal lodged FIR and PS Case No. 413/07 u/s 447/506/34 IPC was registered against promod Pandey working under Sushil Agarwal. The case returned in FR vide no. 164/09 dt. 11.09.09 as true but insufficient evidences could be discerned against the accused person.
4. On 08.04.2010 Anil Agarwal lodged complaint before the OC Panbazar PS but the case was not registered. GD Entry was made vide No. 367 dt. 08.04.2010 and enquired through ASI Upen Sharma but no action was initiated as reflected.
5. Complainant Anil Agarwal lodged FIR before the OC Panbazar PS on 04.11.2007 alleging Commission of trespass, intimidation and case No. 213/2007 u/s 447/506/34 IPC was registered. It seems that police approached in a very casual fashion.

The investigation was seemingly perfunctory and accordingly the FR was rejected by the court. The criminal justice system received a set back because of such faulty investigation.

The complainant Anil Agarwal lodged FIR on 08.04.2010 before the OC, Panbazar PS but the complaint was entered into GDE vide No. 367 dt. 08.04.2010 and enquired through ASI Upen Sharma. No case was registered by OC Panbazar PS on receiving the FIR from the complainant. It amounted to serious misconduct u/s 78.1.(g) of the Assam Police Act, 2007.

Materials on record clearly indicated that the police personnel in question failed to provide impartial police service for safeguarding the interest of the people. Materials on record further clearly pointed to the lapses of the police personnel. We are of the considered view that the concerned officials are to be reprimanded and made accountable to law and also should be appropriately punished for dereliction of duty and for negligent conduct. The officers namely IO H.C. Kalita, SI R.C. Saikia and the then OC Panbazar Police Station Md. Suleman Ali are required to be punished departmentally.

Subject to the observation and direction made above, the Commission would like to direct the DGP for initiating appropriate measure as per law. The Director General of Police of the State is advised to present the Department's

view and additional facts, if any not already in the notice of the Commission within four weeks of the receipt of the order before finalization of the case.

Sd/-
CHAIRMAN

Sd/-
MEMBER

SPAC Case No.37/2010
Shri Anil Kumar Agarwal
-Versus-
Panbazar Police Station

ORDER

Date-13.09.2013

1. Perused the communication from the Assam Police Headquarters vide bearing letter No. SPAC/APHQRs/37/2010/25 dated 07th August, 2013.
2. The Police Headquarters, instead of presenting the department's view and additional facts, if any, in terms of the proviso 82 of the AP Act, 2007, forwarded the following assertions :-

“(1) The Hon’ble Commission has charged Md. Suleman Ali, APS, Deputy Supdt. of Police, CID, Assam, the then O/C Panbazar PS for non- registration of FIR submitted by Sri Anil Kumar Agarwal on 08/04/2010. The complaint petition submitted by Sri Anil Agarwal was duly received at Panbazar PS on that day at 5.45 pm vide Panbazar PS GD Entry No. 364 dated 8-04-2010 and endorsed to ASI Upen Sharma for causing enquiry. Md. Suleman Ali, the then O/C Panbazar PS availed 3(three) days Casual Leave vide GD Entry No. 358(ka) dated 08-04-2010 at 3:00 P.M. and resumed his duty on 12/04/2010 vide GD Entry No. 515 dated 2/4/10 at 12:15 PM.....

(2) The dispute is among the family members and no outsiders are involved in this case. Shri Manoj Agarwal and Shri Sushil Agarwal are younger brothers of Shri Anil Agarwal and the dispute is over a plot of land measuring 7.22 Ares covered by Dag No.158 Patta No. 181 in village Sahar Guwahati Part IV, Mouza – Ulubari Circle, Guwahati, district – Kamrup. The case is Sub-Judiced in Civil Judge Court vide TS/No. 281/07. Three cases were registered within 21 hours vide Panbazar PS Case No. (1) 411/07 U/S

447/506/34 IPC (2) 412/2007 U/S 341/323/34 IPC (3) 413/2007
U/S 447/506/34 IPC.”

3. In our earlier order dated 17th April, 2013, we found that the Final Report was submitted by Md. Suleman Ali, the then O/C vide FR No. 169/09 dated 11.09.2009 as a civil dispute. The said FR was rejected by the Court. We found that the investigation seemingly was perfunctory and the then O/C without applying his mind to the dispute involved, submitted a Final Report. The officer concerned Md. Suleman Ali, the then O/C, Panbazar PS appeared in person before the Commission. The Commission heard him in person. The officer concerned did not make any whisper about his availing “3(three) days casual leave”. The purported mentioning of “GD Entry No. 358(ka)” is nothing but artifice, an act of artful fabrication to outmanoeuvre our findings and directions. The purported statement is only contrivance for resorting to dubious device. There is no room for devising a sub-entry in the GD. Rule 53 of the Assam Police Manual, Part-V sealed the door of such interpolation and trickery. Before forwarding such imprudent note, had the APHQ consulted the rules and procedures and its own directives issued as far back as in April 1965, the APHQ would not have committed the faux pas.

4. We, therefore, directed the Police Headquarters to initiate departmental proceeding against I.O. H.C. Kalita, SI R.C. Saikia as well as the then O/C Panbazar PS Md. Suleman Ali on the strength of our findings of misconduct based on factual matrix. As to the second part of Police Headquarters’ assertion to the effect that the dispute of the family members has no relevance in the proceeding, we are, here, concerned about the lapses and serious misconduct of the police. Such considerations are totally irrelevant and not germane to the issues.

5. Subject to the observations made above, the order passed by this Commission on 17.04.2013 is made absolute.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No. 51 /2012

Mrs. Anima Dutta w/o Lt. Akanti Dutta of Kukurasowa, Dist. Sivasagar

Vs

OC, Amguri Police Station, District Sivasagar

ORDER

Date-04.02.2013

The complainant before us is a lady who alleged high handedness of police action, where police came to knock at the residence in the mid night on 18.4.2012. Consequent thereto the police personnel of Amguri Police Station raided her house on 18.4.2012 in search of her son Amarjyoti Dutta, assaulted her, police personnel slapped her, pulled her hair and hit her by the bottom of the rifle's body. She also alleged that the Amguri police personnel showered on her obscene abuses, assaulted her minor son Amarjyoti Dutta and sought to drag him to the police vehicle. She was pushed to the back when she tried to protect her son.

A factual report was called for from the Superintendent of Police, Sivasagar District with the materials on record including the General Diary. It was reported that the OC, Amguri PS registered the case u/s 380 of the IPC on receipt of the written FIR dated 9.4.2012 from one Kamal Gogoi. The FIR inter alia alleged that in the night of 8th April, 2012 his mobile handset was stolen from the bed room. Records reveal that the said FIR was registered on 9th April, 2012 at 4.00 PM.

The report denied of any police excess or that of any illegality committed by the police. The report admittedly did not address the basic issues involved in the case. It also failed to consider a complaint against the police by a citizen in the right perspective. The citizen of a republic submitted a complaint against police excess, which ought to have been given more importance by the authority.

We have looked into the police records. The materials on record unerringly implicate at the police personnel for the assault on human rights. Admittedly the FIR was lodged on the 8th of April, 2012. Police started investigation from 9th April, 2012 itself. No reasons are ascribed nor we could find as to why police was needed to go at the dead of the night to a dwelling house of a lady and give a mid night knock. What was the extraordinary necessity to give a raid at mid night to a citizen that too a woman for recovery of a mobile handset. According to police the accused was a habitual criminal. Why this extraordinary situation was created by the police for investigation by giving a raid at the mid night. The police team along with VDP Secretary, Bimal Gogoi and two villagers Amulya Dutta and Bikash Dutta arrived at the house of Anima Dutta on 18.4.2012 at 11.45 PM and searched the house and recovered the SIM along with mobile handset. All these actions were taken in contravention of the procedures prescribed by law.

The SP in his report asserted that police action was lawful and that the allegation brought against the Amguri Police Station by the complainant was not corroborated by the testimony of independent witness. The report did not categorically deny the allegations of police excess by the complainant. Admittedly the police did not accompany with any search warrant. The search

was mainly done in a hole and corner fashion. Even the police record including that of the GD did not indicate any emergency for making a search at the dead of the night without following the procedure prescribed by law. The Commission is unhappy with the conduct of the district police. We have given our anxious consideration of the matter. It is a case where police committed severe inroad on the privacy of a woman in utter disregard of the law of the land. The SP concerned failed to look into all the aspects of the matter which is not a happy state of affairs. Considering all the aspects of the matter, we direct the Director General of Police to impel SP, Sivasagar to pull-up Shri Deepak Bora, SI of Police and direct the SP to issue appropriate instructions regarding search and seizure to District Police so that such thing does not recur in future. With this the proceeding stands closed.

Sd/-

CHAIRMAN

Sd/-

MEMBER

SPAC Case No. 41/2012

Md Islam Ali of Hajo, Kalitakuchi

Vs

OC , Sualkuchi & Hajo Police Station, Kamrup (R)

ORDER

Date-02.03.2013

The complaint is that on 20.11.2010 the complainant went to the Sualkuchi PS to ascertain as to whether Jiten Deori visited the Police Station where the OC, Sualkuchi PS namely Mukul Das asked him to pay Rs. 1500 (Rupees fifteen hundred) as a price to catch the aforesaid Jiten Deori within a day. Accordingly the complainant paid Rs. 1500 (Rupees fifteen hundred) to the OC and on 21.11.10 the OC caught hold of Jiten Deori and brought him to the Police Station. The complainant was also asked to appear at the Police Station and when he appeared, the OC called for a petition writer, made an agreement with the aforesaid Jiten Deori to return his vehicle within 6.12.10 on refund of Rs. 60,000 (sixty thousand). The complainant executed the agreement with Jiten Deori in presence of the OC, Sualkuchi.

On breach of the aforesaid agreement, the complainant again went to Sualkuchi PS and met the OC as to the fulfillment of the agreement. Then Jiten Deori was immediately produced at the Police Station calling him over mobile phone and forced the complainant to make a new agreement for the said vehicle. At that time the complainant along with Jiten Deori went to Hajo Sub-Registrar's office and executed a new agreement. The complainant made a

request to the OC for recovery of the aforesaid vehicle and in turn the OC advised him to cancel the earlier deed dated 2.8.2010 and the deed was cancelled before the Notary. The complainant lodged another FIR at Hajo PS alleging that Jiten Deori had fraudulently taken his vehicle No. AS01 BC-4172 and had hidden the vehicle. On 15.8.2011 again he went to Hajo PS and on meeting OC, Hajo PS namely Sushil Bhuyan who called one Hara Kanta Khound, SI, Hajo PS and handed over the charge of investigation to him. SI Khound demanded Rs. 50000 (Rupees fifty thousand) for recovery of the vehicle. However, on his request the OC reduced the amount to Rs. 30000 (Rupees thirty thousand) and would register the case after receiving the money and accordingly the complainant mortgaged his landed property measuring seven bighas to one Abedur Rahman, resident of the same village and paid the amount to the OC. Soon after receiving the amount, the case was registered vide case No.232/2011 u/s 420/506 IPC on 24.8.2011.

On 1.10.11 the SI of Hajo PS called him over mobile phone and told him to come to the Police Station and accordingly he went to Hajo PS where the SI offered him Rs. 87,000 (Rupees Eighty seven thousand) only to pay the balance installment of the said vehicle and promised him to hand over the aforesaid vehicle next day on production of money receipt. The SI also induced to execute an agreement dated 1.10.11 by which he admitted that he had received his aforesaid vehicle, but actually he did not receive the vehicle.

For the money he received from the SI to pay to the financier on 7.10.11, he produced the money receipt to OC Hajo PS in presence of the SI Khound and on having received the money receipt by the OC Hajo PS with a soft slap on his back, told him that now the financier will not search for your vehicle; you are free from pending liabilities but now you file an ejahar alleging theft of your vehicle within one month in the same Police Station and you will get Rupees three lakhs from the Insurance Company on police report. The amount will be divided between you and them (police) at the ratio 200000:100000. The complainant submitted that he did not file any false ejahar till date.

On receipt of a complaint, the Commission called for a report from the SP, Kamrup (R). The SP prayed for extension of time for submission of report. However, on examination of the report received on 8.8.2012, it has been observed that the Enquiry Officer Mrinal Deka, APS found lapses on the part of the SI UB Mukul Das, the then OC of Sualkuchi PS. His report discloses that an FIR bearing No. 122/10 from the Hajo Court was received by OC, Sualkuchi PS on 19.11.10

But no case was registered by the OC, hence lapses of non-registration of case after receipt of FIR by the OC, Sualkuchi PS is established.

Secondly, the enquiry report reveals lapses on the part of SI Sushil Bhuyan and SI Hara Kanta Khound of Hajao PS. The Enquiry Officer found that S.Is have committed the legal and procedural lapses as discerned during

his enquiry which occasioned in course of investigation of the Hajo PS Case No. 232/11 u/s 420/506 IPC.

- (1) The FIR submitted by Islam Ali which bears date 14.8.2011. Moreover, Islam Ali and Deepak Rajbongshi who accompanied the complainant to the Hajo PS stated that FIR was lodged on 14.8.2011 and it was registered on 24.8.11, which constitute a serious lapse on the part of the SI Sushil Bhuyan, the then OC of Hajo PS.
- (2) The vehicle in question bearing registration No. AS01 BC-4170 was not recovered during the investigation.
- (3) Both OC and the SI investigating the case had returned the case in FR as mistake of fact on the ground that the deed of agreement between the two contestant parties as executed between them at Kamrup Notary, Hajo stating that the vehicle was returned to the first party i.e Md. Islam Ali and there did not exist any financial liabilities between them. The I.O. did not seize the vehicle, when both the parties came to the PS with the deed of agreement and recognized the compromise contrary to the provisions of Rule 156 of Police Manual Part V.
- (4) Duplicate diaries of the case were not sent to the Addl. C.I. of Police, Hajo except that of case diary No. 1 and 2, thus deprived the Addl. C.I. and other for timely supervision.
- (5) Both these officers disposed the case without approval, though the case was treated as Special Report Case vide SR No. 97/11. The report further indicates that SI Hara Kanta Khound had already gone on retirement and steps are being initiated to revive the investigation of the case and explanations are being sought from the guilty officers for their lapses.

Facts emerged

- (1) The OC, Sualkuchi PS, SI Mukul Das , besides having not registered the FIR as received from the learned court is also guilty of executing agreement between two contending parties arising out of the issues communicated in the FIR. He is also liable for extorting the complainant.
- (2) SI Sushil Bhuyan, the then OC of Hajo PS is guilty of criminal act of non-registering a complaint at the first instance and registered having extorting the complainant after ten days on receipt of the demanded money. Both OC, Sushil Bhuyan and I.O. Hara Kanta Khound of Case No. 232/11 are guilty of returning the case in FR by inducement to the complainant for execution of the agreement to have received the vehicle as returned by the second party, but in fact the complainant received the vehicle in pen and paper, thereby deprived the complainant of his rightful possession of the vehicle. Both of them are liable u/s 418/217/218 IPC besides being conspirators

in cheating the complainant by inducement to manipulate the earlier agreement. They are also liable for departmental proceeding for abuse of rules and procedure in conducting the investigation and recognizing compromise contrary to the rule 156 of APM Part V and not obtaining order from the competent authority to return the case in FR in a bizarre conclusion, manipulation and perfunctory investigation.

The Director General of Police is therefore, advised to submit department's view and additional facts, if any which is not in the notice of the Commission for finalization of its opinion within three weeks from the date of receipt of this order.

Sd/-
CHAIRMAN

Sd/
MEMBER

Sd/-
MEMBER

SPAC Case No. 41 of 2012
Islam Ali, Hajo, Kalitakushi
-Versus-
Officer-in-Charge of Sualkuchi & Hajo Police Station

ORDER

Date-12.06.2013

Perused the communication bearing No.SPAC/APHQRs/41/2012/35 dated 8th May, 2013.

The communication appears to be an *action taken report* instead of presentation of the department's view and additional facts, if any, in terms of proviso one of Section 82 of AP Act. 2007.

The reason ascribed for not taking any measure to initiate DP against SI Hara Kanta Khound is incomprehensible. Needless to state that retirement cannot impede disciplinary proceeding for misconduct of a person preceding four years period from the date of retirement. Assam Pension Manual has provided the answer and makes the position clear. It may be mentioned here that misconduct of the person relates to the year 2011. Law permits the disciplinary authority to initiate departmental action for misconduct of a person preceding four years period from the date of retirement.

The authority is, therefore, advised to take appropriate action also against SI Hara Kanta Khound as per law.

