

**NATIONAL HUMAN RIGHTS COMMISSION
(L A W D I V I S I O N)
FARIDKOT HOUSE
COPERNICUS MARG, NEW DELHI - 110 001**

Dated 22/07/2013

Case No. 47/23/3/2010-PF/DB-II

To

✓
SHRI SUHAS CHAKMA, DIRECTOR
NATIONAL CAMPAIGN FOR PREVENTION OF TORTURE,
C-3/441-C, JANAKPURI,
DELHI – 5.

Sir/Madam,

With reference to your complaint dated 01/12/2010, I am directed to say that the matter was considered by the Commission on 03/07/2013. The Commission has made the following directions.

“In response to the recommendations made to the Ministry of Home Affairs, Government of India, a response has been received, inter-alia indicating that a sanction letter has been issued for payment of Rs. 2 lakhs to Tulu Aktar, Rs. 5 lakhs to the next of kin of the deceased Khoka Mia and Rs. 50,000/- each to Abdul Kalam and Badhsa Mia. The Government has also forwarded copies of the documents indicating that the amount, as recommended, has been paid to the persons concerned.

Under the circumstances, it is clear that the Government has paid in all Rs. 8 lakhs as recommended by the Commission, break-up of which has been indicated herein above. Under the circumstances, the case is closed.”

This is for your information.

Yours faithfully,


DEPUTY REGISTRAR(LAW)

Copy to:

The Under Secretary,
Ministry of Home Affairs, Govt. of India,
4th Floor, NDCC Bldg –II,
Jai Singh Road, New Delhi.

Smt. Ambiya Khatun w/o late Khoka Mia
Village Amzad Nagar, PO Sarsasima
PS - Belonia, District – South Tripura,

National Human Rights Commission

New Delhi, India

Case Details of File Number: 47/23/3/2010-PF

Diary Number	144209
Name of the Complainant	SUHAS CHAKMA, DIRECTOR
Address	NATIONAL CAMPAIGN FOR PREVENTION OF TORTURE, C-3/441-C, JANAKPURI, WEST DELHI , DELHI
Name of the Victim	KHOKA MIA
Address	VILL- AMZAD NAGAR, SOUTH TRIPURA , TRIPURA
Place of Incident	AMZAD NAGAR SOUTH TRIPURA , TRIPURA
Date of Incident	11/30/2010
Direction issued by the Commission	<p>It is a sorry state of affairs that where women's' rights are violated by Armed Forces, the superior officers of the Armed Forces are declining even to cooperate with the process issued by the Court. The Ministry of Home Affairs was called upon to send a copy of the proceedings of the Staff Court of Inquiry through which the BSF exonerated the personnel implicated in this incident has not yet been forwarded. If the inquiry is completed why time is taken by the Ministry of Home Affairs is difficult to understand. It was also pointed out to the MHA to see that when the Magistrate has issued a warrant to arrest, it is essential that the same should be challenged before the Magistrate. But, that is not being done. Secretary, Ministry of Home Affairs, Government of India is required to forward the document sought for by the Commission on or before 7th February, 2013, failing which the Commission shall be constrained to issue coercive process. List the matter on 13th February, 2013.</p>
Action Taken	Additional Information Called for (Dated 1/3/2013)
Status on 3/11/2013	Commission is considering the reports recieved from concerned authority.

Note: For further details kindly contact **National Human Rights Commission, Copernicus Marg, New Delhi, PIN 110001 Tel.No. 23385368 Fax No. 23384863 E-Mail: covdnhrc@hub.nic.in**

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National Human Rights Commission

New Delhi, India

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Address: NATIONAL CAMPAIGN FOR PREVENTION OF TORTURE, C-3/441-C, JANAKPURI, WEST DELHI, DELHI
Name of the Victim: KHOKA MIA
Address: VILL- AMZAD NAGAR, SOUTH TRIPURA, TRIPURA
Place of Incident: AMZAD NAGAR, SOUTH TRIPURA, TRIPURA
Date of Incident: 11/30/2010

