

(2003) 03 BOM CK 0010

In the Bombay High Court

Case No : Criminal Writ Petition No. 431 of 2001

Dinkarrao Pole

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 13-03-2003

Acts Referred:

Bombay Police Act, 1951 — Section 159
Constitution of India, 1950 — Article 21, 22, 226
Criminal Procedure Code, 1973 (CrPC) — Section 169, 41, 91
Penal Code, 1860 (IPC) — Section 211, 420, 468, 471, 52

Citation : (2003) 2 ALD(Cri) 82 : (2003) BomCR(Cri) 1655 : (2003) 105 BOMLR 302

Hon'ble Judges : B.B. Vaganyi, J;A.S. Bagga, J

Bench : Division Bench

Judgement

B.B. Vaganyi, J.—Heard petitioner in person. Mr. K.G. Patil, learned A.P.P. for respondent Nos. 1 to 3 and Mr. S.G. Shinde, learned Advocate for respondent No. 4.

2. Being aggrieved by the wrongful arrest and detention in the police custody by the respondent No. 3, the petitioner, a practising Lawyer, has invoked extraordinary jurisdiction of this Court under Article 226 read with Articles 21 and 22 of the Constitution of India for grant of compensation and direction for submission of "B" Final Report with prosecution against respondent No. 4 for having committed an offence punishable u/s 211 of the Indian Penal Code. In brief the facts giving rise to this Criminal Writ Petition are as under:

3. One Rajarampant had three sons from his first wife Yamunabai namely, Vitthalrao, Shankarrao and Shrikrishnarao; and two daughters namely Babutai alias Saraswati and Shantabai. Madhukarrao is the son of Vitthalrao. Respondent No. 4 Sulabha Shendarkar is the married daughter of Shrikrishnarao. Vitthalrao, Shankarrao and Shrikrishnarao are no more alive. Shrikrishnarao died in February, 2000. Rajarampant is not alive and his first wife Yamunabai died prior to 1923. After death of Yamunabai, Rajarampant married second time to one

Yamunabai. Petitioner, Bhaskar and Sushilabai are issue of Yamunabai-II.

4. House bearing No. 3-14-15 (C.T.S. No. 8101/1) of Aurangabad was owned and possessed by Rajaram. It was his self acquired property. Rajaram executed a Will in favour of Yamunabai-II on 17.5.1963 and by the said Will, Rajaram bequeathed whole of the house to her. Yamunabai, the real mother of the petitioner, executed registered Will on 12.5.1975 and bequeathed house property to the petitioner, Bhaskarrao and Madhukarrao. Garage was given to Sushilabai, the sister of the petitioner. During her lifetime, Yamunabai-II sold the garage to one Satish Mehta, Yamunabai died on 18.9.1992. After her death, the names of the petitioner and other beneficiaries have been mutated in the relevant records. Bhaskarrao sold his portion of the house of Vandana Gadiya and Sarla Gadiya by registered sale deed. The petitioner and Madhukarrao, the son of Vitthalrao, sold their respective portions of the house property to one Sajed by a registered sale deed dated 22.1.2001.

5. The petitioner started his legal career as a Lawyer at Aurangabad in the year 1951. He practised law till 23.12.1960. On 24.12.1960, the petitioner was appointed as a Police Prosecutor. After retirement, the petitioner resumed his legal profession since 1989. Madhukar is a retired teacher.

6. It is alleged by the petitioner that respondent No. 4 Sulabha, the daughter of Shrikrishnarao, who happens to be the step-brother of the petitioner, filed false and frivolous First Information Report at City Chowk Police Station, Aurangabad on 28.4.2001. According to petitioner, respondent No. 4 had absolutely no interest of whatsoever nature in the house property. However, respondent No. 4, in order to grab a share in the property, filed a false report in order to bring a pressure on the petitioner and Madhukar. Respondent No. 4 filed a report contending therein that petitioner and Madhukarrao sold the house property by committing forgery in the original registered Will of Yamunabai - II. Respondent No. 4 has also filed a Civil Suit in the Civil Court and thereby challenged the execution of Will by Yamunabai.

