
(1994) 10 SC CK 0084

In the Supreme Court Of India

Case No : Writ Petition (Criminal) No's. 356-57 of 1993

Afzal and Another

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 19-10-1994

Acts Referred:

Constitution of India, 1950 — Article 32

Citation : (1995) 1 ALT(Cri) 199 : (1994) 3 Crimes 593 : (1994) 7 JT 167 :
(1994) 4 SCALE 671 : (1995) 2 SCC 388 Supp

Hon'ble Judges : M. N. Venkatachaliah, C.J;K. Ramaswamy, J

Bench : Division Bench

Judgement

K. Ramaswamy, J.—The facts in these cases bring to focus the mixed blend of efficacy of pragmatic procedure u/s 32; absolute disregard for truth; rank indiscipline among the so-called discipline police force, despite scientific advancement persistence of crude methods of investigation; depraved conduct of the official to forge signatures of higher official and the complicity of persons who moved this Court callously compromise with the officials to speak contrary to the facts placed before the Court. A practicing Advocate is no exception. He had sworn to an affidavit but not even slightest hesitation to make a somersault and deny his averments made in the sworn affidavit filed in this Court. These disturbing trends cause not only a deep anguish to this Court of the degeneration in the moral and official conduct but also feel difficult to place absolute reliance on affidavit evidence placed on record.

2. The objective report of Mr. Kalyan Rudra, Director-General of Police, Haryana, and his affidavit dated November 2, 1993 filed pursuant the directions of this Court dated November 2, 1993 and the report of D.R. Aneja, the learned District Judge, Faridabad, submitted pursuant to the orders of this Court dated December 8, 1993, do establish the fulcrum of the charge made in these writ petitions. Rahim Khan, father of Afzal is an accused of the offenses of forgery of railway receipts, fraud, cheating and misappropriation of railway property. Two FIRs were

registered against Rahim Khan in the police station at Ambala. He is a resident of House No.58-275-B, Mehrab Ka Nagla, Sarai Khaja, Agra. Inspector Mohd. Ishaq of G.R.P. (CIA), Ambala Cantonment police station, Ranbir Singh (ASI), S.H.O., Constable Ram Kumar and other police party had gone to the house of Rahim Khan at 11.00 a.m. on October 12, 1993, without either any assistance of the local Agra police, or recording in daily register of any of the police stations in Agra or even recording any search Memo, and raided his house and found him to be absconding. His wife Smt. Munni Begum and the mother of the first petitioner-Afzal, had given evasive replies of the whereabouts of Rahim Khan. Inspector Mohd. Ishaq had picked up Afzal and Habib, son of Ahmed Khan, both minors, took them to Ambala and kept them in wrongful confinement as a condition for surrender of Rahim Khan. Munni Begum sought and Ismail Khan, practising advocate, Agra, had assisted her and went to Ambala and met the Inspector Mohd. Ishaq in the police station and found the petitions in his custody in Ambala cantonment police station. His pleading for their release met with defiance and the later insisted surrender of Rahim Khan, as a condition for release of them.

3. This Court by proceedings dated October 29, 1993 on writ petitions under Article 32 for Habeas Corpus issued notice by usual mode and by dusty service to the standing Counsel and directed to post the cases on November 1, 1993 on which date this Court directed the Home Secretary of Haryana, to examine the complaint of illegal detention of the petitioners and to submit a report by November 5, 1993. On mention by the Counsel for the State of Haryana of non-availability of Home Secretary, on November 2, 1993 modified the order and directed the Director-General of Police to make the investigation and file the report by November 5, 1993. As already stated in the affidavit filed by Mr. Kalyan Rudra, DGP, he has stated that Inspector Mohd. Ishaq had taken the petitions into the custody and he wrongfully confined them at different places between October 13, 1993 to October 30, 1993. On the night of October 31, 1993, the police party dispatched them to their residence in Agra. These facts further got affirmed from the evidence recorded by the District Judge and the report dated January 29, 1994, thus:-

Viewed in totality, there can be no escape from the conclusion that two children had been picked up on 12.10.93 from Agra by the police raid party headed by Inspector Mohammed Ishaq, GRP, CIA, Ambala Catt. and they were released after illegal detention for over three weeks during the pendency of the writ petition.... "Inspector Mohammed Ishaq has to be held culpable in the matter as the role of other subordinate police officials was more or less auxiliary in nature. They must be deemed to have acted at his behest.

