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**Case No. 400/25/2005-2006**  
**NATIONAL HUMAN RIGHTS COMMISSION**  
**( LAW DIVISION )**  
\* \* \*  
FARIDKOT HOUSE  
COPERNICUS MARG, NEW DELHI - 110 001

Dated 3/8/2009

To  
THE SECRETARY  
DEPTT. OF REVENUE, MINISTRY OF FINANCE,  
GOVT. OF INDIA, NORTH BLOCK, NEW DELHI

Sub : Complaint from

REFERENCE FROM:  
TAXINDIAONLINE.COM  
WEST BENGAL WEST BENGAL.

Sir/Madam,

I am directed to say that the matter was considered by the Commission on 29/7/2009 and the Commission has directed as follows.

*These proceedings shall be read in continuation of the Commission's earlier proceedings dated 21.7.09 when it directed as under :-*

*"The request is allowed subject to the condition that the report be submitted during 1st week of September, 2009."*

*Before issuance of letter regarding extension of time requested for, Under Secretary to the Govt. of India, Ministry of Finance, Department of Revenue vide communication dated 17.7.09 has sent the reply to show cause notice dated 12.5.09. The relevant part of report is reproduced below:-*

*"Brief facts of the case are that acting on an intelligence and on the basis of search authorization issued by Assistant Commissioner of Malda Customs Division, the residential premises of Shri Bimal Saha, Ukilpara P.O., Raiganj P.S., were searched by a group of Customs officers of Malda Customs office, Singhabad L.C.S., SIU, DIU and SRI. During the course of search, 67 Kgs. of Ganja was recovered and seized, and accordingly, a case was booked on 21.9.05. After search, Shri Bimal Saha and his son Sh. Bhibas Saha were brought to Raiganj Preventive Unit and thereafter Malda Customs Office for further interrogation. After interrogation on 22.9.05, it was decided by the Malda Customs Officers to arrest both the accused for keeping / dealing with narcotics and to produce them before Magistrate on 23.9.05. But they neither completed the arrest formalities nor put the accused persons in police custody for the night. The Supdt. and the Inspector left office at 10.30 P.M. on 22.9.05 after keeping one Hawaldar and one Driver as their guard.*

*It has been reported that on 23.9.05 Sh. Bhibas Saha went to the corner toilet of Malda Customs Office at about 9.30 A.M. but did not come out of the toilet even after a considerable time. The toilet door was broken open and it was found that Bhibash Saha had hung himself. Hawaldar Shri Naskar immediately informed Inspector Shri Malay Majumdar about the incident, who in turn informed the matter to the Supdt. Mr. Ghosal over telephone. Sh. Ghosal, Supdt. then lodged an FIR in the English Bazar Police Station.*

*In this context, it is further submitted that:-*

i) No case relating to the death of the deceased, Late Shri Bhibas Saha has been reported with the police and as per concerned Police Station, no one turned up to file a case in the matter.

ii) Cause of death was due to hanging (suicide) as supported by post mortem and Inquest reports. As such his death cannot be attributed to torture and harassment in custody.

iii) No FIR has been lodged against Custom officers nor there is any evidence regarding torture or harassment by Custom officers during custody of the deceased, and therefore, Custom officers cannot be held responsible for the un-natural death of the deceased.

The Commission has observed that the punishment awarded to errant custom officials indicated that the deceased committed suicide due to harassment and torture in custody. However, it may be observed from the report (s) already furnished to the Commission under letter dated 13.3.09 that the cause of death was due to hanging (suicide) as supported by post-mortem and Inquest reports. As such, Customs officers cannot be held responsible for the un-natural death of the deceased or for any violation of the human rights of the deceased. Further, as requested by the Commission, a copy of magisterial investigation report along with the letter dated 21.5.07 issued by the Inspector-In-charge English Bazar Police Station addressed to the Assistant Commissioner of Customs, Malda regarding enquiry conducted by him in respect of FIR lodged by Shri Ghosal; and copy of post mortem report is also enclosed for the Commission's perusal.

In this regard, it is further stated that the Govt. after getting proper inquiry conducted in the matter has issued 'Warning' to the concerned officials as they were found having acted in a negligent manner and failing to provide safe custody to the deceased, and not on account of any harassment or torture in custody to the deceased. Nothing has been established on record to prove any malafide on their part. As such, there is no ground to indicate that the concerned officials violated the human rights of the deceased in any manner.

In view of the stated position, this does not appear to be a case for recommendation for compensation to be awarded to the kin of the deceased by the Commission, and it is requested that the said SCN may be withdrawn."

The Commission has considered the matter and is not in agreement with the report. It is a clear case of violation of human rights of the deceased who was a young man of 30 years and died in the state custody. Secretary, Deptt. of Revenue, Ministry of Finance, Govt. of India is recommended to pay compensation of Rs. 1,00,000/- (Rupees One Lakh only) to the next of kin of the deceased as damages / interim relief w/s 18(a)(i) of the Protection of Human Rights Act, 1993. The proof of payment be sent to the Commission within six weeks.

It is therefore, requested that the compliance report in the matter be sent to the Commission latest by 17/9/2009, so that the same could be placed before the Commission.

Yours faithfully,

  
ASSISTANT REGISTRAR (LAW)

CC To.

✓ REFERENCE FROM:

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BY

Speed Pm

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