7. Respondent No. 3 registered Crime No. 90/2001 under Sections 420, 468 and 471 of the Indian Penal Code on the basis of First Information Report dated 28.4.2001, lodged by respondent No. 4. The crime was registered on the same day. Respondent No. 3, without application of mind, arrested the petitioner at 9.35 p.m. on 28.4.2001 and kept him in the lock up throughout the night. The petitioner, a practising Lawyer of 76 years of age, sustained a rude shock on account of his illegal arrest and detention. The respondent No. 3 produced the petitioner before the Judicial Magistrate at 3.00 p.m. on 29.4.2001. The petitioner submitted application for grant of bail and the same was allowed by the Judicial Magistrate. The petitioner was ultimately released on bail at 3.45 p.m. on 29.4.2001.

8. The Investigating Officer came to the conclusion on the basis of material collected so far that the petitioner, Madhukarrao and Sajed did not commit any

offence. The Investigating Officer has come to the conclusion that the complaint lodged by respondent No. 4 was false. Therefore, the Investigating Officer submitted a report u/s 169 of the Criminal Procedure Code and moved the learned Magistrate for discharge of the Petitioner. Madhukarrao and Sajed. Respondent No. 3 did not even ask for police custody. On the production of the petitioner before the Magistrate, M. C. remand was asked for. However, the Magistrate released the petitioner on bail. The Investigating Officer has also submitted a report for grant of "B" Summary.

9. According to the petitioner, the respondent No. 3, without verification of the correctness of the recitals of the complaint dated 28.4.2001, made a haste for his arrest without there being any justification for arrest and illegally detained him in the jail. The petitioner has made a serious grievance that he being the owner of the house property, should not have been arrested on the false and frivolous complaint lodged by respondent No. 4. According to him, there was no need of his arrest and detention in police custody. The petitioner has also made a serious grievance that the respondent No. 3 could have summoned the petitioner for production of document u/s 91 of the Criminal Procedure Code. The subsequent report of the Investigating Officer submitted u/s 169 of the Criminal Procedure Code and further report to the Magistrate for grant of "B" Summary, according to the petitioner, would clearly go to show that action of respondent No. 3 was illegal. Therefore, petitioner has claimed compensation from the State on the basis of Doctrine of Vicarious Liability.

10. In response to the notice, the respondent No. 3 has filed affidavit-in-reply. The respondent No. 3 has justified in his affidavit-in-reply the action of arrest of the petitioner. According to him, the arrest of the petitioner was very much necessary in order to recover the forged document. The original Will executed by Yamunabai-II was seized from the petitioner along with Death Certificate of Yamunabai. The specimen signature of the petitioner was also obtained for purpose of forwarding it to the handwriting expert in order to ascertain whether forgery was committed. The respondent No. 3 has specifically stated in para 6 of his affidavit that he acted in good faith while arresting the petitioner. According to him, he carried investigation impartially and in accordance with law. It is said that the petitioner is not entitled to get compensation for the acts which are committed in good faith. He has repeatedly played the same tune as to the registration of crime on the ground that, complaint lodged by respondent No. 4 disclosed commission of cognizable offence.

11. The respondent No. 4 has also filed affidavit-in-reply. Respondent No. 4 states in her affidavit-in-reply that sale deed executed by petitioner and Madhukar is forged and bogus document and this document is prepared in order to deprive her legal right in the immovable property. According to her, a fraud was committed on the Government authorities by showing the name of Madhukar as son of Rajaram and got prepared the P. R. Card of the house property showing the name of Madhukar s/o Rajaram Pole. According to the

respondent No. 4, this act was deliberate. A statement is also made in the affidavit-in-reply that petitioner has also committed forgery in respect of registered Will executed by Yamunabai. She states further that her report was not false, frivolous and vexatious. Respondent No. 4 finally submits that petitioner is not entitled to get compensation and the petition is, therefore, liable to be dismissed.