4. Thus it is established that the minor petitioners were taken into illegal detention by Inspector Mohammed Ishaq and kept them in wrongful confinement till October 30, 1993 and were sent to their home on October 31, 1993. It is on record that Inspector Mohd. Ishaq has been suspended and further action against him is in progress. Therefore, it is not necessary to probe further into his

conduct. The question is what remedial steps are required to be taken for the illegal detention of the two minor children. In the writ petition, the petitioners laid the accusing fingers against the 3rd and 4th respondent. The report of the DGP and the Dist. Judge squarely fixes the culpability of Inspector Mohd. Ishaq for the illegal detention of the petitioner. To exculpate the erring official the parents and family members prevaricated from the facts. Their conduct thereby denies themselves the remedy of liquidated damages for illegal detention personally against the erring official. In this scenario, award of damages amounts to premium for prevarication and an impetus to abuse of the process of the Court. In the inquiry done by the learned District Judge, Munni Begum was examined as Witness No. 1, Afzal as Witness No. 2, Habib as Witness No. 3, Munni Khan, the father of Habib as Witness No. 4, Ahmed Khan, brother of Habib as Witness No. 5, Ismail Khan, Advocate, Agra, as Witness No. 13. They made a somersault in the inquiry and they did not support the averments made in the writ petition. The learned District Judge, in his report, stated thus:-

They pleaded ignorance about the making of the complaints or the visit of Shri Ismail Khan, Advocate of Agra to Faridabad and Ambala. Shri Ismail Khan, Advocate (W-13) merely deposed that after he was contacted on 19.10.93 by Munni Begum and her father Ahmed Khan about the raid conducted by Railway Police on 11.10.93, he had, under her instructions, gone to Ambala via Faridabad on 22.10.93 and happened to contact there a tall person outside the police station at Ambala Cantt. and had ultimately talked to some person, not in uniform, stated to be of the rank of Inspector who told him that two person under detention would be released after the surrender of Rahim Khan before the police whereafter he discussed the matter with Shri M.L. Dahiya, Advocate, and taken steps for filing of the writ petition.

5. On the conduct of the parties, the learned District Judge records the finding thus:

The reason for the members of the family of the writ petitioners to make some obliging statements in favour of the police raiding party, is not far to seek. The assertion made by Ismail Khan could not lend legitimacy to the action taken by police raid party. He had, of course, taken a somersault and completely disowned the averment made in the affidavit filed by him in the Hon'ble Supreme Court that he had seen the two boys in the custody of Inspector Ishaq Mohammed but that merely reflected that he too was swayed by "some consideration for seeking exculpation of the wrong doers. In the affidavit filed before the Hon'ble Supreme Court he had specifically named Inspector Ishaq as the police officer monitoring the entire affair regarding the illegal detention of the children for forcing the surrender of Rahim Khan wanted in the cases of embezzlement and cheating etc. of railway property.

6. Thus their conduct would reflect that the parties without any compunction compromise or disown with no responsibility of the averments made in the affidavit evidence on record exposing to the risk of accepting and acting upon

affidavit evidence unless some authentic evidence is on record to corroborate it. The pragmatic process of securing evidence through independent agencies, i.e. D.G.P. and the Dist. Judge proved efficacious. We would deal with the conduct of the advocate at a later state. Suffice it to state at this stage that in this murky situation, we do not feel satisfied to award damages against the erring official, Mohd. Ishaq personally for wrongful confinement of the minors as a crude step to force Rahim Khan, the accused, to surrender for further investigation into the offence alleged against him. The State, be it Union or State Governments, to avoid needless harassment to the innocent people as well as its various liability, should instruct its investigative agencies to eschew crude steps and adopt scientific methods in detecting the crime with foolproof. As its ongoing process, State should organise reorientation courses to their investigative officers at periodical intervals.

7. The affidavit filed by the third respondent, M.S. Ahlawat, Superintendent of Police, GRP (CIA) Ambala Cantonment, dated October 30, 1993 was purported to have been signed by him. The averments therein extracted in the order of this Court dated December 8, 1993, given details of two cases registered against Rahim Khan for forgery, misappropriation, fraud, cheating etc. etc., denied the detention of the petitioners and further alleged that the proceedings in this Court were initiated falsely with a mala fide intention to pre-empt the pending investigation against Rahim Khan. He filed another affidavit dated November 5, 1993 wherein he has stated that he did not receive any notice from this Court in the writ petitions. He was in Camp at Rewari from October 31, 1993. Pursuant to the instructions by the standing Counsel, he met her in the company of DIG, Railways, Mr. Gurjot Singh Malhi, who informed him of filing his counter affidavit. He was shocked to learn that an affidavit, on his behalf with his forged signature, was already filed in the Court on October 30, 1993. He disowned the averments made therein. He also stated that the draft counter affidavit sent to him was with him and he did not sign it as he had neither received notice from this Court nor had seen the averments made therein. In the inquiry conducted by the learned District Judge, M.S. Ahlawat was examined as Witness-19 on January 12, 1994. The learned District Judge found that signing the signature of Ahlawat is "the act of crude forgery". Two sets of officers played part in this sordid affair.. One set consists of Sub-Inspector, Ishwar Singh (W-15), Constable Ahmed Khan, GRP, Rewari (W-16), another set consists of Constable Krishna Kumar W-11 of Police Station GRP, Faridabad, ASI-Randhir Singh (W-6). The learned District Judge recorded that the report of Sukh Lal, Dy Superintendent of Police (Ex.-P-8), carries little probative value since his report is based on the statement said to have been made by Constable Kartar Singh (W-10) and Head Constable Paras Ram (W-17) but they did not testify to support the accusation made against Constable Krishna Kumar that he forged the signature of Ahlawat. The assertion of S.I., Ishwar Singh, "does not also appear to be veracious and impeccable".

