
(2007) 04 KAR CK 0008
In the Karnataka High Court
Case No : Writ Petition No. 3 of 2007

S. Srinidhi

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 19-04-2007

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 357

Citation : (2007) 4 KarLJ 627

Hon'ble Judges : R. Gururajan, J;Anand Byrareddy, J

Bench : Division Bench

Advocate : Ravivarma Kumar, for C.S. Dwarakanath and Associates, for the Appellant; S. Dore Raju, State Public Prosecutor, for the Respondent

Judgement

R. Gururajan, J.—Sri Srinidhi, is before us seeking a direction to the respondent to produce Sri K.S. Venkatesh and Smt. Rukmini, who are taken into custody by the police in the case on hand. According to petition averments, Sri K.S. Venkatesh filed P.C.R. No. 180 of 2007 against Vishweshwara Teertha Swamiji for an offence punishable under Sections 307, 326. 340 and 506 read with Section 34 of Indian Penal Code, 1860. Matter was referred for investigation. Thereafter according to him Sri K.S. Venkatesh and his sister Smt. Rukmini were taken away by KG. Nagar Police Station. It is further stated that they are being tortured by the Police. With these allegations, this petition was filed. This Court issued notice on 10-1-2007 and thereafter this Court directed the police to make all efforts and to produce Sri K.S. Venkatesh and Smt. Rukmini before the Court. On 23-1-2007, a counter-affidavit was filed before this Court. The Police authorities also produced Sri K.S. Venkatesh and Smt. Rukmini. They were set at liberty by this Court. Thereafter the matter was listed before the Court for further proceeding"s on 5-3-2007. A submission was made by the petitioner with regard to torture and illegal detention by the police. Noticing this submission, we thought that the matter requires consideration by this Court in terms of the averments made before us. Hence, we directed the Registrar Vigilance to hold an

enquiry with regard to the allegation of illegal detention right from 7-1-2007 and the alleged torture from 4-1-2007 in terms of the affidavit and submit his report within four weeks. Thereafter a report has been filed by the Registrar Vigilance on 13-4-2007. The matter was listed on 16-4-2007. The report which was in a sealed cover was opened in the Court. In the light of the report of the Registrar with regard to illegal detention and with regard to inhuman treatment by the police, we directed the parties to address arguments with regard to the power/ quantum of compensation.

2. Sri Ravi Varma Kumar, learned Senior Counsel would argue that though the detainees were set at liberty, the Court need not close the case and the Court has to consider the detention for rendering justice to the parties. He would also place before us a couple of judgments with regard to compensation to be made available to the detainees. Per contra, learned State Public Prosecutor would argue that the petition has no legs to stand and the detainees have taken money from the Swamiji and same has not been made over to him. In addition, they have also taken money from others and their conduct is to be viewed seriously. Insofar as the report is concerned, he would say that the evidence on record has to be taken note of before accepting the report. He would also argue that no case is made out for any compensation neither at the hands of the appellant nor at the hands of the State.

3. After hearing, we have gone through the material on record. From the writ averments, what we see is that Sri K.S. Venkatesh has filed a private complaint against Sri Pejawar Swamigalu. Learned Judge has chosen to order investigation in the matter. It is thereafter according to petition averments, Sri K.S. Venkatesh and Smt. Rukmini were taken away by the Police and that they are being tortured for no reason. In the counter-affidavit filed by the State, it is stated that Sri K.S. Venkatesh and Smt. Rukmini were taken by the Police for investigation. They deny the averments with regard to torture in the affidavit filed by them. Police further say that Sri K.S. Venkatesh and Smt. Rukmini are involved in two criminal cases and they are pending decision. It is further stated that Sri K.S. Venkatesh is involved in a number of cheating cases and he has played fraud and collected huge amount by issuing cheques without maintaining balance in the Bank Account. It is further stated that on 8-1-2007 under the instruction of Superior Officers, the Sub-Inspector of Police went to the house of Sri K.S. Venkatesh and Smt. Rukmini and brought them to KG. Nagar Police Station for recording their statement. After recording the statement they were allowed to go. It is further stated that Sri K.S. Venkatesh is a habitual criminal and he has cheated several people including Sri Pejawar Swamigalu. Thereafter an affidavit was filed by Sri K.S. Venkatesh on 16-1-2007 stating that he and Smt. Rukmini were staying in Kereguddadahalli, Bangalore. On 7-1-2007, the Assistant Commissioner of Police came and assaulted him and his sister and abused him and forced him to withdraw the case registered by him against Sri Vishweshwara Tirtha Swamiji of Pejawara Mutt. The details are forthcoming in paras 3, 4 and 5 of the affidavit. It is further stated that on 8-1-2007, he was threatened by the

Police.

4. A counter-affidavit was filed on 21-3-2007 by the Assistant Commissioner of Police stating that the affidavits filed by the petitioners are concocted and are motivated at the instance of some NGOs who are not in good terms with him. The affidavit is filed to lower the morale of the Police. It is stated that on 4th, 5th and 6th of January, 2007 the staff searched for them and thereafter their statements were recorded.

5. A rejoinder was filed by the petitioner. As mentioned earlier after noticing the affidavits and the submissions, we directed the Registrar Vigilance to hold an enquiry with regard to allegations of illegal detention right from 7-1-2007 and with regard to the allegation of torture from 4-1-2007 in terms of the material available on record and to submit his report. Proceedings before the Registrar are made available to us. Report is also made available to us. From the report, we see that several exhibits have been filed in addition to examination of witnesses. The Registrar holds at page 12 as under:

Perusing the materials on record, they go to show that on 4th, 5th and 6th January, 2007, there is no torture or ill-treatment by the respondent/Police to K.S. Venkatesh and Smt. Rukmini. This is why because, P.Ws. 2 and 3 themselves deposed in their evidence that on 4th, 5th and 6th January, 2007 they used to go to the Police Station. If they were and going and coming back on all the three days, then it goes to show that there was no ill-treatment or harassment.

