

(2002) 10 BOM CK 0051
In the Bombay High Court
Case No : Criminal W.P. No. 244 of 2002

Samadhan Pandit Nagre and Another	APPELLANT
Vs	
State of Maharashtra and Another	RESPONDENT

Date of Decision : 28-10-2002

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2003) 1 BOMLR 485 : (2003) 1 DMC 594 : (2003) 2 MhLj 386

Hon'ble Judges : N.H. Patil, J;B.B. Vagyani, J

Bench : Division Bench

Advocate : N.V. Gaware, for the Appellant; K.G. Patil, APP, for the Respondent

Final Decision : Allowed

Judgement

B.B. Vagyani, J.—This criminal writ petition filed by the petitioners depicts a sorry state of affairs. The facts emerged out from this criminal writ petition show as to how the public servants have committed illegalities. Because of illegal detention even after order of acquittal, petitioner No. 1 has claimed compensation of Rs. 2 Lakhs from the State Government.

2. The facts giving rise to this criminal writ petition are as under : The petitioner No. 1 Samadhan was married to deceased Surekha on 17-1-1997. The petitioner No.1 Samadhan and his mother Savitribai, who is petitioner No. 2, subjected Surekha to cruelty. It is alleged that serious atrocities were committed on Surekha. She was physically and mentally tortured. Surekha could not bear the harassment and ultimately, committed suicide on 2-5-1997 by sprinkling kerosene oil on her person and setting herself on fire. Therefore, the petitioner Nos. 1 and 2 were prosecuted for offences punishable under Sections 498A and 304B read with 34 of Indian Penal Code. The learned Sessions Judge, Shrirampur convicted both the petitioners under Sections 498A, 304B read with 34 of Indian Penal Code. Feeling dissatisfied by the order of conviction and sentence, the petitioners (original accused) filed Criminal Appeal No. 176 of 1998. The petitioner No. 2 was on bail whereas the petitioner No. 1 did not get bail and he

was in jail. Single Judge of this Court allowed the criminal appeal filed by the petitioners by order dated 27-4-2001 and quashed and set aside the order of conviction and sentence passed by the Additional Sessions Judge, Shrirampur. Consequently, the petitioners were acquitted. This Court, after recording order of acquittal, directed petitioner No. 1 Samadhan to set at liberty forthwith.

3. The intimation of acquittal was sent to the Additional Sessions Judge, Shrirampur on 30-4-2001. The copy of the final writ was also sent to the Superintendent, Sub Jail, Kopargaon, District - Ahmednagar for information/necessary action. The Additional Sessions Judge, Shrirampur, acting on the final writ issued by the High Court, issued release order on 9-5-2001 and sent it to the Jailor, Kopargaon, The Superintendent of Sub Jail, Kopargaon sent the intimation to the Superintendent, District Prison, Ahmednagar. The District Superintendent of Jail, Ahmednagar forwarded the intimation to Superintendent, Yerwada Central Prison, Pune because petitioner No. 1 was already transferred to Yerwada Central Prison, Pune and was undergoing sentence imposed on him by the Additional Sessions Judge, Shrirampur. The intimation was received by the Superintendent, Yerwada Central Prison, Pune on 18-5-2001. However, it was only intimation. In the absence of release order, the prisoner was not released from jail, though he was acquitted by the High Court on 27-4-2001.

4. The petitioner No. 1 was restless in the prison. He was anxious about the decision of his criminal appeal. But nobody intimated him about the decision of criminal appeal filed by him. In order to know the progress of his criminal appeal, he wrote a letter to his brother in law. Dattatraya Shridhar Dahale -brother in law of the petitioner No. 1 then moved the Additional District and Sessions Judge, Shrirampur by his application dated 20-12-2001. In the said application, all the necessary particulars were furnished about order of acquittal passed by the High Court. The learned Additional Sessions Judge, Shrirampur issued release order on 20-12-2001 and sent it to the Superintendent, Yerwada Central Prison, Pune. The learned Additional Sessions Judge, Shrirampur, District Ahmednagar asked the Superintendent, Yerwada Central Prison, Pune to release the petitioner No. 1 forthwith. Acting on the order of Additional Sessions Judge, Shrirampur dated 20-12-2001, the Superintendent, Yerwada Central Prison, Pune immediately released the petitioner No. 1 from prison.

