
(2005) 08 BOM CK 0120
In the Bombay High Court
Case No : Criminal W.P. No. 209 of 2005

Riyaz alias Ahemad and Others	Vs	APPELLANT
State of Maharashtra and Others		RESPONDENT

Date of Decision : 05-08-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 107, 111, 151
Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 17
Penal Code, 1860 (IPC) — Section 509

Citation : (2005) 4 MhLj 299

Hon'ble Judges : S.P. Kukday, J; R.M.S. Khandeparkar, J

Bench : Division Bench

Advocate : C.T. Jadhav, for the Appellant; Pramod C. Patel, Assistant Public Prosecutor, for the Respondent

Judgement

S.P. Kukday, J.—Rule. Rule made returnable forthwith by consent of parties. Learned APP waives service for respondents.

This is one more example of violation of the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000.

2. The petitioners are students having their residence in Kuccharwata locality of old Jalna. On 27-3-2005 while they were going to the mosque for offering prayers at about 8.00 p.m., respondent No. 4 and 5 arrested and brought them to Kadim Police Station. At the police station, petitioner No. 1 was maltreated at the instance of P.I. Chandansingh Rajput. No information regarding their arrest was given to the petitioners. On getting information regarding incarceration of the petitioners, their parents had come to the police station, but they were asked to come to Tahsil office on the next day with necessary documents for furnishing surety such as 7/12 extracts. All the three petitioners were searched. Hundred-rupee note found with petitioner No. 3 was taken away and was not returned. The petitioners were then detained in police lockup for the night and were taken

to Tahsil office on the next day. In the absence of Naib Tahsildar Mrs. Sangita Watave, Clerk Mr. Suradkar, completed the formalities regarding service of show cause notice and demanding an interim bond for Rs. 5,000/- with one surety in the like amount, but copies of the documents were not furnished to the petitioners. They had to apply for the certified copies and received the copies on 1-4-2005 on payment of Rs. 20/-. Petitioners were incarcerated though they had not committed any offence. On account of the detention in police lockup, petitioners suffered trauma, humiliation and damage to their reputation. The incarceration was in violation of the right of petitioners to personal liberty. In view of this high-handed attitude on the part of respondent Nos. 3, 4 and 5, petitioner No. 1, who was to appear at the examination on next day i.e. on 29th, could not concentrate on his studies and could not perform well at the examination. Not only that petitioner No. 3 is a minor, therefore, his detention is in contravention of Section 17 of the Juvenile Justice (Care and Protection of Children) Act, 2000, (hereinafter to be referred to as Juvenile Justice Act.) As the petitioners have suffered mental agony and loss of reputation, they are entitled to compensation from the respondents, who are responsible for their wrongful confinement in the police lockup and unwarranted prosecution. On these grounds, petitioners claim compensation of Rs. 25,000/- from respondents.

3. So far as allegations regarding the detention in lockup are concerned, affidavit in reply is filed on behalf of respondent Nos. 1 to 5 by P.I. Chandansingh Rajput. According to these respondents, respondent Nos. 4 and 5 found petitioners 1 and 2 teasing girls belonging to Hindu community in Kuccharwata locality and brought them to the police station. Shivjayanti was being celebrated on the next day, in this background, there was possibility of conflict between the two communities on account of this incident. Parents of the girls were not willing to file complaint against the boys in respect of offence punishable u/s 509 of Indian Penal Code, therefore it was decided to take preventive action against the petitioners. Parents and relatives of petitioners had come to the police station and were informed that the petitioners were arrested u/s 151 of Criminal Procedure Code and would be produced before the Executive Magistrate on the next day for taking preventive action u/s 107 of Criminal Procedure Code. Petitioner No. 3 was not arrested and was not detained in lockup. However, preventive action is taken against him because during the enquiry, it was found that he had also indulged in teasing young girls. Had any proof been produced to show that he is a minor, preventive action u/s 107 of Criminal Procedure Code would not have been taken against him. The fact that petitioner No. 3 was not detained in lockup, can be seen from the entries in the Station Diary and Lockup registers. Respondent Nos. 3, 4 and 5 acted in accordance with provisions of law. They have not abused the powers vested in them in discharging of their duties. Respondent Nos. 1 to 5 have traversed all adverse allegations on the basis of these averments.