Considering the entire materials on record, both oral and documentary produced by both parties, they clearly goes to show that there was no torture, ill-treatment and illegal detention by Sri Pejawar Swamiji to K.S. Venkatesh and Smt. Rukmini on 4-1-2007 and onwards.

The material also clearly goes to show that on 7-1-2007 during night at about 10.30 PM there was assault and ill-treatment by respondent-Police to K.S. Venkatesh and Smt. Rukmini in the house of their relative Vittal at Kereguddadahalli and that K.S. Venkatesh and Smt. Rukmini were dragged to the Police Station from the house of Vittal and they were illegally detained in the Police Station till the evening of 8-1-2007 and they have been treated inhumanly in the Police Station.

6. From the report it is seen that the Registrar Vigilance has only found fault with the police in the matter of assault and ill-treatment on 7-1-2007. It is to be mentioned here at this stage, that our order is very clear with regard to the report in the matter of ill-treatment by the Police. We have not stated in our order anything with regard to the alleged ill-treatment or alleged illegal detention by anybody else including Sri Pejawar Swamiji and the Deputy Chief Minister. Therefore in our view, the finding with regard to Swamiji and Deputy Chief Minister at page 12 of the report is superfluous. The only other finding against the police is that the police ill-treated K.S. Venkatesh and Smt. Rukmini on

7-1-2007. The said report is accepted by us in the light of the detailed findings given by the Registrar. Registrar has chosen to consider every one of the aspects in his report. No exception can be taken to the report. In fact, the report would reveal that there was no ill-treatment or harassment on 4th, 5th and 6th January, 2007 and it was only on 7th January, 2007 there was ill-treatment by the Police. The report is prepared by a responsible District Judge, now working as Registrar Vigilance. Hence we accept the report.

7. The law is well-settled with regard to compensation.

8. In *Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others*, , the Apex Court has condemned the high handed and authoritarian conduct in depriving the personal liberty of a person. The Court has also granted a sum of Rs. 50,000/- payable by State as compensation.

9. In *Rudul Sah Vs. State of Bihar and Another*, , the Supreme Court has directed the State to pay compensation of Rs. 30,000/- to the petitioner.

10. In *Competent Authority, Ahmedabad Vs. Amritlal Chandmal Jain and Others*, , the Supreme Court has ruled that once the detinue is released during the pendency of his writ of habeas corpus, by the detaining authority it cannot always be said that writ petition had become infructuous. In the light of this judgment what is clear to us that just because the detinue has been released that by itself would not result in a petition becoming infructuous. The Court has to take into consideration all the aspects of the matter including the plea of illegal detention or torture for the purpose of protecting the citizen of his right of liberty in terms of Article 21 of the Constitution of India. Liberty of a citizen cannot be jeopardized or curtailed by anybody without authority of law. That is the essence of democracy. Therefore we are of the view that though the detenuess are set at liberty, we can go into the question of illegal detention/torture for the purpose of providing justice to the litigants in terms of Article 21 of the Constitution of India. From the report made available to us, it is seen that the detenuess have been illegally detained and they are made to suffer by the Police. Hence they are to be compensated by the State for illegal detention in terms of the Apex Court judgment. It is useful to refer to a latest judgment of the Supreme Court in *Sube Singh Vs. State of Haryana and Others*, , wherein the Apex Court has ruled that repeated questioning by police of family members of. accused as a part of investigation process cannot be considered as harassment or violation of Article 21 of the Constitution of India. The Apex Court has ruled that the award of compensation against the State is a proper and effective remedy for redress of an established infringement of a fundamental right under Article 21 by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation by way of public law remedy will not come in the way of the aggrieved person claiming additional compensation in a Civil Court, in enforcement of the private law remedy in tort, nor come in the way of the Criminal Court ordering compensation u/s 357 of the Code of Criminal Procedure,

1973.

11. Taking into consideration all these aspects of the matter and also the finding given by Registrar Vigilance, we are of the view that a sum of Rs. 50,000/- would be an adequate amount of compensation payable by the State for the illegal detention/torture on 7-1-2007 by the Police in terms of the finding of the Registrar. That in our view would meet the ends of justice. We are also of the view that a sum of Rs. 5,000/- is to be made over by the State as costs of the litigation. Payment is to be made within four weeks from today. This compensation is without prejudice to the pending cases at the instance of the petitioner.

12. Sri Ravi Varma Kumar, learned Senior Counsel invites our attention to a judgment of the Andhra Pradesh High Court reported in G. Picheswara Rao Vs. Sub Inspector of Police and Others, (A.P.) in which the Court has given directions in terms of a suitable action against the erring Police Officers. This Court has to say that Police Station are to be friendly stations. People of the country have to come to the Police without fear or favour in the matter of justice at the hands of the Police in the event of any wrong committed to an individual. Unfortunately, of late, on account of some officials in the Police Department, the entire Police Department is getting a bad name despite their good work. To arrest this bad name to the Police Department and to see that the guilty are properly punished, we deem it proper to direct the Director General of Police to get hold of the entire records and conduct an independent enquiry to decide the (sic) hold that the person who is with regard to illegal detention/torture in the case on hand. In the event of any finding in terms of this order, the Director General of Police may proceed against such erring official in accordance with law.

13. Ordered accordingly.