The order is made absolute.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

sd/-
MEMBER

SPAC Case No. SPAC/C/33/2012

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

Vs

SI Chitta Ranjan Buragohain of Tinsukia Police Station

O R D E R

Date -07.01.2013

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 Tinsusukia 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 Statue 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 Hostipal 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 Mundhra 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.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No.33/2012
Shri Aditya Mundra, Tinsukia
Vs
SI Chitta Ranjan Buragohain of Tinsukia Police Station

ORDER

Date-18.03.2013

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 repute 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.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No.54/2011

Shri Sanjay Krishna Khosla, G.S. Road, Christan Basti, Guwahati-5

Vs

OC, Latasil Police Station, Kamrup (M)

ORDERDate- 07.06.2013

On 15.5.2010 the complainant lodged an FIR in Latasil Police Station alleging amongst others of causing hurt on his person by his wife. Since the complaint petition alleged involvement of senior police officer, we called for a report from the Police Headquarters. As per the report received from the concerned authority it is apparent that the then OC, Latasil PS Shri Bhakti Ram Kakati failed to respond to the FIR. As the officer incharge; he was duty bound to act upon the FIR as per law and to arrange medical examination. The report from the Spl. SP, CID also indicated that the OC "failed to make any GD entry, instead he advised the complainant to file FIR at the All Women Police Station, Panbazar". We called upon Inspector Kakoti and provided him with the opportunity to explain his stand. Inspector Kakoti however did not avail the opportunity. Materials on record unerringly points to the commission of serious misconduct and dereliction of duty by the OC concerned. He is accountable under the law. It is a fit case in which the authority is required to take a DP. We therefore, direct the authority to take appropriate measure by initiating DP against the concerned officer, on the basis of the materials on record. The Director General of Police is accordingly provided with an opportunity to present department's view and additional facts if any, already not in the notice of the Commission within three weeks from the date of receipt of the order.

Sd/-
CHAIRMAN

Sd/
MEMBER

Sd/-
MEMBER

SPAC Case No.07 of 2012

1. Sanjay Kumar
2. Md. Sabur Uddin Ahmed

-Versus-

1. Insp Mridul Barua
2. Insp Gauri Kanta Bora
3. SI Jagat Chutia

O R D E R

Date -12.06.2013

A complaint was received by the Commission alleging serious misconduct against police personnel of forceful deprivation of rightful ownership and possession of property.

The Commission called for the report and examined the matter in depth. It is apparent from the records made available to the Commission that Garchuk PS received an FIR on 05.02.2012 vide GDE No. 139 dated 05.02.2012. Instead of registering the FIR, a Non-FIR case bearing Case No. 03/2012 U/S 107 CrPC dated 09.02.2012 was taken up for binding the persons to maintain peace in the area.

After a lapse of six months, the OC Garchuk PS registered Case No.183/12 U/S 448/427/506 IPC on 15.06.2012 at 10.15 pm. The police report also indicated that one of the complainants, namely, Sabur Uddin Ahmed submitted a petition before the OC Garchuk PS stating that they have settled the matter amicably on 17.06.2012 and later on the case was returned in FR vide Garchuk PS FR 136/12 dated 30.07.12 as the case of mistake of fact U/S 447/427/506 IPC. It also appears that complainant Sabur Uddin Ahmed intimated the Commission on 05.02.2013 to the effect that the matter was settled amicably and that the Inspector returned back the “captured land”.

We have examined SI Jagat Chutia, Insp Mridul Barua, OC, Garchuk PS. Also heard Gauri Kanta Bora. The materials on record including that of the version put forwarded by Insp Mridul Barua, it is apparent that police personnel in this regard failed to take appropriate measure as per law. Firstly, when the FIR dated 05.02.2012 was received disclosing cognizable offence, the police was duty bound to register the case. Instead, Inspector Barua detailed SI Jagat Chutia for enquiry on receipt of the complaint and registered a case on receipt of the enquiry report. An FIR is to be registered promptly, enquiry of whatsoever manner, is not permissible under the law before registering a case. Police should have first registered the case and thereafter would go for investigation. This is a case of serious misconduct on the part of OC for not registering a case. Materials on record also clearly indicated that Insp Gauri Kanta Bora is found to have been engaged in demolishing the boundary wall of the complainants and engaged himself in forceful deprivation of rightful ownership and possession of their property. The Garchuk police also faltered in investigating the case in right direction. Instead, it engaged itself in compromising the matter which is per se unlawful. Compounding of offences rest on the Court that too those offences which are compoundable in nature under the law. Police cannot

arrogate on the power of adjudicating authority and accept compromise. Law of the land specifically debars police from recognizing compromise. It is a serious act of breach of rules and procedure. Police officials are liable for departmental as well as criminal prosecution for shielding the accused officer Gauri Kanta Bora. Insp Mridul Barua, OC Garchuk PS engaged Jagat Chutia for enquiring the complaint instead of registering a case. Mridul Barua also faltered returning the case in FR as a civil dispute and accepting a compromise. Likewise, SI Jagat Chutia engaged himself in enquiring the complaint as detailed by OC on the body of the complaint and he submitted a report on the body of the same complaint paper. He then investigated the case. Thereafter, after completion of the investigation, he registered the case and returned the case in FR as mistake of fact as instructed by the OC on the basis of the compromise. On the own showing of the police, there was no direction from the Court for binding the person.

Chapter-VIII of the CrPC provided the procedure for keeping peace and for good behaviour. The job of keeping security, for good behaviour is vested in competent authority other than the police.

Materials on record clearly indicated that OC Mridul Barua, SI Jagat Chutia along with Insp Gauri Kanta Bora engaged themselves in unlawful act. Considering the gravity of the matter, Commission would like to consider it, as appropriate to advise the authority to cause registration of FIR against Insp Gauri Kanta Bora, Insp Mridul Barua and SI Jagat Chutia U/S 120(B)/217/160 of the IPC read with Section 107 of the IPC. In addition, the Department should cause initiation of the DP against the three police officers for their unlawful act. The DGP is advised to submit department's view and additional facts, if any, if not already in the notice of the Commission for finalization of its opinion within 4(four) weeks from the date of receipt of this order.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No.15/2011
Mrs. Anjali Daimari & Others

-Versus-

Shri P.K. Dutta, the then Supdt. Of Police, Kokrajhar and Others.

ORDER

Date-11.07.2013

A complaint signed by the President of Boro Women's Justice Forum, President of All India Democratic Women's Association and President, Kokrajhar District Mahila Samittee pertaining to sexual assault on a tribal woman was received by the Commission.

According to the complainant, on 20.04.2011, the personnel of the 15th Dogra Regiment came in civvies, entered the house of Sri Ratneswar Goyary (aged 36 years) of village Tharaibari, under Kokrajhar Police Station forcibly. At that time, the wife of Sri Goyary, Mrs Manek Goyary, (38 years), mother of three children was asleep with her youngest child, aged about 3¹/₂ years. Two of the security personnel gang raped her in turn and physically abused her till she was turned out to be semi unconscious. She sustained serious injury. After half-an-hour when her husband returned home and learnt about the incident, he immediately informed the OC Kokrajhar PS Inspector Dhananjay Kumar Das and Addl.SP(S) Shri Amar Chaudhury. It was alleged that police neither turned up to take stock of the situation nor registered any case at that time. Next day, the victim had to go to the police station to lodge FIR personally. Subsequently, medical examination was done on the victim.

The complaint contained allegation of serious misconduct against the police. The Commission took cognizance of the complaint and called for the report from the concerned authorities. The police report admitted the fact of gang rape. Police report also indicated to the effect that the complainant stated to them that the accused were of Army personnel in civil dress. Report indicated that information was entered in the General Diary with Kokrajhar PS GD Entry No. 639 dated 21.04.2011 and on the same day, at 5.00 pm, he received a written FIR lodged by one Bijuli Narzary representing the Kokrajhar Women Organisation. Police report also indicated that Kokrajhar PS Case No. 119/2011 U/S 448/376/34 IPC was registered and entrusted to SI Sunil Kumar Das for investigation. According to police report, 9(nine) Army personnel of 15th Dogra Regiment including the Coy Commander as well as the civil driver Mantu Narzary were examined. All of them denied the charges. Curiously the police authority in its report called us to question the genuineness of the alleged rape of Manek Goyary by the Army personnel and observed as "*seems to be doubtful*". Police report was also accompanied by statements made by the victim woman before the Magistrate U/S 164 CrPC. The Commission found the report to be incomplete and accordingly asked the SP, Kokrajhar to submit a detailed report.

The second report indicated that Shri Ratneswar Goyary, husband of the victim made telephonic calls at about 8.00 pm on 20.04.2011 to Sri Amar Chaudhury, Addl.SP. Kokrajhar as well as to Inspector Dhananjay Kumar Das, OC Kokrajhar PS. Mobile call details to Phone No. 7896863676 of Shri Ratneswar Goyary confirmed that he made three calls altogether to the aforesaid officers on the same night. The report also indicated that Shri Goyary asked for security on the same night apprehending that the Army would conduct raid in his house again. The second report also reiterated that both the police officers denied of being informed about the incident of rape, on that night. The report did not give any indication as to the progress of the investigation of the case between the first report dated 22.05.2011 and the status report submitted on 15.10.2011 that too at the instance of the Commission. In the running commentary on action taken by the Investigating Officer of Kokrajhar PS Case No. 119/2011 in his first report, the SP Kokrajhar Shri P.K. Dutta did not reveal what "*concrete clue regarding the involvement of Army personnel*" was found and the direction of the investigation. Names and particulars of the Army personnel of 15th Dogra Regiment stationed at Kokrajhar were not mentioned and also as to whether the Identity Cards of the Army personnel who committed rape as revealed in the statement of the victim who described the persons to be of strong built, swarthy complexion with noticeable height. The report only indicated that the SP smugly was assuaged with the report of the IO where he proclaimed that the Army personnel in their account denied the allegations. Did the SP or IO expect that the guilty personnel would straightway admit the guilt? What was the cause of soft pedaling? What prevented the police in not collecting and collating the photographs of the Army personnel? What was the cause of reluctance of the police including the SP in gathering the photographs of the personnel and displaying the same to the victim? This was one of the basic steps in the investigation of a case of this nature. The elementary and rudimentary means of investigation were not taken aid of.

The Commission heard the then SP Kokrajhar Shri P.K. Dutta on 02.11.2011. He failed to enlighten the Commission whether he examined the First Information Report made to two Police Officers and faltered in consulting his own record of the Police Control Room Register entry No. 800 dated 20.02.2011. On 03.11.2011, i.e. after his appearance before the Commission, the SP instructed Shri H.K. Nath, Addl.SP(HQ) Kokrajhar to supervise the Kokrajhar PS Case No. 119/2011. The SP also, on 03.11.2011, sent a request to BSNL to provide the conversation details between Shri Ratneswar Goyary and OC Kokrajhar PS without making use of the investigative tools, e.g., notice, search, seizure in aid of law. The Commission was left with no alternative but to look for the technological and scientific data in view of obvious denial of the SP

Kokrajhar that the husband of the victim did not inform police of the incident of rape. However, he talked over phone to police officials on that particular time and date as confirmed by the CDR analysis. To ascertain the fact, correspondences were made from our end with the concerned telecom authority having found that the Police Department including the SP Kokrajhar failed to arrange the recorded conversation. By the time we moved the authority, we were informed that such materials get dissipated after a lapse of time.

The Commission reminded the SP Kokrajhar well within the time for the transcript of conversations from the TSP but failed to get the appropriate response. The Commission also could not approach the TSP within the stipulated time of one year as required under the provisions of clause 44.16 of CMTS Licence. A very useful technological aid for the investigation was thus missed by the SP Kokrajhar to verify/testify the claim of the victim's husband that he informed the incident of rape committed on his wife within half-an-hour to the OC Kokrajhar PS and the Addl.SP(Security) of the district over mobile phone. It was a very valuable piece of information, input in aid of the investigation of the case as it could have established whether the husband of the victim reported the alleged crime of his wife's rape on mobile phone to the OC Kokrajhar and SP Kokrajhar and the Addl.SP(Security) of the district. The SP obviously could not explain as to why no tangible steps were taken against his subordinate staff for non-registration of the case in time and to initiate prompt investigation at the first available opportunity and to apprehend the offenders. The case having been supervised by Shri H.K. Nath, Addl.SP(HQ) has been suggested to be returned in FR as true U/S 458/376/341 IPC for insufficient evidence against the accused vide his First and Final PR of Kokrajhar PS Case No. 119/2011 U/S 458/376/341 IPC dated 30.03.2012. We are at dark as to whether the suggestion has been approved and the case returned in FR.

The Commission examined the witnesses. The Commission issued notice to the telephone authority to provide the transcript of conversation over mobile between the husband of the victim and the OC Kokrajhar PS and the Addl.SP(Security) Kokrajhar on 20.04.2011, but they failed to get proper response from the local authority. The Commission, thereafter, had to examine the victim's husband and local witnesses to probe into the matter.

The husband of the victim Shri Ratneswar Goyary stated before the Commission that he informed the OC Kokrajhar PS of the incident of rape within half-an-hour of the incident and the OC informed that he would visit the place of occurrence in the next morning. The OC did not turn up even in the morning of the following day. He then took his wife to the police station since the OC did not come. The OC even did not visit the

place of occurrence on that day even after registration of the case belatedly on the following day.

Shri Kamal Goyari, a co-villager stated that he went to the house of Ratneswar Goyary on the following day of the incident. He came to know the details of the incident from Ratneswar Goyary that 5/6 Army personnel came to Ratneswar's house at 7.00 pm on the day of incident, assaulted his wife and took her out and criminally assaulted on her. He then advised Ratneswar Goyary to inform OC over phone requesting him to come for investigation of the incident. Ratneswar Goyary contacted OC over phone, but the OC did not come till then. The villagers assembled at his house and after discussion decided to take measures for investigation of criminal case.

Shri Uday Chandra Brahma, son of Late Katiram Brahma of the same village stated that the witness came to the house of Ratneswar Goyary on the day of incident. He learnt that Ratneswar reached home soon after the incident and having seen his wife in a devastated condition, rang up the OC Kokrajhar PS requesting for police action. No policeman came to the village till then. He was at the house of Ratneswar Goyary for 15/20 minutes on the day of incident. Incidentally, the witness is a Gaonburha of the village. He was not aware of the action taken by police. He expressed that police did not investigate the case due to the reason that the accused were Army personnel.

The Commission also examined Miss Bijuli Narzary, Miss Anjali Daimary, Miss Rwimali Mooshahary, Miss Bhumika Roy who supported the complaint. All of them asserted that the incident took place in the early evening of 20th April, 2011 and sensing that the police would not investigate since the accused being Army personnel, they spearheaded the cause of the hapless tribal woman. Bijuli Narzary accompanied the victim and her husband to the Kokrajhar police station in the forenoon between 9.00 and 10.00 am having learnt from Ratneswar Goyary about his informing to the OC Kokrajhar PS of the incident and the OC having assured him to come to the place of occurrence in the morning hours on the following day, they waited for sometime in the morning, but none went from the police station. They decided to come to the police station for informing the incident of rape on Manek Goyari. Bijuli Narzary was all along present at the police station. The case was registered in the evening of the following day of incident. All the witnesses expressed their resentment against the police in dilly-dallying with the matter and therefore, they approached the State Police Accountability Commission.

The Commission also examined the then Addl. SP(Security) and the then OC Kokrajhar.

From the statement of Sri Amar Chaudhury, the then Addl.SP(Security) it is revealed that he received a phone call from

Ratneswar Goyari when he was returning from Gosaigaon in the evening on 20.04.2011. While he was so travelling, Ratneswar informed him about the incident that had taken place in the evening and he also informed that he needed security and safeguard for his family members which was duly communicated to the Police Control Room, Kokrajhar located at Kokrajhar PS itself and also to the OC Kokrajhar. He also instructed the O/C to visit the house of Ratneswar Goyary and provided him with the mobile number of the informant, i.e., Ratneswar Goyary. It also appears from the statement of Addl.SP Chaudhury that on the following morning, i.e. on 21.04.2011 of the incident when he was asked by the SP Kokrajhar to take charge of law and order duty in the Kokrajhar District HQ township in view of likely disturbance following the incident of rape and accordingly he remained on the assigned duty from 7.00 am on 21.04.2011. He also produced a piece of Police Control Room Register Entry to the effect that he informed Police Control Room of the incident and also his direction to the OC Kokrajhar PS to proceed to the house of Ratneswar Goyari.

Inspector Dhananjay Kumar Das, the then OC Kokrajhar PS, during examination, stated that he met Smt Manek Goyari, wife of Ratneswar Goyari of Tharaibori village who was sitting in the police station along with some members of local Mohila Samiti on 21.04.2011 at 1.45 pm. Smt Manek Goyari narrated about commission of rape on her on 20.04.2011 at 7.30 pm by 6(six) persons in civil dresses. He heard her and noted her statement in the police station in plain paper. At that time he did not register the case. She submitted a petition at 5.00 pm stating the fact on the same day and registered the case U/S 458/376/34 IPC and endorsed to SI Sunil Kr. Das for investigation. He could not say at what time the victim appeared at Kokrajhar PS, but he met her inside the police station on his return from duty at 1.45 pm and he could not recollect the time when he went out for the duty and also he could not recollect the Specific Nature of the task/duty that he attended on 21.04.2011 in the morning hours. We did not find any support about his activity from the GD. He could not explain as to why he was dilly dallying with the matter instead of registering the case and taking appropriate action under the law on such a serious matter.