12. The petitioner has argued that without application of mind and without any justification the respondent No. 3 arrested him and illegally detained him in police custody. He points out from remand report (Exhibit D) dated 29.4.2001 that the Investigating Officer did not even ask for police custody remand. On the contrary, M. C. remand was asked for. The petitioner also brought to our notice the report (Exhibit C) submitted by the Investigating Officer on 16.6.2001 filed u/s 169 of the Criminal Procedure Code for discharge of the petitioner. He also diverted our attention to the report submitted for "B" Summary by the Investigating Officer (Exhibit F). According to the petitioner, these documents would clearly support, his case of unjustified arrest and illegal detention. He further submits that the State is responsible for giving compensation to him for the illegal acts committed by the respondent No. 3 on the basis of Doctrine of Vicarious Liability. In support of his submissions, he mainly relied upon the case of Joginder Kumar Vs. State of U.P. and others, and D.K. Basu Vs. State of West Bengal, .

13. The learned A.P.P. Shri K.G. Patil submits that the First Information Report lodged by respondent No. 4 disclosed the commission of cognizable offence and, therefore, the respondent No. 3 was justified in arresting the petitioner. He submits that no illegality was committed by respondent No. 3 in arresting the petitioner. The petitioner was arrested at 9.35 p.m. on 28.4.2001 and immediately on the next day he was produced before the Judicial Magistrate, First Class at 3.00 p.m. and was released on bail. Therefore, the petitioner is not entitled to compensation on the basis of Doctrine of Vicarious Liability. He also submits that respondent No. 3 acted in good faith while arresting the petitioner. He raised defence u/s 159 of the Bombay Police Act, 1951.

14. The learned Advocate Shri S.G. Shinde, for respondent No. 4 submitted that no illegality has been committed by respondent No. 4. The complaint lodged by respondent No. 4 very much disclosed commission of cognizable offence and, therefore, there was nothing wrong in the arrest of the petitioner.

15. We gave anxious consideration to the rival submissions made at the bar. It is material to note that the petitioner is a old man of 76 years. The petitioner is in active practice of law. He practices law in the High Court. Prima facie the house property was originally owned and possessed by Rajarampant, the father of the petitioner. The petitioner acquired title to the portion of the house property on the basis of registered Will executed by his real mother. It is seen from the copy of the Will (Exhibit G) that Yamunabai executed Will on 12.5.1975. This document of Will (Exhibit G) would clearly support the say of the petitioner with

regard to his title to the portion of the house property.

16. It is clearly mentioned in the report submitted u/s 169 of the Criminal Procedure Code that the registered Will dated 12.5.1975 is a genuine document. It also reveals that the officer from the Department of City Survey committed an inadvertent mistake in showing the name of Madhukar as son of Rajaram Pole instead of Vitthalrao Pole. It is also stated in the report submitted u/s 169 of the Criminal Procedure Code that on the basis of the inadvertent mistake committed by the concerned officer from City Survey Office, Madhukar has not at all taken any undue advantage and has not cheated the Government or any other person. It is also clearly mentioned in the report u/s 169 of the Criminal Procedure Code that the entry in the P.R. Card in respect of incorrect name of Madhukar is not at all deliberate. It is reiterated in the report u/s 169 of the Criminal Procedure Code that it was a slip of hand. It is also pointed out that Madhukar submitted application for mutation after death of Yamunabai and he had shown his name as Madhukar s/o Vitthalrao Pole.

17. In fact, petitioner has not committed any kind of forgery so far as registered Will dated 12.5.1975. He has also not committed any forgery in respect of P. R. Card. It is clearly seen on the basis of material placed on record that the respondent No. 4 tried to take advantage of slip of hand and lodged a report at the City Chowk Police Station without there being any foundation. The respondent No. 3 could have verified from the record from City Survey Office as to who is the owner of the house property in dispute. It is also material to note that Shrikrishnarao, the step-brother of the petitioner, who died in February, 2000, did not at all challenge the Will executed by Rajarampant in favour of Yamunabai and the registered Will dated 12.5.1975 executed by his step-mother Yamunabai during his lifetime. The respondent No. 4 was aware that her father did not challenge the Will executed by Yamunabai-II.

18. On examination of the documents placed on record, and after having digested the material facts of the case, we are not at all inclined to accept the explanation of the respondent No. 3 in the matter of arrest and detention of the petitioner in jail. The petitioner is a practising Advocate. He is a Senior Citizen. There was no possibility of petitioner being absconded. The justification for arrest and detention for seizure of so-called forged documents is nothing but a lame excuse put forth by the respondent No. 3 in order to justify his high handed action. The respondent No. 3 could have summoned the petitioner u/s 91 of the Criminal Procedure Code for purpose of production of so-called forged document. He did not at all apply his mind as to whether really arrest and detention of the petitioner was necessary. From the very report lodged by respondent No. 4, one could easily know in whose name the house property stands.

