
(1996) 05 P&H CK 0123

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 359 of 1992

D.S.Gill, Chairman, Pb.Human Rights Organisation

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 29-05-1996

Acts Referred:

Citation : (1997) 3 AICLR 460 : (1996) 3 RCR(Criminal) 397

Hon'ble Judges : V.S.Aggarwal, J

Advocate : J.S. Brar, R.S. Bains, Advocates for appearing Parties

Judgement

V.S. Aggarwal, J.

1. During the visit of a Single Judge of this Court at Ludhiana, a complaint was given on behalf of Punjab Human Rights Organisation. It was treated as a writ petition and notice was issued to the State.

2. It was mentioned in the complaint that on the night intervening 9/10.4.1992 at about 2.45 A.M. a police party led by Inspector Gurjit Singh of Sarabha Nagar Police Station raided the residence of Shri S. Gill. He was taken into custody. He was taken to Sarabha Nagar Police Station and confined till 4.00 P.M. on 10.4.1992. Learning the confinement of Shri S. Gill the Punjab Human Rights Organisation had sent a telegram to the District & Sessions Judge and to the Chief Judicial Magistrate, Ludhiana that "Gurbhajan Singh Gill, Administration Secretary, Punjab Human Rights Organisation arrested at 3 a.m. today without informing case against him. Nothing is recovered. Apprehended false implication, torture, danger to life. Please intervene B.S. Somal, Secretary, Punjab Human Rights Organisation, District Courts, Ludhiana". It is contended that at about 5.00 P.M. on the same day, the administration secretary was informed by ASI Balwant Singh that instructions had been received from the highups in Circuit House, Ludhiana that Shri S. Gill be proceeded in some security proceedings and sent to jail. At about 7.00 P.M. he alongwith another person was produced before Shri Vijay Kumar Janjua, Sub Divisional Magistrate who was sitting in the Satluj Club, Ludhiana. The Sub Divisional Magistrate passed an order "Accused

produced in Police custody. Remanded to judicial custody. Produce again on 20.4.1992 in the Court". Even the relatives of the said person were not informed about the said detention. The Courts were closed from 11.4.1992 to 15.4.1992. On 16.4.1992 Shri Balbir Singh Sookh, Advocate filed bail application. The Sub Divisional Magistrate showed his helplessness to pass any order without instructions of the District Magistrate. Ultimately he passed an order forwarding the same to the concerned Executive Magistrate incharge of the Police Station. The said Executive Magistrate had passed the following order:

"File produced. Respondents called who come from jail. The respondent is a retired Colonel. The I.O. has not made any statement in this case, while he should have made the statement about the Calender (complaint). 6.5.1992 has been fixed for the detailed statement of the I.O.

Respondent No. 2 has furnished his personal bond as well as surety bond which have been accepted. Mr. Harbant Singh Kahlon was in judicial lockup and I do not feel keeping him in lockup after 10 days, though he has not offered any bail bonds. But I feel morally that he be freed from jail. He has been asked to appear on 6.5.1992 in Court."

3. It was contended that there was flagrant violation of the mandatory provisions of Sections 107 and 111 of the Code of Criminal Procedure. No order under Section 111 Cr.P.C. was passed.

4. While the petition was pending another application was filed seeking compensation for illegal detention.

5. In the reply filed by DSP Mangal Singh, the averments were denied that Shri S. Gill was arrested from his residence. It was admitted that Shri S. Gill was produced before the Sub Divisional Magistrate, Ludhiana who remanded him to judicial custody. The custody was stated to be not illegal but the arrest was under Sections 107/151 Cr.P.C.

6. Separate affidavit was filed by DSP Amarjit Singh, Civil Lines, Ludhiana. It was denied that Shri Gill was illegally detained. No fundamental right of Shri S. Gill was violated.

7. The purpose of enacting Section 107 Cr.P.C. is well known. This is to prevent breach of peace. The provision is preventive and not punitive. By enacting such a provision it is intended that persons who are desperate characters and habitually disturb the public peace should be prevented from disturbing the same. The object of the section is not to punish the persons for anything which they might have done in past but to prevent them in doing something which is likely to occasion a breach of peace and disturb the public tranquillity in the near future.