Inspector Dhananjay Kumar Das stated that he received mobile phone call from Ratneswar Goyari on 20.04.2011 evening (though he could not recollect the time). He stated that Shri Ratneswar Goyari was under fear and feeling insecure and wanted to stay in the house of relatives for the night. He did not respond to his suggestion. The informant used to call him over phone occasionally, but he said nothing about the incident in the evening nor he had enquired about the cause of his fear and insecurity. He supervised the case and visited the place of

occurrence along with the Investigating Officer SI Sunil Kumar Das after registering a case. He could not recollect the date and time for visiting the place of occurrence.

Needless to state that GD Entry is a chronicle of events that may be brought to the knowledge of the police officers. It is a very important tool of investigation. Interestingly, entries did not indicate as to the action taken and when the law was set in motion. The complainant as well as the witnesses indicated about telephonic conversation with the OC on 20.04.2011. He made a report to the OC Kokrajhar PS immediately after the occurrence. Materials clearly indicated that the information of commission of rape was duly received at the police station by the OC as well as one of the Addl. Supdts. of Police of the District. But the GD is silent on this point. There is no entry in the GD about receiving a call and contents of the communication by the OC Kokrajhar. He only pleaded that it was a call for security to be given to the family of the mother. What was the nature of security called for and for the reasons for asking protection? It means that OC was aware of all the information, but he wanted to remain as a spectator and thereby allowed him as lending hand in the commission of the crime. The witnesses as well as the victim claimed that they came to the police station in the early hours of the day of on 21.04.2011, but the police GD entry shows that it was made at 1.45 pm. The victim was sent for medical examination at 2.30 pm before the registration of the case which has been registered at 5.00 pm. The victim was again sent to the hospital on the next day at 10.45 pm. No reasons are ascribed as to why a woman in trauma had to shuttle time and again, even for collecting medical report is not mentioned. It is the primary duty of the concerned Investigating Officer to pursue the medical report. We strongly deprecate the conduct of the O/C. Such things are not done.

The IO Sunil Kumar Das had left for investigation after registration of the case at 5.00 pm even before the victim arrived from the hospital at 6.50 pm after medical examination. The first and prime duty of the IO was to examine her before going for investigation. Police report did not disclose about any steps that he took up for investigation on his return to the police station at 10.00 pm, thereby wasting a considerable time of investigation. GD entries indicated that SP Kokrajhar accompanied with Addl.SP(HQ) Kokrajhar arrived at Kokrajhar PS at 5.05 pm 21.04.2011 soon after the case was registered at 5.00 pm. The SP and Addl.SP stayed there till 7.30 pm and after spending about 2 Hrs 25 minutes and briefed the OC and the IO of the case for taking necessary action in the investigation. They had again visited the police station on the following day at 10.45 pm and at that time itself the victim was re-sent to the hospital. It was an act of sheer harassment of a woman who was in acute trauma. The reasons for unleashing such agony to the victim were not

explained. The OC had informed the IGP BTAD, SP, Addl.SP. DC. ADC Kokrajhar about the incident of rape at 3.00 pm on 21.04.2011. SP, Addl.SP were fully aware of the lapse for the non-registration of the case as provided under section 154 CrPC and the OC was found to have registered the case, not at the earliest point of time and initiated investigative action without the registration of the case. It is a clear case of non-registration of the case in time and sheer inaction in the investigation. It seems to be a gross inaction of the police and no reasons are discernible as to the hesitation of the police in registering the case promptly. No reasons are ascribed for vacillating in proceeding with the case.

The OC is primarily responsible for non-registration of the case. But the then SP Kokrajhar is equally accountable for non-registering the case as well as initiation of the case for detection of the crime. The offences were of serious nature assaulting on the dignity of a woman. It is a serious offence of criminal assault on a woman and the police action only aided to protect the offenders. The then OC and SP Kokrajhar are squarely blamable for violation of the provisions of Section 154 of the CrPC read with the provisions of Assam Police Manual for non-registering the offence in time and protecting the criminals by overlooking the interest of the victim. It seems as if the police are conniving to shield the perpetrators of the crimes.

We have perused the first and final PR being submitted by Sri H.K. Nath, Addl.SP(HQ). He has suggested the case to be returned in FR "*as true for insufficient evidence against the accused*". Interestingly, his progress report is a carbon copy of the SP's report submitted to the Commission. It is doubtful as to whether the rape case was treated as SR case by the police as required under the procedure prescribed by the Assam Police Manual. Since AP Manual insists for PR, the PR has not discussed in the evidence except the medical examination report to say that the time of commission of the rape as per the medical estimation report is estimated at 5.10 am on 20.4.2011 which does not corroborate the FIR. He did not discuss the statements of the neighbouring witnesses as to the time of occurrence and also the time of the First Information received by the OC Kokrajhar, nor as to why the victim was sent for medical examination before the case was registered. The PR has not discussed as to the identity of the accused and what investigative action was taken for identifying the accused persons. Without identifying the accused, how could he dare to assert that evidence was insufficient against the accused without identifying them or without they being known? The accused persons have not been known in the investigation. It is a case of sheer non investigation into the clue given by the complainant and the victim. It cannot be said to be a case of insufficient evidence. It is

a case of non investigation without making full use of the legal means provided by the CrPC. In our opinion, the opinion of the Addl.SP is perverse. The opinion of the Addl.SP to the extent that “*medical examination and FSL examination were not of any use*”. How could he suggest that the case was true? The Addl. SP, on one hand, observed the case is true; on the other hand, he dismissed the FSL and medical report. His report also did not indicate as to whether IO tried to search for the blood-stained clothing in the Army Camp and if not, what was his direction to the IO? There have been perceptible loose ends in the investigation. The supervisory officer had likewise omitted to examine the evidence.

The PR demonstrates the enthusiasm towards returning the case at the earliest instance without earnestly trying to detect overlooking the slur, trauma of a young tribal mother, that too at the hand of mighty Army personnel. The investigation is outright perfunctory, so also the supervision. This is a case which has brought into surface about the hesitation of the police in registering a case of rape of a tribal woman. A serious complaint pertaining to the honour, dignity and safety of a tribal woman sought to be watered down the District police headed by the SP allowed the guilty to go scot free. The senior level officers, proceeded in a very nonchalant manner who went on remarking to the effect that the case relating to the offences of rape and criminal trespass is true but evidence is not sufficient against the so-called accused whose identity they omitted to prove. Police pitifully failed to spot the accused. The ground of FR for insufficient evidence does not hold good on the basis of materials on record. It has been returned in FR because of the blasé and indifferent inclination in investigating the matter. It is a case of culpable inaction in the investigation of the case after registering under public pressure.

We have given our anxious consideration on the matter. In our considered opinion, the then OC Kokrajhar Inspector Dhananjay Kumar Das, Shri Harekrishna Nath, the then Addl.SP(HQ), Shri H. K. Nath, the then SP Kokrajhar Shri P.K. Dutta are all accountable for their acts of misconduct. The matter also clearly indicated the culpability of Shri P.K. Dutta, the then SP Kokrajhar, Shri Harekrishna Nath, the then Addl.SP(HQ) of Kokrajhar and Inspector Dhananjay Kumar Das, the then OC of Kokrajhar for committing the alleged offences U/Ss 166/217/218/201/120(B) of the IPC read with Section 98(a) & (b) of the Assam Police Act. In our view, a departmental action is also needed to be initiated against Shri P.K. Dutta, the then SP Kokrajhar for his unbecoming act. The Commission also feels that it is a case which should be reopened and reinvestigated afresh since the case is returned in FR

without any valid ground. In re-investigating the matter, the investigating agency may take the following aspects into consideration:-

- (i) The photo identity cards of the personnel posted at Kokrajhar Camp can be collected and shown to the victim;
- (ii) The transport vehicle used by the personnel before and after the time of the occurrence of the reported incident should be identified from the Camp administrative records and the drivers of the transport vehicles should be examined. Also the fuel consumption on the particular day needs to be examined;
- (iii) The personnel of the Camp who have been pressurizing the victim and his family to withdraw the criminal case needs to be identified with the relevant time and space and means for doing so as may be disclosed by the victim's family and other sympathizers;
- (iv) The CDR of the Supdt of Police, Kokrajhar on the date of the incident and subsequent time, more particularly, when there was inquiry held at the instance of the Deputy Commissioner, Kokrajhar regarding the incident of rape and on the following day concerning the likelihood of public agitation on 21.04.2011 be examined. This analysis may help the investigation as to the role of the then SP Kokrajhar in the investigation and subsequent fate of the case;
- (v) The harassment of the victim by Army personnel prior to the incident of rape can also be explored in order to streamline the re-investigation;
- (vi) The investigating agency also need to collect evidence to identify the perpetrators of the crime. The investigating agency should also reconsider the visual image of the personnel of committing the crime. The investigator may take out the bearing, appearance and other physical appearance of the culprits from various statements submitted in our report and the investigative action done at the point of time.

It is an appropriate case for the authority to look into and cause re-investigation accordingly. We advise the DGP accordingly to issue appropriate direction. We direct the DGP, Assam to register FIR against the 3(three) persons named above U/Ss 166/217/218/201/120(B) IPC read with Section 98(a) & (b) of the Assam Police Act in addition, to initiate departmental action against Shri P.K. Dutta, the then SP Kokrajhar, Dy. S.P.- A. S. Laskar and S.I Sunil Kumar Das, the two investigators of the Case No. 598/2011 U/S 457/376/34 IPC for the perfunctory investigation

of the case as discussed above. The Director General of Police is accordingly provided with the opportunity to communicate the department's view and additional facts, if any, not already in the notice of the Commission within a month from the date of receipt of this order to enable the Commission to finalise its opinion.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No.48/2013
Shri Prashadi Sarkar
-Versus-
Sarthebari Police Station, Dist. Barpeta

ORDER

Date-06.08.2013

It is a complaint alleging lapses and misconduct on the part of police personnel in connection with Sarthebari PS Case No. 178/2013. It was alleged by the complainant that two of her minor sons were wrongfully removed from her custody and both the minor sons were in illegal confinement of the accused persons. Instead of arresting the persons and recovering the children, the concerned police personnel were not coming to her aid.

We called for a report from the concerned Supdt of Police. From the report, it appears that the complainant was arrested in connection with Sarthebari PS Case No. 08/2013 U/S 302/34 IPC along with other accused allegedly for causing the death of one Jiten Mandal, the deceased husband of the complainant. The report also disclosed to the effect that the complainant was in judicial custody. In view of the arrest and confinement of the complainant, the grand-mother of the minors took her two grand-sons to her home and thereafter she took the children to Noonmati Sishu Mongal Kendra and got them admitted in the said institute. In the report it is also indicated that the IO visited the institute at Noonmati, contacted the care-taker of the minor children. The SP in his report indicated that the minor children are in the safe place at the Sishu Mongal Kendra and materials furnished also mentioned that IO took all the necessary steps to see that the children are properly looked after by the institution.

On our own, we also considered it appropriate to verify the matter ourselves keeping in mind the safety of the two minors. Our Chief Investigator was accordingly deputed to see the matter personally. The Chief Investigator personally visited yesterday, i.e. 5th August, 2013 and seeing both the minor boys, namely, Sanjay Sarkar (8 years) and Biswajit Sarkar (6 years) as produced by Mrs.Rumi Baruah of Noonmati Sishu Mongal Kendra found them in good health and well protected. It seems that the two minors are in right places where they are getting the opportunity of education.

In view of the facts and circumstances as stated above, we do not find any lapses on the part of the police. Rather the police took appropriate care and concern for the minor boys. In the set of circumstances, we do not find any justification to proceed with the matter further. The proceeding thus stands closed. A copy of the order may also be communicated to the complainant.

Sd/-
CHAIRMAN

Sd/-
MEMBER

SPAC Case No.46/2010

Shri Pranjal Das, Complainant

-Versus-

OC Morigaon PS Debajit Mahanta & SP Morigaon

ORDER

Date : 19.08.2013

The Commission received a complaint from Shri Pranjal Das, a local correspondent of Electronic Media 'News Live' from Morigaon. The complainant inter-alia alleged to the effect that the concerned O/C Shri Debajit Mahanta engaged himself in blackmailing and allowed indulgence to the touts and factotums in the police station thereby disturbing and disrupting functioning of the police station. The complaint also mentioned that on the 27th October, 2010, the complainant while he was engaged in discharging his lawful duties as a Journalist, a section of miscreants assaulted him and two of his camera-men, Shri Ranjan Das and Shri Manabendra Debnath at the instance of three touts, namely, Ajar Ali, Hobibur Rahman Siddiqi and Sashimohan Biswas. The miscreants brutally attacked him and his two camera-men which caused serious injury to them. He reported that he lodged an FIR at the Morigaon Police Station. He alleged that the Morigaon police did not act impartially and made all attempts to screen the accused, named in the FIR. It was inter-alia alleged that one of the accused Makibur Rahman was the relative of Ajar Ali, a tout who used to hobnob with the O/C of Morigaon PS. He also alleged that the SP Morigaon Anurag Agarwal also failed to take any steps against the activities of the O/C. The complainant annexed the FIR along with the complaint.

We called for the report from the SP Morigaon. The Commission also caused a local investigation through its investigating agency under the leadership of the Chief Investigator Shri R.K. Bania, IPS(Retd). The Commission also heard Shri Debajit Mahanta, the I.O. SI Sarma and perused the materials on record.

The genesis of the crime seems to have generated from the fact that a doctor also being a public servant taking advantage of his official position allegedly committed outrage on a woman which resulted in a serious law and order situation. In the result, a section of the public attacked the doctor as well as the police party who came to protect the doctor. The Morigaon police forwarded the doctor to GMCH with full police protection. A case was also registered on the FIR of the doctor. To report the incident, the complainant as Reporter of an Electronic Channel along with his associates went to the place of occurrence. The complainant also went to the Civil Hospital to cover the story and there the complainant and his associates were assaulted. The O/C concerned went there with the TSI and other staff and registered Morigaon PS Case No. 162/10 U/S 143/147/148/149/324/325 IPC and sent up the matter for investigation. The O/C himself arranged for the arrest of accused Makibur Rahman and Tubewell Mistry of Morimusalmasngaon and forwarded both of them to judicial custody. In course of time, the accused were charge-sheeted.

According to the O/C, the complainant used to publish news against the police and used to blackmailing the police personnel. He also alleged that the complainant was warned by the public for making his wrong reporting. The O/C concerned also took the trouble to attend the doctor. Our investigating agency examined the records produced by the Morigaon police. The General Diary containing Volume 17 dated 27.10.10 recorded morning GD No.863 to GD No.523. The GD did not bear the signature of the concerned O/C. The entire GD was without signature of the officer and remained unsigned till it was examined by the investigating agency on 19.04.2013. The SP's report did not indicate as to verification and ascertainment of facts of relevant GD entries relating to case on 27.10.10. The report sent to the Commission by the SP disregarding the vital police record in breach of its duties and responsibilities as a senior officer of the district. The report is uninspiring and insipid. The perusal of the materials, more particularly on reading of the GD, the following facts come into surface:

- (i) Against Entry No. 874, there are double entries – one at 2.20 pm and other at 4.00 pm with separate incidents. It indicates about manipulation of the GD;
- (ii) The medical examination of the doctor was carried out at the police station by a team of doctors whereas, the same treatment was not given to the victim woman Smt Medhi. The victim lodged FIR at 6.30 pm on 27.10.10. The senior officers were present at the police station while the team of doctors visited the police station for examination of the accused doctor and sitting in the police station as the supervising officer;
- (iii) The Addl.SP(HQ) found sitting in the police station from 5.30 pm and Dy.SP(HQ) from 7.30 pm to 11.15 pm/11.20 pm respectively. These officers remained as silent spectators. No case was instituted

- for the alleged injury of the police personnel due to pelting of stones by unruly public in front of the police station;
- (iv) When Morigaon police station was under stress and strain on 27.10.10, it appears from the GD that SI J.N. Deka of Morigaon police station with a CRPF contingent was sent to protect SP Morigaon at his official residence at 8.00 pm; It also reveals a poor leadership of the concerned SP. Instead of remaining present in the HQ PS and discharging his duty U/S 36 of the CrPC read with Sec 13 of AP Act, he preferred to secure his security reinforced;
 - (v) The GD Entry also did not indicate about the medical examination of victim Smt Medhi after registering a case at 7.00 pm whereas, a team of doctors examined the erring doctor at the police station at 8.00 pm and referred him to GMCH;
 - (vi) The aberrant doctor was provided protection in the police station from 5.15 pm. The case was registered at 7.00 pm. The erring doctor was taken to the GMCH at 11.30 pm through ASI N. Bhuyan, UBC Hemen Saikia;
 - (vii) The complainant reported incident at 10.00 pm and O/C returned from the place of occurrence at 11.10 pm, but did not disclose in his Entry as to whether the erring doctor was brought along with him for examination or whether examination was done or not;
 - (viii) The case was registered as Morigaon PS Case No. 162/10, but no investigation was done as per GD records vide GDE No. 886 at 11.10 on 27.10.10.

