
(1995) 09 AP CK 0051
In the Andhra Pradesh High Court
Case No : Writ Petition No. 8310 of 1995

Parvathi

APPELLANT

Vs

The Commissioner of Police and Others

RESPONDENT

Date of Decision : 15-09-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 109, 41

Citation : (1995) 3 ALD 654 : (1995) 3 ALT 521 : (1996) CriLJ 281

Hon'ble Judges : Y. Bhaskara Rao, J; M.H.S. Ansari, J

Bench : Division Bench

Advocate : Y.V. Chalapathi Rao, for the Appellant; A.G., for the Respondent

Judgement

M.H.S. Ansari, J.—The above writ petition is filed by one Mrs. Parvathi w/o alleged detainee No. 1 and a relation of Mr. Raju, alleged detainee No. 2 and is the sister of Mr. Dharam Singh, alleged detainee No. 3 and Aunty of Mr. Sanjay, alleged detainee No. 4 and related to Mr. Vinodya, alleged detainee No. 5. It is alleged in the affidavit filed in support of the petition that Police Personnel belonging to the Crime team criminally trespassed into the huts of the petitioner on 18-4-1995 at 2.30 a.m. and assaulted the petitioner and her husband and her daughters and caused injuries to family members and took away Rs. 30,000/- which was kept in the house for the purpose of the marriage of the petitioner's daughters. In spite of hues and cries made by the petitioner and the locality people, the Police arrested her husband along with other detainees 2 to 5 named above and took them away without bothering to tell the petitioner as to why her husband and other detainees were arrested. They were later locked up in Balanagar P.S. and thereafter their whereabouts are not known to the petitioner. In spite of requests made by the petitioner to the police to release the husband and other detainees, the police did not release them nor produced the said detainees before any Court. Therefore, their detention is illegal and unlawful. It is further stated that detainee Nos. 1, 4 and 5 are vegetable vendors. That the detainee No. 1 is the husband of the petitioner, and the detainees Nos. 2 and 3

are auto drivers.

2. The Inspector of Police, Balanagar P.S., who is the third respondent in the above writ petition filed a counter-affidavit denying the allegations made by the petitioner and in particular the allegation that the detenues were locked up in Balanagar P.S. It is stated in the said counter that none of the alleged detenues are wanted for any crime in Balanagar P.S., and therefore the question of detaining the alleged detenues by the Balanagar P.S. does not arise.

3. The petitioner thereupon filed a petition to implead respondents 5, 6 and 7 in the above writ petition and accordingly vide orders passed in W.P.M.P. 11865 of 1995, dated 9-5-1995, the Superintendent of Police, C.C.S., and C.I. of Police, C.C.S., and Mr. Allauddin, Constable, C.C.S., all of R.R. District were impleaded as respondents 5 to 7 in the above writ petition. A counter-affidavit was filed by the Inspector of Police, Central Crime Station, Ranga Reddy District, the 6th respondent herein. In that counter, he denied the allegations of criminal trespass into the huts of the petitioner or of assault against the petitioner or her husband. It is categorically stated in the said counter that the incident that is said to have occurred on 18-4-1995 and the details thereof given in paragraph 2 of the petitioners affidavit are nothing but figment of the petitioner's imagination. It is denied that the police took away Rs. 30,000/- from petitioner's hut and that the allegation is invented for the purpose of this writ petition. The allegation that the detenues were taken to Balanagar P.S. is specifically denied. It is stated that enquiries made by respondent No. 6 revealed that two of the alleged detenues Mr. Maruti and Mr. Dara Singh i.e., alleged detenues 1 and 3 were arrested by the Narsapur Police of Medak District vide Crime Nos. 36 to 39 of 1995 for offences under S. 41, Cr.P.C. on 30-4-1995. They were produced before the Mandal Revenue Officer, Narsapur and were bound over. They were released on personal surety to keep good behaviour for a period of one year. Similarly, Mr. Raju, alleged detainee No. 2 was arrested by Medchal Police Station, R.R. District on 1-5-1995 in Crime Nos. 45 to 49 of 1995 under S. 41, Cr.P.C. and was produced before the Mandal Revenue Officer, Medchal on the same day and was released on execution of personal surety. Two of the alleged detenues Mr. Sanjay and Mr. Vinod, who are the alleged detenues 4 and 5 were arrested by Saroornagar Police of R.R. District on 29-4-1995 in Crime Nos. 195, 196 of 1995 of Saroornagar Police Station. They were produced before the Mandal Revenue Officer, Saroornagar on the same day, who ordered release on executing personal sureties for keeping good behaviour. The allegations that the detainee were detained by Balanagar P.S. or by the C.C.S., Ranga Reddy District is denied and the question of shifting them from Balanagar P.S. to Golkonda P.S. does not arise.

