



REPORT ON NCPCR ON ALLEGED POLICE TORTURE OF A 13 yr OLD CHILD
INVESTIGATION OF HT REPORT Dtd. 02.04.2011

This case brings to the fore a larger malaise. In order to protect the rights of children and to prevent torture a host of laws, rules and institutions have been put in place. However as observed in this case sequentially and systematically each person and institution whose statutory duty it is to protect children, failed to act diligently, allowing 2 policemen to illegally detain, frame and torture a minor child



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Date: 02/06/2011

F.No. HR-11015/22548/2010/2011/SMComp.

IN RE: Alleged torture of a 13 year old Child, Sonu @ Bhole s/o Sh. Vedpal, resident of Krishna Colony, Sector-4, Gurgaon, at the Sector-4 Police Post in Gurgaon, Haryana.

PROCEEDINGS HELD AT NCPCR IN CAPTIONED MATTER

The National Commission for Protection of Child Rights (NCPCR) is constituted under Section 3 of the Commissions for Protection of Child Rights (CPCR) Act, 2005 to exercise the powers conferred on and to perform the functions assigned to it under this Act. One of the functions of the Commission under section 13 (1) (j) of the CPCR Act, 2005 is to inquire into complaints of violation/ deprivation of child rights. The Commission, under section 14 of the CPCR Act, 2005, has all the powers of a Civil Court in trying a suit under the Code of Civil Procedure, 1908.

The Commission had taken suo-motu cognizance of HT news report dated 02.04.2011 annexed as **ANNEXURE-1**, under section 13 (1) (j) of the CPCR Act, 2005, of the alleged torture of a 13 year old child, whose name was later found to be Sonu @ Bhole S/o Sh. Vedpal, resident of Krishna Colony, Sector-4, Gurgaon, at the Sector - 4 Police Post, Gurgaon by two policemen under section 13 (1) (j) of the CPCR Act. The Commission constituted an Inquiry Team comprising of following members to conduct a preliminary inquiry into the matter:

NCPCR constituted an inquiry team vide Office Memorandum ref HR-11015/22548/2010/2011/SMComp. Dated 02-04-2011 comprising of:

Shri Vinod Kumar Tikoo, member, NCPCR ;

Shri Sandeep Jindal, Consultant, NCPCR;

Shri S.C.Sharma, Inspector, NCPCR;

Shri Suraj Kumar, White Lotus (NGO working for the protection of child rights)

The team members were authorized to interact with all concerned in the case including the child, his father & other family members/neighbours, the concerned police officials, the concerned Doctors & the PMO of the civil hospital, Gurgaon, Chairperson/members of JJB; Supdt. / In-charge of the Juvenile Home/ Rehabilitation Centre, Faridabad and any other official person related to the matter/ incident. They were also authorized to obtain their statements (wherever necessary) and peruse relevant /all records at police station,Civil Hospital,Gurgaon and the Juvenile Home/Rehabilitation Centre and obtain a certified copy of the same for the purpose of the inquiry report.

Procedure followed in the inquiry :

- (I) Examination of relevant witnesses.
- (ii) Recording of statements in writing.
- (iii) Audio recordings of certain police and other witnesses.
- (iii) Examination of official records and collecting certified copies of the relevant records/documents.

The NCPCR Team conducting the Preliminary Inquiry visited District Gurgaon and District Faridabad for this purpose. Statements of various persons - child Sonu @ Bhole, his family members; officers and other inmates of the Observation Home, Faridabad; owner and incharge of Agarwal Sweet and Restaurant/Hotel at Gurgaon; complainant namely Shri Sumit Bhardwaj (who lodged the FIR No. 78/2011 dated 28.3.2011) and Doctors of Civil Hospital, Gurgaon and other concerned persons, were recorded and few documents were also obtained from the Civil Hospital Gurgaon and from Observation home, Faridabad by the Inquiry Team and the same has been placed before this Bench who heard the matter.