8. Under Section 107 Cr.P.C. when an Executive Magistrate receives information that any person is likely to commit a breach of peace or disturb the public tranquillity and he is of the opinion that there are sufficient grounds for proceeding, he may in the manner prescribed require such person to show cause

why he should not be ordered to execute a bond with or without sureties for keeping the peace for a period not exceeding one year. Under Section 108 of the Code of Criminal Procedure when information is received by an Executive Magistrate that any person, orally or in writing or in any other manner disseminates or attempts to disseminate any matter, the publication of which is punishable under Section 124A or Section 153A or Section 153B or Section 295A of the Indian Penal Code or concerning any Judge acting or purporting to act in discharge of his duties, the Magistrate after formulation of opinion that there is sufficient ground for proceeding, may require such person to show cause in terms of Section 107(1) of the Code mentioned above. In the same context Section 111 of the Code provides that when a Magistrate acting under Sections 107 to 110 Cr.P.C. deems it necessary to require any person to show cause, he shall make an order in writing, setting forth the substance of the information received or the amount of bond to be executed. Section 112 Cr.P.C. refers to the procedure in respect of persons present in court which under Section 117 of the said Code if on enquiry it is proved that it is necessary for keeping the peace that person against whom enquiry has been made should be directed to execute the bond in the manner prescribed.

9. The leading case on the subject is that of *Madhu Limaye and another v. Ved Murti and others*, AIR 1971 SC 2481. The Supreme Court was concerned with similar provisions under the Code of Criminal Procedure, 1898. While discussing the relevant provisions and the elaborate procedure, the Supreme Court held that the procedure must be followed because "Since the liberty of the person is involved, not because of anything he has done but because of the likelihood of breach of the peace or disturbance of the public tranquillity by reason of some act on his part, the provisions must obviously be strictly followed. Since the action is taken on the mere opinion of the Magistrate, the provisions of the Chapter naturally ensure that no case of harassment arises." It was further observed that the power is used if Magistrate considers that immediate measures are necessary for prevention of a breach of the peace or disturbance of public tranquillity. The Supreme Court also observed that before Magistrate took action in the facts of the case, he did not make any offer to enquire into the truth of the information. No sworn statement of any kind was obtained, as such.

10. What has happened in the present case can well be relisted. Admittedly Shri S. Gill had been detained under the provisions of Sections 107/151 of the Code of Criminal Procedure i.e., to prevent breach of peace or public tranquillity. He was produced before the Executive Magistrate who remanded him to judicial custody for 10 days. No attempt was made to enquire into the truth of the information required under subsection (3) of Section 117 of the Code of Criminal Procedure. No attempt even was made to call for interim bonds. There were no bonds asked to be furnished for appearance of the said person. After 10.4.1992 there were some holidays but even when the Courts reopened, the matter was put off. After 10 days the proceedings were dropped. In this process there was no subjective satisfaction of the person incharge and petitioner continued to be

detained without due procedure of law.

11. The decision of the Supreme Court in the case of Nilabati Behera alias Lalita Behera v. State of Orissa and others, AIR 1993 SC 1960 provides the guidelines. Where liberty of an individual has been put to stake, the Supreme Court held that compensation could be awarded by the appropriate court. In paragraph 16 it was held:

"It follows that a claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is "distinct from, and in addition to the remedy in private law for damages for the tort" resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This is what was indicated in Rudul Sah (AIR 1983 SC 1086) and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights".

Close to the facts of the present case further is the decision of Bhuvneshwar Singh v. Union of India, 1994(1) RCR 361 . Therein the concerned person was illegally detained for more than 3 months prior to trial due to nonconvening the Court Martial. The Supreme Court held that illegal detention would not vitiate the trial. The compensation was awarded. In paragraph 12 the court held:

"The continued pretrial detention of the appellant for a period beyond three months was on account of the fact that there was delay in the convening of the District Court Martial. No mala fide have been alleged, let alone established, for detaining the appellant beyond a period of three months, without obtaining the approval of the Central Government. The authorities appear to have been negligent and have shown scant respect for the provisions of the Army Act and the Rules. That is objectionable. Those who feel called upon to deprive other persons of their liberty in the discharge of their duty, must strictly and scrupulously observe the norms and rules of law. The object of Sections 101-103 of the Army Act read with Rule 27 of the Army Rules is that a person charged under the Act should not be unnecessarily deprived of his freedom on the ground that he is accused of offence triable by the Court Martial. The protection granted to persons subject to the Act by the above provisions would become meaningless

if one who is supposed to be protector of the person concerned acts callously and unconcerned with the rights available to such a person."

12. The facts of the present case patently are no different. The procedure prescribed under Chapter 8 of the Code of Criminal Procedure was ignored. The petitioner was detained for 10 days. There was no order even passed in this regard for execution of the interim bonds. No satisfaction contemplated under the relevant provisions had been recorded. In these circumstances when such was the case, the petitioner could claim compensation for unwarranted detention. In the facts of the case Rs. 5,000/ would be adequate compensation though there cannot be any strict yardstick in this regard.

13. For these reasons, the petition is allowed and it is directed that State would pay Rs. 5,000/ as compensation to Shri S. Gill within three months from today.