4. A rejoinder is filed by the petitioner and it is reiterated that the petitioner and the alleged detenues were abused on 18-4-1995 and theft of Rs. 30,000/- from the hut of the petitioner was made on that day by one of the policemen and that in view of the above writ petition, false cases have been foisted on the detenues and a prayer is made for setting aside the orders passed in Crime Nos. 36 to 39

of 1995 by the Mandal Revenue Officer, Narsapur and in Crime Nos. 45 to 49 of 1995 by the Mandal Revenue Officer, Medchal and in Crime Nos. 195, 196 of 1995 by the Mandal Revenue Officer, Saroornagar in the interests of justice and equity. It is also prayed that a direction be issued to the respondent No. 2 to pay a compensation of Rs. One Lakh for having robbed Rs. 30,000/- which were kept for the purpose of the marriage of the daughters of the petitioner and which was postponed due to the "Robbing" and for refund of Rs. 30,000/- said to have been robbed and for a direction to pay a sum of Rs. 25,000/- each to detenues Nos. 1 to 5 separately for having illegally detained the detenues from 18-4-1995 to 1-5-1995 for causing loss and damage to their profession. Along with the rejoinder, the petitioner has filed amongst the material papers, separate affidavits of the detenues 1 to 5 and also the FIRs issued against detenues by the respective Police Stations and the copies of bond executed under S. 109, Cr.P.C. by the detenues.

5. The point for consideration is whether the petitioner is entitled to the reliefs claimed in the above writ petition.

6. The counter-affidavit filed on behalf of the respondents show that the alleged detenues 1 and 3 were arrested on 30-4-1995, in Crime Nos. 36 to 39 of 1995 and released on personal security by the orders of Mandal Revenue Officer (Special Executive Magistrate), Narsapur. Mr. Raju, detainee No. 2 was arrested on 1-5-1995 in Crime Nos. 45 to 49 of 1995 and were produced before Mandal Revenue Officer (Special Executive Magistrate), Medchal on the same day and released on executing personal security and Mr. Sanjay and Mr. Vinod, detainee Nos. 4 and 5 were arrested by Saroornagar P.S., R.R. District on 29-4-1995 in Crime Nos. 195, 196 of 1995 of Saroornagar P.S. They were produced before the Mandal Revenue Officer (Special Executive Magistrate), Saroornagar on the same day who ordered released on executing personal sureties for keeping good behaviour. The above position has also been admitted in the rejoinder filed by the petitioner wherein it is prayed that the said orders of Executive Magistrate be set aside. The learned counsel for the petitioner contends that until the date of release of the detenues by the respective Executive Magistrate, the detention was illegal and the petitioners are liable to be compensated for the illegal detention and the State Government be directed to launch prosecution against the erring policemen.

7. The fact, however, remains that the alleged detenues have been released on executing personal security bonds, details of which have been stated in counter filed by the 6th respondent. This is an important fact to be kept in mind and has relevance for disposal of the above writ petition.