Preliminary Inquiry Process :

During the preliminary inquiry, statements of following persons were recorded. :-

- 02-04-2011: Sonu@Bhole the Child aged 13 years – Statement recorded at the Civil Hospital Gurgaon.
- 02-04-2011: Shri Vedpal father of the child Sonu.
- 02-04-2011: Dr Khazan Singh, PMO of Gurgaon Civil Hospital.
- 05-04-2011: Mr Abhay Singh, Warden of Observation Home, Faridabad.
- 08-04-2011: Sh Hardip Singh,S/o Late Sh Bagat Ram cook(Halwai)

The Inquiry Team submitted its preliminary Inquiry Report on 05/04/2011 annexed as **ANNEXURE - 2**. Since a prima facie case was made out, and the policemen were not cooperating with the enquiry, it was decided that the matter may be heard by a Bench of the Commission, as per provisions of C.P.C.R. Act, 2005.

A Bench was constituted consisting of the following members:

Dr. Shantha Sinha, Chairperson, NCPCR;
Sh. Vinod Kumar Tikoo, Member, NCPCR;
Dr. Yogesh Dube, Member, NCPCR;
Ms. Vrinda Grover, Advocate

Hearings were conducted and the following persons were called to depose before the Bench on the days mentioned below:

11-04-2011: Investigating Officer (IO) & H.C Jitender Kumar (922/GGN),
11-04-2011: Constable Manoj Kumar (757 1st IRB)
11-04-2011: Medical Officer of Civil Hospital, Gurgaon – Dr Tony Jowel,
11-04-2011: Mr Naresh Kumar, SHO Police Station Sector -5, Gurgaon under whose supervision and jurisdiction the Police Post Sector 4/7 functions,
11-04-2011: Mr Rajesh Duggal, ACP, West Gurgaon, Haryana Police, who supervises the P.S. Sector-5, GGN .
12-04-2011: Sumit Bhardwaj@Babbu s/o Raju Bhardwaj @Rajender Prasad, who had filed a report of loss/theft of Scooty from the market of 4/7 Sector, Gurgaon.
19-04-2011: Mr Maheshwar Dayal, DCP –West, Gurgaon, Haryana Police with overall supervisory and administrative control of the Police Stations and Police Posts in West Gurgaon. 19-04-2011: Vedpal father of child Sonu
30-05-2011: Sh Sajjan Kumar-current SHO of Police Station, Sector-5, Gurgaon who had brought the original Roznamcha (D D Diary Registers) of Police Post Sector-4 and Police Station Sector-5 and also the Wireless Transcription of the recordings of calls made & received on Ph No100 on 28th & 29-3-11

BRIEF FACTS of the case :- .

The Commission had taken cognizance of alleged torture, abuse and unlawful detention of a 13 year old child Rahul @ Sonu, resident of Krishna Colony, at Police Post, Sector -4, Gurgaon as reported in the daily edition of Hindustan Times on 02-04-2011. As per the report the minor was arrested on 28-03-2011, on charges of theft of a motor vehicle Kintetic Scooty belonging to one Sh. Sumit Bhardwaj who had reported the loss on PCR Tel 100 and against which an FIR No 78 under Sec 379 IPC was registered with Police Post Sector 4, Gurgaon, operating under the jurisdiction of Police Station Sector-5, Gurgaon. The arrest was shown on 29-03-2011, while the family members and the father of the child alleged that the child was picked up from his house on 28.03.2011, at appx 1.30 p.m, illegally detained, tortured and even refused to acknowledge his presence in Police Post Sec-4 Gurgaon. Joint statement of the family annexed at **ANNEXURE - 3**

Observations/Findings :-

The observations and findings enumerated below are based upon the examination of the above mentioned witnesses and scrutiny of the relevant documents :-

(A) It has been found that child Sonu was implicated in a false case of theft and thereafter illegally detained and tortured in a cruel and inhuman manner in absolute contravention of the law. It is clear from the statements and records before the Commission that the illegal detention, brutal beating and other forms of torture were inflicted on the child, by Head Constable Jitender Kumar (922/GGN) and Constable Manoj Kumar (757 1st IRB).

