
(1997) 10 AP CK 0080
In the Andhra Pradesh High Court
Case No : Writ Petition No. 13920 of 1997

K. Rajesh Babu

APPELLANT

Vs

Superintendent of Police and Others

RESPONDENT

Date of Decision : 14-10-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 141
Constitution of India, 1950 — Article 226

Citation : (1997) 2 ALD(Cri) 673 : (1997) 6 ALT 1 : (1998) 1 APLJ 1

Hon'ble Judges : P.S. Mishra, C.J.; P. Ramakrishnam Raju, J.; G. Bikshapathy, J

Bench : Full Bench

Advocate : Siddaiah, for the Appellant; A.G., for the Respondent

Judgement

P.S. Mishra, C.J.—This reference seeking review of the judgment by a Bench of this Court in W.P.No. 13920 of 1997 has been placed before the Special Bench constituted for the purpose of examining whether the observations and directions therein to the A.P. State Legal Services Authority constituted u/s 6 of the Central Act 39/87 are sustainable.

2. By a petition under Article 226 of the Constitution of India, one K. Rajesh Babu has alleged that he and his father were arrested by the police on 27/28-6-1997 in the night and taken to the S.R. Nagar Police Station. His father was brutally beaten up by the police. They were shifted in a jeep to Chevella Police Station and illegally confined till 30-6-1997. The Officer-in-charge, the Sub-Inspector of Police, demanded Rs. 20,000/- and when the petitioner expressed his inability to do so, he (the Officer-in-charge) suggested to him to sell away his television set and other household articles and to arrange the said amount of money. Until the demand was met, his father would be kept in custody. He alleged in the affidavit that when he wanted to know why he and his father were taken into custody, no proper reasons were disclosed to them and that he apprehended danger to the life of his father; his father was not involved in any offence and because his father was illegally detained, his mother and his

brothers and sisters were put to severe hardships. The Court entertained the said petition and notices were issued to the respondents.

3. The Officer-in-charge, the Sub-Inspector of Police, Chevella Police Station in his return stated that on 12-5-1997 at 7-30 hours one Gurram Srinivas, Cashier in Raghavendra Service Station, Chevella lodged a complaint in the Police Station, Chevella stating that at 4-00 hours, two unknown persons knocked at the door of the petrol bunk in which the complainant was sleeping and on hearing the knocking of the door, the complainant opened the door. Immediately two persons who were wearing masks forcibly entered into the room, threatened the complainant not to shout and took away Rs. 28,000/- from the cash-chest and almirah confining the complainant in another room. They cut the telephone wires and locked the door from outside and decamped with the booty. The complainant then called out the pedestrains from the window and they woke up the other workers who broke open the lock. The said complaint was registered as Crime No. 74/97 u/s 382, IPC and investigation was taken up. During the course of investigation, the police suspected one Chakali Lakshmaiah of Chevella village who was an ex- employee of the Raghavendra Service Station, but he was absconding from the village. It came to light that the alleged detenu and another Moonaiah were moving along with the said suspect. The police visited the residence of the alleged detenu on 29-6-1997 but they were not available at his residence. The alleged detenu was later apprehended at Shankarpalli village on 3-7-1997. He was brought to the police station and after interrogation he confessed to have committed the offence in Crime No. 74/97. He stated that he along with Moonaiah entered into the petrol pump and committed the robbery. The police recovered Rs. 1,000/- from his possession. The alleged detenu was produced before the First Class Magistrate, Chevella on 4-7-1997. The learned Magistrate remanded him to judicial custody. Consequently, the detenu was lodged in Central Prison, Hyderabad.

4. After taking notice of the facts as alleged in the affidavit on behalf of the petitioner and in the counter-affidavit as the return to the allegations of the petitioner by the Sub-Inspector of Police, the Court concluded the judgment by stating as follows:

"In view of the above averments in the counter-affidavit and since the detenu is an accused in the case and he is in the judicial custody, it cannot be said that he is illegally detained. We therefore find that the allegations made in the telegram are absolutely a tissue of lies."

It has just crept into the judgment, "allegations made in the telegram are absolutely a tissue of lies" although as we have noticed above, the proceeding before the Court has been taken up by a petition supported by an affidavit by the son of the alleged detenu and since the mention of the telegram has provided the occasion, in the impugned judgment it is said thereafter:

"Unfortunately this Court is facing with a number of telegrams of this nature

given by thieves, robbers, murderers and kidnappers which are taken up as writ petitions. Thinking that there will be at least some truth in the telegrams this Court is issuing directions to the police to expeditiously bring the alleged detenus before this Court without any loss of time and file its counter on ascertaining the facts. After counter is filed and when the facts were brought to the notice of the Court, what we find is that the exercise of jurisdiction by this Court as public interest litigation is being abused by the criminals and unsocial elements. Since this has become routine affair in about 95% of the cases that we have disposed of under public interest litigation category, we are constrained to make the above observations. The valuable time of the Court as well as the investigation agency and the learned Counsel appearing on both sides is being wasted only to see that those criminals are escaped from the clutches of law. If that is the public interest litigation this Court is to exercise, then we should think of taking some steps to remedy the situation. We feel it appropriate to direct the authority, which is referring the telegrams and letters to this Court to be treated as writ petitions, has to scrutinise them strictly. If necessary the authority can, at that stage itself, refer the matter to the concerned authority, where the matter is not so serious, to get information to decide whether the matter requires to be referred to this Court to be treated as writ petition and thereafter to take a decision of sending it to this Court."