8. It is well settled that in Habeas Corpus proceedings, the Court is to have regard to the legality or otherwise of the detention of a person at the time of the return and not with reference to the institution of the proceedings. *Ram Narayan Singh Vs. The State of Delhi and Others*, which view has been reiterated in *Kanu Sanyal Vs. District Magistrate, Darjeeling and Others*,). Therefore as the facts

amply prove, the alleged detainees are no longer in detention. The material date is 16th May, 1995 when the affidavit on behalf of the respondent was filed and wherein it is clearly stated that the detainees have been released on 29th April, 1995, 30th April, 1995 and 1st May, 1995 by orders of the respective Executive Magistrates. It is also well settled that the detainees having been released, Writ of Habeas Corpus cannot be issued and accordingly the same is liable to be dismissed.

9. The learned counsel for the petitioner contained that in any case, the alleged detainees had been illegally detained and false cases were foisted on them to cover up their illegal detention and the said detainees are thus entitled to damages by way of compensation and in support of his contention, the learned counsel relied upon Rudul Sah Vs. State of Bihar and Another, . This case supports the prosecution that when grave injustice is perpetrated upon the petitioner, the same can be rectified. In that case, it was held that the right to compensation is some palliative for the unlawful acts of the instrumentalities which act in the name of public interest. In that case, the Court ordered, as an interim measure the State must pay a sum of Rs. 30,000/- in addition to Rs. 5,000/- already paid after holding that the detention in prison after acquittal was wholly unjustified. Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others, has also been cited by learned counsel for the petitioner. This is a case relating to non-production of the detainee before the Court. The Supreme Court held that in appropriate cases, the Court has jurisdiction to compensate the victim by awarding suitable monetary compensation and awarded monetary compensation holding that such authority is now established by the decisions of the Supreme Court in Rudul Sah Vs. State of Bihar and Another, (Supra-1) and AIR 1984 SC 1026.

10. B.R. Ramabhadriah Vs. Secretary, Food and Agriculture Department, Andhra Pradesh and others, has been cited for the proposition that the Court has power to mould the relief and take note of the changed circumstances in the interest of justice. The learned counsel also cited Saheli, Saheli, A Women's Resources center, Through Ms Nalini Bhanot and Others Vs. Commissioner of Police Delhi Police Headquarters and Others, which was a case of child death in police custody and compensation was awarded and State of Maharashtra v. Ravikanth S. Patil, AIR 1991 SCW 871 which was a case relating to handcuffing of an under trial who was held entitled to compensation.

11. Thus, it is now fairly settled that the Court has power in appropriate cases to award compensation and to compensate the victim by awarding suitable monetary compensation where the constitutional rights are violated. The Courts have in appropriate cases awarded compensation against the State. In some cases compensation has been awarded as an interim measure without precluding the citizen from bringing a suit to recover appropriate damages from the State and its erring officials. There is therefore no doubt about the power of Court to award damages or compensation in appropriate cases in exercise of its power

under Art. 226.

12. However, the question that arises for consideration is whether the case on hand is an appropriate case for awarding compensation or any other relief as has been prayed for by the petitioner.

13. The incident of 18-4-1995 when the alleged detenues are said to have been illegally arrested and the petitioner robbed of Rs. 30,000/- is sought to be established solely on the basis of petitioners affidavit and the affidavits filed by the detenues amongst the material papers filed with the rejoinder of the petitioner. In the counter-affidavit of 6th respondent, the entire incident of 18-4-1995 has been denied and reference has been made to the proceedings under S. 41, Cr.P.C. and release of the detenues on their executing personal security bond. Thus, the petitioners were not in custody on the date of filing of the return. The learned counsel for the petitioner contends that their detention up to the date of release was illegal and they should be compensated. This fact has been disputed. It is equally well settled that the disputed question of facts cannot be gone into Proceedings under Art. 226 of Constitution of India. The learned counsel for the petitioner laid stress upon the affidavits of the detenues and sought to contend that the illegal detention is still continuing. He invited attention to the affidavits filed by the detenues themselves and a reference may be made to the statements made in those affidavits. Detenue No. 1 and 3 have stated in para 5 as follows :

Though the police have assaulted me and illegally detained me from 18-4-1995 to 30-4-1995, the illegal detention continued thereafter through the P.S. Trimulghery who have been threatening me and calling me to the police station and arresting my movements almost every day by wrongful confinement from 30-4-1995 to till today and the illegal detention continues and continued during the pendency of Writ Petition No. 8310 of 1995. Detenue No. 2 has stated as follows in paragraph 8 :

"I submit that after my production before the M.R.O., Medchal and release after execution of the Bond, I was again taken back to the Medchal Police Station by the Policemen of Medchal Police Station and from there I was deported to R.R. District, C.C.S., and I was again detained in the C.C.S., Ranga Reddy District by the 6th respondent".

and Detenue No. 4 as in paragraph 4 stated thus".