5. The petitioner No. 1 was detained in prison illegally for 238 days. The High Court allowed the criminal appeal of the petitioners on 27-4-2001. The learned Additional Sessions Judge, Shrirampur immediately informed jail authorities to release the petitioner No. 1 from jail. In spite intimation from learned Additional Sessions Judge, Shrirampur, the jail authorities did not release the petitioner No. 1 from jail. Thus there was illegal detention of the petitioner No. I. The petitioner No. 1, therefore, made a serious grievance about violation of his fundamental right to personal liberty. Without there being any fault, he was forced to remain in prison for 238 days. There was complete abrogation of his fundamental right to liberty. Therefore, the present criminal writ petition is filed under Article 226 of

the Constitution of India for grant of monetary compensation.

6. Shripati More, Naib Tahsildar, who happens to be the Superintendent, Sub Jail, Kopargaon has filed affidavit in reply. He tried to save his skin by saying that he intimated the order of acquittal to the Superintendent, District Prison, Ahmednagar. It is also stated in the affidavit in reply that the then Naib Tahsildar had requested the Superintendent, District Prison, Ahmednagar to release the prisoner in view of the order of acquittal. He has produced the copy of communication letter dated 14-5-2001 along with his affidavit in reply, which is marked as Exh. R-1. He has also placed on record the copy of the request letter addressed to the Superintendent, District Prison, Ahmednagar which is marked as Exhibit R-2.

7. Anand Laxman Vadar, Superintendent, District Prison, Ahmednagar has filed his affidavit in reply. He admits in his affidavit in reply that the Superintendent, Sub Jail, Kopargaon apprised him about the order of acquittal passed by the High Court. He has produced the copy of communication letter dated 14-5-2001 received by him from Superintendent, Sub Jail, Kopargaon, which is marked as exhibit R-1. According to him, though he received intimation about the acquittal order, he did not receive the release order dated 9-5-2001 which was issued by the Additional Sessions Judge, Shrirampur. He, therefore, personally spoke on phone to the clerk at the Sub Jail, Kopargaon on 15-5-2001. He informed that he did not receive the release order issued by the Additional Sessions Judge, Shrirampur. However, he immediately informed the Superintendent, Yerwada Central Prison, Pune by his letter dated 16-5-2001 that the criminal appeal filed by the petitioners was allowed by the High Court. He admits that the release order was not sent to the Superintendent, Yerwada Central Prison, Pune. His explanation is to the effect that the Superintendent, Sub Jail, Kopargaon did not forward the release order issued by the learned Additional Sessions Judge, Shrirampur.

8. Shri Bhima Dhondu Pichad, Additional Senior Jailor, Yerwada Central Prison, Pune has filed affidavit in reply. He admits that the intimation dated 16-5-2001 dispatched by the Superintendent, District Prison, Ahmednagar was received at Yerwada Central Prison on 18-5-2001. However, the supersession writ of the Trial Court certifying the order of the Hon"ble High Court passed in Criminal Appeal No. 176 of 1998 was not received at Yerwada Central Prison, Pune. Therefore, in the absence of release order, the petitioner No. 1 could not be released from prison. It is tried to be suggested by the Additional Senior Jailor, Yerwada Central Prison, Pune that the Additional Sessions Judge, Shrirampur wrongly addressed the release order to the Superintendent, Sub Jail, Kopargaon which ought to have been sent to the Superintendent, Yerwada Central Prison, Pune. It is stated in the affidavit in reply that the release order dated 9-5-2001 issued by the Additional sessions Judge, Shrirampur was first time received in the Yerwada Central Prison, Pune on 21-12-2001 and immediately thereafter, the petitioner No. 1 was released from jail. It is stated in the affidavit in reply that the

superintendent, Yerwada Central Prison, Pune did not commit any wrong. A reference is also made to the provisions of Section 388 of Criminal Procedure Code and thus the action is tried to be justified.