5. This Court has formalised on the basis of the directions of the Supreme Court of India, the guidelines to be followed for entertaining letters/petitions as public interest litigation. The guidelines, refer to petitions from jails complaining of harassment, against police for refusing to register a case or harassment by them and death in police custody. On informations furnished in telegrams/letters sent by the victims /relations of the victims, the Office of the A.P. State Legal Services Authority prepares notes which are placed before the Hon'ble Judge in-charge of the PIL matters, the Hon'ble Judge being invariably the Executive Chairman of the A.P. State Legal Services Authority or the Chairman of the High Court Legal Services Committee. After approval by the Hon'ble Judge, such papers are sent to the Registry of the High Court for processing the same and placing them before the Court as petitions for writs, orders or directions in the nature of habeas corpus. The Legal Services Authority invariably allot such matters to an Advocate to represent the case.

6. After, however, the directions as aforementioned in the impugned judgment, the Office of the Legal Services Authority has placed the following note before the Chairman of the High Court Legal Services Committee:

"It is respectfully submitted that Supreme Court of India issued guidelines for entertaining letters/petitions as public interest litigation. As per the guidelines, petitions against the police for refusing to register a case, harassment by police and death in police custody are to be treated as public interest litigation.

Basing on the information furnished in the telegrams/letters sent by the victims/relations of the victims, notes are being put up to treat them as habeas corpus

petitions.

A Division Bench of our High Court in W.P.No. 13920 of 1997 filed by Sri K. Rajesh Babu directed the A.P. State Legal Services Authority to scrutinise the telegrams /letters strictly and if necessary to refer the matter to the concerned, where the matter is not so serious, to get information to decide whether the matter requires to be referred to the Court to be treated as writ petition and thereafter to take a decision of " sending it to the Court.

In view of the above directions in the judgment of the Division Bench, a decision has to be taken whether to direct the victim/victim's relations to furnish more details whenever their grievance is cryptic and also to ascertain from them whether any criminal case is pending adjudication against the detenu. In getting the information some time may elapse and in which case the very purpose of complaining the illegal detention may be lost."

The Chairman of the High Court Legal Services Committee has upon the same ordered as follows:

"Please place it before the Hon"ble the Chief justice for taking note of the directions of the Division Bench and issuing necessary guidelines in the matter."

Noticing, however, that the above directions have been issued by a Bench of this Court in exercise of its judicial power, the Chief Justice has ordered as follows:

"Post before a Full Bench to consider whether such a direction to A.P. State Legal Services Authority is appropriate."

7. Although no objection has been raised as to the proceeding before us by way of a review of the directions of a Bench of this Court, with a view to keep the record straight we may indicate that the review indeed of the above directions is sought by the Legal Services Authority and its Executive Chairman who has felt difficulty in clearing matters to be placed as PIL petitions on the judicial side of the Court because a Bench of this Court has directed the Legal Services Authority to scrutinise the telegrams/letters strictly and if necessary to refer the matter to the concerned authority, where the matter is not so serious, to get information to decide whether the matter requires to be referred to the Court to be treated as writ petition and thereafter to take a decision of sending it to the Court. Legal Services Authority has received the directions although it has not been a party before the Court and it had now to bring to the notice of the Court how such telegrams/letters are processed before they are placed before the Court as PIL petitions. Invariably, the review of an order is done by the Judge or Judges constituting the Bench whose orders are sought to be reviewed. Constraints of Order 47 Rule 1 of the Code of Civil Procedure, however, are not applicable in view of the provisions u/s 141 of the Code to proceedings under Article 226 of the Constitution of India and if ever there is need to review, it is done in exercise of the very plenary power under Article 226 of the Constitution of India itself which is exercised while issuing direction or writ or making the order which is

sought to be reviewed.