4. Respondent No. 6 has also filed affidavit in reply. According to Respondent No. 6, petitioners were produced before Naib Tahsildar on 28-3-2005 in Chapter case

No. 88/2005 initiated u/s 107 of Criminal Procedure Code. Show cause notices, contemplated by Section 111 of Criminal Procedure Code, were served on the petitioners and their acknowledgment was obtained. Petitioners accepted the allegations levelled against them. Therefore, Naib Tahsildar directed them to execute bond for Rs. 5,000/- with one surety in the like amount. Accordingly, petitioners executed the bond and furnished their sureties. Thereafter petitioners were released with an intimation that the matter is posted for hearing on 25-4-2005. Respondent No. 6 was on leave from 22-4-2005 to 15-5-2005, therefore, he does not know what transpired on 25-4-2005. The proceeding was properly handled by Naib Tahsildar, to whom powers of Executive/Taluka Magistrate are delegated by Notification dt. 16-1-1974. According to respondent No. 6, neither he nor his subordinates have misused the powers conferred on them.

5. Undisputedly, petitioner Nos. 1 and 2 were major. The allegations levelled in respect of arrest, detention and prosecution of these two petitioners raise disputed questions of fact. Not only that alternative efficacious remedy is available to these petitioners for redressal of their grievance in respect of alleged wrongful arrest and malicious prosecution. Therefore, these petitioners cannot invoke extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India in respect of their grievances.

6. We have already made it clear that only the detention of minor can be looked into. Therefore, the discussion is restricted to this aspect only. In support of theory propounded by respondent Nos. 3 to 5, documentary evidence in the form of xerox copy of Station Diary Entry No. 54 taken at 21.45 hrs. on page No. 46, carbon copy of Chapter Case No. 86/2005 u/s 107, Criminal Procedure Code xerox copy of Arrest Register and Lockup Registers, are produced on record. As there was overwriting at some places, direction was given for production of the Original Case Diary and Arrest Register. The Case Diary produced appears to be containing carbon copies. Entry No. 54 therein appears on page No. 95. It can be seen from other pages of the Case Diary that both the sides of papers are utilized for taking entries. On page No. 93, entry starts from Sr. No. 47. After Entry No. 49, Sr. No. 47 appears again. Back side of this page is kept blank and instead of starting the entries from Sr. No. 50, entry on page No. 95 start from Sr. No. 51. There is overwriting on the figures giving time of entry at Sr. Nos. 51 and 52. After that, there appears to be change of duty and entry No. 54 is taken by P.S.I. Kadam. It is pertinent to point out that in the column meant for giving Serial numbers, below Sr. No. 54, Sr. No. 50 also appears. Anomalies found in the Station Diary entries are compounded by similar anomalies found in the Arrest Register for the year 2005. Relevant entries in respect of arrest of petitioner Nos. 1 and 2 are at Sr. Nos. 238 and 239. Here again it can be seen that there is manipulation from the entries at Sr. No. 236 till Sr. No. 239. Original entry No. 236 is converted to 237. However, the conversion is so crude, that both the figures 6 and 7 are clearly visible. Last digit from the entry Sr. No. 237 is changed for changing Sr. number to 238. Similar overwriting is found in respect

of entry No. 239. Here as the overwriting covers entire digit it stands out prominently. The theory propounded by respondent Nos. 3 to 5 is that respondent Nos. 4 and 5 found the petitioners teasing some girls. Therefore, they were brought to the police station along with the girls and their parents. This theory is not substantiated by the entry in the Station Diary. There is no reference to the girls or their parents in the said entry. Therefore, except the statement made by the respondents, there is nothing on record to show that in fact girls and their parents had come to the police station. There is no dispute that petitioner Nos. 1 and 2 were brought to the police station. If the case is that respondent Nos. 4 and 5 came across the petitioners who were teasing the girls and brought them to the police station, the theory that only two petitioners were brought to police station cannot be accepted as all the three of them are prosecuted for eve teasing. In these types of cases, enquiry is made on the spot and if the girls and parents are not willing to come forward to lodge a report, the offenders are brought to police station for taking decision regarding further action. Therefore, no further enquiry is contemplated. In this background, the theory that during the course of enquiry information that petitioner No. 3 also indulged in teasing the girls cannot be accepted. In any event, if he was not involved in the incident, petitioner No. 3 could not have been prosecuted along with other two petitioners. These facts, coupled with the manipulations found in the record, show that all the petitioners were brought to the police station together and were detained till they were produced before the Executive Magistrate on the next day.