The police have arrested us several times even after 29-4-1995 and released us after assaulting us and the illegal detention comes through police harassment.

On the basis of the said allegations, it is sought to be contended that the detention is continuing. However, perusal of the aforesaid allegations shows that the detenue have been released after they were produced before the Mandal Revenue Officer, and the allegation is that the detention is continuing in different ways by making threats that case would be foisted on them. The said allegations

in our view cannot be said to constitute detention. Also, there is nothing to establish that the detenues had been kept in illegal custody until they were produced before Executive Magistrate and re-leased on executing personal security. There is thus no reliable material before us to consider the instant case to be one where it would be appropriate to award any damages or compensation. The orders passed by the Executive Magistrate releasing the detenues on furnishing securities show that the bonds have been executed voluntarily and there is no allegation that the detenues were forced or compelled to execute such bonds. In the circumstances, we are not inclined to accept the contention of the learned counsel for the petitioner with regard to the relief of damages and compensation claimed. It shall however be open to the petitioner or the alleged detenues to take such appropriate steps for filing such proceedings as may be open to them in law as they may be advised.

14. After the arguments in the above case were concluded and matter posted for Judgment, the learned counsel for the petitioner represented that there were certain decisions of the Supreme Court that he wanted to bring to the notice of this Court. Accordingly permission was granted to the counsel to state those cases for which he took time. When the case was posted on 25-8-1995, the learned counsel for the petitioner cited Arvinder Singh Bagga Vs. State of U.P. and Others, . That was a case where pursuant to the order of the Hon'ble High Court, the District Judge of Bareilly submitted his report wherein it was submitted that erring Police Officers should be prosecuted and compensation should be given to those who suffered illegal detention and humiliation at the hands of the Police. The Supreme Court awarded compensation to each of the persons who were illegally detained and humiliated for no fault of theirs.

15. He next cited as Paritosh Das v. Smt. Kalyani Dass 1993 Cri LJ 2899. That was a case of custodial death and the victim was aged 22 years. In that case the admitted facts were that the victim was taken into police custody and he was found dead the next day without being released from custody and the death was unnatural caused by multiple injuries sustained by him and the Court awarded compensation.

16. He next cited Peoples' Union For Democratic Rights Through Its Secretary and Another Vs. Police Commissioner, Delhi Police Headquarters and Another, . That was a case where the Police collected four people and took them to Police Station for doing some work. Later they were beaten and it appears that one of them succumbed to injuries. The Deputy Commissioner of Police in his affidavit frankly accepted the atrocities committed by the Police Officer and action had been taken and Station House Officer had been arrested. In those circumstances, the Supreme Court awarded compensation to be paid to the family of the deceased and also awarded compensation to other persons. In this case also the facts were not in dispute.

17. As already adverted to, there is no dispute about the power of Court in awarding compensation in appropriate cases and where facts are not in dispute.

The learned counsel, based on the said judgments of Court, contended that though the writ petition was filed on 24-4-1995, and though the detenue were released subsequently, they have once again being taken into custody for which purpose another Miscellaneous Petition has been filed bearing No. 23153 of 1995 against the Malkajgiri Police and the Trimulghery Police. He sought permission to implead the officers of the said Police Station as Respondents 8 to 12 in the above writ petition. That petition has been dismissed with liberty to the petitioner to take appropriate independent proceedings. In the facts and circumstances of the case, this writ petition is dismissed with liberty to the petitioner to take appropriate proceedings as may be open to him in law. But in the circumstances, there shall be no order as to costs.

18. Order accordingly.