8. A Full Bench of this Court in *A. Srinath and others Vs. The Andhra Pradesh State Road Transport Corporation and others*, . has gone into some details to the basic issue how the Letters Patent power of the Court is all pervasive and what is the extent of the power of the Chief Justice in assigning case/cases to the Judges of the Court including constitution of Benches of more than one Judge and held as follows:

"The Hon"ble the Chief Justice has the inherent power to allocate the judicial business of the High Court including who of the Judges should sit alone and who should constitute the Bench of two or more Judges. No litigant shall, upon such constitution of a Bench or allotment of a case to a particular Judge of the Court will have a right to question the jurisdiction of the Judges or the Judge hearing the case. No person can claim as a matter of right that this petition be heard by a single Judge or Division Bench or a particular single Judge or a particular Division Bench. No Judge or Bench of Judges will assume jurisdiction unless the case is allotted to him or them under the orders of the Hon"ble the Chief justice.

.....A Judge or the Judges constituting the Bench will not decide whether to entertain a review petition or not unless the same is placed before him or them under the orders of the Hon"ble the Chief Justice.....Unless it is on account of exceptional circumstances or to meet an extraordinary situation the Hon"ble the Chief Justice decides to allot the work to some other Judge or Judges as the case may be, the Judge or Judges who passed the judgment/decreed or made the order which is sought to be reviewed are allotted the work by the Chief Justice."

The Chief Justice has considered the instant matter of considerable importance and decided upon constituting a Special Bench to decide upon the issue whether the directions which are issued by the Bench of this Court are sustainable and the Legal Services Authority has to obey the same. There are two exceptional circumstances and they are so patent that we are surprised how the Court could fall in error in not noticing them. Firstly, the Court forgot that the petition was one presented by the son of the alleged detenu and was not one brought before the Court as a PIL case by the Legal Services Authority. Secondly, the Court was not dealing with the question whether the Legal Services Authority was taking necessary precautions to avoid frivolous or vexatious petitions or not and when it desired informations in this behalf, it depended solely on its own perceptions about public interest litigations which were brought before it by way of PIL cases. Courts do not issue directions to persons or authorities who are not before it and who are not given the opportunity of being heard. Courts also do not deal with matters which have not arisen before them for adjudication. It is said that a judicial decision is the abstraction of the principle from the facts and arguments of the case. A remark by way of observations does not form part of decision making process i.e., things said in passing have no binding force though they do have some persuasive power. Such observations and directions which do not

represent the ratio decidendi of the case and/or obiter dicta are invariably avoided by the Courts. A decision is only an authority for what it actually decides. What is of the essence in a decision is a ratio and not other observations found therein nor what logically follows from the various observations made in it. It is said what constitutes binding precedent is the ratio decidendi of a case: (See) Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others, .

9. The Supreme Court in Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others, . said:

"For the purpose of ratio decidendi, the question is not whether a subsequent Bench of the Supreme Court thinks that it was necessary or unnecessary for the Constitution Bench, or the earlier Bench to have dealt with the issue, but whether the Constitution Bench itself thought it necessary to interpret Section 2(oo) for arriving at its final decision. If the smaller bench of the Supreme Court ignore the earlier decision of a larger Bench of the Supreme Court by holding that in its opinion, it was not necessary for the earlier Bench to have gone into the issue, equally it would be open to a High Court to adopt the same approach and ignore binding judgments of the Supreme Court giving rise to judicial indiscipline.....A judicial decision will often be reached by a process of reasoning.....A decision is said to be given per incuriam when the Court has acted in ignorance of a previous decision of its own or of a Court of co-ordinate jurisdiction."

We do not propose to burden the instant judgment with many authorities except to say that when faced with many frivolous and vexatious petitions, a person may feel envied but not a Judge. He shall declare a frivolous or vexatious petition as frivolous or vexatious and deal firmly and strictly in accordance with law with the person who has brought before it a frivolous or vexatious petition. When action is started in public interest on the basis of a telegram/letter by the Court, there is always a petitioner i.e., the sender of the telegram or the letter. He is invariably called in the proceeding to verify what has been said in the telegram or the letter by him and it is on such verification that action is initiated and the respondents are called upon to show cause. A detenu in a habeas corpus petition is directed to be produced by the Court when the Court is prima facie satisfied that some one has been, as alleged, illegally kept in detention. No Court issues notice and calls upon the respondents to show cause or produce the body of the alleged victim without being prima facie satisfied that such a course is required. In other words, the Court exercises its judicial discretion when it entertains a petition under Article 226 of the Constitution of India and does not act mechanically. We have good reasons to hold that the observations have occasioned because the Court has fallen in error that the proceeding before it had come by way of a telegram from either the detenu or a relative of the detenu. The directions obviously are issued without giving any opportunity of

being heard to the Legal Services Authority and thus are not operative. Observations are mainly in the nature of obiter dicta and are expressions of the Court's anguish that the privilege of public interest litigation is being abused by many persons . who do not deserve any indulgence.

10. We thus declare that the observations aforementioned and the directions to the Legal Services Authority are not sustainable. They are accordingly recalled. The Legal Services Authority shall proceed as it has been proceeding in the past and place such letters/telegrams as it has been placing in the past 20 by way of public interest litigation before the Court.