
(2010) 01 SC CK 0055

In the Supreme Court Of India

Case No : Writ Petition (Criminal) No. 17 of 2007

Kaka @ Tilak Raj (Minor) tr. Father and Another

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 15-01-2010

Acts Referred:

Constitution of India, 1950 — Article 32

Penal Code, 1860 (IPC) — Section 193, 211, 34, 341, 342

Citation : (2010) 1 ACR 642 : (2010) 1 JT 389 : (2010) 1 SCALE 464 : (2010) 3 SCC 399

Hon'ble Judges : J. M. Panchal, J;H. S. Bedi, J

Bench : Division Bench

Advocate : Lekh Raj Rehalia, Kartar Singh and R.C. Kaushik, for the Appellant;
Naresh K. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Harjit Singh Bedi, J.—The petitioner has made the following prayers in this petition under Article 32 of the Constitution of India:

(a) direct the Respondent No. 1- State of Himachal Pradesh to hold an independent, fair and impartial enquiry by the sitting Judge of the Hon'ble High Court or by the District Judge of the Concerned District and to submit report within a specific time period with regard to illegal detention, inhuman treatment, merciless beating by the respondents No. 2 to 7 on dated 16.11.2006 and 17.11.2006;

(b) Award reasonable and sufficient compensation in favour of the petitioner Nos. 1 and 2 for their illegal detention and the said compensation to be awarded from the personal pocket of the Respondents No. 2 to 7;

(c) Initiate prompt and necessary departmental enquiry against the Respondents 2 to 7 herein for keeping the law of the land at bay and for creating lawlessness in the society by way of indulging in corrupt practice just to pressurize the

petitioner to pay a sum of Rs. 25,000/- to them for none of their fault.

(d) Requisite direction be issued to the respondent No. 1 for lodging an FIR against the Respondent Nos. 2 to 7 u/s 193, 211, 341, 342, 447, 504, 506 and 34 IPC in the concerned police station and to record the statement of the persons present more than 100 on the date of forcibly taken out the petitioners in the police custody by dragging from the field to the main road in order to ascertain the complete truth of the alleged illegal action of the respondents No. 2 to 7;

(e) The show cause notice be also given to the concerned Chief Medical Officer of the Government. Hospital, Nurgpur, Tehsil Nurgpur as to how when the son of the Respondent No. 8 was initially medically examined by the Government Dispensary at Fatehpur on the alleged date and it remained without any medical help for 4-5 days, thereafter the report given by the concerned Dispensary Doctor seems to be authentic rather than the MLR given by the concerned Chief Medical Officer, Govt. Hospital, Nurgpur after a prolonged time from the alleged occurrence not only seems to false and fabricated documents but it is the handiwork of the local politicians to book the present petitioner No. 2 in the aforesaid offences after prolonged delay and as such the concerned M.L.R. procured by the respondents No. 2 to 7 in-order to save their skin for the illegal demand made by them on 8.9.2006;

(f) a contempt proceeding be initiated against the respondents No. 2 to 7 for gross violation of the direction of this Hon'ble Apex Court reported in Dilip K. Basu Vs. State of West Bengal and others, ;

(g) and pass such other or further order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice.

2. We are unable to see how these prayers can be permitted to be raised in a writ petition directly in the Supreme Court under Article 32 of the Constitution. Nevertheless as the learned Counsel for the petitioner has referred to certain illegal acts committed by the respondents in violation of the directions of this Court in Dilip K. Basu Vs. State of West Bengal and others, and submitted that proceedings pending against the petitioner in various criminal courts be quashed, a fresh enquiry be ordered by the CBI or the District Judge, that compensation be awarded to the petitioner and that an FIR be lodged against respondent Nos. 2 and 4 i.e. Shri Hirdu Ram, DSP and Jog Raj, ASI as an attempt had been made by all the respondents collectively to extort money from the petitioner we have chosen to go into the facts of the case as well.

3. A reply has been filed on behalf of all the respondents by the SP Dharamshala, and it has been pointed out that enquiries had revealed that the petitioner and his father Kashmir Singh had beaten some persons and this fact had been found as correct during the course of the investigation and the two had accordingly been arrested, but as the petitioner was a Juvenile, he had been sent to the Juvenile Court at Una and later, released on bail and handed over to his uncle

Vijay Kumar. It also appears that as a consequence of an agitation by a political party, an enquiry had been conducted by the SDJM, Jawali and he had forwarded his Report to the higher authorities, suggesting that no further action was required to be taken in the matter as it was under investigation. It has further been highlighted that a charge-sheet had been filed against the petitioner and his father and the matter was under trial as of now. The allegations that the petitioners had been beaten or an attempt had been made to extort money from them or anyone else has been specifically denied. Alongwith the reply, an order of the Sub-Divisional Judicial Magistrate, Jawali, District-Kangra, H.P. dated 3rd February, 2007 has also been appended. This order pertains to an enquiry made by the Magistrate with regard to a reference as to whether the directions issued by this Court in D.K. Basu and Ors. had been violated.

4. The final observations in this order are relevant and are reproduced below:

Keeping in view the entire facts and circumstances of the case, I am of the considered opinion that there is no violation of basic requirement as laid down in case D.K Basu supra were infringed. Infact, the requirements are to be followed as a major to prevent the custodial violation. It is nowhere disputed by the applicant that he was subjected to custodial violation. Infact, this is not at all a case of custodial violation. Hence, there is no substantial merits, therefore, show cause notices issued to the respondents are hereby dropped. Be tagged with the main case.

In this view of the matter, the judgments cited by the learned Counsel cannot come to his aid.

5. The Writ Petition is, accordingly, dismissed, but with liberty to the petitioners to pursue their remedies before the Criminal Courts.