
(2006) 06 AP CK 0093

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1064 of 2004

Gargula Chandra Sekhar and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 26-06-2006

Acts Referred:

Constitution of India, 1950 — Article 21, 22

Criminal Procedure Code, 1973 (CrPC) — Section 176, 41, 45, 46, 50

Penal Code, 1860 (IPC) — Section 100, 380, 457

Citation : (2006) 5 ALD 504 : (2006) 4 ALT 726

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : Y.S. Yella Nand Gupta, for the Appellant; G.P. for Home, for the Respondent

Judgement

N.V. Ramana, J.—The petitioners, who are four in number, are Gold and Silver Merchants. They are carrying on their business of gold and silver under proper and valid licences obtained from the authorities concerned in Kamareddy of Nizamabad District. While so, it is their case that the respondents-police authorities are interfering with their lawful business and summoning them to the police station on the alleged ground that the petitioners are indulging in purchase of stolen property. The petitioners state that on the representation made by the Gold and Silver Merchants Association about police excesses and harassment of gold merchants and goldsmiths, the Government of Andhra Pradesh in consultation with the Police Director and Inspector General, to protect the interests of the gold and silver merchants and goldsmiths, issued orders in Memorandum No. 3341/Police-B/85-86, dated 08-10-1985, prescribing the procedure to be followed in dealing with theft and recovery of gold and silver merchants. But the respondents-police authorities, ignoring the orders issued by the Government in the aforementioned Memorandum, are arresting the petitioners without there being any complaint and without registering any F.I.R. Hence, they filed the present writ petition seeking a direction to the respondents

and their subordinates not to harass the petitioners and protect their fundamental and legal rights guaranteed by the Constitution of India.

2. The learned Counsel for the petitioners submitted that the petitioners are doing business in gold and silver under proper and valid licences obtained from the authorities concerned, but the action of the respondents-police authorities in harassing the petitioners by calling them to police stations on the alleged ground that they indulged in purchase of stolen property, without there being any complaint and without registering any F.I.R. and without following the orders issued by the Government of Andhra Pradesh in Memorandum No. 3341/Police-B/85-86, dated 08-10-1985, is illegal and arbitrary and violative of the fundamental and legal rights of the petitioners guaranteed by the Constitution of India. They thus prayed for appropriate directions.

3. Respondent No. 1-Sub-Inspector of Police and respondent No. 3-Director General of Police, filed separate counters denying the allegations of the petitioners. Reiterating the counter averments, the learned Government Pleader for Home" submitted that based on a report lodged by one Gampa Chakrapani on 10-12-2003 that his shop was ransacked by unknown offenders, a case in Cr. No. 258 of 2003 on the file of Kamareddy Police Station, for the offences Under Sections 457 and 380 IPC was registered. During the course of investigation, it came to light that petitioner No. 1 and four others were involved in the crime. Petitioner No. 1 and the others were arrested on 09-01-2004, and after recording their confessional statements and after preparing the recovery panchanama, the accused were produced before the Hon"ble Judicial First Class Magistrate, who directed them to be produced before the Hon"ble Judicial First Class Magistrate, Banswada on 12-01 -2004. Accordingly, they produced the accused before the Judicial First Class Magistrate, Banswada, and on that day petitioner No. 1, who is shown as accused No. 3 in the crime, was granted bail, while others were remanded in judicial custody. He submitted that the police filed charge-sheet, and the case is numbered as C.C. No. 19 of 2004, which is pending on the file of the Judicial First Class Magistrate, Kamareddy. He submitted that the respondents are implementing the Memorandum No. 3341/ Police-B/85-86, dated 08-10-1985, strictly, and contended that petitioner No. 1 never complained about any sort of ill-treatment by the police before the Magistrate, but have concocted the story for the purpose of the writ petition,

