

(1997) 08 AP CK 0045

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6623 of 1997

K. Yesupadam

APPELLANT

Vs

S.I. of Police and Others

RESPONDENT

Date of Decision : 06-08-1997

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : (1997) 2 ALD(Cri) 621 : (1997) 5 ALT 98

Hon'ble Judges : Y. Bhaskar Rao, J;V. Rajagopala Reddy, J

Bench : Division Bench

Advocate : Taddi Nageswara Rao, for the Appellant; Govt. Pleader for Home, for the Respondent

Judgement

V. Rajagopala Reddy, J.—The telegram sent by the petitioner was treated as a Writ Petition for a Writ of Habeas Corpus, since the allegations made therein pertain to the violation of the personal freedom of the petitioner's wife, by the police. The telegram reads as follows:

".....The S.I. of Penamaluru Police Station, Vijayawada wrongfully detained my wife Manemma for the last two days. When I approached the Police, the Sub-Inspector is very much arrogant person. He is not having respect towards law. The Police threatened my wife and myself to vacate the house and to go to somewhere. When we refused to vacate he used filthy language Malanakodaka, Lanjakodaka. I will kill your wife or your son or you. One of my sons having some police case. For that person he harassed my family members. My wife is not having any cases. My wife is working Nagarjuna Hospital as Aaya. The house is mine and the S.I. of Police is interfering with my civil right. Please treat this telegram as writ and do justice."

2. The grievance of the petitioner was that his wife was detained by the S.I. of Police, Penamaluru P.S., R-1 herein, wrongfully for two days and that the police also threatened them to vacate the house.

3. On 7-4-97 a direction was issued by this Court to cause production of the detenu on 10-4-97. Without producing the detenu, the 1st respondent made an attempt to explain as to why the alleged detenu was not produced. In support of his version he filed a counter-affidavit. However, this Court extended time for production of the detenu till 15-4-97. Thereafter, the 1st respondent filed additional counter-affidavit stating that the detenu was requested to accompany him to Hyderabad, to be produced before the High Court. But when he went to her house on that day at 1 a.m., he found the house locked. In the circumstances, time was further extended for production of the detenu. However, the alleged detenu has appeared before this Court on 22-4-97 and filed an affidavit through her Counsel asserting that she was illegally detained by the 1st respondent from 23-3-97 to 31-3-97. Since it was a serious allegation, the Court thought it fit to expedient to order an enquiry into the alleged detention and appointed the Principal District & Sessions Judge, Krishna at Machilipatnam, as Enquiry Officer.

4. Accordingly, the District Judge enquired into the matter and submitted his report dt 19-6-97. He recorded the depositions" of witnesses including the petitioner, the alleged detenu and the 1st respondent and found that according to the depositions of P. Ws. 2 to 4, who were independent witnesses, the alleged detenu was confined from 23-3-97 to 31-3-97 only for the reason to get her son arrested or surrendered, as he was absconding.

5. It is the contention of the learned Counsel for the petitioner that the case of the petitioner that the 1st respondent has illegally detained his wife from 23-3-97 to 31-3-97, found support from the report given by the District & Sessions Judge, Krishna, and hence the 1st respondent should be mulcted with compensatory damages.

6. Learned Government Pleader appearing for the 1st respondent refutes the contentions and submits that the S.I. did not detain the petitioner's wife and that the report is baseless. Learned Government Pleader brought to our notice several discrepancies in the evidence of the witnesses examined by the District & Sessions Judge and argues that in view of the discrepancies the report has to be thrown out.

7. Learned District & Sessions Judge has examined 7 witnesses in support of the petitioner and 13 witnesses to support the case of the 1st respondent. After considering the entire evidence on record, the learned District & Sessions Judge, held that there was clear and positive evidence of P.Ws. 2 to 4, who had come to the police station carrying tiffin carrier from 24-3-97 to 31-3-97 for the detenu Manemma, to show that the detention of Manemma without making any entries in the General Diary by the S.I. of Police. We have examined the enquiry report. The alleged detenu was confined only to get her son arrested or surrendered as he was absconding. It should also be remembered that the detenu was working as Aaya in Nagarjuna Hospital and as per the submission of the learned Counsel for the petitioner, she was given a show-cause notice for removal from the

hospital on the ground that she was absent from 24-3-97 to 1-4-97 without applying leave. Though there are some discrepancies in the depositions of the witnesses, they are only minor discrepancies, which will normally present in the depositions of witnesses and we are of the view that the said discrepancies will not discredit the evidence in this case. In the circumstances, we do not find any infirmities in the report and we have no hesitation in accepting the same.

8. Since the relief in the writ petition was for the release of the petitioner's wife and as she has already been released, the prayer for relief of Habeas Corpus no longer survives.

9. However, since it was found that the 1st respondent has illegally detained the wife of the petitioner from 23-3-97 to 31-3-97, for eight long days, keeping her away from her duties as Aaya in Nagarjuna Hospital, the petitioner's wife should be suitably compensated. She has been deprived of her fundamental right of personal liberty guaranteed under Article 21 of the Constitution. Article 21 will be denuded of its content if no suitable compensation is awarded to the detenu when her fundamental right of liberty is deprived of. It has been so observed in Rudul Sah Vs. State of Bihar and Another, . It was also held in T. C. Pathak v. State of U.P., (1995) 6 SCC 357 that the award of compensation is independent of any remedy which the detenu may have in private law for damages against the persons responsible for her illegal detention.

10. In view of the fact that the detenu is a woman and also in view of the fact that the detenu stands to lose her job in the hospital by the 1st respondent's act of illegal detention and also for the reason that the detenu was detained eight long days, we award Rs. 10,000/- (Rupees Ten thousand only) as compensation to be paid by the 1st respondent to the detenu, within four weeks from to-day. The said amount should be deposited in the name of the detenu in a Nationalised Bank at Penamaluru or in any other nearby place, for a period of five years, enabling the detenu to draw the interest and to hand over the FDR to her.

11. The writ petition is accordingly disposed of.