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The Magistrates Court in Jerusalem
Civ. 11738/97
Sbeih v. Farres
Opening date: 13 August 1997

Procedure: Ordinary

At the Magistrates Court in Jerusalem

In the matter of:

1. _____ **Sbeih**

represented by attorneys Hisham Shabaita
and/or Hala Huri and/or Eliahu Abram
of HaMoked: Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger
4 Abu Obeidah Street, Jerusalem 97200
Tel. 02-6283555, Fax 02-6276317

The Plaintiff

v.

1. _____ **Farres**

2. _____ **Mizrahi**

whose address for service of process is
Israel Police, National Headquarters, Jerusalem

3. **The State of Israel**

all represented by the Tel Aviv District Attorney's
Office (Civil Department)
1 Henrietta Szold Street Tel Aviv 64924
Tel. 03-6970222; Fax 03-6918541

The Defendants

Nature of the claim: **Damages for Bodily Injuries**

Amount of the claim: **NIS 50,000**

Complaint

1. The Plaintiff was born in 1970 and is a resident of the Beit Hanina neighborhood in East Jerusalem.
2. Defendants 1 and 2 served, at the timeframe relevant to the facts of the Complaint, as policemen in the Israel Police.

3. Defendant 3 was, at the timeframe relevant to the Complaint, in charge of the actions of Defendants 1 and 2.

4. In the evening of 25 May 1991, the Plaintiff was sitting near a vegetable stand in the center of Beit Hanina, run by his friend S., in his company and in the company of another friend, I..

5. At around 21:30 or thereabouts, a Border Guard Jeep driven by Defendant 1, along with two other Border Guard policemen, stopped near the vegetable stand.

It should be noted that on that day, Defendant 1 was the commander of the Border Guard patrol.

6. Defendant 1 got off the Jeep, asked the Plaintiff's friends for their IDs, and after reviewing them, returned them to their owners.

7. The Plaintiff was not requested by Defendant 1 to show his ID but to get into the Jeep straight away.

It should be noted that the Plaintiff was not told of what he was suspected and why he was required to get into the Jeep.

8. Defendant 1 drove the Jeep to the Newe Yaaqov police station.

After getting off the Jeep, the Plaintiff was required to sign a document that was phrased by Defendant 1, in which the Plaintiff allegedly confirms that no force was used against him and that he suffered no damage during his arrest.

9. Defendant 1 also claimed to the Plaintiff that he was suspected of throwing stones and of inciting others to throw stones. Defendant 1 threatened the Plaintiff that if he left the neighborhood where he lived once again, he would tie him to the Jeep and drag him.

When the Plaintiff denied the allegations against him, Defendant 1 slapped the Plaintiff on the face several times and kicked his leg several times.

10. The Plaintiff was brought into one of the rooms at the police station, where he was questioned by the investigator on duty (hereinafter: the Investigator). The Plaintiff's statements were translated into Arabic [sic] by an Arabic-speaking policeman, who was also present in the room.

The Plaintiff was asked by the Investigator why he had not boarded the Jeep when required to do so and why he had not presented his ID when required to do so.

The Plaintiff denied the allegations against him, and made it clear that he had shown no resistance to boarding the Jeep and that he had presented his ID quickly and promptly. The Investigator yelled and shouted at the Plaintiff that he was a liar.

11. At this point, Defendant 2, who served as the Day Duty Officer at the station on that day, entered the room, grabbed the Plaintiff by the shirt, pushed him into the corner and punched and kicked the Plaintiff on his face and legs.

When Defendant 2 noticed that the Plaintiff was hurt, *inter alia*, in the mouth and was bleeding, his stopped the beating and continued questioning the Plaintiff.

12. After the Plaintiff's injury, Defendant 1 entered the room. He gave the Plaintiff an opportunity to wash the blood that was staining his mouth off his face, put him on the Jeep and, with two other Border Guard policemen, drove toward the Plaintiff's neighborhood.

On the way, the Plaintiff mentioned that he intended filing a complaint against Defendants 1 and 2.

In response, Defendant 1 threatened that if he did so, he would accuse him of stonethrowing, "testify against him in court", take him to the nearby hills and "break him".

When Defendant 1 approached the Plaintiff's neighborhood, the Plaintiff was released.