7. Petitioners have filed xerox copy of Transfer Certificate issued by Urdu High School and Urdu Jr. College, Jalna. In regard to petitioner No. 3 giving his date of birth as 8-2-1988. Petitioner No. 3 was, therefore, 17 years old at the time of incarceration. Veracity of this document, giving date of birth of petitioner No. 3, is not controverted by the respondents in their affidavit in reply. Therefore, we have no hesitation in coming to the conclusion that petitioner No. 3 was a juvenile at the time of his incarceration on 27-3-2005. Respondent Nos. 3 to 5 and P.S.I. Kadam being police officers are invested with powers of arrest. This power is to be exercised with due care and caution. Precaution must always be taken by a police officer to ensure that a citizen is not deprived of his personal liberty without proper justification. No arrest can be made merely because it is lawful for the police officer to do so. Existence of power to arrest is one thing and the justification for the exercise of it is quite another. Police officer must be able to justify the arrest apart from his power to do so. Negligence on the part of a police officer leads to disastrous effect and adversely affects the citizen concerned. Similarly, casualness shown in detaining a person in lockup can cause incalculable harm to the said person. Therefore, it is necessary for the police officer to show desirable restraint and to be careful in exercise of the power of arrest. Omission to exercise due care and caution entails serious consequences. In this behalf reference can be made to the ruling of the Supreme Court in the matter of D.K. Basu Vs. State of West Bengal, . In this case the Apex Court has

observed in para 42 of the report that "the Court, where the infringement of the fundamental right of a citizen is established, cannot stop by giving a mere declaration. It must proceed further and give compensatory relief, not by way of damages as in a civil action but by way of compensation under the public law jurisdiction for wrong done, due to breach of public duty by the State of not protecting the fundamental right to life of the citizen. To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience."

8. In the present case, there is sufficient material on record to substantiate allegation of the petitioners that all the three petitioners were brought to the police station together and were detained on 27-3-2005 till they were produced before the Executive Magistrate on 28-3-2005. Respondent No. 6, who is the Executive Magistrate, in his affidavit reply has mentioned that petitioners were brought to the office and were produced before Naib Tahsildar on 28-3-2005 in Chapter Case No. 86/2005 for initiating preventive action against them u/s 107 of Criminal Procedure Code. Notices were served on the delinquents u/s 111 of Criminal Procedure Code and as the petitioners accepted the allegations, they were asked to execute interim bond. These facts are disputed by the petitioners. We are not concerned with the disputed facts. Undisputedly petitioner No. 3 was dealt along with other petitioners though in view of the provisions of Section 17 of the Juvenile Justice Act, provisions of Chapter VIII of Criminal Procedure Code are not applicable to the Juveniles. Therefore, Naib Tahsildar could not have entertained proceedings u/s 107, Criminal Procedure Code against petitioner No. 3. It was duty of the Naib Tahsildar to ascertain age of the accused as all of them were students and upon getting information, he should have given direction for producing the minor before the Juvenile Court. The lapse on the part of Naib Tahsildar in proceeding against a minor cannot be condoned. The conduct of respondents has resulted in incarceration of the juvenile, which is prohibited by law, therefore, respondents are liable to pay compensation to petitioner No. 3.

9. The quantum of compensation depends on the facts and circumstances of each case. In the present case, it appears that there was some justification in taking decision to arrest and initiate preventive action against petitioner Nos. 1 and 2. The lapse committed by respondents Nos. 3 to 5 lies in not performing their duty with due care and caution so far as petitioner No. 3 is concerned. These facts will have to be taken into consideration while determining the quantum of compensation. It is now well settled that the State is vicariously liable for the tortuous act committed by its employees in the course of their employment. Therefore, the compensation will have to be paid by respondent No. 1. Respondent No. 1 can initiate appropriate action against the persons who are responsible for causing the loss, for recovery of the monetary loss caused to the State.

10. In the light of above discussion, the petition is partly allowed to the extent of wrongful detention and prosecution of petitioner No. 3. Considering facts and circumstances of this case. Respondent No. 1 should pay compensation of Rs.

5,0007- (Rupees Five thousand) to petitioner No. 3. It is made clear that the respondent No. 1 is at liberty to initiate appropriate action against respondent Nos. 3 to 6 for recovery of the loss caused to the State. The amount of compensation shall be deposited in the Court by respondent No. 1, within four weeks from today. On such deposit of the amount, petitioner No. 3 would be entitled to receive the said amount by way of compensation. In the light of this, petition is partly allowed in terms of the above observations.