On perusal of the record, it appears that the Morigaon PS Case No. 162/10 was registered U/S 143/147/148/149/324/325 IPC on the complaint of Shri Pranjal Das on 27.10.10 at 11.10 pm by the O/C Morigaon PS. The FIR disclosed ingredients of offences U/S 143/147/149/341/342/307/325/506 IPC which were masterminded by two persons who led 30/40 persons and the complainant was attacked by them. The O/C arrested two FIR named persons only being rioting case and arranged to submit charge-sheet U/S 143/147/323 IPC. The investigation is totally perfunctory. Save and except the two accused, no other accused were arrested. The case was disposed by the Judicial Magistrate, First Class for the reasons mentioned; prosecution failed to prove the guilt of the accused persons and discharged. Our investigating agency also examined Shri Pranjal Das and some of the local inhabitants in the Morigaon town. He expressed the unhappiness in the conduct of the police personnel including that of the SP.

On examination of materials on record, we find that the Morigaon police failed to conduct in impartial manner in prosecuting the complaint of the complainant Shri Pranjal Das. The materials indicated in FIR and the surrounding circumstances clearly indicated the alleged offence U/S 341/365/307/143/147/149/325 IPC whereas, the O/C Mahanta registered the

case U/S 143/147/148/149/324/325 IPC and thereby minimising the gravity of the offence. The complainant along with his crews went to the place of occurrence for covering an incident where the modesty of a woman was allegedly outraged by a doctor in the Civil Hospital on that day afternoon (27.10.10) at 4.15 pm. O/C Mahanta visited the Civil Hospital, Morigaon and picked up the doctor at 5.15 pm on 27.10.10 and detained him in the police station without any authority. A case bearing Morigaon PS Case No. 160/10 U/S 376(d) IPC was registered against the doctor on the FIR of the victim Smt Medhi. The doctor was examined by a team of doctors on requisition of police, but the rape victim was not examined on the day of reporting. At least no records were made available to us.

GD entry No. 876 discloses that the doctor received injury inside the police station and at the Civil Hospital while he was in the police custody. No reason was ascribed as to why O/C did not question the doctor and simply received a case U/S 307/325 IPC against Smt Medhi (rape victim) and her father and one Himangshu Mahanta by name.

The GD is not maintained in terms of law including that of Section 53 of the AP Manual. The GD remained unsigned. We examined the entire GD Volume 17 – Entries No. 876 dated 27.10.10 to Entry No. 523 dated 16.11.10 and found that those entries were not signed as required under Rule 53(i) of the AP Manual. The police record itself became doubtful, manipulated for which the O/C is responsible for gross misconduct and dereliction of duty. Allegedly the dignity of a young woman was tarnished in the Civil Hospital, and police failed in its duty to respond. The alleged crime was not investigated and allowed to wind down. Seemingly the police station under the leadership of the O/C showed its eagerness to put the crime under the carpet. This sort of activities not only unlawful but also tarnishes the image of the police. This aspect of the matter was totally overlooked by the district police under the leadership of the then SP Morigaon Anurag Agarwal. The entire genesis of the complaint centered round the alleged incident in the Civil Hospital. The complainant was also assaulted when he went to the Civil Hospital for covering the news. The Addl.SP(HQ) R.K. Handique and Dy.SP(HQ) Morigaon and SP Morigaon failed to discharge the responsibilities in properly supervising and guiding the subordinate officers in maintaining proper records in the police station. For days together the GD Entries were not inspected. They did not detect the omission of the O/C Debajit Mahanta. Likewise, C.I., Morigaon also failed to discharge his lawful duty as enjoined in Rules 1, 11 and 14 of AP Manual, Part-V.

The administration of police throughout the local jurisdiction of the district is vested in the district SP for general control and command. As eluded earlier, the SP who was supposed to diligently supervise the district officers in upholding and enforcing the law, faltered in discharge of his duty.

The complaint of presence of touts in the police stations could not be ruled out. The O/C Mahanta did not dispute about the presence of the alleged touts. The O/C concerned, however, described these three persons as civil liaison group. We found it difficult to accept the pleas of the O/C that the persons named by the complainant were persons of civil liaison group or community liaison group. A civil liaison group is constituted by the SP concerned U/S 11(5) of the Assam Police Act comprising of respectable local residents of the area bearing unimpeachable character, antecedents and aptitude for Community Services. It is intriguing to note that the O/C Morigaon SI D. Mahanta stated that the persons alleged as touts are members of the Civil Liaison Group of the PS. It is only a façade, the pretended Civil Liaison Group of the O/C were behaving like touts and the people identify the personalities as such. All concerned should take serious note of the situation. Information often comes to us about presence of some outside persons regularly in the police stations and who are hobnobbing with the Officers-in-Charge. We found such complaints from Barpeta and Nagaon districts. The police HQ should take all care to control this menace and allow the O/C to function with the independent judgment. Here was a case that due to the interference of such persons, a gruesome crime against a woman went unpunished due to the influence of the bad elements. We insist on the police HQ to look into all these things and to take appropriate measures.

In the facts situation, we consider it appropriate to direct DGP to initiate Departmental Proceeding against the then O/C Morigaon PS SI Debajit Mahanta for dereliction of duty and for his unbecoming conduct as enumerated above. We also advise the DGP to appropriately pull up the then SP of Morigaon Anurag Agarwal, the then Addl.SP(HQ) R.K. Handique and the then Dy.SP(HQ), Morigaon to make them more accountable. The DGP is accordingly afforded opportunity to present the department's view and additional facts, if any, not already in the notice of the Commission before finalizing our opinion within 3(three) weeks from the date of receipt of this order.

Sd/-

CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No.46/2010

Shri Pranjal Das, Complainant

-Versus-

OC Morigaon PS Debajit Mahanta & SP Morigaon

ORDERDate- 28.10.2013

1. By our order dated 19.08.2013, the Commission examined the complaint and on completion of enquiry, communicated its findings to the authority concerned as required U/S 82 of the AP Act, 2007. Further, the Commission also asked for department's view and additional facts, if any, before finalization of its own opinion in consonance with proviso one of Section 82.
2. The Assam Police Headquarters by letter No. SPAC/APHQRs/46/2010/27 dated 08th October, 2013 forwarded its communication whereby it informed that the department has "*no additional facts to offer*" and that the department "*concur with the observations of the Commission.*"
3. In the set of circumstances, the order is made absolute. It is expected that Police Headquarters will intimate the further course of action taken from time to time and keep the Commission abreast. With this order the proceeding stands closed.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No.40/2010
Mrs. Meherun Nissa Ahmed

-Versus-

Officer-in-Charge, Paltanbazar Police Station & Ors

ORDERDate- 21.08.2013

1. The complaint in question appertains to the alleged grave dereliction of duty and serious misconduct against the police personnel. The complainant, *inter-alia* alleged that on 08.08.2010 at about 11.30 pm, persons numbering about 13(thirteen) trespassed into her house and illegally occupied the adjacent room. The intruders stayed there for the whole night. She submitted an FIR at the Paltanbazar Police Station on the next day on the advice of her father who happened to be an advocate. On the next day, i.e. on 09.08.2010, the miscreants again came and forcibly occupied their house. On 11.08.2010,

the complainant Meherun Nissa Ahmed went to the SSP(City) and submitted a complaint narrating the above facts. It was further alleged that one Prakash Sarkar of Rehabari accompanied by some unknown persons came to their house on 28.08.2010 and demanded Rs.50,000/-, else the entire family members would have to face the dire consequences. That on 29.08.2010, the complainant filed another FIR before the O/C, Women Police Station, Panbazar, Guwahati it was asserted. On the same day, one police personnel Mr. Paul of Paltanbazar PS came to their house and took her father to the police station where he was confined till 08.30 pm and was released from the police station to facilitate his abduction by some unknown persons to some unknown destination. She along with her husband went to the police station when her father did not turn up home. The police personnel Mr. Paul of Paltanbazar PS asked her to go back to her house assuring her father would be released. Mr. Paul contacted some persons over phone and directed them to release her father. Her father was released by the miscreants at about 11.00 pm and set him free at Ulubari Chariali. On the next day, i.e. 29.08.2010, her father lodged an FIR at Paltanbazar Police Station about his kidnapping, but the O/C of Paltanbazar PS did not accept the FIR.

2. The Commission called for a report from the SSP(City), Guwahati. After several reminders, the SSP(City) submitted a report. The SSP also forwarded an enquiry report dated 02.07.2010 submitted by Sri Longnit Teron, Addl.SP, Guwahati City. The SP's report reveals that the case was registered on 29.08.2010 at Paltanbazar PS on receipt of a complaint by Md.Maslimuddin Ahmed, father of the complainant against Manju Begum, Afrina Begum, Salim and others. The complainant stated in the FIR that the above mentioned persons forcibly entered into their house and threatened to occupy the same and menacingly demanded Rs.50,000/- from the daughter of the complainant. The case was investigated and the Investigating Officer visited the place of occurrence and examined the witnesses, including the complainant Meherun Nissa and Md. Maslimuddin. All the witnesses corroborated the facts mentioned in the FIR. The Investigating Officer apprehended the accused persons of the case and they were arrested and released on bail as the offences were bailable. The case was pending for investigation and for steps to identify the accused persons.

3. The SP's report also indicated that a "counter-case" was registered on 20.08.2010 against Maseuruddin Ahmed @ Mukut, son of Md. Maslimuddin Ahmed of Ashram Road, Ulubari lodged by Mustt. Manjuma Begum, Md. Abdul Salim and Mustt Hasna Begum. The complaint was forwarded by the Court U/S 156(3) CrPC to O/C, Paltanbazar PS who, registered case No. 522/2010 U/Ss 420/406 IPC and SI Badal Paul was detailed for investigation. The I/O collected

evidence against Muslimuddin Ahmed, seized documents and examined witnesses. The case was pursued by 31(thirty-one) individuals against the accused Md. Maslimuddin Ahmed for luring the complainant and the signatories for investing money in a money banking scheme with handsome return. The investors were issued pass-books and on maturity they were supposed to get their money with interest. But when the investors approached Md. Maslimuddin Ahmed about maturity, they did not receive the money invested with interest. Both the father and the son absconded.

4. The SP's report also disclosed that the information was received at Paltanbazar police station at 6.20 pm on 28.08.2010 that 50/60 women gheraoed the residence of Md. Maslimuddin Ahmed and demanded that his son Md. Maseuruddin Ahmed @ Mukut to be handed over along with the lacs of rupees cheated by him. Accordingly, the I/O with police patrol vehicle went to the place of occurrence and Md. Maslimuddin Ahmed, son of Rustam Ali was brought to the Police Station apprehending violence at 6.40 pm for examination and interrogation. The I/O gathered that Md. Maseuruddin Ahmed @ Mukut had fraudulently and by deceitful means collected lacs of money from the general public of Ashram Road area in the name of some banking investors. The accused Maseuruddin had absconded since few months back. The I/O after examining and recording statements of Maslimuddin Ahmed in connection with the case did not find sufficient evidence against him. Hence, he was allowed to go along with one Dharani Rai, son of Shri Prafulla Rai who, used to stay in his residence in a rented room. The report further added to the effect that an FIR was received on 29.08.2010 at 11.00 pm from Maslimuddin Ahmed that he was kidnapped by Gurkhan, Prakash Sarkar, Salim, Karim Khan, Waheeda Begum, Afrina Begum and Manju Begum and kept confined in an unknown place where he was compelled to sign documents under threat on 28.08.2010 at about 8.30 pm. He was released at 11.00 pm at Ulubari Chariali after obtaining his signature with an agreement. The case No. 544/2010 was registered at Paltanbazar Police Station on the facts as stated above. The report further indicated that SI Badal Chandra Paul brought Maslimuddin Ahmed on 28.08.2010 to the police station and also the complainant Meherun Nissa along with her husband came to the police station to enquire about her father and the SI informed that Md. Maslimuddin Ahmed had already left after examination and recording his statement along with Dharani Rai. SI Paul, in presence of complainant made a telephonic call to Dharani Rai who, informed in turn, that they were in the residence of some Advocate and was preparing an agreement and the Officer directing Dharani Rai to take the complainant home and accordingly the complainant was informed.

5. In addition, the Commission caused an investigation of its own to ascertain the facts. The complainant stated before the Investigating Agency that the accused persons after occupying their house for about 15/20 days, vacated and presently she was in peaceful possession of the house. The complainant also stated before the Investigating Agency that after approaching SPAC, the police of Paltanbazar PS acted on their FIR and investigated the case. Since then the accused persons stopped harassing them and disappeared from the scene. According to her, the miscreants were known to her but later she came to know that they were the ruffians and land-grabbers. She also stated that SI Badal Chandra Paul of Paltanbazar took her father on 28.08.2010 in the morning hours and kept him till evening. So, she went to the police station in search of her father Maslimuddin Ahmed and met SI Badal Chandra Paul. SI Badal Chandra Paul informed her that her father was released from the police station. When she said that her father did not turn up, Mr. Paul contacted over phone with someone and informed them that he was somewhere and will reach home soon. Her father was dropped by somebody at Ulubari Chariali and from there she took him home. She could learn from their father that when he came out of the police station in the evening, outside the police station he was caught by some persons and forcibly took him to some advocate and obtained agreement under some threats. So in the next day, i.e. on 29.08.2010 her father Maslimuddin Ahmed lodged FIR before the O/C, Paltanbazar PS. She said that the matter has since been settled between the parties.

6. SI Badal Chandra Paul appeared before the Commission in person. He was heard at length. He asserted that as per instruction of O/C, Inspector Sujit Saikia, he visited the house of complainant Meherun Nissa and found huge gathering of both male and female persons creating nuisance and entered into their house, demanded money back which was taken by the son of Maslimuddin Ahmed (brother of the complainant) earlier. The agitators forcibly entered into their house, damaged doors and other accessories. So, he informed O/C Sri Saikia about the situation but O/C instructed him to pick up the owner of the house Maslimuddin Ahmed (father of the complainant) to the police station. So, he picked up Maslimuddin Ahmed with his Pappa vehicle and produced him before police station. He was kept till evening from morning and in the evening, released him and handed over to one Dharani Rai, a tenant of the complainant. He (Mr. Paul) said that he acted as per order of O/C Inspector Sujit Saikia and kept Muslemuddin Ahmed at his Ashram Road house after releasing him. No action was initiated towards the unruly persons who were creating nuisance in the house of the complainant in the Ashram Road, South Sarania in the morning hours of 28.08.2010.

7. The Commission also perused the report submitted by Addl.SP Longnit Teron which were relied by the SSP(City). As already alluded in his report he illustrated that the report was based on the enquiry report submitted by the Addl.SP Longnit Teron. We have scrutinized the report. In our opinion, the report of Mr. Terron was of casual nature. His enquiry did not indicate that he examined the records of the police station including the GD Entries. The report of the Addl.SP did not **reveal** that he went through the records of police station. The report submitted by the said officer cannot be said to be a report of a Supervisory Officer. The following infirmities are discernible. The report of the Addl.SP disclosed the following infirmities:-

- (a) The report of the IO did not indicate that he addressed his mind to the assertions of the complainant;
- (b) The Addl.SP also did not address his mind on the FIR submitted by the complainant Muslimuddin Ahmed which was duly received by the O/C Paltanbazar PS on 29.08.2010;
- (c) The report did not reflect anything as to whether the FIR was registered or not;
- (d) SI Badal Chandra Paul who, acted on the direction of the O/C Inspector Sujit Saikia picked up an innocent old aged man, the father of the complainant from his house on the morning of 28.08.2010 and kept him under detention till evening without any authority. The Addl. SP simply overlooked this aspect of the matter;
- (e) No action was initiated against the unruly persons who attacked the house but illegally detained Muslimuddin Ahmed and released him from the police station with one Dharani Rai who was not associated with the family members of Muslimuddin Ahmed;
- (f) The act of SI Badal Chandra Paul was reprehensible. He wrongfully picked up Muslimuddin Ahmed from his house to the police station and illegally detained him in the police station for the whole day till evening and released him facilitating of his being kidnapped by some unknown persons who kept him confined for three-to-four hours unlawfully wherein the miscreants obtained his signature and prepared the purported agreement and left him at Ulubari Chariali at about 11.00 pm on 28.08.2010;
- (g) The act of SI Badal Chandra Paul cannot be supported by law. He wrongfully taken into custody of an old aged person, illegally detained him at the police station for the whole day till

evening and released him with a view to facilitate the commission of abduction by the miscreants.

8. The relevant GDE dated 28.08.2010 as claimed to have deputed SI B.C. Paul by the O/C Paltanbazar PS Inspector S. Saikia has been examined. The GD in question was obtained by the Commission after long persuasion. The GD Entry bearing No. 1384 was unsigned. The said GD Entry did not indicate that SI B.C. Paul was directed to take into custody of Muslimuddin Ahmed, an elderly person by the O/C Paltanbazar PS. The report of the Addl.SP, the GD Entry, the version of SI B.C. Paul, the Case Record of the case lodged by Muslimuddin Ahmed and the surrounding circumstances unerringly point out the culpability of SI B.C. Paul for unlawfully taking into custody of Muslimuddin Ahmed and for wrongfully confining him. The materials on record also established that SI Paul abetted in kidnapping and forcibly obtaining the signature of Muslimuddin Ahmed for preparing a valuable document along with the abductors. The Constitution of India guarantees the people of India a right to life, liberty as well as the right to equality. Instead of upholding and enforcing the law impartially and to protect life, liberty, human rights and dignity of the members of the public, SI B.C. Paul by throwing into winds all the canons of law, engaged himself in unlawful act. The acts or actions taken by SI Paul amounted to criminal offences U/Ss 341/342/166/217 of the IPC read with Section 98 of the AP Act, 2007. SI B.C. Paul *prima facie* committed offence of abduction of Muslimuddin Ahmed, abetting in unlawfully executing a valuable document and intimidating Muslimuddin along with the abductors.