4. Heard the learned Counsel for the petitioner and the learned Government Pleader for Home for the respondents.

5. Article 21 of the Constitution provides that "no person shall be deprived of his life or personal liberty except according to procedure established by law". Article 22 guarantees protection against arrest and detention in certain cases and declares that no person who is arrested shall be detained in custody without being informed of the grounds of such arrest and he shall not be denied the right to consult and defend himself by a legal practitioner of his choice. Clause (2) of Article 22 directs that the person arrested and detained in custody shall be

produced before the nearest Magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate. t Clause (3) of Article 22 lays down that a person accused of an offence shall not be compelled to be a witness against himself. These are the constitutional safeguards provided to a person with a view to protect his personal liberty against any unjustified assault by the State. Likewise, there are certain provisions in the Code of Criminal Procedure, 1973 in Sections 41, 45, 46, 50, 53, 54, 56, 58 and 176, providing for the method and manner of arrest and affording procedural safeguards to a person arrested by the police.

6. But it is sad to note that in most of the cases, the police observe the above constitutional and statutory provisions more in breach than in compliance. There can be no dispute that the Police have a legal duty and legitimate right to arrest a criminal and interrogate him during the course of investigation of an offence, but the law does not permit them to use third-degree methods on the accused while interrogating and investigating into the crime. Despite constitutional safeguards, day in and day out, we see cases where the police arrest persons without warrant in the name of investigation of an offence, and without recording the arrest, subject them to torture to extract information for the purpose of further investigation or for recovery of the case property or for extracting confession etc.

7. The Apex Court in D.K. Basu Vs. State of West Bengal, , considered the right of the Police to investigate into a case and interrogate an accused vis-a-vis the precious right of the individuals under Article 21 of the Constitution, and answered the same as follows:

The Supreme Court as the custodian and protector of the fundamental and the basic human rights of the citizens cannot wish away the problem. The right to interrogate the detenus, culprits or arrestees in the interest of the nation, must take precedence over an individual's right to personal liberty. The Latin maxim *salus populi suprema lex* (the safety of the people is the supreme law) and *salus republicae suprema lex* (safety of the State is the supreme law) co-exist and are not only important and relevant but lie at the heart of the doctrine that the welfare of an individual must yield to that of the community. The action of the State, however, must be "right, just and fair". Using any form of torture for extracting any kind of information would neither be "right nor just nor fair" and, therefore, would be impermissible, being offensive to Article 21. Such a crime-suspect must be interrogated ? indeed subjected to sustained and scientific interrogation ? determined in accordance with the provisions of law. He cannot, however, be tortured or subjected to third-degree methods or eliminated with a view to elicit information, extract confession or derive knowledge about his accomplices, weapons etc. His constitutional right cannot be abridged in the manner permitted by law though in the very nature of things there would be qualitative difference in the method of interrogation of such a person as compared to an ordinary criminal.

8. The Apex Court after surveying the case-law, as preventive measure, to curb custodial violence, required the Police to follow, in all cases of arrest or detention till legal provisions are made in that behalf, the following:

1. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

2. That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

3. A person who has been arrested or detained and is being held in custody in a police station or interrogation center or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memos of arrest is himself such a friend or a relative of the arrestee.

4. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organization in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

5. The person arrested must be made aware of his right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

6. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

7. The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

8. The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

9. Copies of all the documents including the memo of arrest, referred to above, should be sent to the illaqa Magistrate for his record.

10. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

11. A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

9. Now that a case is registered against petitioner No. 1, and the case is pending trial, the law will take its own course, and it is for petitioner No. 1 to prove that he was not involved in the purchase of stolen property.

10. Be that as it may, as long as the petitioners, or for that matter, any other gold and silver merchant, carries on their business in gold and silver lawfully, there should be no interference by the respondents-police. However if, during the course of investigation of cases of theft of gold and silver ornaments, it comes to light that a particular merchant or merchants have indulged in purchase of theft property, it is open for the respondents-police authorities to proceed against such merchant or merchants, who have indulged in purchase of theft property, but while doing so, they shall follow and implement the orders issued by the government in Memorandum No. 3341/Police-B/85-26, dated 08-10-1985(which is in Telugu), in letter and spirit. For the benefit of all concerned, the orders issued by the Government in the Memorandum in Telugu, translated into English, read as follows:

1. The Police authorities can seize the block of melted gold or silver, only when there is sufficient evidence to show that the Silver, Gold Merchant, Goldsmith or Occupation workers, have made such block of gold or silver, by melting gold or silver ornaments etc.