Medical Officer, Tony Jewel, posted at Civil Hospital, Gurgaon issued a medical certificate of no injuries for child Sonu in his statement (**Annexure no - 4**) to the Inquiry Bench stated that:

“He asked the child whether he has any pain in his body or had he been beaten up by any person. The child Sonu was sitting on a stool next to him and both policemen were standing. The child apparently appeared to be in a good health. When I questioned the child, HC Jitender Kumar and Cons Manoj Kumar were present there and they could hear and see child Sonu.” Statement of Dr Tony Jewel annexed in **Annexure no - 5**

“The child Sonu was dressed up and he (doctor) did not remove his clothes or conducted proper medical examination, hence it was not possible to see any injury upon his chest, posteriors, legs, etc., without removing the clothes of the child.” He has stated that “He has not examined the child Sonu. He only saw him (Sonu) apparently on the face value”. (See Annexure no: 5)

From this statement of Medical Officer Tony Jewel(Annexure no: 5) it is clear that he had given the medical certificate for Sonu without conducting a proper check up that would constitute a medical examination. He had not examined the child after removing his clothes for any external injuries. Further the Doctor had questioned child Sonu about his well being, in the presence of the 2 police officers who had tortured him and in whose custody Sonu was.

The fact that child Sonu had been subjected to severe beatings has been established by the MLC which indicated that the child had marks of external injuries on his back and both buttocks annexed in **Annexure no: 6**. Subsequent opinion issued by the Medical Board constituted by the PMO on 31/03/2011, states that the “*external injuries described in the m.l.c. were caused by blunt force impact & further that the possibility of allegation regarding forcing petrol through anal route cannot be ruled out*”. annexed in **Annexure no: 6a**). The PMO has also in his statements recorded with the Presenting Officer, NCPCR on 23.04.2011(**Annexure no: 7**) said that the Medical Officer Dr. Tony Jewel had erred in giving the ‘*clean medical certificate with no injury*’ to the police without proper examination of the child.

The NCPCR team visited the Observation home in Faridabad where the child was taken after being tortured were informed by four of the inmates, whose names have been withheld by the Commission on its files – however a translated version of statement of four children from the Home is annexed in **Annexure – 8** stating that the child Sonu had been crying all night and had said that he had been beaten up mercilessly by the Police.

It is the statement of Mr.Vedpal father of the child, that he had seen his son in the PP sector-4 in the evening of 28-03.2011, and at that time the child was naked and appeared to be crying. The child also complained of severe beatings by the police officers and the injection of petrol in his private parts to his father upon his release on bail on 31/03/2011 see **Annexure -9**.

These statements substantially corroborate the version of events given by child Sonu regarding his arrest, detention and torture independently to ACP on 14.04.2011, copy of this statement annexed in **ANNEXURE - 10** was tendered by ACP to the Commission .

(B) The documents examined by the Commission including the Wireless Transaction Log of Police Control Room (see **ANNEXURE – 11**) and the statements of HC Jitender Kumar (see **ANNEXURE - 12**) and Constable Manoj Kumar (**ANNEXURE -13**) establish that the entire case of theft of scooty foisted upon child Sonu was false. Sonu was falsely implicated, illegally detained and tortured by the 2 aforementioned police men to extort money from his family. The statements of these 2 police officials are not consistent with each other although it is alleged that they were both present when child Sonu was found with the stolen scooty on 29/03/2011.