13. On the following day, 26 May 1991, the Plaintiff filed a complaint with the Ombudsman of the Border Guard in the Jerusalem region.
14. Following the investigation of the incident, on 7 January 1994, Defendant 2 was brought to trial before the Jerusalem Disciplinary Court, and convicted of unlawful use of force. In his sentence, the Judge determined, *inter alia*, that "this was a use of force of the graver type, in which there is no justification at all for using force as aforesaid, when the complainant is undergoing questioning".

The judgment is attached to this Complaint as Exhibit A and constitutes an integral part hereof.

Liability of Defendant 1 and 2

Battery

15. The Plaintiff shall claim that the beating he received to all parts of his body by Defendants 1 and 2 constitutes Battery, within the meaning of this term in Section 23 of the Torts Ordinance [New Version], 5728-1968.

Negligence

16. The Plaintiff shall further claim that the battery committed by Defendants 1 and 2 constitutes, in itself, the civil wrong of negligence.

17. In addition, the Plaintiff shall claim that Defendants 1 and 2 were negligent, and that their negligence was expressed, *inter alia*, in the following acts and/or derelictions, namely that they:
- a. Exceeded their authority and acted against the law and the orders and/or instructions and/or directives of the Inspector General of Police, by unlawfully attacking the Plaintiff and/or using force that, under the circumstances of the matter, was excessive.
 - b. Behaved incautiously and/or recklessly and/or contemptuously and/or apathetically towards the integrity of the Plaintiff's body and his health, and contrary to the conduct of reasonable and skilled policemen under similar circumstances.
 - c. Failed to do everything within the power of reasonable policemen to prevent or mitigate the injury to the Plaintiff.
 - d. Used wrongful measures to maintain public order.
 - e. Abused their authority by taking the law into their own hands and using force against the Plaintiff without any lawful justification and/or reasonable cause and/or to an excessive degree.

Negligence Per Se

18. The Plaintiff shall further claim that Defendants 1 and 2 were negligent per se by violating statutory duties which are designed, according to the rightful meaning thereof, to protect the type of persons to which the Plaintiff belongs, thus causing the damage claimed by the Plaintiff.
19. In particular, the Plaintiff shall claim that Defendants 1 and 2 violated the duties set forth in the Penal Law, 5737-1977 (hereinafter: the Law) and in the Police Ordinance [New Version], 5731-1971 (hereinafter: the Ordinance).
20. For the sake of further specification, and without derogating from the generality of the aforesaid, the Plaintiff shall claim that Defendants 1 and 2 violated the following duties:
- a. Section 280(1) of the Law, which prohibits civil servants from abusing their authority to perform an arbitrary act which infringes the right of another.
 - b. Sections 333, 334 and 335 of the Law, which prohibit the infliction of grievous injury and battery.

- c. Sections 378, 379, 380 and 382 of the Law, which concern simple battery, battery causing serious bodily injury and aggravated battery.
- d. Section 3 of the Ordinance regarding the duties of all policemen in maintaining public order and personal safety.
- e. Section 19(a) of the Second Schedule to the Ordinance, which prohibits the use of force against a person as part of the fulfillment of a duty, contrary to the Police Orders or any other lawful instruction.

Liability of Defendant 1: False Imprisonment

- 21. The Plaintiff shall further claim that, in addition, Defendant 1 unlawfully denied the Plaintiff his freedom, thus committing a false arrest and the tort of false imprisonment, within the meaning of this term in Section 26 of the Torts Ordinance [New Version], 5728-1968.

Liability of Defendant 3

- 22. The Plaintiff shall claim that Defendant 3 bears vicarious liability for the foregoing acts and/or derelictions of Defendants 1 and 2, in their capacity as its agents and/or employees and/or as acting on its behalf.
- 23. The Plaintiff shall further claim that Defendant 3 bears direct liability for the damage caused to the Plaintiff due to negligence and/or lack of caution and/or negligence per se, as expressed, *inter alia*, in the following acts and/or omissions, namely that it:
 - a. Failed to fulfill its lawful duties and/or missions, and to ensure the safety of the residents of the state, including the Plaintiff and/or failed to ensure that policemen in general and/or Defendants 1 and 2 in particular refrained from the use of force and/or refrained from the use of force other than to make an arrest and/or refrained from using unreasonable force.
 - b. Failed to supervise and/or to properly supervise the acts and omissions of Defendants 1 and 2, its agents, and/or acted incautiously and failed to pay attention to and/or watch over the persons under its charge.
 - c. Failed to instruct and/or direct Defendants 1 and 2 not to abuse their authority and not to commit an arbitrary act violating the right of others, including the Plaintiff.
 - d. Failed to instruct and/or define for its agents their duty of maintaining public order, health and safety.

