
(2012) 07 AHC CK 0143

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 9574 of 2006

Bankey Behari Purohit

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 25-07-2012

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 169, 41
Penal Code, 1860 (IPC) — Section 169, 406

Citation : (2012) ACR 2759 : (2012) 8 ADJ 427

Hon'ble Judges : Ramesh Sinha, J; Arun Tandon, J

Bench : Division Bench

Advocate : S.V. Goswami, Rajiv Goswami and Sanjay Goswami, for the Appellant;

Judgement

1. Heard Learned Counsel for the petitioner and learned Additional Government Advocate for State-respondents.

Petitioner, before this Court seeks a writ of mandamus directing the respondents to pay compensation to the petitioner for illegal detention of the petitioner in jail between 4th April, 2006 to 17th April, 2006 and further for a mandamus directing the Central Bureau of Investigation (for short "CBI") to register, investigate and prosecute the persons found guilty in the said case.

Facts in short leading to the present writ petition are as follows:

Petitioner before this Court, who was in the employment of Deity Thakur Bankey Bihari Ji Maharaj Virajman Bankey Bihari Ji Temple situate in Biharipura, Vrindavan, District Mathura, was arrested by the Police at Vrindavan with reference to the First Information Report lodged u/s 406 of the Indian Penal Code, registered as Case Crime No. 120 of 2006, Police Station Vrindavan, District Mathura. Petitioner was named as the accused in the First Information Report.

2. It appears that subsequently, the informant/complainant made a statement before the Investigating Officer that the written complaint does not bear his signatures and it was not lodged by him. On the aforesaid, the Investigating Officer on 16th April, 2006 submitted a report u/s 169 of the Criminal Procedure Code. The Chief Judicial Magistrate, Mathura passed an order dated 17th April, 2006 releasing the petitioner on bail with a condition that he may furnish surety/ personal bond of Rs. 25,000/-. What has happened to the proceedings thereafter is not known. However, it is admitted on record that the petitioner has been set free under order dated 17th April, 2006.

3. By means of the present writ petition it has been contended that since the Police has submitted report u/s 169 of the Criminal Procedure Code after recording that the complainant himself has denied the making of the complaint, the arrest of the petitioner is rendered illegal, therefore, he is entitled for compensation. The petitioner has also prayed that the CBI be directed to register and investigate the matter.

For the purpose, following judgments of the Apex Court as well as of this Court have been relied upon by the petitioner:

- (1) Joginder Kumar Vs. State of U.P. and others, ,
- (2) Amarawati and Another (Smt.) Vs. State of U.P., ,
- (3) Sube Singh Vs. State of Haryana and Others,
- (4) Shiva Nath Prasad Vs. State of West Bengal and Others, .

The first two judgments are relied for spelling out the procedure required to be followed by the Police before arresting a person and the subsequent judgments are relied upon for the proposition that because of wrongful detention in jail, the person concerned becomes entitled for compensation and the High Court under Article 226 of the Constitution of India has ample power to issue such orders for compensation.

4. this Court may only record that arrest of the petitioner by the Police was as a consequence to the lodging of the First Information Report. Such power of arrest flows from Section 41 of the Criminal Procedure Code, 1973. Merely because at a later point of time, the complainant has made a statement that such complaint was not made by him and the Police has submitted report u/s 169 of the Criminal Procedure Code, this Court cannot record a finding without any further enquiry that the arrest of the petitioner was for mala fide reasons or that the Police has not acted fairly in discharge of its duties, as contemplated u/s 41 of the Criminal Procedure Code.

5. The power of the High Court to grant compensation in case of wrongful detention in jail in exercise of powers under Article 226 of the Constitution of India, has been well-settled by the Apex Court but at the same time, the Apex Court has also warned the High Court in paragraph-20 in the case of Sube Singh

(Supra) in following terms:

That may open the floodgates for false claims, either to mulct money from the State or as to prevent or thwart further investigation, Courts should, therefore, while jealously protecting the fundamental rights of those who are illegally detained or subjected to custodial violence, should also stand guard against false, motivated and frivolous claims in the interests of the society and to enable Police to discharge their duties fearlessly and effectively.

In the same judgment, the Apex Court with reference to the compensation as a public law remedy in paragraph-12, has further clarified that though illegal detention and custodial torture are recognized as violations of the fundamental right of life and liberty guaranteed under Article 21, to begin with, only the following reliefs were being granted in writ petitions under Article 32 or 226 :

(a) direction to set at liberty the person detained, if the complaint was one of illegal detention.

(b) direction to the concerned Government to hold an enquiry and take action against the officers responsible for the violation.

(c) if the enquiry or action taken by the concerned department was found to be not satisfactory, to direct an inquiry by an independent agency, usually the Central Bureau of Investigation.

From the aforesaid it logically follows that the issue of payment of compensation and for directing CBI to conduct an enquiry, as prayed for in the present writ petition would arise only after the State is asked to hold an enquiry into the matter of arrest of the petitioner by the Police with reference to the First Information Report, which was lodged. After the report is received, the State shall take appropriate action. Such stage has yet not been reached in the facts of the case. Therefore, this Court disposes of the present writ petition by providing as follows:

The State may constitute an enquiry into the matter of arrest of the petitioner for determination as to whether the action of the Police while arresting the petitioner was in any way illegal or wrongful and thereafter to determine as to what further action is required to be taken in the matter. It is ordered accordingly.