(i) The Wireless Transaction Log of Police Control Room, **Gurgaon** has the following entries relating to theft of a scooty pertaining to date 28-03- 2011

0950 hrs	Information	Reg. Jam	No 8800337041 informed about Traffic.....
1045 hrs	Information	Reg. Theft	Received a call from a person named Sumit form Mobile No 9891916432 that a Silver Colour Kinetic scooty is reported lost from the Market of Sec 4 outside the HDFC Bank parking
		Action	All Stations have been informed
		Reply	The operator informed that this scooter is standing in PP Sec 4/7. In this regard V.T. has been cancelled and the complainant has been informed
1109 hrs	Information		Delhi Control Room No 01123490313 informed.....

- (ii) The case of theft of Scooty lodged by Sumit on PCR No 100 was recorded by PCR at 1045 Hrs on 28-03-2011 under FIR No 78/11 (under IPC 379) as is clear vide the Wireless Transcription Log dated 28-03-2011 of the Police Control Room Police Stn. Sector -5, submitted by SHO P.Stn. Sec-5, Shri Sajjan Kumar to the Commission under his signature (see ANNEXURE – 11).
- (iii) In the same Log of PCR relating to PS Sec-5, it is noted that the scooty was reported to be traced @ 1050 Hrs on 28-03-2011 and was reported to be in P.Post 4/7 at the said reported time.
- (iv) This fact has been corroborated by the complainant himself in his statement confirmed by his father on 12-04-2011 annexed in **ANNEXURE - 14**. Sumit stated that on 28/03/2011 he had parked his scooty outside HDFC Bank in Sector -4 Market at about 7:00 A.M. At about 10:30 A.M. he went to take his scooty back, he could not find it there. He made a telephonic call to his father and to PCR 100 from telephone of a passerby, He received the information within 10-15 minutes that his scooty has been found and was standing in police post sector-4 Gurgaon. While the Roznamcha (DD Diary) materially altered and attested photocopy tendered to the Bench confirmed that the two policemen had been searching the reported stolen scooty till the morning of 29th March, 2011 (entry no 24 on 29.3.11 @6.00A.M.) annexed in **ANNEXURE – 15**.
- (v) HC Jitender Kumar has stated that he found the child Sonu at 6:35 am (see para -7 of the annexure– 12) when he was out on *gasht* (patrol). However, in Constable Manoj Kumar's statement it is stated that they found the child with the scooter at 7:00 AM after checking 30-35 vehicles for more than one and a half hours (see para-4,page 3 of the annexure – 13).
- (vi) HC Jitender Kumar has deposed that he stayed at the place of arrest of Sonu for an hour preparing documents. Constable Manoj Kumar has stated that no documents were prepared there other than the arrest memo and the Jama Talashi and HC Jitender Kumar prepared some documents at the Police Station.
- (vii) In the statement of HC Jitender Kumar there are many inconsistencies. He had initially stated in his statement said that he informed the Police Chowki about arrest of child Sonu by sending Constable Manoj Kumar with the information, but later he said that he had given information to the Police Chowki using his phone. Similarly, he stated initially that while on patrol he was not carrying any files related to the stolen scooty, but later stated that he was carrying the FIR related to the theft of the scooty.

The discrepancies pointed out in (i) to (vii) above shows that the 2 policemen are giving a false, concocted and fabricated version of events with malafide intentions .

(C) The complaint was sent by HC Jitender Kumar to P P Sec-4 for lodging an FIR. Almost immediately thereafter the allegedly stolen scooty was located and two minor children were found to be playing with it. One child was slapped by the policemen and

apprehended and the other child (child Sonu in this case) ran away from the scene and went home. HC Jitender along with two more policemen went to child Sonu's residence at about 1245 hrs and apprehended Sonu taking him to the Police Post Sec 4, where the other child was already kept in captivity and later released, see para 4 point no 3 of the statement given by the family to ACP on 14/04/2011 annexed as **ANNEXURE – 16**.