9. We accordingly direct the DGP to take appropriate measure for lodging FIR with the appropriate authority U/Ss 341/342/166/217 of the IPC read with Section 98 of the AP Act, 2007. We are equally unhappy with the conduct of the then SSP(City), Guwahati and the Addl.SP Longnit Teron for withdrawing from superintendence of the police station where we found that the vital GD Entry remained unsigned and those aspects of the matter escaped their attention. The sheer negligence of the officers named above provided a free hand to SI B.C. Paul in committing the crime and misconduct. These two officers failed to exercise the powers provided to them U/S 36 of the CrPC read with Section 13 of the AP Act, 2007. We could not appreciate as to why the officers of superintending level failed in discharging their duties and functions as per law. We are, but pained to express our unhappiness in the conduct of the officers mentioned above. We leave the matter to the wisdom of DGP who is the competent authority to look into the matter and take appropriate remedial measure as considered appropriate by him. The DGP is accordingly afforded an opportunity to present the department's view and additional facts,

if any, not already in the notice of the Commission before finalizing our opinion within 3(three) weeks from the date of receipt of this order.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No.40/2010
Mrs Meherun Nissa Ahmed

-Versus-

Officer-in-Charge, Paltanbazar Police Station & Ors

ORDER

Date-09.10.2013

The complaint in question was duly examined by the Commission. After completion of the enquiry and on consideration of materials on record, the Commission passed its order and communicated its findings to the concerned authority with the appropriate direction.

2. Vide communication No.SPAC/APHQRs/40/2010/36 dated 3rd October, 2013 the Assam Police Headquarters communicated to the Commission its agreement with the findings of the Commission.

3. The Order of the Commission dated 21.08.2013 is therefore made absolute. The Commission be kept abreast with the follow up actions from time to time.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No.46/2013
Shri Nripen Chandra Kalita

-Versus-

Officer-in-Charge of Rangia Police Station

ORDER

Date : 13.09.2013

1. *“Section 154 CrPC places an unequivocal duty upon the police officer-in-charge of a police station to register an FIR upon receipt of the information that a cognizable offence has been committed. It hardly gives any discretion to the said police officer. The twofold obligation upon such officer is that : (a) he should receive such information, and (b) record the same as prescribed. The language of Section 154 CrPC imposes such imperative obligation upon the officer. The genesis of this provision in our country in this regard is that the officer-in-charge must register the FIR and proceed with the investigation forthwith.*

The purpose of registering an FIR is to set the machinery of criminal investigation into motion, which culminates with filing of the police report in terms of Section 173(2) CrPC. It is a very material document on which the entire case of the prosecution is built. Upon registration of FIR, beginning of investigation in a case, collection of evidence during investigation and formation of the final opinion is the sequence which results in filing of a report under Section 173 CrP (Anju Chaudhary v State of UP : (2013) 6 SCC 384).”

2. There are number of instances where the Commission has delineated the scope and contents of Section 154 of the CrPC and inter-alia observed that it is a statutory duty to register FIR as required Under Section 154 and failure to register the FIR amounts to dereliction of the duty under Assam Police Manual. Despite all these, the Officer-in-Charge of Rangia Police Station failed to register the case and thereby committed serious misconduct.

3. The Commission received a complaint dated 08.07.2013 indicating the refusal to accept and register the FIR lodged by Smt. Mamoni Kalita on 06.07.2013. On receipt of the complaint, the Commission called for a report from the District Superintendent of Police. The District SP submitted a report dated 24.07.2013. The observation of the SP is reproduced below :-

“In the light of aforesaid enquiry, I am of the opinion that there is neither concrete nor conclusive evidence against Inspector Himangshu Das, Officer-in-Charge, Rangia PS and his PS staff. Although the complainant has leveled the charge of non-registration of case, all the police personnel on duty at that time have vehemently denied this. It is also to be stated that the enquiry officer i.e. SDPO Rangia has told the complainant that she could still lodge the FIR, but she has not filed the case so far.”

4. The SP also submitted an enquiry report conducted by the SDPO Rangia. The SP, as per his report, could not find any conclusive evidence against the named accused. The SDPO, in his concluding report also admitted that from the oral statement of the PS personnel and written record of PS, he came to the conclusion that the lady named Smt. Mamoni Kalita and witness Shri Sankar

Kalita had come to the PS to meet the OC of Rangia on 06.07.2013. But it is very difficult to establish that they gave any FIR and PS staffs refused to lodge the FIR. On the other hand, he made the following observations in his report :-

"I examined the above mentioned officers and staffs of Rangia Police Station regarding the issue and recorded their statement also. Most of them stated that they saw one lady along with two persons came to Rangia PS to meet OC of Rangia PS Insp. Himangshu Das. Since the OC was outside busy in Law and Order duty and not in PS, so they went away.

First, I examined the 2nd officer of Rangia PS SI Dipak Kr. Neog. He replied that he was present at PS on 06.07.2013 from 9:00 am to 6:00 pm. According to him he did not know any lady named Smt. Mamoni Kalita neither the lady of the name of Smt. Mamoni Kalita came to him with any ejahar. He further states that at about 3:00 pm he returned back to PS after having lunch and then ASI Brajen Sarmah was also present that time. ASI Brajen Sarmah told him that two unknown persons along with one unknown lady came to him at about 2:30 pm and asked where the OC of Rangia PS was. ASI Brajen Sarmah replied them that the OC is in Law and Order duty at SDO(C) Office, Rangia. To hear this they went back telling that they had some work with OC.

Then I examined ASI Brajen Sarmah. He stated that on 06.07.2013 at about 2:20 pm two persons with a lady came to him and he did not know any of them. They asked Brajen Sarmah where is the OC. Then ASI Brajen Sarmah replied that the OC was busy in a Law and Order duty at SDO(C) office, Rangia. ASI Sarmah asked them what work they have and why they wanted to meet OC but they simply told that they wanted to meet the OC and nothing more as they had work with the OC and then they went back.

When I examined the Traffic ASI Lal Babu Singh, he stated that on 06.07.2013 at about 2:00 pm he was in PS and then ASI Brajen Sarmah was on phone duty. At that time he saw that two unknown persons and one unknown lady came to PS and asked about OC of the PS as they told they had some work with OC. According to him ASI Brajen Sarmah told him that OC is in a Law and Order duty at SDO(C) Office, Rangia. Then the visitors replied to ASI Brajen Sarmah that they will come back later and they did not lodge any FIR."

5. The Officer-in-Charge, Rangia PS appeared before the Commission and he was heard at length. The O/C, Rangia PS, before the Commission, corroborated the report made by the Supdt. of Police. The O/C, Rangia stated before the Commission that on 06.07.2013, he left for law and order duty leaving the charge of the police station to SI Dipak Kumar Neog, the next in rank to the Officer-in-Charge.

6. From the aforesaid observations, it is apparent that the wife of the complainant came to the police station and asked for the OC Rangia and all of them said that OC was absent in the police station. The observation itself is a contradiction. A police station cannot go unmanned without the Officer-in-Charge of the police station. Section 2(o) of the CrPC defined that “officer in charge of a police station” includes, when the officer in charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when the State Government so directs, any other police officer so present. Assam Police Manual Part-V also provides indication of the police station and the Officer-in-Charge of the police station. Therefore, the police personnel was not correct in telling Mamoni Kalita on 06.07.2013 that Officer-in-Charge of the police station was not present in the police station. All these indicate that the lady came for meeting the OC with her complaint and Officer-in-Charge of the police station did not entertain the FIR. Absence of Inspector Himangshu Das from the police station could not make the Rangia PS non-functional. Even, in the absence of Himangshu Das the 2nd Officer present in the PS ought to have responded and entertained the claim. Admittedly, the woman accompanied by a civilian went to the police station and met the police officer in the police station. All these led credence to the assertion of the complainant that Rangia PS refused to entertain the FIR which they were bound to register under the law.

7. We have perused the complaint as well as the next thereto which indicated alleged commission of cognizable offence U/Ss 337/341 of the IPC. Instead of working as an effective people friendly and responsive agency, the concerned personnel failed to assist the members of the public, more particularly a woman in registering her complaint. Apart from the legal obligation, every police officer has a social responsibility to respond the grievance of the public. The Assam Police Act made it imperative to uphold and enforce the law impartially, and to protect life, liberty, property, human rights and dignity of the members of the public and behave with the member of the public with due courtesy and decorum, particularly so in dealing with senior citizens, women and children. All these aspects are totally overlooked by the concerned District SP as well as the SDPO. The Commission expresses its severe disapprobation.

8. All things considered, we direct the DGP to issue appropriate direction to the Officer-in-Charge of the PS to register an FIR treating the complaint submitted to us by Shri Nripen Kalita along with the accompanied FIR of Smt Mamoni Kalita as the First Information Report under appropriate Section of law. The DGP is afforded an opportunity to present department’s view and additional facts, if any, not already in the notice of the Commission within 3(three) weeks from the date of receipt of this order.

Sd/-
CHIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No.44/2011
Smt Kalpana Sinha

-Versus-

I.O. Karimganj PS, TSI Angshu Rajkumar, Karimganj

ORDER

Date- 08.10.2013

The Commission received a complaint alleging serious misconduct against the police personnel of Karimganj Police Station. It was alleged that her minor daughter Smt Ratneswari Sinha was kidnapped by her private tutor Shri Uttam Das, son of Shri Hirendra Das of village Sadarashi, PO, PS & Dist. Karimganj, Assam. Her grievance was that despite the FIR was lodged by her, no action was taken. She moved from pillars to posts and finally moved this Commission.

2. The Commission examined the matter, called for the report and also heard Shri Pradip Pujari, IPS, Supdt. of Police, Karimganj. Also heard Inspector Nihar Ranjan Nath, Officer-in-Charge, Karimganj PS. The Commission also heard in person Shri Angshu Rajkumar, Town SI, who conducted the investigation.

3. On consideration of the materials on record including the police report and accompanying documents, it is apparent that Inspector Nihar Ranjan Nath, O/C of Karimganj PS failed to register the case and it was registered only when the matter reached the Commission. On consideration of the matter, we are of the opinion that the Officer-in-Charge, Karimganj PS faltered in discharging duty and failed to register the case as required under the law. Instead the O/C engaged his Town Sub-Inspector to start the enquiry and to find out the missing girl. When a cognizable offence is disclosed in an FIR, the police is bound to register the case promptly. There is no room for conducting an enquiry before registering the case. Unfortunately, the CID Headquarters of Assam Police endorsed the view that U/S 48(f) it has a duty to conduct an enquiry. In our

opinion, there is no scope to linger in registering an FIR in a cognizable offence on the plea of under Section 48(f). Section 48(f) pertains to social responsibility of the police including rendering of assistance to the members of the public, particularly women, children, and the poor and indigent persons, against criminal exploitation by any person or organised group. It does not authorize them to keep an FIR pending in the name of Section 48(f) and conduct enquiry. It is wholly unauthorized and unlawful. We have deliberated the matter in its entirety with the Supdt. of Police, Karimganj. The Supdt. of Police assured that he will take all the necessary steps to recover the girl. The Supdt of Police was also pointed as to the lapses on the part of the Officer-in-Charge and the TSI. When we pointed out the alleged lapses of the TSI, Karimganj in conducting the investigation in a perfunctory fashion, the Supdt of Police candidly stated that he has looked into these things and will take appropriate measure against the erring officials, namely, Inspector Nihar Ranjan Nath, O/C Karimganj and SI Angshu Rajkumar, TSI, Karimganj. We, however, feel it appropriate to direct the DGP to initiate departmental action against Inspector Nihar Rasnjan Nath, O/C Karimganj for non-registration of the case which is a serious misconduct leaving the matter of initiation of action against the TSI to the authority concerned.

4. All things considered, we advise the DGP to initiate departmental action against the erring official, namely, Inspector Nihar Ranjan Nath, O/C Karimganj. In view of the statement of the Supdt of Police, the Commission did not consider it appropriate to direct D.P. against Shri Angshu Rajkumar, TSI leaving the matter of initiation of proceeding at the door of the S.P. The DGP is afforded an opportunity to present department's view and additional facts, if any, not already in the notice of the Commission within 3(three) weeks from the date of receipt of this order.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No. 71/2013

Shri Tapan Das

-Versus-

Officer-in-Charge, Sipajhar Police Station

O R D E R

Date-22.10.2013

1. It is a complaint against the Officer-in-Charge of Sipajhar Police Station for his alleged serious misconduct.
2. We called for the report from the concerned Superintendent of Police. The report is nothing but a repetition and exposing of the feigned ignorance of the police of the law of the land and the laws regulated in the police. The report clearly indicated that instead of following the procedure prescribed by the Criminal Procedure Code as indicated in Chapter-XII of the Criminal Procedure Code, followed a procedure unknown to law. On the own showing of the report of the Superintendent of Police instead of adhering to the procedure prescribed in Sections 154(1) CrPC, 155 CrPC or refusing to investigate in the event of a non-cognizable case refusing to investigate by taking aid of Section 157 CrPC, the Superintendent of Police proudly asserted that on receipt of the complaint matter was sent for enquiry and report and thereafter resolved the dispute amicably by a compromise. This is a procedure unknown to law and police tried to act as an adjudicator. Time and again the Commission reminded the Department to read the law and follow the procedure prescribed therein.
3. The officer concerned appeared before the Commission in a good number of cases and we have interacted with the officer on various issues but it seems that the officer failed to see the reason and act truly as professional police officer. The Commission expected that the Police Headquarters will take proper initiative to guide these officers to adhere to the procedures prescribed by law. The Commission expects that the DGP will take effective measure to train these officers so that this type of act is not repeated.
4. With this, the proceeding stands closed. The Commission be intimated about the development on this matter.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No.42/2011*Shri Ajit Medhi**-Versus-**Shri Kusheswar Nath, SI of Panbazar Police Station***ORDER**Date-20.11.2013

This is a complaint against police misconduct pertaining to illegal charge, arrest and gross abuse of power.

2. We have called for the report and examined the matter at length. On consideration of the materials on record, it transpires that on the complaint of the complainant a criminal prosecution is already initiated. In this respect, we have also examined SI K. Nath. On examination of the report, it appears that the S.I. concerned took the complainant in custody without following due process of law. It appears that the S.I. acted with gross indiscretion. However, the SSP in his report also indicated as to the indiscretion of the officer concerned.

3. Taking into consideration all the aspects of the matter, the Commission thinks it appropriate to direct the SP concerned to take appropriate measure as per law against the SI concerned so that such thing does not recur in future. It may be mentioned herein that the SSP concerned ought to have taken appropriate measure as per law when such thing surfaced.

4. With this, the proceeding stands closed.

Sd/-

CHAIRMAN

Sd/-

MEMBER

SPAC Case No.01/2012

Md. Anwar Hussain

-Versus-

Officer-in-Charge, Bharalumukh Police Station

ORDERDate -29.11.2013

It is a complaint from a senior citizen alleging serious misconduct against the police personnel of Bharalumukh Police Station. It was alleged in his complaint that he owned a plot of land measuring 2 bigha 2 kathas situated at Saukuchi under Beltola Mouza, Guwahati covered by dag no. 613 patta No.91. On being induced by one Md. Aftab Hussain, a resident of No.2 Sarudampur, PS – Hajo, Dist. Kamrup the complainant executed a power of attorney in his favour towards looking after his property. On execution of the power of attorney, he could realize that Shri Hussain was interested to illegally grab his property. It was also alleged that said Hussain sometimes thereafter again came with some musclemen and forcefully took his signature in blank paper. He also asserted in his complaint that he submitted an FIR before the Bharalumukh PS and the Bharalumukh PS registered the FIR being Bharalumukh PS case No. 238/2011 dated 11.08.2011 U/S 420/384/406 IPC. Thereafter also, the said Hussain took his signature in some other documents including affidavit meant for sale permission. The complainant narrated the facts in writing to the Bharalumukh PS but no action so far was taken.

2. On receipt of the complaint, the Commission called for a report. In the report, the Supdt of Police indicated that on receipt of the FIR, a case was registered vide Bharalumukh PS Case No. 283/2011 U/S 420/384/406 IPC and the matter was investigated into. It was also made known in the report that attempts were made to apprehend the accused Aftab Hussain, but he was evading arrest. He then obtained anticipatory bail from the Gauhati High Court. Despite the High Court's order, the accused did not appear before the police. Instead his advocate submitted an order of the High Court before the police station. It is difficult to understand how the police could accept an order from the lawyer and kept quiet instead of arresting the accused. As regard the second FIR, the Supdt of Police in his report informed that the FIR was not signed by the complainant, so he was asked to submit the FIR after putting his signature.