2. The Police authorities while seizing the gold or silver ornaments, shall follow the provisions of the Indian Penal Code and shall take the assistance of the Associations of the Gold and Silver Merchants in the enquiry, with respect to theft property. The Director General and Inspector General of Police shall direct all the police officers that whenever they seize the gold and valuable articles, they shall seize the same only in the presence of two mediators as required by Section 100 IPC.

3. Whenever major thefts of Gold/Gold and Silver ornaments take place, those thefts must be kept informed by the Superintendent of Police and Commissioner of Hyderabad to the Gold and Silver Merchants, and take their assistance in tracing out the culprits.

4. The details of the melted gold and silver blocks register shall be maintained by the Gold and Silver Merchants, to enable the police to verify. There cannot be

any doubt that the members of the Gold and Silver Merchants, will direct their Merchants about the same. The Director General and Inspector General of Police shall also direct the District representative of the Gold and Silver Merchants to maintain the said register.

5. The allegations of Police harassing the Gold and Silver Merchants and those engaged in the jobs of Goldsmith, shall be reported to the higher Police Officers, for appropriate action.

6. The Director General and Inspector General of Police shall give directions to the officers concerned in regard to the above and furnish the copy to the Gold and Silver Merchants Associations.

11. Even though it is contended by the respondents-police authorities that they are implementing the orders issued by the Government in the Memorandum, now that the petitioners have complained that the orders issued by the Government in their Memorandum, were not followed, it is appropriate that the Director General of Police, Andhra Pradesh, Hyderabad, shall communicate the copy of the Memorandum, which is in Telugu, to all concerned, for implementation, in letter and spirit.

12. For protection of all persons under any form of detention or imprisonment, the General Assembly of the United Nations Organization, passed Resolution 43/174 on 09-12-1988, adopting a body of principles for the Protection of All Persons under any Form of Detention or Imprisonment. India is a signatory to the said body of principles. As per Principle 32(1) of the said Body of Principles, a detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful, and as per Principle 37, a person detained on a criminal charge shall be brought before a judicial or other authority provided by law promptly after his arrest, and such authority shall decide without delay upon the lawfulness and necessity of detention, and no person may be kept under detention pending investigation or trial except upon the written order of such an authority, and the detained person shall, when brought before such an authority, have the right to make a statement on the treatment received by him while in custody, and further as per Principle 38, a person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial. The general clause, in the body of principles, states that nothing in the body of principles shall be construed as restricting or derogating from any right defined in the International Covenant on Civil and Political Rights. Thus indicating that these body of principles are in addition to any other right or rights available under the International Covenant on Civil and Political Rights.

13. In tune with these principles, a Division Bench of this High Court in Chiguluri Krishna Rao, President, The Bezawada Bar Association Vs. Station House Officer, II Town Police Station and Others, , envisaged the need of functioning of

nocturnal courts, and in fact, ordered that Magistrates and their staff shall remain available in the Court to do duty during the nights for the purpose of entertaining remand applications and bail applications. It also ordered the jail authorities and the Sessions Judges to ensure that the night Courts function effectively. These directions, made by the Division Bench, are certainly in the direction of protecting human rights, curbing custodial violence and ensuring speedy justice to the accused.

14. Therefore, this writ petition is disposed of directing the respondents-police authorities to follow the directions issued by the apex Court in D.K. Basu v. State of West Bengal, extracted above, in the matter of arrests of accused persons, and follow the orders issued by the Government from time to time, for dealing with different types of cases, in the instant case, Memorandum No. 3341/Police-B/85-2"6, dated 08-10-1985. Now that the Magistrate Courts are functioning even during the nights, the police shall not detain the accused in police stations on the ground that the court timings are over. If the accused are arrested after the regular court working hours, the police shall produce them before the Magistrates manning the night courts. The Director General of Police, Andhra Pradesh, Hyderabad, is directed to communicate this order to all concerned, with a condition that any breach of its contents, would be viewed seriously. No costs.