
(1997) 07 AP CK 0026

In the Andhra Pradesh High Court

Case No : Writ Petition No. 14077 of 1996

M. Kunja Sampathamma

APPELLANT

Vs

Station House Officer, Chirala P.S. and Others

RESPONDENT

Date of Decision : 25-07-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 5 ALD 613 : (1997) 4 ALT 565 : (1997) 3 APLJ 5 : (1998) CriLJ 621

Hon'ble Judges : Lingaraja Rath, J;C.V.N. Sastri, J

Bench : Division Bench

Advocate : T. Ramakrishna Rao, for the Appellant; A. Narendra, Asst. Government Pleader for A.A.G., for the Respondent

Judgement

C.V.N. Sastri, J.—A telegram issued by the petitioner herein to this Court stating that her son Kunja Babu was kidnapped by police in car bearing No. A.P. 9P757 on 11-7-1996 night at 2 a.m. and that his life is in danger, was taken up as a writ petition.

2. Initially a counter-affidavit was filed by the Sub-Inspector of Police, Vetapalem Town Police Station, Chirala, denying the allegations in the telegram of the petitioner and further stating that the detenu is not wanted nor are any cases pending against him in the police station in the Chirala town. It is further stated in the counter-affidavit that the detenu is a habitual offender in property cases, that there are cases pending against him in Nuzvid and Rajahmundry and that on enquiries made as to his whereabouts, it is found that the detenu is moving freely in Chirala town and that he is living with his family members at his residence in Vizilipeta, Chirala town and that he is not in police custody.

3. As per our direction, the alleged detenu was produced in the Court on 25-7-1996 and when questioned by us, he complained that he has been illegally detained in Nuzivid Police Station for three days. As per our directions, an additional counter-affidavit has been filed by the Sub-Inspector of Police,

Vetapalem Town Police Station, Chirala, giving particulars of the various cases pending against the alleged detenu. It is also stated in the said additional counter-affidavit that the detenu was convicted for life in S.C. No. 41 of 1983 on the file of the Additional Sessions Judge, Ongole, and that he served sentence.

4. The alleged detenu Kunja Babu filed a reply-affidavit stating, inter alia, that on the night of 11-7-1996, the police people of Vijayawada and Nuzvid arrested him at his house in Vizilipeta, Chirala town, and had taken him away in the police van/car No. A.P. 9P 757 to Vijayawada, that he was confined in a room at the Police Officers's Club at Vijayawada and was beaten by three policemen i.e., (1) Mastanvali, Head Constable, (2) Malli, Constable and (3) Zakkavali, Sub-Inspector of Police, and that his left leg was severely injured. He was asked to procure gold jewellery from the jewellery shop at Vijayawada on the plea that he sold the said jewellery to that shop which he denied. On 12-7-1996 he was taken by the police in the same van/car to Nuzivid and kept in police lock-up at Nuzivid Police Station for three days. On 15-7-1996, he was again brought to Vijayawada and kept in the Police Officers's Club. On the night of 15th July, 1996, he was taken to Guntur and left at Guntur bus-stand. The Sub-Inspector of Nuzvid gave him Rs. 100/- and asked him to go home at Chirala and to inform the police about criminals at Stuartpuram. In his reply-affidavit the detenu denied the allegation that he is a habitual offender in property cases. He finally claimed a sum of Rs. 10,000/- by way of compensation from the police of Vijayawada and Nuzvid for his illegal detention for five days.

5. In view of the allegations made by the alleged detenu in his reply-affidavit, we directed the Judicial First Class Magistrate, Nuzvid, to hold an enquiry as to allegations of illegal detention of the detenu and submit a report to the Court. Since the detenu is alleged to have been illegally detained by the police of Vijayawada and Nuzvid Police Stations, we directed the Superintendent of Police of Krishna district be added as a respondent to the writ petition and be permitted to participate in the enquiry. Pursuant to the said directions, the X Metropolitan Magistrate at Gannavaram, who was holding full additional charge of Judicial First Class Magistrate, Nuzvid, held an enquiry and submitted a report initially on 12-9-1996 after recording his statements of the alleged detenu and his mother and also the statements of the three police officers belonging to Chirala and the Superintendent of Police, Krishna at Machillipatnam, who was impleaded as a party-respondent to the writ petition. In the said report, the learned Magistrate came to the conclusion that Zakkavali and others took the detenu from his house in police van bearing No. A.P.9P 757 and brought him to Vijayawada and from there brought him to Nuzvid Rural Police Station and detained him for three days.

