
(2004) 04 AHC CK 0148

In the Allahabad High Court

Case No : Habeas Corpus Petition No. 6990 of 2004

Om Narain Pandey and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-04-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 3 AWC 2821

Hon'ble Judges : M.C. Jain, J;K.K. Mishra, J

Bench : Division Bench

Advocate : Sanjay Kumar, for the Appellant; Arvind Tripathi, A.G.A. and A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

M.C. Jain, J.—Petitioners Om Narain Pandey and Atul Pandey are father and son. The petition has been filed by them for a direction commanding the respondents to produce them before the Court and to set them free.

2. The brief facts, shorn of superficialities, are that in between the night of 9/10.2.2004 at about 3 a.m., respondent Pankaj Mishra, Station Officer of Police Station Bara, district Allahabad along with five police constables forcibly entered their house, breaking open the door and took them away, giving a thrashing to them as also to the deponent Indrakali Devi (wife of petitioner No. 1 Om Narain Pandey) and her two daughters-in-law. Since then the petitioners are allegedly in illegal detention of Pankaj Mishra, Station Officer and five other constables at Police Station Bara, district Allahabad. They were neither provided food nor medically examined by any doctor till the filing of the writ petition on 17.2.2004. They were also not produced before any Magistrate for taking remand. According to them, neither any criminal case had been registered against them nor they were involved in any criminal case.

3. By means of supplementary-affidavit filed by petitioner No. 1 Om Narain

Pandey on 21.3.2004, it has been averred that consequent upon the knowledge of order dated 19.2.2004, passed by this Court on the writ petition, asking the A.G.A. to seek instructions within three days and for listing the matter on 23.2.2004, respondent Station Officer, Pankaj Mishra of Police Station Bara immediately released the deponent Om Narain Pandey (petitioner No. 1) on 20.2.2004 from the police station after forcibly obtaining his signatures on plain papers. His son Atul Pandey (petitioner No. 2) still allegedly continued to be in illegal custody of the said Station Officer and five other constables, having been forcibly taken away in between the night of 9/10.2.2004, as stated earlier. It has also been averred in the supplementary affidavit that either the said Station Officer has killed the petitioner No. 2 in some fake encounter or he had been shifted to any other police station.

4. Counter-affidavit, supplementary counter-affidavit and rejoinder-affidavit have been exchanged.

5. Respondent Pankaj Mishra, Station Officer of Police Station Bara, district Allahabad, has filed counter-affidavit and supplementary counter-affidavit. According to him, on 10.2.2004 at 2.40 a.m. he had received a telephonic message from S.H.O. of Police Station of Naini, Allahabad to the effect that petitioner No. 2 Atul Pandey was wanted in a case registered at Police Station Sadar, district Sunder Nagar, Orissa and a team was likely to visit in the morning at 6 a.m. on 10.2.2004. Immediately a G.D. entry was incorporated and he visited the house of petitioner No. 2. He took petitioner No. 2 and his brother Pankaj Pandey, a constable in P.A.C., with him to the police station, informing the purpose and entry to this effect was also made at 3.15 a.m. the same night. Immediately within a span of 10 minutes, on a false pretext, petitioner No. 2 fled away from the police station Bara, when he was in the safe custody of Head Constable Lallan Prasad and Constable Ram Yash Verma. The G.D. entry was made and senior officers were informed regarding the episode. Looking to the seriousness of the situation, the S.S.P., Allahabad by order dated 13.2.2004 suspended both the police officials from whose custody petitioner No. 2 Atul Pandey had escaped. The copies of the G.D. entries have been annexed as C.A.-1. It has also been sworn that the brother of petitioner No. 2 also assured him (Station Officer, Pankaj Mishra) to render all possible help for searching out the petitioner No. 2 and that efforts were afoot to trace him out. It is further averred by him in his counter-affidavit that the police of Police Station Sadar district Sunder Nagar, Orissa, visited Allahabad headed by an Inspector C. S. Mohanti in connection with a case registered as case Crime No. 7 dated 24.1.2004 under Sections 342, 365, 307 and 395, etc. relating to the kidnapping of a person and his recovery from a co-accused who disclosed the name of petitioner No. 2 as his accomplice in kidnapping and that the person concerned had been kidnapped with a view to secure huge ransom. It was in this way that complicity of petitioner No. 2 came to light in the records of Orissa police. It was denied that he (petitioner No. 2) was illegally detained by the said Station Officer, Pankaj Mishra. The allegations made in the writ petition have been

refuted with explanatory averments set out above.

6. We have heard Sri Sanjay Kumar, learned counsel for the petitioners and Sri Arvind Tripathi, learned A.G.A.

7. Admittedly, petitioner No. 1 Om Narain Pandey is not in alleged illegal custody of the police. The argument for the petitioner No. 1 is that he, too was forcibly taken away by Station Officer, Pankaj Mishra along with five constables from his house in between the night of 9/10.2.2004 along with petitioner No. 2 Atul Pandey and was released only on 20.2.2004 consequent upon the filing of this writ petition. However, it has been denied from the other side that he was so taken away from his house. Any way, since he is not in alleged illegal detention, it is not necessary to enter into a debate as to the averments and counter averments with regard to him.

8. The Court is presently concerned with petitioner No. 2 Atul Pandey who is allegedly under illegal detention of Station Officer, Pankaj Mishra of Police Station Bara, district Allahabad. It is admitted by him that he had been taken to the police station for interrogation, but the copy of G.D. entry No. 6 at 5,10 a.m. dated 10.2.2004 of Police Station Bara, district Allahabad (C.A.-1) records that on the pretext of spitting tobacco, the said Atul Pandey came to the verandah where Constable 2267 Ram Yash Verma was on guard duty and Head Constable Genda Lal was on reserve duty. Spitting tobacco, he scaled the wall of verandah and fled away. The copy of order of S.S.P., Allahabad dated 13.2.2004, has also been filed whereby two police personnel have been suspended for dereliction of duty in that the said Atul Pandey absconded from their safe custody. No doubt, it is insisted on his behalf by the learned counsel that he is still in illegal custody of Station Officer, Pankaj Mishra of Police Station Bara, district Allahabad. Further averments are that he has either been killed by the said Station Officer in fake encounter or has been shifted to any other police station. But, as is clear, from the other side the said allegations have been refuted.

9. The writ jurisdiction is generally exercised on admitted and undisputed facts. The High Court does not ordinarily enter into factual controversy while exercising extraordinary discretionary writ jurisdiction. The proceedings under Article 226 of the Constitution of India are of summary nature and are not suitable for agitation of disputed questions of fact. Where the right claimed by the petitioner cannot be conveniently determined in such summary proceedings, the High Court, in exercise of its discretion shall refuse to interfere by a writ under Article 226.

10. Since in the present case, it is denied from the side of the concerned police that petitioner No. 2 Atul Pandey is in their custody, no relief can possibly be granted in this writ petition. The reason is that factual controversy surfacing as per the averments from the side of the petitioners cannot conveniently be decided in these proceedings. This being the short and simple situation, it does not demand a detailed discussion with or without legal quibblings and academic acrobatics. It goes without saying that the petitioners have the liberty to adopt

such other appropriate legal proceedings as are permissible under law.

11. The writ petition is liable to be dismissed. The writ petition is hereby dismissed.