3. We found it difficult to appreciate the stand of the district police for not registering the written information in the absence of his signature. For registration of a case, police does not require a written information. Even in case of an information given orally before an officer-in-charge of the police station, the duty of the police is to reduce it to writing, read over to the informant, obtain his signature and register it. We also found it difficult to accept the plea that the accused could not be arrested by the police. We found the report asking the complainant to sign the FIR to be a misleading one. If at all necessary and handy, it was the job of the police. We also called upon the officer-in-charge as well as the I.O. The Commission called upon the Addl.SP who supervised the case and Commission expressed its unhappiness for allowing a person to evade the process of law even after order of the High Court.

4. By its communication dated 26.11.2013, the Sr. Supdt of Police vide his note indicated that the accused was arrested. The second case was also registered. Both the cases were amalgamated and charge-sheet was submitted.

From the materials on record, it appears that Bharalumukh PS failed to act upon in the right direction and kept the matter delayed for long. The Commission expresses its severe disapprobation on the lackadaisical conduct of the officer in charge of the Bharalumukh police station in handling the investigation. The District Superintendent of Police as being the voice of conscience in the district police also need to zero in the area of supervision of the police stations of the District. We feel it appropriate to call for the attention of the Police Chief of the State to take apt measure for causing meaningful supervision of the working of the *thanas* by the District Police Chief. Since the police have now taken actions as per law, we do not find any justification to continue the proceeding. The proceeding thus stands closed.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No.73/2013
Mustt Furuja Khatun

-Versus-

Officer-in-Charge, Rupahihat PS, Dist. Nagaon

ORDER

Date -04.12.2013

This is a complaint from two elderly ladies alleging serious misconduct of the Incharge, Kawaimari Outpost under Rupahihat Police Station. The two female siblings in their complaint also enclosed four more FIRs said to be submitted before the Outpost. The complainants also alleged that instead of registering a case to protect the two women from unlawful act of the accused persons, the Incharge, Kawaimari Outpost were found to be hobnobbing and hanging around with the accused persons.

2. We called for a report from the Superintendent of Police, Nagaon. In the report, the SP intimated *inter-alia* to the following effect :

“During enquiry, complainant Mustt. Rabia Khatun D/O- Lt. Haji Abidullah, Vill.-Kadamguri PS-Rupahihat again submitted a complain on 29/09/13 at Kawaimari PP. During course of enquiry it is found that, S.I. Khagen Hazarik, I/C – Kawaimari PP made 3 nos. general diary entries

in Kawaimari PP and he also visited the PO on 01/10/13 and he advised to both parties to take the help of Hon'ble court as the matter is a civil dispute nature. I/C Khagen Hazarika neither registered a case even though the offence is cognizable offence U/S-294/427 IPC nor he submit a proceeding U/S 107/144 Cr.PC for which he is asked for an explanation for gross negligence to duty. Also I/C Kawaimari P.P. is instructed to register a case in this regard and take preventive measures immediately."

3. The SP Shri Vivek Raj Singh appeared before the Commission and informed the Commission that he had already taken appropriate steps in this direction. He directed the Incharge, Kawaimari PP to register a case and accordingly a case was registered in the Rupahihat PS bearing No. 469/13 U/S 447/294/427/506/34 IPC. It was also intimated that steps were also taken and report was also made to the concerned Magistrate under his direction U/S 107/144 CrPC.

4. We found it difficult to appreciate the obvious lapses on the part of the concerned SI/Incharge, Kawaimari OP. Despite the clear mandate of the law, the police stations are not taking prompt initiative for registration of the cases. This has become almost a trend. Persons those who matter need to take appropriate steps for proper training of the police personnel and make them responsible and responsive.

5. Since the SP Shri Vivek Raj Singh has already taken steps, we do not feel appropriate to pursue the matter. The proceeding thus stands closed. A copy of the order be communicated to the complainants.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No.82/2013
Smt Bornita Das
-Versus-
Officer-in-Charge, Sivasagar Police Station

ORDER

Date-06.12.2013

1. One more complaint pertaining to non-registration of a case.

2. At the intervention of the Commission, it seems that the case has been registered. The Superintendent of Police, Savasagar District by his communication reported that Sivasagar PS registered the case as Sivasagar PS Case No. 897/13 U/S 379 IPC. The SP by his communication also intimated that he has already asked for explanation from Inspector S. Zaman, O/C Sivasagar PS and ASI Anil Mili, Sivasagar PS for not registering the case and also for not submitting the enquiry report in time.

3. Since the SP concerned has taken measure for bringing accountability, it would be appropriate for us not to proceed further. Accordingly we close the proceeding. The concerned authority is advised to intimate about the further progress of the matter to the Commission from time to time. With this, the proceeding stands closed.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No.51/2011

Smt. Ranju Das

-Versus-

SI Debajit Mahanta (the then O/C, Morigaon PS) & Shri Trailokya Mahanta

ORDER

Date-28.11.2013

The complainant comes from Oujaribori village of Morigaon district who belongs to scheduled caste community under the Constitution of Scheduled Caste and Scheduled Tribes Order 1950. Her basic complaint was that of serious misconduct pertaining to unlawful arrest and detention as well as allegation of blackmailing by SI Debajit Mahanta, the IO of the case. The complainant alleged that her husband Dilip Chandra Das was arrested by Morigaon police in connection with Morigaon PS Case No. 138/07 and kept in police custody for three days. It was also alleged that same I.O. Debajit Mahanta demanded Rs. 1,00,000/- from the complainant during the period of custody of her husband for releasing him from the case forever. The complainant also alleged that the matter was reported to the DGP, Assam and Supdt. of Police, Morigaon.

2. The Commission called for the report. The Supdt of Police, Morigaon by his communication dated 18.11.2011 reported that the husband of the

complainant was arrested in connection with Morigaon PS case No. 138/07 U/S 408/466/34 IPC and forwarded him to judicial custody. He was arrested in connection with a case pertaining to issuance of a fake domicile certificate under the seal and signature of ADC, Morigaon Shri S.M. Deka. The report also indicated that the informant was Shri Apurba Phukan, DC, Morigaon who lodged an FIR at Morigaon PS on 15.06.2007. From the report of SP, it reveals that the husband of the complainant was arrested by SI Debajit Mahanta, O/C Morigaon PS and forwarded him to judicial custody. His specimen handwriting, specimen signatures were sent to FSL, Guwahati for examination and comparison with the seized documents. The report also indicated that the case was returned in FR against the arrested accused Dilip Das as FSL report gave negative result and signature, handwriting of accused did not tally with the exhibits. The report appears to be sketchy, incomplete and inept. That apart, the assertions made by the SP were not backed by the relevant documents. The report did not indicate as to the reason of arrest of the complainant's husband Dilip Das after a lapse of three years. The report was also silent about the date of arrest of accused person, date of obtaining specimen handwriting of the accused and the date when it was sent to FSL and when the FSL report was received. The report dated 28.11.2011 submitted by the SP only mentioned about the allegation of blackmailing by SI Debajit Mahanta, O/C Morigaon PS with the mediator Shri Trailokya Mahanta of Morigaon could not be substantiated during his enquiry.

3. The Commission forwarded the complaint petition along with the report of the SP, Morigaon dated 28.11.2011 and requested the concerned authority to submit a proper report. There was delay in submission of the report. Because of the delay in submission of the report, the Commission had to request the presence of Addl.DGP, CID and Addl. DGP(MPC) before the Commission for ascertaining the fact. The officers attended the Commission and discussed and assured to submit a complete report. By communication dated 20.03.2012, the IGP(L), Assam forwarded a report conducted by Special Superintendent of Police CID.

4. As per SSP CID report dated 16.03.2012 furnished to the Commission, the complainant Smt Ranju Das was examined by Inspector CID Ghana Kanta Bora. Inspector Bora could not complete the enquiry in absence of victim Dilip Kumar Das. The complainant also furnished CD containing recorded version of the negotiations for demanded money by SI Debajit Mahanta (the then O/C Morigaon PS) through a middleman for confirming the allegation. The Commission also wanted to know the result of the scientific investigation contemplated by CID vide Memo dated 27.03.2012. The enquiry report dated 06.07.2012 submitted by Inspector Ghana Kanta Bora of CID(HQ) revealed that Morigaon PS Case No. 135/2007 U/S 468/466/34 IPC was registered on 01.07.2007. The husband of the complainant Shri Dilip Das was arrested in the case on 16.03.2010 and forwarded him to judicial custody on 17.03.2010. Shri

Das was taken in police custody as allowed by the Court for interrogation and on expiry of police remand he was forwarded to judicial custody on 20.03.2010. During the custodial detention of Shri Dilip Kumar Das in Morigaon PS, O/C Morigaon PS SI Debajit Mahanta demanded Rs.1,00,000/- from the accused Dilip Kumar Das for his release. The complainant Ranju Das paid Rs.40,000/- to SI Debajit Mahanta on 18.03.2010 and Rs. 40,000/- only to one Trailokya Mahanta, a near relative of SI Debajit Mahanta for making payment to SI Debajit Mahanta as he acted as mediator in the matter. Father-in-law of complainant Ranju Das contacted Trailokya Mahanta to help releasing Dilip Das from Morigaon PS.

5. Inspector CID Ghana Kanta Bora examined 8(eight) witnesses including that of Shri P.R. Bora, a practicing advocate, Smt Ranju Das, the complainant and her husband Dilip Das etc. These statements clearly established the involvement of SI Debajit Mahanta in blackmailing and extortion as defined U/S 78(f) of AP Act. Inspector Ghana Kanta Bora, CID HQ examined SI Debajit Mahanta, O/C Morigaon PS and Shri Trailokya Mahanta. SI Debajit Mahanta denied the allegation while Shri Trailokya Mahanta said that he assisted the complainant Smt Ranju Das and arranged for bail of Dilip Das through Advocate Puna Ram Bora. The Commission also heard Smt Ranju Das, victim Dilip Das and recorded their statements. From the statements, it disclosed that Morigaon PS Case No. 138/07 was registered on 01.07.2007 and the accused Dilip Das was arrested on 18.03.2010 and forwarded to the Court and remanded to police custody for three days. During the period of police custody, O/C Debajit Mahanta put mental pressure on the family members of Dilip Das to part with Rs.1,00,000/- and finally he was compelled to make payment of Rs.80,000/- in two installments to SI Debajit Mahanta.

6. Investigating Agency of the Commission made local visit to the place of occurrence and examined the records produced by Shri Dilip Das. According to the report of the Investigating Agency, it appears that investigation of the case of Dilip Das was not done and after a lapse of two years he was arrested without making any endeavour to establish his involvement against delivery of domicile certificate by accused Dilip Das to Shri Heramba Kanta Nath. Evidence against delivery of domicile certificate by accused Dilip Das to Shri Heramba Kanta Nath was not collected in the proper manner. No other specimen handwriting obtained except that of accused Dilip Das and forwarded for comparison at FSL although Deputy Commissioner Shri Apurba Phukan in his FIR stated that those fake certificates were being issued by some persons. Specimen signature, admitted handwriting of Shri S.M. Deka, ADC, Morigaon were not obtained and sent to FSL for comparison. There was also enough scope for suspicion against the staff of DC's office for forgery of the signature and corrupt practices for issuance of fake certificates.

7. FSL report collected had revealed that specimen signature and handwriting of accused Dilip Das did not tally with seized documents in question. So, the case was returned in FR on 30.04.2011 vide FR No. 18/11 by SI Debajit Mahanta, O/C Morigaon PS. The specimen signature signed as that of the ADC was absolutely uncalled for. Accused Dilip Das was acquitted from the criminal case.

8. We have examined the materials on record. On consideration of the report of the Investigating Agency, it was ascertained that proper investigation of the case was not done. Only after a lapse of three years, Dilip Das was arrested without establishing his involvement in the case. The basic complaint before the Commission by the complainant to the effect that the complainant, her husband, father-in-law were exposed to blackmailing and extortion by O/C Morigaon SI Debajit Mahanta in the name of acquittal in Morigaon PS Case No. 135/2007. The case was registered on 15.06.2007 having received a written complaint including two documents/records from the Deputy Commissioner, Morigaon. There were as many as four I/Os before the case reached SI Debajit Mahanta. The case has a reference to the special report No. 52/07 but there was no final report and approval thereto placed before the Commission by the police officer Debajit Mahanta in support of his contention. He appeared before the Commission and his statement was recorded. He also sent a communication to the Chairman, SPAC. None of the statements revealed that he had submitted the FR having received the directions from the SP as is required in a case treated as SR case. He had simply stated that the case was supervised and he was directed to return in FR. The report is totally silent as to the role and performance of his senior level officers between the CI and the SP are kept in complete darkness in the report of the SP Morigaon and that the case was properly supervised. As alluded earlier, the said Dilip Das, the husband of the complainant was arrested after three years of the case. The investigation of the case indicates serious lapses and perfunctory action. The questioned document, i.e. the certificate of domicile issued to Papumoni Kakoti as enclosed in the FIR has been twisted and made it a comparative document. The alleged offender has been made to forge the signature in a similar certificate and that was sent to FSL. As an I.O. he had a duty to preserve the handwriting specimen of the alleged offender and sent for opinion considering the certificate enclosed in the questioned document. The SI should have requested the FSL expert for opinion as to whether the signature in the questioned document was that of Shri Dilip Das, the alleged offender. Curiously the SI forced the alleged offender to forge the signature of the ADC and sent for opinion whether the two signatures tallied. This is not only intentional and absurd kind of investigation allowing the offender to go scot free. The senior level officers overlooked this serious mistake. The specimen signature, the question to the handwriting expert are faulty and dubious. In the name of investigation, it was nothing but a mockery and giving a free hand to the offender to escape. It is not only instance of

perfunctory investigation, it is a mockery of justice as if everyone concerned was determined to shield the accused person from the criminal liability.

9. The CID HQ conducted an enquiry into the allegation at the initiative of the Commission through the police headquarters and a report was submitted by Inspector Ghana Kanta Bora of CID. Among other things, the enquiry officer in regard to the extortion had submitted that the allegation of extortion of Rs. 80,000/- by SI Debajit Mahanta with the help of one Trailokya Mahanta was not free from doubt. However, having received a CD of telephonic conversation between Dilip Kr Das and SI Debajit Mahanta and Trailokya Mahanta on the other side in the process of extortion of Rs.80,000/-, the Inspector of CID decided that a voice test for matching the recorded conversation need to be carried out. The then O/C SI Debajit Mahanta and Trailokya Mahanta when called for voice record, both of them disagreed for the test. The Inspector of Police, CID could not go ahead with this action plan due to the non-cooperation of SI Debajit Mahanta and Trailokya Mahanta in course of an enquiry which has no force of legal instrument for the purpose. We failed to appreciate the helplessness as to why it could not act according to the law and did not make attempt to match their voice to come to the decision. The circumstances that prima-facie appeared pointed to the blackmailing to the family members of Dilip Das and extortion of Rs.80,000/- by forcing the parties to dispose their house-hold properties including live-stocks and these circumstances ought to have been collated appraised in the context of the refusal or non-cooperation of these persons to undergo voice test for matching with recorded in the CD and this itself gave proper opportunity to the CID to register a case against SI Debajit Mahanta, the then O/C of Morigaon PS and Trailokya Mahanta, a relative of the O/C.

10. We failed to appreciate as to why the police department failed in their duty to cause proper investigation of the matter and bring to book the guilty persons. In all, we found that a serious case of causing fraud on the State by forging certificate was criminally neglected by the higher echelon of the district police including the then Supdt of Police. The case should have received sharp attention of the then Supdt of Police, but the concerned SP in a most lackadaisical manner overlooked this aspect of the matter and allowed the guilty to go scot free, racketeers and allowed the crime-doers to go unpunished. This is a case of criminal neglect on the part of the persons concerned including the SP. It seems as if all these persons colluded/abetted with O/C Debajit Mahanta and allowed him to indulge in blackmailing and extortion. The learned Judicial Magistrate rejected the FR. The Court re-opened the case giving ample opportunity to the police. The police again failed and Dilip Das was acquitted, but the complaint of the Deputy Commission, Morigaon remained uninvestigated. The police investigation was queerly conducted in most unprofessional fashion throwing to the winds the basic objective of investigation.