Direction issued by the Commission

In response to its proceedings of the 29th March 2012, the Commission has been informed by the Additional SP Belonia, South Tripura, that a charge-sheet for offences u/s 341/376/511/325/302/34 IPC has been filed against three BSF personnel in the Court of the SDJM Belonia, on the 30th April, 2012. The Commission has also been informed that though the SDJM had issued a warrant of arrest against these BSF personnel on the 8th December, 2011, the Commandant of the 70 BN of the BSF has refused to hand them over to the police. This refusal has been confirmed by the BSF, which invokes what in the Commission's view is a false claim of immunity. While attempts must continue to bring these men to justice, the charges filed by the police show that prima facie there is evidence that the following serious crimes were committed by these BSF personnel: i) an attempt to rape Tulu Akhtar; ii) the killing of her father Khoka Mia; and iii) injuring her brothers Abul Kalam and Badshah Mia. The Commission therefore asks the Secretary, Ministry of Home Affairs, Government of India, to show cause why it should not recommend relief to the next of kin of the late Khoka Mia for his death, and as reparations for the harm done to his daughter and his two sons. A response is expected by the 26th July, 2012. Separately, the Commission asks the Secretary, Ministry of Home Affairs, Government of India, to inform it of the steps that Government will take to ensure that these three BSF personnel are tried for the crimes that they are suspected of having committed. The Commission notes that the Staff Court of Inquiry held by the BSF has already absolved them. It has found that this is almost invariably the case with BSF Courts of Inquiry, stalled by junior officers, whose primary concern seems to be to protect their colleagues rather than to uphold the law. This report should also reach the Commission by the 26th July, 2012. Put up on the 2nd August, 2012.

Action Taken
Status on 8/13/2012

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National Human Rights Commission, New Delhi, India

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Date of Incident	11/30/2010

Direction issued by the Commission

Shri Yadendra Singh, DIG (Ops)C, vide his letter dated 24th March, 2011 has pointed out in para 10 about the information being lodged with the police. It is also indicated that an information being lodged against the BSF vide Cr. No. 282/10 which is registered for offences punishable u/s 341/376/511/325/302 r/w 34 of IPC. Further it is stated that the statements of all BSF personnel have been recorded by the police and further investigation is in progress. In para 11, it is stated that the Staff Court of Inquiry has been conducted into the incident by BSF where it has been established that there is no substance in the allegation of attempt to commit rape on Ms. Tulu Akhtar D/o Khokha Mia, 18 years R/o Amzadnagar. It appears that there is some misreading of the provisions of Law. Offences indicated in BSF Act 1968 which falls in Chapter III may be inquired into by the Tribunal established under the Act, except the civil offence as indicated in Section 47. The said Section reads as under:- 47. Civil offences not triable by a Security Force Court.- A person subject to this Act who commits an offence of murder or of culpable homicide not amounting to murder against, or of rape in relation to, a person not subject to this Act shall not be deemed to be guilty of an offence against this Act and shall not be tried by a Security Force Court, unless he commits any of the said offences, - (a) while on active duty; or (b) at any place outside India; or (c) at any place specified by the Central Government by notification in this behalf. In view of the Criminal Procedure Code it is stated that the accused cannot be handed over to the police for investigation. Section 45 of the Criminal Procedure Code 1973 reads as under:- 45. Protection of members of the Armed Forces from arrest.- (1) Notwithstanding anything contained in sections 41 to 44 (both inclusive), no member of the Armed Forces of the Union shall be arrested for anything done or purported to be done by him in the discharge of his official duties except after obtaining the consent of the Central Government. (2) The State Government may, by notification, direct that the provisions of sub-Section (1) shall apply to such class or category of the members of the Force charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section shall apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted. It is required to be noted that the Act must have been done or purported to have been done in the discharge of official duties. Only then the sanction of the Central Government would be required. Molestation, attempt to rape etc. are not the offences committed by the person in discharge of his duties. Looking to the circumstances narrated by the investigating agency, it cannot be said that the Constable while in discharge of his duties fired his weapon on the deceased. There must be proper investigation to come to a conclusion. It is hoped that the officer will take proper advice and shall see that the persons are handed over to the police immediately so that investigation is carried out. He should have known that identification is necessary. The witnesses will point out whether the policemen

alleged were involved in the crime or not. Without their testimony and identification parade, the case cannot be completed. Under the circumstances, it is hoped that DIG (Ops) C shall immediately convey not to obstruct the investigation in accordance with the Law made by the Parliament. It is also surprising that the police are also not taking appropriate steps in the matter for an independent investigation. If they require the presence of the two Constables, it is always open for them to approach the Judicial Magistrate for arrest warrant under Cr.PC. It is hoped that appropriate action shall be taken by the investigating officer and the BSF. Response within a period of six weeks without fail by both the authorities. List on 3rd November, 2011.

Action Taken**Status on 11/1/2011****Additional Information Called for (Dated 9/1/2011)**

Response from concerned authority is awaited.

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