

One lakh for the wasted years

Next time a policeman illegally arrests a citizen in a criminal case, he may have to pay out of his own pocket. **Phiroze Edulji** reports

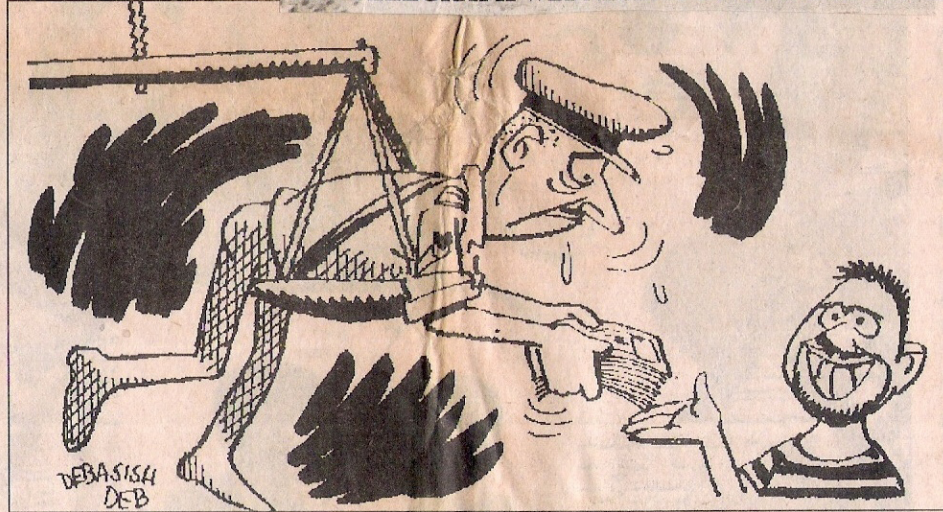
The duty of a police officer investigating an offence is to unravel the truth. But what happens if a police officer falsely implicates an innocent person?

The Supreme Court has already laid down that if any of the organs of the state violates the fundamental rights of a citizen, the courts can direct the state to pay compensation to the citizen. In a recent landmark judgment, the Calcutta High Court extended the principle laid down by the Supreme Court to the realm of criminal jurisprudence. Ruling on a case of illegal arrest and detention, the Court directed the state government to pay the victim Rs 1 lakh and to recover the amount from the concerned police officers.

So long, the only course open to a victim of illegal detention was to file a writ petition before the High Court (under Article 226), or in the Supreme Court (under Article 32) demanding compensation for deprivation of liberty under Article 21. Now, the Calcutta High Court can grant compensation for illegal arrest and detention under Section 482 of CrPC, which deals with "inherent powers of the High Court."

LANDMARK JUDGMENT

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In 1989, Babu Chakrabarty, a co-owner of a book stall in College Street, was arrested from his residence under the Rasulpur police station. He was accused of possessing heroin. The Sessions Judge convicted Chakrabarty under the Narcotic Drug and Psychotropic Substances Act, 1985. Chakrabarty was sentenced to 10 years of rigorous imprisonment. He was also ordered to pay a fine of Rs 1 lakh, failing which he was to be imprisoned for another two and a half years.

When the matter came up before the High Court, Himanshu De and A. Mana, Chakrabarty's counsels, contended that K.L. Mina, the then additional superintendent of police and Shyamal K. Dutta, then the sub-inspector, Burdwan police station, had false-

ly implicated Chakrabarty. De pointed out that the seizure list, the general diary and the depositions of the two police officers were full of contradictions. For example, Mina stated that the accused kept the heroin on the ground outside the room just in front of the door. The seizure list however states that the drug was "produced by Babu Chakrabarty in the presence of the witnesses from the bedroom." The oral evidence of Mina and Dutta also did not tally with the entries in the general diary.

Nor were the mandatory provisions of Section 100(4) of CrPC followed during the search and seizure. This Section states that an officer about to make a search must call upon two or more independent and

respectable local inhabitants to witness the search. In this case, inexplicably, the two independent witnesses were not examined by the prosecution. This, contended De, goes to show that the mandatory two witnesses were not present during the search.

Contending that Babu Chakrabarty's detention was illegal, De prayed "for imposition of fine upon the state government, who shall realise it from the two police officers."

Justices S.N. Mullick and S.K. Tiwari not only acquitted Chakrabarty but also directed the state government to pay Chakrabarty compensation of Rs 1 lakh for the years he was detained in jail. The judges further stated that:

- The compensation is to be paid in six weeks' time

- The state government has the liberty to realise the money from the two concerned police officers

- The magistrate concerned is to proceed against the police officers, Mina and Dutta

- The appellant could further proceed by way of civil/criminal remedy against the said police officers.

The judgment by Justices Mullick and Tiwari has thus introduced the concept of compensation to the cases of illegal deprivation of freedom under criminal law in victim compensatory jurisprudence. In 1993, in the case of Nilabati Behera, the Supreme Court had ordered that any citizen could claim compensation for illegal arrest and detention under Article 21 of the Constitution.

After the recent judgment, compensation for illegal arrest and detention does not remain an exclusive constitutional right. The state shall now be liable to pay compensation under the Code of Criminal Procedure too.