6. After the receipt of the said report, an additional counter-affidavit was filed by the Sub-Inspector of Police, Nuzvid Rural Police Station, Krishna district, taking objection that the learned Magistrate held the enquiry without issuing any notice to him and that he had no opportunity to meet the allegations made by the detenu. It is further stated in the said additional counter-affidavit that Kunja

Babu, the alleged detenu, who was formerly a Police Constable and whose service were terminated on his conviction for life in S.C. No. 41 of 1993, was developed as police informant to fish out information and clues regarding the offenders and their movements in grave crimes, who are residents of Chirala and Stuartpuram settlement areas, that he has been working as an informant to the police for a long time, that on 11-7-1996, on receipt of a phone call from Kunja Babu and as per the instructions of Circle Inspector of Police, Nuzvid, the police party consisting of the deponent himself, Sub-Inspectors of Guduwada II Town Police Station and Kalidindi Police Station, 5 Head-Constables and 11 police Constables rushed to Chirala on vehicle bearing No. A.P. 9P757. Kunja Babu came to the rendezvous between 11 p.m. to 12 mid-night, and on the information given by him, the party visited Ramnagar in Chirala, Stuartpuram and Mangalagiri in Guntur district but they could not trace any offender. Then the police party and Kunja Babu came to Vijayawada Police Club and took rest for some time as the team was tired due to operation during the entire night. The next day, after taking lunch at Vijayawada, Kunja Babu left. A sum of Rs. 200/- was given to him for his expenses.

7. In view of the said objections taken by the respondents, we have directed the learned Magistrate to issue notice to the Sub-Inspectors of Police, Nuzvid Rural Police Station and Guduwada II Town Police Station, record their statements and submit a fresh report. We also directed that an opportunity may be afforded for cross-examination of the said witnesses as well as the detenu Kunja Babu who was examined earlier. After complying with the said directions, the learned Magistrate submitted a further report on 18-10-1996. In the said report, the learned Magistrate opined that the version of the respondents that Kunja Babu is a police informer cannot be accepted in the absence of any other evidence in proof of the said version except the oral statements of the police personnel. The respondents filed objections to the said report of the learned Magistrate in the shape of an additional counter-affidavit sworn to by Zakkavali, Sub-Inspector of Police, Guduwada II Town Police Station.

8. We have heard Sri T. Ramakrishna Rao, the learned Counsel for the petitioner and Sri A. Narendra appearing for the learned Additional Advocate General for the respondents. The short question for decision is whether Kunja Babu has been illegally detained for five days from 11-7-1996 and whether he is entitled for any compensation for his alleged illegal detention by the police.

9. The case of the petitioner and the detenu rests solely on their oral assertions and there is no independent corroboration. Likewise the version of the respondents that Kunja Babu is a police informer is not borne out by any record excepting the oral statements of the two Sub-Inspectors of Police concerned. Thus the evidence on both sides is not clinching and it is evenly balanced. In situation like this, the Court has to go by the probabilities and also circumstantial evidence. Personal liberty is undoubtedly the most cherished right among the fundamental rights guaranteed by the Constitution. As such the Court attaches

utmost importance for safeguarding this right. At the same time, the Court cannot grant relief merely on the basis of sympathy, sentiment or suspicion in the absence of proof. Of course, in a proceeding like this, proof beyond reasonable doubt is not required as in a criminal case.

9A. The learned Magistrate, who held enquiry as per our directions has, no doubt, come to the conclusion in his first report dated 12-9-1996 that Kunja Babu was detained in Nuzvid Rural Police Station for three days but he reached the said conclusion merely on the basis of the ipse dixit of the detenu. The fact remains that the learned Magistrate submitted the said report without notice to the Sub-Inspectors of the concerned police stations and without recording their statements. It can, therefore, be said to be one-sided. That is why we called for a further report from the Magistrate. Even in the second report the learned Magistrate failed to properly analyse the evidence or the probabilities as directed by us and he rejected the version of the respondents on the sole ground that it is not borne out by any other evidence except the oral statements of the police personnel. It is true that the respondents have not placed any record to show that Kunja Babu was their informer and they did not also mention the details of any other instances when he acted as their informer in the past. But there is some circumstantial evidence in the case which lends credence to the version of the respondents in this behalf. The detenu Kunja Babu was not involved in any crime registered either in Nuzvid Rural Police Station or Gudiwada II Town Police Station. If that be so, there is no reason for the personnel of these two police stations either to arrest him or to detain him in illegal custody. Moreover, the admission of Kunja Babu that he was paid Rs. 100/- by the S.I. of Police and he was also given a chit containing the Telephone Number of the Police Station and he was asked to contact the said Telephone Number, if necessary, lends further support to the version of the respondents that Kunja Babu was their informer. The claim of the detenu that his leg was severely injured due to the torture inflicted by the police is belied by his own admission that he did not go to any doctor or undergo any treatment. His claim that the police demanded from him one bucket of gold, on the face of it, appears to be highly improbable and exaggerated. The fact that he was a former police constable also makes it probable that the, police have developed him as their informer. Further his antecedents do not inspire confidence making it difficult for us to accept his oral assertions without any independent corroboration. The learned Magistrate failed to advert to any of the above facts and circumstances. We are, therefore, unable to share his view. We are satisfied that the petitioner and the detenu failed to satisfactorily discharge the burden of proof which undoubtedly lies on them. We are, therefore, constrained to hold that the detenu failed to make out his plea that he has been illegally detained by the respondents. As such the question of awarding any compensation to him does not arise.

10. Since Kunja Babu is not in police custody and he is free, no further orders are required to be passed in the writ petition and it is accordingly disposed of. There will be no order as to costs.

11. Order accordingly.