(D) Upon receiving information about his son's apprehension, when child Sonu's father, Ved Pal, reached the PP sec-4 . Here Ved Pal was told that this son Sonu was being held in P.S.Sec-5. On reaching PS sec-5 he was told that child Sonu was not in their custody. Thereafter, Ved Pal rushed back to PP Sec-4,. Here Ved Pal heard the shrieks and cries of his son and to his horror found his son placed naked on a wooden plank, with his hands tied on his back and his buttocks. Child Sonu was being struck with a belt. By the police men. Ved Pal's requests to the police to release his son were futile. So Ved Pal decided to bring some respected persons of the area. Late in the evening of 28-03-2011, child Sonu's father and few persons from the locality viz. Vazir Singh, Lakhpat Kataria, Vedpal's brother Dharamvir and 3-4 more neighbours joined the group and upon reaching Police Post requested HC Jitender Kumar for release of child Sonu. HC Jitender Kumar reportedly demanded a bribe of Rs.30,000 + 20,000=Rs 50,000 from Ved Pal, the father of the child Sonu (see annexure – 3).

From the statements of the witnesses and the conduct of the 2 above named accused police men, it is apparent that this unlawful demand for money was the malafide reason why Child Sonu was illegally arrested, detained and subjected to custodial torture.

(E) As the family of child Sonu expressed helplessness to meet the monetary demand of the police, HC Jitender Kumar implicated child Sonu in a case for theft of scooty. Ved Pal was asked to reach Court no 8 next day for securing the bail of his son. On 02-04-2011 at the camp office of DCP, HC Jitender Kumar had told the Preliminary Inquiry team that child Sonu was a habitual offender/thief and had been apprehended for similar thefts, on earlier occasion too. HC Jitender Kumar was however unable to show any documentary or other material proof to substantiate the allegation that child Sonu was a habitual offender.

(F) The version of the events as presented by the Gurgaon police is riddled with inaccuracies and inconsistencies and it is presumable that it is false, malafide and concocted. To prop up this fabricated story the official records were tampered with by the 2 accused police men. It is apparent from the statements recorded during the hearing that the allegation of the police that the stolen scooty was recovered from the child is a false claim intended to falsely implicate the child. Sonu and obtain money from his family for his release, as indicated by the alleged demands for money made by HC Jitender Kumar from the father of the child Sonu (See finding no: (D))

There are many instances of tampering of records and fabrication and destruction of evidence to prop up a false account theft of scooty:

(i) It is the statement of Sumit, who had complained of the theft of his scooty, that he had found out about the theft on 28/03/2011 at about 10:30 am and had informed the

police on number 100. It is clear from the wireless log of No. 100 Control room that this information had been received at 10:45, and within five minutes at 10:50, on 28/03/2011 itself, the scooty was recovered and is reported to be standing at P.P sector 4/7 (see annexure –11). Upon receipt of this information the wireless transmission regarding the stolen scooty was cancelled. However, this information has not been recorded in the DD register at P.S sector 5, copy of which was submitted to the NCPCR annexed in **ANNEXURE – 17**, which on the contrary records the complaint under reference FIR entered @ 6.30 P.M. under SI No 30 on 28.3.2011 { DD Entries in the Register of PS sec 5 are materially altered from SI No 30 (28.03.11) to 47(29.03.11) a fact also accepted by SHO Sajjan Kumar on verifying the Original DD Register on 30.05.11 at the hearing see Annexure -19}.

- (ii) In the DD register entries from 28/03/2011 to 29/03/2011, it is apparent that whitener has been applied to a name and ‘Manoj’ has been written over the correction at serial no 6 of the DD Register of PP sec 4 on 29.03.11. This was also admitted by the SHO Mr Sajjan Kumar in a statement recorded on 30.5.11 on para 10 page 2 annexed in **ANNEXURE - 19**
- (iii) Furthermore, it has been recorded in the DD register that on 6 am on 29/03/2011, by Head Constable Jitender Kumar that Constable Manoj Kumar and himself left to investigate FIR 78/11(pertaining to the stolen scooty), when it is clear from the wireless logs that the scooty had already been recovered and was standing at PP Sector 4/7.