19. In the case in hand, the respondent No. 3, without any justification, arrested the petitioner at odd hours of night in order to prevent him from securing a bail and detained him in custody throughout the night. When easy and legitimate course was open for the respondent No. 3, he preferred unjustified arrest, and

illegal detention of the petitioner simply on the ground that the First Information Report lodged by respondent No. 4 disclosed the commission of cognizable offence. The respondent No. 3 cannot take shelter under the umbrella of good faith in order to justify his high handed and illegal action of arrest and detention of the petitioner. Good faith is defined by Section 52 of the Indian Penal Code. Good faith requires care, caution and prudence. The action of respondent No. 3 does not reflect either care or prudence. Therefore, Section 159 of the Bombay Police Act, 1951 cannot be pressed into service.

20. In the case of Joginder Kumar, the Supreme Court has observed in para 24 of the judgment that no arrest can be made because it is lawful for the Police Officer to do so. The existence of the power to arrest is one thing and the justification for the exercise of it is quite another. The Police Officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. The Supreme Court went on to observe that it would be prudent for a Police Officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. A person is not liable to be arrested merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the Officer effecting the arrest that such arrest is necessary and justified and except in heinous offences, an arrest must be avoided if a Police Officer issues notices to person to attend the Station House and not leave Station without permission would do.

21. We would also like to make reference to the case of M.C. Abraham and Anr. v. State of Maharashtra and Ors. 2002(9) Scale 769. The Supreme Court dealt with the question of powers of Investigating Officer with regard to arrest. Section 41 of the Criminal Procedure Code gives power to a Police Officer to arrest an offender without an order from a Magistrate or without a warrant. Section 41 of the Criminal Procedure Code gives discretion to the Police Officer in the matter of arrest. However, the Supreme Court has observed that Police Officer is not expected to act in a mechanical manner and in all cases to arrest the accused as soon as the report is lodged. It is further observed that in appropriate cases, after some investigation, the Investigating Officer may make up his mind as to whether it is necessary to arrest the accused person. Since the power to arrest is a discretionary, a Police Officer is not always bound to arrest an accused even if the allegation against him is of having committed a cognizable offence. The Supreme Court went on to observe that since an arrest is in the nature of an encroachment on the liberty of the subject and does affect the reputation and status of the citizen, the power has to be cautiously exercised. It depends upon

the nature of the offence alleged and the type of persons who are accused of having committed the cognizable offence. The power, therefore, has to be exercised with caution and circumspection.

22. If the observation made by the Apex Court are taken into consideration, we are of the clear opinion that the respondent No. 3, without there being any justification for immediate arrest, clearly indulged in an illegal act of arrest and detention of the petitioner, which has caused incalculable harm to his reputation and self-esteem. The respondent No. 3 has failed to justify the arrest of the petitioner. No doubt the respondent No. 3 has power to do so. The guidelines of the Supreme Court given in Joginder Kumar's case unfortunately fell on the deaf ears of respondent No. 3. The respondent No. 3 has arrested the petitioner in a routine manner on mere allegations of commission of a cognizable offence. The respondent No. 3, in this particular case, has lost sight of the very concept of personal liberty and the constitutional protection of the rights of the citizen. The arrest and detention of the petitioner was contrary to the guidelines given by the Supreme Court.

23. There is nothing on record to show that the respondent No. 3 has verified as to genuineness and bonafides of the complaint and a reasonable belief as to the petitioner's complicity in the crime and need of immediate arrest. He has not bothered slightly in depriving the personal liberty of the petitioner. The respondent No. 3 has not at all pointed out a reasonable justification in effecting the arrest of the petitioner at the odd hours of night. There was no need to effect arrest in the night time. The respondent No. 3 had oblique motive in doing so. Because of arrest at the odd hours of night, the petitioner could not obtain bail. It is also to be noted that First Information Report does not disclose heinous offence.