11. All things considered, we feel appropriate to direct the Director General of Police to initiate criminal prosecution against SI Debajit Mahanta (the then O/C of Morigaon PS) and Trailokya Mahanta by directing the concerned authority to lodge an FIR and register the case against SI Debajit Mahanta and his associates under Sections 166/167/384/385 IPC. We feel that it will provide the authority an opportunity to make proper investigation in the cyber offence. In addition, FIR should also be lodged for criminally prosecuting SI Debajit Mahanta U/S 98(a)(b) of Assam Police Act, 2007 for his dereliction in the investigation of the case. The Circle Inspector, Dy.SP, SP should be departmentally proceeded for their dereliction in the case and giving undue protection to SI Debajit Mahanta in the blackmailing and extortion. All those who matter also make all endeavours to re-open and re-investigate the case on the basis of the FIR lodged by the Deputy Commissioner, Morigaon dated 15.06.2007 in aid of Section 173(8) of the CrPC. The authority should also take appropriate steps against the Circle Inspector, Dy.SP, SP, Morigaon for dereliction of duty in not properly investigating on the FIR lodged by the Deputy Commissioner, Morigaon dated 15.06.2007. The DGP of the State is given an opportunity to present the department's view and additional facts, if any not already in the notice of the Commission within 3(three) weeks from receipt of this order.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No.13/2011
Shri Himendra Baruah, Dist. Golaghat

-Versus-

OC, Barpathar Police Station, Golaghat District

ORDER

Date-30.12.2013

It is an unfortunate case where a man in prime of his youth took his life by committing suicide. The complainant is the unfortunate father, who moved the Commission to take appropriate measure under the law against the OC of Borpathar Police Station under Golaghat District. The complainant in his complaint stated that his son Anjan Baruah on the night of 25.2.2011 at 11.45 PM committed suicide because of continuous threat and harassment. Because of the incessant intimidation by the police his son was forced to take his life. The

OC according to the complainant is guilty of abetting and masterminding the commission of suicide by his son.

The Commission called for a report and the records of the case. The Commission apart from examining the records, case report and relating GDE also looked into certified copies of the relevant orders. Materials on record indicated that the deceased Anjan Baruah was arrested in connection with Barpathar PS Case No. 60/10 u/s 121/121(A)/122 IPC on 25.10.2010.

The Commission also examined SI Ranjit Moran. On examination of all the aspects of the matter it has found that the deceased was arrested by the police in connection with a case. The circumstances in allprobability had a telling effect on his body and mind. His arrest and the surrounding circumstances, all these created stress and strain. Ache and pain over took his mind. Anjan took the tragic course of action. On the basis of the materials available to us, we found it difficult to hold the OC, Barpathar Police Station, guilty for abetting of the commission of suicide. It is unfortunate that a young man had to give his life. But for that we cannot hold the OC guilty.

The proceeding thus closed.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No.36/2011
Karinur Nessa Borbhuyan & others

-Versus-

Dy.SP Khalilur Rahman, Hailakandi

ORDER

Date- 30.12.2013

Complainants are three in number. All are women. The complaint pertains to allegation of serious misconduct. A thumbnail sketch is given hereinafter.

On 30..6.2011 Shri Sibli Hussain Borbhuyan lodged an ejahar at the Hailakandi Police Station. Police case was registered accordingly. The opposite party, also lodged an FIR after two days at Hailakandi PS and the same was also registered. The IO investigated on first of July, 2011 and Dy. SP arrested two persons in connection with the second case. The IO visited the site on first of

July, 2011 and Dy.SP arrested the persons at 3.00 PM. According to the complainant the DySP visited the place in drunken condition along with two other persons. The complainant Karinur Nessa while narrating the genesis of the case on 30.6.2011, the DySP misbehaved with her and assaulted her on her forehead. The DYSP was in an inebriated condition when he entered the house and started throwing chairs, cushions, plastics, etc. Mrs. Sanchita Begum, one of the complainant tried to pacify and control the behaviour of Dy.SP Rahman. The DYSP in turn threatened her and beaten her and also assaulted on her breast and shoulder for which she had to undergo medical treatment. The DySP then entered into the house of third complainant Mrs. Sahana Sultana Borbhuyan, arrested Badrul Haque Barbhuyan, Husband of Sahana Sultana. When the Wife Sahana Sultan protested the arrest, the DYSP caught her hair and shoulder and pushed her and she fell down on the side of PWD drain. The complainant also alleged that DYSP used to visit the village and drink with the local drunkers and created unpleasant atmosphere affecting the peace.

The Commission called for a report from the SP, Hailakandi. The SP, Hailakandi submitted the report. The report indicated that on 2.7.11 the complainant Fatima Begum w/o Abdul Matim Mazumder lodged an FIR before the OC, Hailakandi stating to the effect that Abdul Matin Mazumder, the President of Kanchanpur LP School and Badrul Islam is the Headmaster of the school. The complainant narrated that Badrul Islam wanted to sell the rice of the mid day meal for the month of June, 2011. The husband of the complainant opposed the proposal of Headmaster. The Headmaster threatened the President Abdul Matin Mazumdar with dire consequence and left her house. The complainant also stated in her FIR that on 3.6.2011 at 7.30 PM while she with her husband was returning from her father's house the Headmaster Badrul Islam with three others confronted them on the road and assaulted her husband by iron rod and also caused grievous injuries on her husband's head and he fell down on the ground and became senseless. According to the complainant she was also manhandled physically. The accused person took away cash from Abdul Matin Mazumdar while he was in unconscious state. On the information of Fatima Begum, Hailakandi PS case No. 286/2011 u/s 341/320/326/379/354/34 IPC was registered. Injured Abdul Matin Mazumdar was admitted to the Civil Hospital, who was subsequently referred to Silchar Medical College Hospital. As per SP's report Dy.SP Rahman visited the place of occurrence. The two accused persons namely Badrul Islam and Baharul Islam were arrested and handed over to OC, Hailakandi PS for legal action. Later on the OC, Hailakandi forwarded the two persons to the court in connection with the case. It may be mentioned here that SP's report was not accompanied with the supporting documents. The Commission had to call for documents along with the GDEs. After a long lapse of time i.e. on 22.5.2013 SP, Hailakandi submitted the documents and GDEs .

We have given our anxious consideration in the entirety. The materials on record, documents submitted to the Commission disclosed that injured Abdul

Matin Mazumder (age 35 yrs) was produced before the OC, Hailakandi PS on first of July,2011 and the injured person was sent to the Civil Hospital for medical examination. It refers to GDE No. 20 dated 01.7.2011 of Hailakandi PS Case No. 268/11 u/s 3541/325/326/379/345/34 IPC registered on 2.7.11 at 8.30 PM. The FIR however, indicated that written application was submitted to the OC, Hailakandi PS on 1.7.2011. OC, Hailakandi however, did not register the case on first of July, 2011 and reasons for delay of registration is also not indicated. The case was registered by SI Lal Mohan Das. DY.SP Rahman visited the PO with the IO SI Lal Mohan Das and effected arrest of accused persons in course of investigation on 02.7.2011. The accused were charge sheeted vide CS No. 156 dated 31.08.2011 against the arrested persons Badrul Haque Barbhuyan and Baharul Islam Barbhuyan.

OC, Hailakandi PS, Ashim Kumar Dey (the then OC), IO SI Lal Mohan Das were called for personal hearing by the Commission. They were heard. The afore mentioned persons submitted self explanatory statement. Inspector Ashim Kumar Dey stated that he received written complaint from Fatima Begum on 02.7.2011 at 8.30 AM and Hailakandi PS case No. 265/2011 was registered u/s 3451/325/326/379/354/34 IPC and endorsed to SI Lal Mohan Das for investigation.

Records indicated that Dy.SP Khalilur Rahman visited the PO for the purpose of supervision of the case. Earlier SPAC Case No. 39/2011 was instituted against Dy.SP Rahman on the complaint of Faruk Hussain for illegal acts of forcefully pulling up pillars of the land and tried to facilitate possession to others. He was called for personal hearing. But SP, Hailakandi vide his Wireless message intimated that due to illness he was not in a position to appear for hearing.

From the records it appears that Inspector Ashim Kumar Dey, OC, Hailakandi failed to register cognizable case as reported to him on 01.7.2011 vide GDE No. 20 dtd 01.7.2011 of Hailakandi PS. Non-registration of a case is a serious misconduct as defined u/s 70 of the Assam Police Act, 2007 which is also dereliction of duty u/s 98 of the A.P.Act, 2007. The SP and Addl. SP (HQ) of Hailakandi conducted enquiry but failed to take note of the facts by receiving FIR on the first of July, 2011.

The Commission has given its anxious consideration on the entire matter. Materials on record failed to indicate misbehavior or misconduct alleged to have committed by DY.SP concerned. The Commission however, found that the Inspector Ashim Kumar Dey, the then OC, Hailakandi Police Station committed serious misconduct in not registering the FIR. The SP and Addl. SP (HQ) failed to take appropriate action against the OC, Hailakandi for non-registration of FIR.

In view of the observation made above and in the fact situation we direct the Director General of Police to take appropriate departmental measure against the Inspector Ashim Kumar Dey, the then OC, Hailakandi. We also advise the

DGP to pull up SP and Addl. SP, Hailakandi for their failure to initiate action against OC, concerned as per law.

In the facts setout above, we direct the Director General of Police to present its department's views and additional facts, if any, already not in the knowledge of the Commission within three weeks from the date of receipt of the order, to enable the Commission to finalise its opinion.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No.64/2011
Shri Sanjeeb Baruah

-Versus-

*Supdt of Police, Dhemaji, O.C., Dhemaji PS, SI Neeraj Alam Choudhary,
Dhemaji Police Station*

ORDER

Date- 30.12.2013

It is a complaint against police personnel for alleged blackmailing and attempt of extortion of a citizen. The complainant is an authorized sub-dealer of sale and service of the Hero Honda Motors Ltd., having its registered show room and workshop at Dhemaji town. The complainant is doing the aforesaid business more than eleven years. The complainant in his complaint asserted that he purchased 52 numbers of motor cycles on 19.10.2011 for an amount of Rs.24,50,000/- and the payment was made through the Assam Gramin Vikash Bank, Dhemaji Branch. Accordingly, M/S Brother Enterprise transported and delivered the vehicles to the complainant at Dhemaji town. On 20.10.11, the complainant received 52 numbers of motor cycles from M/S Brother Enterprise, Naharlagun, Itanagar. While unloading the said motor cycles at Baruah Auto Traders Show Room at Dhemaji, the police came and seized the motor cycles. The police claimed that the said motor cycles were stolen property. It was also alleged by the police that the driver of the vehicle sold the motor cycles to the Baruah Auto Trader by carrying from Naharlagun and committed the breach of trust and implicated him as accused for knowingly keeping the stolen property knowingly for the purpose of sale. The complainant also stated that the owner of

the motor cycles from whom he purchased the motor cycles said that it was not stolen property. Despite all these, the motor cycles were seized and the complainant and his driver were taken into custody despite production of relevant documents. According to the complainant, the police have demanded money for releasing him and his motor cycles. On refusal to pay the money, the police registered Dhemaji PS Case No. 306/2011 U/S 407/379/411/34 IPC. The complainant also asserted that his father requested the Supdt of Police, Dhemaji and also produced the invoices of the motor cycles before him but the SP concerned insulted his father and said those documents were manufactured. The complainant in his complaint also alleged that one of them, viz., SI Neeraj Alam Choudhary of Dhemaji PS demanded a sum of Rs.50,000/- for payment to the higher officers of the district. It was also alleged that on 08.02.2011 at 8.00 pm to 10.00 pm SI Neeraj Alam Choudhary made call to the complainant and agreed at Rs.18,000/- or Black Berry Mobile handset from the complainant. He also alleged that he was threatened by the police over phone when he refused to pay the said amount and the threat notice/voice of the said officer was recorded by him in the mobile phone and on 09.02.2011 he made oral complaint before the Deputy Commissioner, Dhemaji against the said officer. The officer was transferred following his complaint. There again after few months, he was re-posted at Dhemaji PS and after taking charge at Dhemaji PS he was searching for an opportunity to implicate the complainant in a criminal case. According to the complainant, it was a counter blast to thwart his complaint made before the Deputy Commissioner.

2. The Commission took cognizance of the complaint. Since SP concerned was implicated, we thought it proper to call for a report from the DGP by our order dated 26.12.2011. The police headquarters instead asked the DIG to enquire into the conduct of allegation of SI Neeraj Alam Choudhary seemingly ignoring the complaint against the SP as it reveals from the communication sent by the Assam Police Headquarters bearing No. SPAC/APHQRs/180/2011/18 dated 27.01.2012. The full extract of the communication sent from the Assam Police Headquarters is reproduced below :

“A preliminary enquiry against SI(P) Neeraj Alam Choudhary of Dhemaji PS has already been conducted by SP, Dhemaji. He has already submitted a report vide his letter No. CB/DMJ/2109 dated 19.12.2011 which is enclosed.

From the enquiry it is clear that SI(P) Neeraj Alam Choudhary has indeed demanded 01(one) mobile from one Shri Sanjeeb Baruah during the month of February, 2011. This matter was reported by Shri Sanjeeb Baruah to the Deputy Commissioner, Dhemaji immediately after the incident. Further, Shri Sanjeeb Baruah has also recorded the demand note by SI(P) Neeraj Alam Choudhary on his mobile phone handset. Further, this was also played on the local TV channel on 15.12.2011. The conduct of SI(P) Neeraj Alam Choudhary is highly condemnable and

deserves strongest and quickest action. His conduct has brought disrepute to the entire police force.

The act of SI(P) Neeraj Alam Choudhary also amounts to commission of cognizable offence and therefore empowers the police to take cognizance to said crime. In this regard SP, Dhemaji is being directed to register a criminal case immediately against SI(P) Neeraj Alam Choudhary and investigate.

In the complaint submitted by Shri Sanjeeb Baruah of M/S Baruah Auto Trader, Dhemaji Chariali, Dist-Dhemaji, it is also alleged that he was falsely implicated in a motor cycle theft case, even though he had bona fide purchased the motor cycles from M/S Brother's Enterprise, Naharlagun, Itanagar. In this regard it is learnt that a case vide Dhemaji PS Case No. 306/11 U/S 379/407/411/34 IPC was registered and Shri Sanjeeb Baruah was arrested and forwarded to judicial custody on 20.10.2011. SP has been directed to send a detailed report along with a copy of the FIR in this case. A detailed supervisory note will be submitted separately. SI(P) Neeraj Alam Choudhary initially attached with Dhemaji DEF for field training and has been recently transferred to City DEF for the 2nd part of the field training."

3. From the above it seems that the police headquarters thought it proper not to enquire into the conduct of the Supdt of Police, Dhemaji though there was serious allegation against the police officer. On the other hand, it appears that the police headquarters asked the SP to submit his report on the complaint as will be revealed from the communication bearing No. NR/Crime/2011/6105 dated 21.12.2011. The Commission was forwarded with the report of the SP exonerating all concerned. It failed to address on what authority search and seizure were made. Entire search, seizure and arrest were made in a crude and steamy fashion. Interestingly, the police headquarters deputed the SP to supervise the case against whom serious allegations were made. Police headquarters also instructed the said officer who was under the scanner to give a supervisory note to the investigating officer. Everything was taken very casually, obviously for reasons known to the authority. The Commission was also informed by the police headquarters that a case against the SI concerned Neeraj Alam Choudhary was initiated under Prevention of Corruption Act. Needless to state that O.C. Lalit Buagohain was also party to the blackmailing and illegal search and seizure.

4. The Commission in course of enquiry, examined action taken by Shri K.C. Das, SI of Dhemaji PS, the I.O. of Dhemaji PS Case No. 306/11 U/S 379/407/411/34 IPC. The police in its investigation failed to show and establish the reasons for the search and seizure of the motor cycles of a registered sub-dealer. The authority concerned failed to satisfy us as to whether before search and seizure of the vehicles and taking into custody of the complainant and the driver, whether it assiduously adhered to the procedure prescribed by law. The

complainant made known the name of the dealer. The office of the main dealer was situated at Naharlagun which was within a range of about 120 km from the Dhemaji PS. They could have enquired about the police station at Naharlagun as well as from the complainant. Instead of that, in a high-handed fashion, the properties of a person were seized, he was harassed and reputation of the person was seriously affected. All these aspects were not taken into consideration by any of the authorities concerned. It was expected of the police headquarters to keep an eye on these activities, more so when it was made known to them. This sort of attitude will simply allow lawlessness and abuse of rule of law. Such things cannot be countenanced in a democratic country. All those who matter need to ponder over this issue and to take appropriate measure.

Findings:

5. The Commission examined the documents furnished by the police headquarters as well as the SP and the DIG. We also heard the O.C. Lalit Buagohain and the I.O. SI K.C. Das. On consideration of all the aspects of the matter, we found that the complainant and his driver were illegally brought into custody by the O.C. and kept him in his custody from 11.30 am on 20.10.2011 without even registration of a case. The illegal arrest or detention is revealed from the GDE No601 dated 20.10.2011. He had no business to keep a person wrongfully confined before registration of the case before his arrest.

6. We found the following infirmities:

- (i) Illegal arrest, wrongful confinement and also manipulation of documents as will appear from the seizure list and GD;
- (ii) From the GD, it appears that the complainant and his driver were brought to the police station at 11.20 am on 20.10.2011 whereas seizure was conducted at Baruah Trader at 11.30 am.
- (iii) Interestingly, in the seizure list, one of the seizure witnesses is Neeraj Alam Choudhary who was allegedly involved in the crime.
- (iv) It thus appears that search and seizure seemingly made in the absence of the complainant and his driver since according to their own report, they were brought to the police station at 11.20 am whereas search took place at 11.30 am.
- (v) Shri Lalit Buagohain, the O.C. was also involved in manipulation of documents. In our view, it is a fit case in which a criminal prosecution need to be initiated and FIR need to be initiated against SI Lalit Buagohain U/S 341/342/111/471 IPC read with Sections 98 and 99 of AP Act.