It is clear from the above that the scooty reportedly stolen on 28/03/2011 vide FIR 78/11 was claimed to have been recovered from child Sonu is false and has been fabricated by the police. In order to cover up their tracks the police men made false entries in the record books of the Police Post intending them to be used as evidence, thus constituting a serious offence of fabrication of false evidence and even destruction of evidence.

(H) Despite the fact that Child Sonu had given his complaint as early as on 01-04-2011, to ASI Mukhtiar Singh of P P Sec-4, GGN (see **ANNEXURE – 20**) and the same was recorded by ASI as a criminal complaint against the aforementioned HC & the Ct and the same was in the possession of and knowledge of senior Police Officials, HC Jitender Kumar was allowed to continue to act as Investigating Officer in contravention of law and principles of natural justice and equity. A copy of the child’s complaint dtd 01-04-11 on which no cognizance was taken by Police was submitted by SHO Shri Naresh with his statement recorded on 11.04.11 before the Commission on 11-04-2011 see **ANNEXURE - 21**.

(I) Sh.Hardeep Singh, cook in-charge at the Agarwal Sweets & Resturant which also runs a guest House on the upper floor, had stated during the preliminary enquiry that his employer had informed him that there was a call from P P Sec-4 and that a Room be provided for the night to whosoever comes from PP sec-4. Shri Hardeep Singh further testified that a police man had approached him for the room and since 204 which was originally reserved could not be given out the Room No 203 was let out. See **ANNEXURE–22**

(J) The above named accused police men, by arresting a minor child and not presenting him before JJB committed a serious violations of The Juvenile Justice (care & protection of children) Act, 2000 and infringed provisions of law.

(K) Child Sonu was kept in the illegal and unlawful custody of a police personnel during the night of 28-29th March,2011 without producing before JJ Board and constituting a violation of Sec. 13 of the JJ Act,2000, requiring information to be given to the parents, thereby clearly leading to unlawful detention of child Sonu a violation amounting to unlawful confinement even under Section 342 IPC.

(L) It is also noted that the police involved, namely HC Jitender Kumar has been regularly intimidating the child, his father & family and also tried to interfere with the proceedings of the Commission by attempting to induce Mr. Vedpal, the father of child Sonu, to withdraw his complaint by offering him money, HC Jitender Kumar and another police officer called Mr. Vedpal to a third person's house on 19-04-2011 and made an offer of monetary consideration as a compromise formula for withdrawing the complaint after signing certain documents. This fact has been stated by Mr. Vedpal in his statement dated 19.04.2011 see para 7 of **Annexure – 9**. HC Jitender Kumar taking advantage of his uniform, has threatened child Sonu's family with dire consequences, as they have had the audacity to make a complaint against policemen.

(M) The Police officers superior to Head Constable Jitender Kumar and Constable Manoj Kumar seem to be reluctant in registering FIR and taking requisite action against against the accused police persons. This is evident from the following facts:

- (i) The SHO of Police Post Sector 5, Mr. Naresh Kumar Yadav, deposed on oath that he had sent HC Mukhtiar Singh to Civil Hospital on 1.04. 2011 to record the statement of Sonu (see annexure – 20). The HC had recorded the statement that child Sonu had been arrested, detained illegally and tortured in a barbaric manner. The SHO however has not registered a FIR against the 2 police officers involved, in spite of the statement of child Sonu disclosing the commission of a cognizable offence. The SHO has also received a copy of the MLC of the child Sonu on 1. 04. 2011, but no action was taken by him in this regard, other than recording the statement in the Roznamcha.
- (ii) The ACP has said in his statement (see **Annexure – 23**) that the letter of the DCP dated 01/04/2011 directing him to submit an enquiry report in this case was mistakenly sent to PP sector 5 and he had received the DCP's letter only on 09/04/2011. The ACP's has claimed that this was the cause of the delay in conducting enquiry in this case. He also stated that there had been overwriting upon using whitener in the letter from the DCP. He could not give any explanation as to why no information had been given to him of the letter lying at PP sector 5. He also stated that despite having the knowledge, that the statements of child Sonu disclosed a cognizable offence, he had not directed the SHO to register an FIR in this case against the erring officials.

