
(2010) 04 MP CK 0083
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3527 of 1997

Mehmood Ahmed and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 20-04-2010

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 307, 365

Citation : (2010) ILR (MP) 1734 : (2010) 2 MPLJ 408

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Judgement

Sanjay Yadav, J.

Petitioners, parents of Rashid Ahmed and Atiq Mohd, who died on 8.1.1997, being killed in an encounter, have preferred this petition seeking direction for an enquiry by the Central Bureau of Investigation and for prosecution of persons involved in the encounter. The relief is being sought on the ground that, the encounter was a fake one.

Facts leading to encounter as unfurled from respective pleadings are that in the evening on 7.1.1997 it was reported to the police post Chiklod that one dreaded criminal Mukhtar Malik along with 4 accomplices has kidnapped 5 children of village Amrathor for a ransom of Rs. 1 Lac and is hiding in Chiklod Forest.

On receiving the report an offence u/s 365 IPC was registered against Mukhtar Malik and his 4 accomplices and a police party was deployed to Chiklod Forest which is spread over a considerable area. After surrounding the forest thorough search was conducted.

That in the morning on 8.1.1997 on a tip of by one of the kidnapped child Tej Singh who was released to send the message regarding ransom; search was conducted whereon the abductees were spotted near Phoota Talab. The members

of the gang on seeing the police approaching, opened fire. Few members of the gang taking advantage of the cross firing slipped away in the forest, but three of its members, later on identified as Rashid Ahmed, Atiq Mohammad and Nanhe @ Afsar, were killed in firing. The police seized country made 12 bore rifle and blank cartridges from the place where the dead body of one of the accused was lying. Similarly, a country made 315 bore riffle with fired round catridges was found from the place where dead body of another accused was lying. The kidnapped children were recovered and were produced before Judicial Magistrate First Class Bareli, District Raisen and in the statement recorded u/s 164 Code of Criminal Procedure, 1973, these children categorically disclosed the names Mukhtar Malik, Guddu Afsar, Bhura and Pappu. Subsequently, Mukhtar Malik was arrested and two separate offences u/s 307 IPC were registered vide crime No. 7/97 and 8/97.

The Petitioners by way of present writ petition alleges that the said encounter was a fake one. The Petitioners relies on various newspaper reports and the clippings to bring home their submissions.

It is urged that, it was Mukhtar Malik to get out of the clutches of the Police, joined hands with some police personnels to stage the fake encounter which resulted in the death of Rashid Ahmed and Atiq Mohd. It is further contended that, being the resident of Hamirpur, Uttar Pradesh, their children were roped in by the accomplices of said Mukhatar Malik under the false pretext to accompany a barat party. It is urged by the Petitioners that, their children were innocent and were wrongly subjected to encounter. It is accordingly contended that, a fair enquiry by an independent agency would bring the truth on the forefront and the culprits to the book.

The story as is put forth by the Petitioners regarding the deceased being taken as a members of a barat party does not find any support from any cogent material on record. The entire edifice seems to be built on the bedrock of the presumption inspired from the newspaper reports. The reports which have no foundation cannot in turn be the basis to nullify the fact that there is no explanation as to what prevailed up on the deceaseds" to be in company of the Criminals in a jungle with kidnapped children. It cannot be a co-incident as is being sought to be projected by the Petitioners.

The hard facts as borne out from the documents on record are that, the children were being kidnapped and kept as hostages in a forest for ransoms and the death of Rashid Ahmed, Atik Mohd and Namhe @ Afsar was due to firing which was resorted to by the party who went on search and fired at. These facts are not the figments of imagination as alleged but are based on record placed along with the return. Perusal of record does suggest that it was in an encounter that three criminals were killed. It is not borne out from the record that the encounter was tailor made or preplanned. If a police party in search of the criminals having kidnapped for the children ransom is fired at, it is not expected of the force to bear the brunt and not react.

True it is that, Article 21 guarantees right to life to the people and the State has no right to take any such action depriving the people of this basic right. However, in the case at hand, and the given facts therein where the dreaded criminals having kidnapped the children for ransom and the investigating agency which goes in operation to prevent such action and if prevented by the criminals in the manner they did in the present case, it was well within the rights of such agency to open fire and if the criminals die in process of such action, it can be nobodies case that there is a violation of right to life guaranteed under Article 21 of the Constitution of India.

The Petitioners have placed reliance on judgment in People's Union for Civil Liberties Vs. Union of India and another, . In the said case an enquiry by learned District and Session Judge Churachandpur it was found that there was no encounter in the night between 3.4.1991 and 4.4.1991 at Nungthulien village. The two deceased, namely, Lalbeiklien and Saikaplien were shot dead by the Police while in custody on 4.4.1991 whereas the facts of the present case are totally different.

Having thus considered, this Court is of the opinion that, there is no substance in the claim put forth by the Petitioners that Rashid Ahmed and Atiq Mohd were killed on 8.1.1997 in a fake encounter.

In view of above the petition fails and is hereby dismissed. However, no costs.