



**ODISHA POLICE
CRIME BRANCH**

CRIMINAL INVESTIGATION DEPARTMENT

No. 39363 /CID/Law

Dtd. 26 10.2018

To

All District SsP including SsRP Rourkela/Cuttack/ DCsP, Cuttack & Bhubaneswar UPD.

Sub: Advisory on liability of mob leaders for damage to public property.

Hon'ble Supreme Court of India in WP (Civil) case No.330 of 2018 has issued various instructions which was communicated by CID-CB vide Letter No. 37861/CID-Law dtd. 9.10.2018.

In the judgment Hon'ble Supreme Court has enumerated details about responsibility of Police Officers.

RESPONSIBILITY OF POLICE OFFICIALS:

- When any act of violence results in damage to property, concerned police officials should file FIRs and complete investigation as far as possible within the statutory period and submit a report in that regard. Any failure to file FIRs and conduct investigations within the statutory period without sufficient cause should be considered as dereliction of duty on behalf of the concerned officer and can be proceeded against by way of departmental action in right earnest.
- If there is any unexplained and / or unsubstantiated delay by Police in filing FIR / or conducting investigation should be deemed as inaction on the part of the Nodal Officer. Nodal Officer have already been designated as per the instructions communicated vide PCO No.377/2018 dtd.11.08.2018.
- While issuing license / permission for processions, terms and conditions clearly specifying the route, timings and other details should be imposed vide powers conferred under section 30 of Police Act. 1861, Sec.4 of Orissa Fire works and loud speaker (Regulation) Act. 1958, Noise Pollution (Regulation & Control) Rules, 2000. Wherever there is anticipation of potential trouble or

violence, specific conditions shall be imposed after due vetting. Strict instructions should also be issued not to carry any lathi, sword, firearms, explosives, knives etc. In areas where there is potential for trouble, prohibitory orders under section 144 CrPC should be imposed.

- In the event that any such procession / demonstration, turns violent the Officer-in-charge shall ensure that the event is videographed either through police operators or through private operators and also request such information from the media and other person who would be present. This video should be properly studied and used as evidence.
- The police shall immediately inform the Crime Branch with reports of the event, including damage, if any, caused. The CID CB shall prepare report and submit to the State Govt.
- The CID CB on the basis of the report containing all necessary details, will move the Hon'ble High Court for appointment of the Claims Commissioner. The Claims Commissioner will then award compensation.
- You may appraise the Hon'ble Court through the PP where the person arrested for either committing or initiating, promoting, instigating or in any way causing to occur any act of violence which results in loss of life or damage to property has applied for bail, may be granted conditional bail upon depositing the quantified loss caused due to such violence or furnishing security for such quantified loss. In case of more than one person involved in such act of violence, each one of them shall be jointly, severally and vicariously liable to pay the quantified loss. If the loss is yet to be quantified by the appropriate authority, the judge hearing the bail application may quantify the amount of tentative damages (which shall be subject to final determination thereof by the Claims Commissioner).
- It should be noted that as per the directions of the Hon'ble Supreme Court, if in case any damage to property has occurred because of direct action of the mob/group/political party/organisation etc, their leaders/office bearers should physically present themselves for questioning in the Police Station within whose jurisdiction the violence and damage occurred, within 24 hours. Any such person(s) failing to present himself/herself without any sufficient reason should be proceeded against as a suspect and a legal process must be initiated forthwith against him/her including for being declared an absconder in accordance with law.

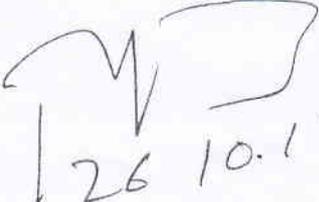
Further Hon'ble Supreme Court has issued following guidelines with regards to the estimating the loss due to damages caused to the public or private property and fixing their liability.

"In the absence of legislation the following guidelines are to be adopted to assess damages:

- (I) Wherever a mass destruction to property takes place due to protests or thereof, the High Court may issue suo motu action and set up a machinery to investigate the damage caused and to award compensation related thereto.*
- (II) Where there is more than one state involved, such action may be taken by the Supreme Court.*
- (III) In each case, the High Court or Supreme Court, as the case may be, appoint a sitting or retired High Court judge or a sitting or retired District judge as a Claims Commissioner to estimate the damages and investigate liability.*
- (IV) An Assessor may be appointed to assist the Claims Commissioner.*
- (V) The Claims Commissioner and the Assessor may seek instructions from the High Court or Supreme Court as the case may be, to summon the existing video or other recordings from private and public sources to pinpoint the damage and establish nexus with the perpetrators of the damage.*
- (VI) The principles of absolute liability shall apply once the nexus with the event that precipitated the damage is established.*
- (VII) The liability will be borne by the actual perpetrators of the crime as well as organisers of the event giving rise to the liability – to be shared, as finally determined by the High Court or Supreme Court as the case may be.*
- (VIII) Exemplary damages may be awarded to an extent not greater than twice the amount of the damages liable to be paid.*
- (IX) Damages shall be assessed for :*
 - (a) Damages to public property;*
 - (b) Damages to private property;*
 - (c) Damages causing injury or death to a person or persons;*
 - (d) Cost of the actions by the authorities and police to take preventive and other actions.*
- (X) The Claims Commissioner will make a report to the High Court or Supreme Court which will determine the liability after hearing the parties."*

In addition to the above guidelines of the Hon'ble Supreme Court of India, you are further directed to ensure that the organiser / office bearers of the group / organisation applying for license submits a bond to maintain peace and to pay compensation for any loss or damage of public or private property during such rally, procession, protest, Dharana, etc. He shall also give a declaration on his behalf and on the behalf of all the office bearers and members of his organisation that they will not resort to violence in any manner nor cause any damage to any public or private property or any injury or death to a person in the course of such rally, procession, protest, Dharana in any manner.

Please ensure that the orders of the Hon'ble Supreme Court of India in Writ Petition (Civil) case No.330 of 2018 dtd.01.10.2018 are implemented in letter and spirit.


26 10.18

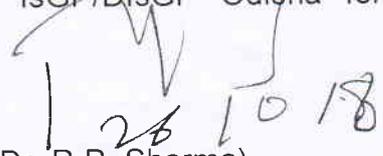
(Dr. R.P. Sharma)

Director General of Police,
Odisha, Cuttack.

Dt 26.10.2018

Memo No. 39364/Law

Copy forwarded to Commissioner of Police, Bhubaneswar-Cuttack, Bhubaneswar/Addl. D.G. Railways, BBSR/ All Range IsGP/DIsGP Odisha for information and necessary action.


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