The tend and tenor the statement made by different police officers/officials during the course of the enquiry went a long way to suggest that they have tried

to toe the line of one or the other group of the two factions in the Railway Police and traded charges and counter charges against each other. The stance taken by them was substantially incorrect and based on incomplete or probably motivated reports. The manner in which Sub-Inspector Ishwar Singh, the senior most in the group of police officials, concerned with the preparation of counter affidavits and briefing the standing Counsel, did not object to the filing of a forged affidavit, spoke volumes of the tendentious nature of the stand taken by him.

A thorough probe for a complete answer to that vexed question as the detection of forgery is possible only after detailed investigation including the opinion of handwriting experts and application of other scientific methods.

8. The report of the Dist. Judge exposes the so-called disciplined police officials are rank undisciplined not only audacious to forge the signature of respondent-Superintendent of Police but also have no compunction to justify that no forgery was committed. The affidavit of Ahlawat dated September 5, 1993, his evidence before the Dist. Judge and the report of the later do establish that the signature of Ahlawat was forged on the affidavit dated September 30, 1993 and it is a "crude forgery which needs thorough investigation and deterrent action. It cannot be lightly brushed aside of the tenancy to file false affidavits or fabricated documents or forgery of the document and placing them as part of the record of the Court are matters of grave and serious concern. Therefore, we are of the view that a thorough investigation is necessary in this behalf. We would, therefore, request Shri K. Vijaya Rama Rao, the Director of C.B.I, to entrust to one of his senior officers to investigate into the fact to identify the person that forged the signature on the affidavit of M.S. Ahlawat, dated November 30, 1993 filed in this Court and who are the persons connected therewith and were responsible to file the affidavit with forged signatures so as to take further action in this behalf. He is directed to ensure that the report should be submitted as expeditiously as possible within three months from the date of the receipt of this order. The Registry is directed to permit the said officer to take into custody the original affidavit of Ahlawat signed on November 30, 1993, his signature on the Vakalatnama signed by him and the signature on the original affidavit dated November 5, 1993 and also other affidavits with signatures of officials connected with the case as are available. A copy of the report of the learned District Judge dated January 29, 1994 should be given to him. He is free to conduct investigation in his own way.

9. According to affidavit (Annexure-E), filed in this Court, at page 23 of the paper book, Ismail Khan, Advocate, Agra, went to Faridabad and Ambala Cantt on October 22, 1993 and met Inspector Mohd. Ishaq (wrongly stated by him as Ishaq Ahmed) GRP (CIA), Ambala at 9.30. a.m. in the police station..He, saw the petitioners Afzal and Habib in the custody of Ishaq Ahmed. He further stated that Ishaq Ahmed told him that the petitioners will be released and let free only when Rahim Khan surrenders before him. His attempt to impress upon Ishaq Ahmed to release them from illegal detention proved futile, that is one of the pieces of

evidence this Court has taken into consideration for issuing the notice believing that his statement to be true. From the report of the learned District Judge, it is clear that he made a somersault in the inquiry conducted by the learned District Judge. In other words, in his evidence before the District Judge, he has spoken contrary to what he had stated in the affidavit filed in this Court in Annexure-E. A responsible Advocate, if he speaks with the same voice two diametrical opposite statements, and is accepted to be correct the conduct not only is unbecoming of responsible advocate but also needs depreciation in strongest terms. In addition to take further action for speaking falsely on the two different occasions on the same set of facts, a notice should go to him to show cause as to why the statement before the Dist. Judge prima facie false and why he should not be punished for prima facie making mutually inconsistent and reconcilable statements which necessarily if accepted to be inferred that either of them to be false and suitable punishment should not be imposed on him, apart from declaring him unfit to practise as an Advocate. Registry is directed to issue a notice to him to appear in person within 3 weeks to take further action.

10. The Registry is directed to post the case on the question of forgery for further action after the receipt of the report of C.B.I.

11. These writ petitions will remain pending.