(iii) The Suspension Order No 11947-53/A-III dated 18-04-2011 issued by DCP, Hqrs, Gurgaon, against HC Jitender Kumar No 922/GGN has diluted the gravity of the crimes committed by the 2 police men on a minor child which constitute a grave violation of his fundamental rights and an infringement of laws including the Juvenile Justice (care & protection of children) Act, 2000. The suspension as the orders states “ *Thus the above said police officials have shown negligence, indiscipline and gross misconduct*” (see ANNEXURE – 24). With regard to the other official Ct Manoj Kumar the said Order No 11947-53/A-III says a letter for taking disciplinary action against Constable is being written to the Commandant 1st BN IRB Bhodsi separately. No reference is made of the criminal offences of illegal arrest, unlawful detention, torture, causing hurt etc. by the two police officials.

(N) In his statement recorded on 11.04.2011 by the Bench , Constable Manoj Kumar No 757 IRB stated that “*whenever they carry any person to the Doctor they stand with the person itself and that day also they both stood with the child Sonu. They were in the hospital for about 20 minutes. He does not know any special provision for the arrest of any person. No information/training, etc. had been given to him by police department about legal formalities in the arrest case*”.

The statement of the HC Jitender Kumar recorded by the Bench on 11.04.2011 clearly denotes the violations of Section 10 (on apprehension of juvenile in conflict with law) and Section 13 (on information to parent, guardian or probation officer) of the JJ (Care & Protection of children) Act, 2000, wherein he stated that “*as per law he had to give the information of the arrest to the family members of the arrestee. There were many passerby on the road and he told one of them to give the information of the arrestee child to his father. He does not know address of that passerby without knowing where that unknown person was headed to. He thought it was sufficient to send the information to the family of the arrestee through an unknown person, who was passing by the road. He does not have any knowledge about the J.J. Act, NCPCR Act or any other special child related Act or Regulations*”. No designated officer from the SJPU was assigned totake care of the child Sonu an infringement of Rule 11 of the J J Rules 2007

(O) In his statement recorded before the Bench on 11.04.2011, ACP (West) Sh Rajesh Duggal (see ANNEXURE – 23) stated that he had read about the incident in the newspaper and sought details from the SHO of P.S.sector-5, Gurgaon. He further stated that “*He completely relied upon the SHO in this matter he did not think it necessary to take any further action in this matter. He has received one letter from the DCP on 09.04.2011. He was asked by the DCP to submit a detailed inquiry report within 3 days. The said letter is dated 01.04.2011. It is not written in any Act, if DCP does not order for the registration of the FIR, FIR cannot be registered and neither the DCP can stop registration of FIR in cognizable cases. It is also correct that it is necessary to register the FIR for proceeding in the enquiry against the police officer*”

ACP confirmed that the record submitted to him also contained the statement of child Sonu dated 01.04.2011 recorded by Head Constable Mukhtyar Singh and yet he did not give any instructions on the basis of the statement for taking any action against the two policemen and he would do so only after conducting enquiry on his own, as he had power to conduct enquiry.

(Q) Statement of Shri Maheshwar Dayal, D.C.P. West Gurgaon was recorded on oath on 19/04/2011 (see **ANNEXURE – 25**). *“On 1st April, 2011 on receipt of more information I asked the ACP to conduct the enquiry and gave the written instructions to ACP. Mr Duggal, ACP in his written report stated that there were certain irregularities in the investigations. The ACP has further mentioned that departmental enquiry need to be conducted against I.O. namely Jitender Kumar and Constable Manoj Kumar. Since Constable Manoj Kumar belongs to IRB Battalian I will be asking Commandant of IRB to take departmental action against the Constable Manoj Kumar. The irregularities mentioned by the ACP in his enquiry report included allegation of torture and procedural lapses. For the rest detailed departmental enquiry has been recommended in the enquiry report by the ACP. I think in my opinion torture by police person on any person including a child is a crime in this country.*

Despite the fact that ACP in his report to DCP confirmed allegations of torture and procedural irregularities – No criminal action was initiated or proposed to be initiated by Haryana Police against the erring policemen including those who failed in the supervisory capacity.