7. We have also heard the SP. We found that Shri P.R. Kar, SP, Dhemaji failed to perform his duty and responsibility as a district SP. He failed to act U/S 13 of the Assam Police Act read with Section 33 of the CrPC. The connected documents reportedly produced before the SP by the father of the complainant, no good reason was assigned to reject the documents produced. Interestingly, the DIG(NR) was asked to enquire the matter, who did not address these things in his report. The voice conversation records of SI Niraj Alam Choudhary and complainant Baruah could not be matched in FSL examination and for that the DIG(NR) instructed authority to send it again to the FSL but it was not reported in the SP's report. We failed to appreciate as to why SP raised an accusing finger against complainant Sanjeeb Baruah. The report of the SP, Dhemaji appears to have endorsed the view of the I.O. of the case registered against SI Neeraj Alam Choudhary that the victim tried to conceal the real facts of recording the voice of the accused and recorded the voice of some other person and reflected in the video clippings to malign the image of the accused and to victimize him on personal grudge against the accused. The victim perhaps, intentionally refrained to allow the I.O. to seize his mobile set for fear of disclosure of actual fact. In suo motu case of the police, the SP having exercised his superintending power was expected to examine the above mentioned points thoroughly on the registration of the case. During hearing, the SP sought time in view of his transfer to Nalbari district and non-availability of the relevant records. The SP was again heard on 23.05.2013 and submitted a written statement in the form of parawise comments. An extract of which are reproduced below:

“5. So far as the contents of para-4 is concerned, the Opp. Party states that the police case was registered against the complainant on genuine, credible and reliable accusations. As reported, the I/O submitted the charge-sheet against the complainant as accused for trial before the court of law. The allegation that police made conspiracy against the complainant etc. are nothing but made out stories only to derail the investigation from its proper perspectives.”

8. The report of the SP callously ignored the production of the invoice by the father of the complainant. He has not also dwelt upon as to the action taken by the police officials with reference to process of law - such as registration, investigation, inquiry. Materials on record clearly indicated that I.O. SI K.C. Das along with SI S. Singh went to Naharlagun after the incident, enquired into the dealer and found that there was no theft and found in their investigation that there was no theft of vehicles. All these only show and establish gross abuse of power and misuse of the process of the law. On perusal of the materials on record, the allegation of the complainant in the complaint directly points to the involvement of the SP. In our considered opinion, we find that Mr. P,R, Kar is

also equally guilty along with O.C. Lalit Buragohain. FIR need to be lodged against SP Mr. Kar and the O/C Lalit Buragohain for the alleged offence U/S 120(B)/341/342/471/167 IPC read with Sections 98 & 99 of the AP Act. In addition, we also feel that these two officers should also be departmentally proceeded.

9. It may also be mentioned herein that the vehicles were released by the criminal court on examining the documents. After release of the vehicles by the SP, Dhemaji P.R. Kar supervised the case and deputed I.O. SI K.C. Das to investigate by visiting M/S Brother's Enterprise, Naharlagun, Arunachal Pradesh. Accordingly, the I.O. SI K.C. Das visited M/S Brother's Enterprise, Naharlagun on 21.12.2011 to collect evidence and failed to collect anything materials to help the prosecution. Needless to state, it should have been done at the initial stage, i.e. on the day of detection of the articles on 20.10.2011. The SP, Dhemaji on the other hand, deputed SI K.C. Das after a lapse of 2(two) months from registering the case as will reveal from the GDE No. 543 dated 21.12.11. The SP concerned deputed SI Das after release of the articles by the CJM Dhemaji. The DIG's report did not address these relevant aspects. His report indicated against Neeraj Alam Choudhary and that, too, on an enquiry report of the SP who was himself under scanner. The DIG relied upon the SP Dhemaji who is allegedly a party to the commission of illegal act. The report of the DIG was manifestly a partial one obviously to divert the real issue. We expected DIG to seriously look into the complaint to address the grievance of a citizen. The unprofessional act of the DIG is disappointing. Instead, all these officers were found defending the wrong doers and allowed them to act lawlessly. We express our deep disapprobation on the conduct of the DIG.

10. In the circumstances, we consider it appropriate to ask the DGP to present its department's view and additional facts, if any, not already in the notice of the Commission within 3(three) weeks of the receipt of this order.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

SPAC Case No.40/2011
Smt. Deepamoni Gogoi

-Versus-

Shri Mukul Saikia, Addl. SP, Tinsukia

ORDER

Date- 31.12.2013

The Commission received a complaint from the wife of a Havildar Driver of 3rd APTFBN deployed in Digboi Police Station. She asserted in her complaint to the effect that her husband was subjected to inhuman torture by Shri Mukul Saikia, Addl. SP, Tinsukia. The complaint stated that her husband had to be admitted first at Digboi Civil Hospital because of inhuman torture on him. Because of the nature of severe injuries sustained, her husband was referred to Tinsukia Civil Hospital where he was treated. According to the complainant, a criminal prosecution was initiated against her husband with oblique motion through the driver Robin Dutta, a Homeguard deployed by the Addl.SP which was numbered and registered as Digboi PS Case No. 139/11 U/S 294/323/506 IPC. She also narrated that the O/C, Digboi PS despite knowing about condition of her husband, he was marked absent from duty from 07.08.2011 till the date of filing the complaint dated 25.08.2011 against her husband. Her grievance was that, the O/C did not even care to deploy any police personnel with her husband at Tinsukia Civil Hospital for treatment. On 16.08.2011, she lodged a complaint case in the Court of SDJM, Margherita against Shri Mukul Saikia, Addl.SP and his driver and the Court having taken cognizance has issued summons against the accused persons. The complainant narrated that on 23.08.2011, Shri Mukul Saikia called her husband to Tinsukia and threatened him with dire consequences and pressed her to withdraw the complaint case. The Addl.SP thereafter lodged an FIR through one Shri Lambit Moran framing a concocted case at Makum PS vide Makum PS Case No. 139/2011 U/S 307/511 IPC read with Section 25(1)(a) of Arms Act, read with Sections 10/13 of the ULA(P) Act against her husband.

2. We called for the report from the concerned authority and also called for the records. The least we comment is better. This is a case which we feel ought to have been settled within the four walls of the establishment. The controversy between two police personnel which could have been ironed out by the authority with a little tact and wisdom. It could have been settled through the departmental forum instead of forcing the party to institute case outside. Even the medical report produced before us did not speak well of the department. The report did not indicate the nature of the injuries. The least is said the better. However, we feel that these are the areas where department is to take care of for bringing peace in the rank and file.

3. We are not inclined to proceed further and feel it appropriate to advise the department to settle the same by adopting an in-house procedure. In view of the above, this is a fit case required to be examined and settled by an officer of the

rank of DIG and decide the outcome of the matter with an intimation to the Commission.

4. The proceeding thus stands closed.

Sd/-
CHAIRMAN

Sd/-
MEMBER

Sd/-
MEMBER

Sd/-
MEMBER

5. REFERENCE OF CASES OF INDIVIDUAL COMPLAINANT TO THE COMMISSION.

There has been not a single reference of cases made over to the Commission during the year under report and the situation remained same as the previous years since the beginning of the Commission started functioning in the State. The issue has been widely dealt with in our previous report. The absence of such reference is indicative of the inertia and mal functioning in the complaint redressal system in the police department betraying the expectations in the police reform and the statute for making police responsive and friendly to people with professional competence and efficiency in services to the people. However, the issue discussed in our previous report is placed in this report also for reference.

Like that of the previous years, the cases of misconduct 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 misconduct as defined under the provision of Section 78(3) of Assam Police Act, 2007 have been recorded Nil in this report. Our earlier report which has dealt with the issue in length is coated below:

Quote – “This is, no doubt, an indicating parameter of peoples’ approach to the Police for complaints of police misconduct for redressal by the in-house mechanism of the police department. Nonetheless, 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 statute is to render a comprehensive and effective mechanism to render people approach to the departmental authority for redressal of their grievances against the police misconduct 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 misconduct 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 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 reforms 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-motu 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 six 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 to build the police force professionally 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 the 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 on overall direction and supervision of the Police Force need to look into this aspect of the matter and take appropriate measures 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 Headquarters has failed to submit a report whatsoever as required under Sub-section (3) of Section 78 of the Act. It seems the Police Headquarters 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.”

6. THE NUMBER OF COMPLAINTS RECEIVED BY THE DISTRICT COMPLAINT AUTHORITIES AND THE MANNER IN WHICH THEY ARE DEALT WITH:

District Accountability Authorities have not been set up. The District Accountability Authorities for several districts have been suggested with Head Quarter at Dibrugarh, Sonitpur, Silchar and for west Assam districts namely Goalpara, Dhuburi, Kokrajhar, Bongaigaon, Barpeta and of the BTAD districts. The District Accountatbility Authorities with ideally organized clusters of districts may be set up in suitable Head Quarters of the districts. As such, the required information is nil in respect of the District Accountability Authorities for the period of the report.

7. THE IDENTIFIABLE PATTERN OF MISCONDUCT ON THE PART OF POLICE PERSONNEL IN THE STATE:

The tabular statement, illustrative cases and the disposal orders/directions have clearly revealed the pattern of misconduct on the part of police personnel in the State. Having examined the complaints and findings arrived at, the pattern of the police misconduct has been identified as follows :

- (a) Non-registration of FIRs;
- (b) Cases are registered but not investigated and refused registration in violation of the provisions of Section 157 CrPC;
- (c) Making enquiry in lieu of investigation ;
- (d) Taking persons into custody and wrongfully confining without due process of law;
- (e) Blackmailing and extortion;
- (f) The General Diary is not maintained according to the provisions of the law and Assam Police Manual;
- (g) The GDs are found in some cases not even signed by the O/Cs escaping attention of the Senior Supervisory Police Officers having scope to manipulation and forgery of the public record. Supervisory Police Officers in the enquiry and examination of complaints referred to the Police Department by the Commission have faulted in enforcing the due process of laws keeping in view the provisions U/S 36 CrPC read with Section 13 of the Assam Police Act, 2007. This is a most disquieting trend in arresting the pattern of the police misconduct.

8. RECOMMENDATIONS ON MEASURES TO ENHANCE POLICE ACCOUNTABILITY:

The Commission has been making several important recommendations in the reports published since 2008 and the recommendations have yet to see the light beyond the tunnel for enhancing the police accountability to law. However, the Commission reiterates some of the recommendations to be considered by the Government as a measure considered very urgent and appropriate in view of the unrelenting trend of police misconduct as discussed in this report.

- (i) To make suitable provision in the manual and executive Government orders to issue receipt of the complaint/FIR by Police Stations with a continuous and specific serial number in the receipt duly entered into the General Diary.
- (ii) To amend the Assam Police Act 2007 empowering the Investigating Agency of the Commission to investigate the offences of serious misconduct by police;

- (iii) To empower the Commission to engage prosecutor for conducting prosecution of cases charge-sheeted against police officers in Criminal Proceedings;
- (iv) To set up the District Police Accountability Authorities at regional level without further delay;
- (v) To submit quarterly reports of the departmental enquiries to the Commission by the Government and the DGP as required by the law;
- (vi) To conduct Orientation Course for the SP, Addl.SP on issues related to police accountability in general and Assam Police Act 2007 in particular so as to groom these senior police bracket as an instrument of upholding the police accountability to law as envisaged in Section 69 of Assam Police Act, 2007. These police officers should be inducted into the well designed training course having focus on the orders/directions issued by the SPAC in matter of complaints against police in the State for last six years and the names and particulars of police officers undergoing the course to be a data-base both for police department and the State Police Accountability Commission as well for trekking the enhancing of the police accountability measures.

Post Script

Accountability is now a buzzword. People are desperately craving for accountability in all spheres of activities, governmental, non-governmental including art, culture, media and technologies etc. Inefficiency in public life in any form is viewed with scepticism and all called in question when it affects in the day to day life. Accountability calls for responsibility in the decision-making process and due execution of law. Explanations are expected for the trust deficit. Accountability, more particularly in public life, is not a new concept. It is an age old and more searching in a free society from the dawn of civilization. Accountability, today, has become more a pressing need owing to the information technology boom making the entire globe, the abode of billions of people proximate and close. People now can see what other people are doing the best things in augmenting the lifestyle and resources mobilisation. People now crave for lifestyle at par with the people of the developed and rich countries. They have become aware of the best practices elsewhere and expect for the same back home finding their expectations not fulfilled with the present dispensation. The accountability has assumed the dynamics of evaluation of the authoritative performances and now it is demanding everywhere. Accountability is the corner stone of good governance. Accountability refers to the formal or legal locus of responsibility.

Police occupies a pivotal position in public life in ensuring an environment of peace and security linked with development. Police, therefore, is to shoulder the responsibility of catering to the needs of systems structured

through various laws and regulations. Hence, police is an obvious target of being demanded for accountability.

The Annual Report of 2013 is a testimony of the challenges to the Commission revealing the necessity of perspective planning in the complaint redressal mechanism. It is heavily burdened with complaints to be disposed at the earliest to mitigate the grievances before they lose sight of and become ineffectuous. To make the Commission meaningful and effectual, the formations of District Complaint Authorities selectively at locations in the State is the pressing need. The Independent Investigative Agency of the Commission with increase of the Investigators and logistic support for conducting the field of investigation is another area for urgent attention.

In addition, the perspective planning includes land and building of the Commission, sanctioning of support staff with exquisite knowledge to handle the complaints redressal system, upgradation in the interaction with common man and woman, media and the target population, that is, the police and ability to collate and publication of reports.

The State Police appears to be on the cross roads of the I.T. induced methodology and the age-old rules and procedures. Computerisation of the primary law-enforcing machinery – the Police Stations and Sub-Police Stations (Outpost) has not seen the light for more than decades sweeping far and wide under the impact of information technology. The Police Manual (Rule Book) of British vintage is yet to be replaced by a new rule book translating the wisdom of the new Police Act. The framing of the broad policy guidelines and the identifying of the performance indicators as provided in the Section 40(a), (c) of the Assam Police Act 2007 are yet to be put in place.

A confusionary state is prevailing as to whether the transition to an era of evaluating performance from the diehard colonial concept and practice of the police would take place smoothly. It is high time now to show the right direction towards attaining the police accountability with the statutory directions and logistic supports to address the complaints (FIR) increasing with the passage of each day and month. To allow the magnitude of the complaint redressal mechanism with due process of law to escalate with no redemption in sight due to resource crunch would end up in making the Police Force thickskinned, nonchallant, cynical and hiding under the carpet. The sooner the better is to remove the block in the artery of law enforcement organ ensuring accountability not necessarily in the Police Department but also extending to all the organs through the accountable, efficient and professional police. Good governance without a responsive police force accountable to, in the discharge of duties and responsibility, is a task not conceivable and difficult to achieve.

The Commission hope and trust that the Government of Assam would soon address to the obstacles by early computerisation of the thana police work, framing of the rules, with the necessary upgradation befitting the present day police system. The Government should also frame rules for holding periodical

meetings of the Home Department officials, the DGP and the State Police Accountability Commission for a coordinate approach to the police accountability issues as tried in the initial years with positive result.

We are pained to note about the steady decline in the working in the area of superintendence of the policing in the district level. We often find that superintendence are not visible in the activities and superintendence and supervision of the subordinate officer in the district. The Officers-in-Charge of the Police Stations are mostly allowed to go in their own way without there being any proper supervision and superintendence. Supervision is a serious job. The act of supervision means to direct or oversee the performance of the subordinates and watch over their activities. It is an act of overseeing. The Superintendent of Police is entrusted with the powers and authority of an inspection, superintendence and oversight. It connotes an act of superintendence, care and oversight for the purpose of direction. It implies administrative control enabling the authority enjoying of such powers to give direction to the Superintendents and discharge the administrative duty and function. Under the scheme of the Criminal Procedure Code, as an officer superior in rank to an officer-in-charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station. We have hardly seen exercise of these powers and responsibilities by the Superintendents of Police in aid of Section 36 of the CrPC. The spirit as indicated above is also delineated in Section 13 of the Assam Police Act entrusting a senior police officer to perform any duty assigned by law or by a lawful order to any officer subordinate to him, and may aid supplement, supersede or prevent any action of the subordinate by his own action. Police performance and accountability can only be ensured through appropriate superintendence and supervision. It is expected that all the concerned authorities will join hands to improve the superintendence.

In our first report, we recommended the State Chief of Police to formulate accountability parameters of various ranks including supervisory responsibility of senior ranks of and above the rank of Superintendent of Police. A thorough enforcement of accountability at all levels in the police accountability was accordingly called for. It is unfortunate that such accountability parameters are yet to be defined. In the first report, we also recommended towards enhancing police accountability to ensure integrity of the highest order. It is the integrity that can only enhance the respectability of the Police Force. We accordingly call for the members of the Force to keep their private lives scrupulously clean, develop self-restraint and be truthful and honest in thought and deed both in personal and official life.

Increased accountability will enhance efficiency and higher rate of conviction sending the right signals to criminals. It would make an appreciable difference to the maintenance of law and order for the better. It is elementary

fact that people expect a security of life and property and improved law and order.

CHAIRMAN

MEMBER

MEMBER

MEMBER

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