- e. Failed to clarify to Defendants 1 and 2 the instructions and/or orders and/or guidelines of the Inspector General of Police and/or improperly supervised and taught the said orders and/or gave no and/or insufficient safety instructions and/or failed to ensure that persons dedicated to the instruction thereof, were familiar with or observed the same.
- f. Failed to do everything in its power and/or everything it should and/or ought to have done and/or was required to do in order to prevent the battery incident and the damage therefrom and/or acted recklessly and incautiously and failed to pay attention to and/or watch over the persons under its charge.

The Plaintiff's Damage

24. As a result of the Defendants' acts and/or derelictions, the Plaintiff was injured in the face, and suffered swelling and a deep cut in his lower lip.

Consequently, the Plaintiff suffered severe pain in his lip for around two weeks.

In addition, throughout that period, the Plaintiff had difficulties eating and even talking, because every movement of his lips caused him severe pain.

25. In addition, the Plaintiff was arrested, as aforesaid, for no reason or justification, while sitting in the company of his friends under circumstances that aroused no suspicion.

Despite this, after his arrest the Plaintiff complied with all of the Defendants' demands. And yet, unfounded allegations were still threateningly cast at the Plaintiff, and he was, as aforesaid, severely beaten.

During the course of the incident, the Plaintiff was astonished and unable to understand the motives that stood behind the acts of Defendants 1 and 2, other than the urge to abuse him and to pick on him.

Consequently, the Plaintiff felt humiliated, helpless and demeaned, not to mention that the mere location of the injury and the conspicuous tarnishing of his face for many days, caused the Plaintiff great embarrassment.

26. Due to the damage specified above, the Plaintiff is fixing his claim in the total sum of NIS 50,000.

27. The Honorable Court has the territorial and the subject matter jurisdiction to hear the Complaint.

28. The Honorable Court is therefore moved to summon the Defendants and to charge them, jointly and severally, with payment to the Plaintiff of his damage in full as specified above and/or according to any other specification as the Court shall deem

right and just under the circumstances, and to charge the Defendants with payment of trial expenses and attorney's fees, and all in addition to differences of indexation and interest as set out in the law until the date of actual payment.

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Adv. Shabaita Hisham
Counsel for the Plaintiff

Jerusalem, 12 August 1997

(T.S. 2117, M.M. 18981)

Judgment

The Defendant was accused in the complaint of unlawful use of force against the Complainant at the Newe Yaaqov station and of wounding him in the lip. The Defendant pleaded not guilty and in fact claimed that he did not serve as Day Duty Officer at the time of the Complainant's entry to the facility, did not beat the Complainant up, does not remember having seen him at all and did not see anyone who was injured as aforesaid.

Three issues require a decision. The actual use of force against the Complainant, the legality thereof and the Complainant's [sic] identification as the one who used force against him. With regard to the use of force, it appears that such was proven beyond any reasonable doubt by the Complainant's complaint, the battery findings on his lip, which were not present prior to his entry into the investigation room, the injury witnessed by the Border Guard personnel Farres and Hashan, the fact that Complainant said that he would complain of the beatings and the fact that Mizrahi, the investigator, saw the Complainant leave the investigation room toward the bathroom sink. The said use of force was committed inside the police facility, during the Complainant's investigation and in his capacity as such, and in the absence of another reason or explanation therefor, was unnecessary and illegal. The question remains of the identification of the battering policeman, which was cast in doubt by the Defendant.

From the evidence in the file and from the testimonies of the Complainant and the Defendant, I find that it was the Defendant who punched the Complainant in the face, thus causing the injury to his lip. The Defendant was identified by the Complainant throughout the stages of the investigation including before me consistently and without any doubt, and did not deviate from his testimony on the identification and the said battery even in his cross examination, to the Defendant's and my questions. In his testimony before me, he remembered mainly the punch that caused his injury while being shoved against the wall, but did not remember the other beatings of which he related only in his first statement two days after the incident. The Complainant even insisted that he was not mistaking the Defendant and others who did or did not beat him, and added to the Defendant's questions that he did not remember the Defendant from a previous incident in which he came across him, and in any event did not resent him for the previous incident, as he had previously said in the investigation of the previous [illegible word] with the Defendant by the investigator Yitzhak Berman while taking down the Defendant's statement.