Recommendations :-

(1) (a) The actions and conduct of police officials namely Head Constable Jitendra Kumar (922/GGN) and Constable Manoj Kumar (757 1st IRB) of PP: Sector-4, Gurgaon make out a prima facie case of illegal arrest; unlawful detention; causing hurt, torture, causing physical and mental harm and injury; influencing medical personnel; concealing, manipulating, fabricating evidences; destruction of evidence; gross misconduct & negligence in lawful duties; non-compliance with procedural laws; intimidating, threatening witnesses and family members of child Sonu @Bhole s/o Sh. Vedpal r/o House No. 408/12, Krishna Colony, Gurgaon, Haryana. In view of the above the Commission under Section 15 (i), of the CPCAR Act, that a criminal prosecution be lodged against HC Jitender Kumar and Constable Manoj Kumar. As the inquiry prima facie discloses the commission of a cognizable offence a FIR against the aforesaid 2 policemen must be lodged.

(b) The Commission further recommends under section 15(i) of the CPCAR Act.2005 that the State Govt. of Haryana is directed to institute departmental proceedings and take disciplinary action for the aforesaid infringement of law and rules.

(2) All senior officers including the DCP, ACP and SHO Naresh Kumar PS: Sector-5, Gurgaon, failed to exercise their supervisory duty to ensure that the police personnel performed their duties in accordance with the law has failed to perform his duties properly and has not exercised proper control and supervision over the two erring suspect officials. The Police Department needs to examine the role played by the senior officers and their persistent reluctance to take appropriate legal action against the aforementioned police men. The State Government must institute transparent and effective mechanisms of accountability of the police to the law to ensure that the brotherhood of the men in khaki does not subvert the rule of law and violate rights of children.

(3) Shri Naresh Kumar SHO P.S. Sec-5 , GGN, also failed in getting the case handled by the SJPU , which has been in force in all the police stations in Gurgaon as per the circular No

1146-03/OHC dated 23-12-2010 issued by DCP West in compliance to the Police Commissioner's notification No 1398-1419/I/C/Special Dt 08-03-2010 announcing setting up of Special Juvenile Unit in all police stations of Gurgaon West. The two officials designated were not on duty on the day 28th/29th March 2011. However, neither did SHO make any attempt to seek the help of a nearby SJPU unit from the neighbouring P.S., nor did he entrust the duties to the official of SJPU who resumed duties on 08-04-2011 as deposed by SHO. A fresh look also needs to be looked into the training requirement of the State Police cadres on the functioning of SJPU and the J J Board as per the provisions of Juvenile Justice (care & protection of children) Act, 2000. The State Home Department and the Department of Child & Women Welfare, need to be concerned on this account.

(4) The role of Medical Officer in the Government Hospital, Gurgaon, who had issued the Medical Fitness certificate for child Sonu without proper examination needs to be looked into with great urgency, as the Hospital is the Main Hospital in the District and a large number of medico legal cases of MLC referred to it. The Hospital authorities / Health Department needs to undertake a training of all Doctors to ensure that they conduct ,edical examination in accordance with the laws in force.

(5) The Commission under section 15 (iii) of the CPR Act, 2005, recommends to the State Govt of Haryana to pay the following interim relief to child Sonu:

- (a) Monetary compensation for the physical tortures needing medical treatment.
- (b) State government to ensure admission and schooling of child Sonu at the behest & cost of State Government