24. In the case of D.K. Basu (referred supra), the Supreme Court has observed that infringement of fundamental right of a citizen cannot stop by giving a mere declaration. It must proceed further and give compensatory relief, not by way of damages as in civil action but by way of compensation under the public law jurisdiction for wrong done, due to breach of public duty by the State of not protecting the fundamental right to life of the citizen. To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial consciences. The Supreme Court has also observed that it is now well accepted proposition that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrong doer.

25. While dilating upon the question of assessment of compensation, the

Supreme Court has given a caution. It is said that the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the Criminal Courts in which the offender is prosecuted, which the State, in law, is duty-bound to do. The Supreme Court has further said that the quantum of compensation will, of course depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf.

26. A reference with profit can be made to the case of Rudul Sah Vs. State of Bihar and Another, . The Supreme Court has observed that the administrative sclerosis leading to flagrant infringement of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right of compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. Respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's right. This case demonstrates consequences of illegal detention for over 14 years after acquittal. The Supreme Court ordered the State of Bihar to pay to the petitioner in that case Rs. 30,000/- as an interim measure in addition to the sum of Rs. 5000/- already paid.

27. In the case of Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others, the Supreme Court awarded compensation of Rs. 50,000/- to the petitioner whose arrest was mischievous and malicious. The Supreme Court, observed that the constitutional and legal rights, if invaded, the mischief or malice and invasion may not be washed away by his being set free. In appropriate cases, the Court has jurisdiction to compensate the victim by awarding suitable monetary compensation.

28. Having examined the case of the petitioner, in the light of the pronouncements of the Supreme Court referred above, we are of the clear opinion that the arrest and detention of the petitioner was unjustified. The arrest and detention of the petitioner was mischievous and malicious. The fundamental right of the petitioner has been abrogated by illegal arrest and detention. Therefore, the petitioner is entitled to monetary compensation. In the matter of liability of the State for the torts committed by its employees, it is now the settled law that the State is liable for the tortious acts committed by its employees in the course of their employment. Viewing the case from that angle, there is no difficulty in holding that the State is liable for the tortious act committed by its servant within the scope of his employment. A Senior Citizen of 76 years of age, a practising Lawyer has been arrested and detained without there being any justification. The law should be used as a positive and effective instrument to meet the demand of the individual to have a better life, a fuller life, meaningful life and a complete life. Right to life includes dignified life. To promote that demand is the purpose of law. The petitioner has made out very

strong case for grant of compensation. Taking into consideration the incalculable harm caused to the reputation of the petitioner, we are inclined to grant monetary compensation to the petitioner.

29. A direction with regard to submission of "D" Summary with prosecution cannot be granted because, the matter for grant of "B" Summary is pending before the Judicial Magistrate, The Judicial Magistrate, First Class is the Competent Authority in this behalf. We do not want to usurp his powers. Therefore, we are not inclined to issue any direction in this behalf.

30. This takes us to consider the case of respondent No. 4. The petitioner has also claimed compensation from respondent No. 4 for having filed a false criminal complaint against him. In order to substantiate his argument, he heavily relied upon the report submitted by the Investigating Officer u/s 169 of the Criminal Procedure Code and the opinion expressed by the Investigating Officer therein. The Investigating Officer has stated in the report u/s 169 of the Criminal Procedure Code that the complaint filed by respondent No. 4 is false. The prayer of the petitioner for compensation is liable to be rejected. The writ cannot be issued against respondent No. 4. There is one more difficulty in accepting the opinion expressed by the Investigating Officer in the report submitted u/s 169 of the Criminal Procedure Code. The Judicial Magistrate, First Class, before whom the proceeding of "B" Summary is pending can very well grant "B" Summary with prosecution or refuse to grant "B" Summary with prosecution. The petitioner, therefore, can very well initiate a proper proceeding against respondent No. 4 for purpose of recovery of compensation after conclusion of the proceeding for grant of "B" Summary.

31. In the result, the Criminal Writ Petition is partly allowed. We direct the respondent No. 1/State to pay compensation of Rs. 25,000/- (Rupees twenty five thousand) to the petitioner within a period of four weeks. We clarify that respondent No. 1 can, after due enquiry, initiate an appropriate action against respondent No. 3 for recovery of monetary loss caused to the State and do recover from him amount of compensation paid to the petitioner. Rule made absolute accordingly.