The Defendant fits the Complainant's description more than any other policeman, and in fact also by way of elimination he remains the only policeman who fits the description of the battering policeman, and this, as aforesaid, in addition to his unambiguous identification by the Complainant. The investigator Jan Mizrahi also identified the Defendant as having left the

investigation room shortly before the Complainant left to wash his face or, as defined by him, to the bathroom sink. In view of the Defendant's denial that he even entered the said room, much importance is imparted to Mizrahi's testimony, which is also supported by a memo (document 33 in the inquiry file), as it rebuts the Defendant's denial which broadens the issues in dispute to that he did not enter the room and never even saw the Complainant on the said evening.

From a review of the station documents pertaining to the said evening, it appears further that the person who is registered in the Defendant's shift as the day duty officer was [illegible word] and not the Defendant, but, on the other hand, it is unclear where the Defendant was at the timeframe relevant to the incident (around 22:00 or a little later) and it is clear that he did not handle at this time, as he tried to claim, Incident 18, since this incident was handled by Assayag, who has himself testified that he did not know where the Defendant was at the time, but in any case not with him.

The Defendant claims to have been a shift driver, but it is clear from the evidence that he also substituted for the day duty officer, and he himself testified that from time to time he did enter the station, so the fact of his being registered in the Journey Certificate as the driver does not indicate that he drove throughout the shift from its beginning. In any case, the possibility that he was in the station at the timeframe relevant to the incident of the complaint, either as a day duty officer or as a substitute or as shift policeman who at that time was not in the patrol car but in the station, at the day duty officer's post, was not ruled out. This is also consistent with the fact that the first incident which the Defendant handled outside started at 00:40 (26 May 1991), after the time of the incident which is the subject matter of the complaint. From all of the aforesaid, I find that it was the Defendant who punched the Complainant and injured him, and that such use of force was, as aforesaid, unjustified and illegal and I therefore convict the Defendant of the offense with which he was charged in the Complaint.

Sentencing Arguments and Evidence

There are 4 use of force records against the Suspect [sic], although no convictions. He has been in the service for 4 years. I ask that you take my financial situation into consideration, I just lost NIS 30,000 on an apartment in Rimmonim and I have many debts. I am married and my wife is pregnant after treatments. I ask that you make do with the smallest possible sentence. I serve as a morning patrol officer since the beginning of my service at Newe Yaaqov. I want to move up in the force and that the sentence and the conviction will not prejudice the continuation of my service. This Sunday, I am going out on a sergeants course.

Presents documents related to the said financial difficulties and a commander's evaluation memo of 28 December 1993 (marked by me as A.P. 15.1.94)

Sentence

This is a case in which the Defendant was convicted of use of force against the Complainant who was subject at that time to police custody. This is a use of force of the graver type, in which there is no justification at all for using force as aforesaid, when the complainant is undergoing questioning. Furthermore, the Defendant, when using force as aforesaid, caused the Complainant an injury to his lip.

The Complainant, according to his commander's opinion and my impression, is a good and serious policeman and also fears for the continuation of his service in the police, which he regards as highly important and for which he cares greatly. The Defendant is supposed to go out on a sergeants course immediately, which indicates to his intentions and to the system's intentions for him.

In addition, the Defendant has recently found himself in financial distress and his current financial situation is hard-pressed and difficult.

In view of the gravity of the incident, which belongs perhaps to the gravest types of use of force that are unjustified on their face, it would have been proper, particularly now as he takes his first steps in the police and in view of his future plans in the police, to pay heed now and to impose on him a deterring sentence which would prevent him from committing similar acts in the future, in the form of a suspended detention sentence, but such a sentence is outside my authority. In view of his financial situation as aforesaid, I see myself restricted to adjust the amount of the monetary fine which I shall impose upon the Defendant in a direct and suitable proportion to the severity of the case.

In view of all of the aforesaid, I sentence the Defendant to a severe reprimand and to a monetary fine in the sum of NIS 300.

Even though no suspected sentence was imposed on the Defendant which would serve as a deterrent, I have advised him to be mindful and to take care, particularly because he is a good policeman, to act properly and within the framework of the law.

At the Defendant's request, in view of his financial condition, he shall pay the fine in three equal installments.

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