9. The learned counsel Shri Gaware for petitioner No. 1 vehemently submitted that there was infringement of fundamental right to liberty. The petitioners were acquitted by the Hon''ble High Court on 27-4-2001. The final writ was also sent by the High Court to the Additional Sessions Judge, Shrirampur on 30-4-2001. The learned Additional Sessions Judge, Shrirampur acting on the final writ of the Hon''ble High Court, immediately issued release order on 9-5-2001 and sent it to the Superintendent, Sub Jail, Kopargaon. The learned counsel Shri Gaware brings to our notice that the Superintendent, Sub Jail, Kopargaon acted promptly and passed on the information with regard to order of acquittal to the Superintendent, District Prison, Ahmednagar. However, the release order which was sent by the Additional Sessions Judge, Shrirampur was wrongly kept back. The release order was not sent to the Superintendent, District Prison, Ahmednagar. The learned counsel Shri Gaware also diverted our attention to the facts emerged out from the affidavit in reply filed by the Superintendent, District Prison, Ahmednagar that there was back reference to the Superintendent, Sub Jail, Kopargaon. The Superintendent, District Prison, Ahmednagar communicated the order of acquittal to the Superintendent, Yerwada Central Prison, Pune. However, the release order was not sent to the Superintendent, Yerwada Central Prison, Pune. In the absence of release order, the Superintendent, Yerwada Central Prison, Pune could not release the petitioner No. 1 out of prison. The learned counsel Shri Gaware then points out that there was illegal detention of the petitioner No. 1 in Yerwada Central Prison, Pune for 238 days. Therefore, the respondent State is liable to pay monetary compensation to the petitioner No. 1. In support of his submissions, he relied upon the case of K. Umapathy Vs. Superintendent, Central Jail, Cuddapah and Another, .

10. The learned APP Shri Patil has half heartedly tried to support the action of the jailors. He submits that unless and until the release order is received in the prison, the prisoner cannot be released from jail.

11. We gave our thoughtful consideration to the rival submissions advanced at the Bar. After having carefully perused the entire material placed on record, we are of the clear opinion that the petitioner No. 1 was illegally detained in the Yerwada Central Prison, Pune for 238 days. The Criminal Appeal No. 176 of 1998 filed by the petitioners was allowed by the Single Judge of this Court on 27-4-2001. The final writ was sent to the Trial Court on 30-4-2001 under outward No. 29-12-2001. The copy of the final writ was also forwarded with compliments for information and necessary action to the Superintendent, Sub Jail, Kopargaon, District Ahmednagar. Acting on the final writ issued by this Court, the Additional Sessions Judge, Shrirampur immediately issued release order dated 9-5-2001 and certified the writ on 11-5-2001. It is also seen from the material placed on record that the Additional Sessions Judge, Shrirampur

sent the release order along with the copy of final writ of the High Court to the Superintendent, Sub Jail, Kopargaon under Outward No. 1735/2001. It is admitted fact that the Superintendent, Sub Jail, Kopargaon received the release order issued by the Additional Sessions Judge, Shrirampur. The prisoner was not detained in Sub Jail, Kopargaon then. Therefore, the Superintendent, Sub Jail, Kopargaon passed on the intimation of the order of acquittal to the Superintendent, District Prison, Ahmednagar. He sent only intimation to the Superintendent, District Prison, Admednagar on 14-5-2001 under Outward letter No. 321/2001.

12. It is clearly seen from the material placed on record that the Superintendent, District Prison, Admednagar conveyed the information to the Superintendent, Yerwada Central Prison, Pune on 16-5-2001 under outward letter No. 665 of 2001. It is admitted fact that the intimation dated 16-5-2001 sent by the Superintendent, District Prison, Admednagar was received at Yerwada Central Prison, Pune on 18-5-2001. However, the release order dated 9-5-2001 was not sent to the Superintendent, Yerwada Central Prison, Pune along with the intimation dated 16-5-2001. Naturally, in the absence of release order, the Superintendent, Yerwada Central Prison, Pune could not release the petitioner No. 1 from jail and thus the petitioner No. 1 was detained in the prison illegally for 238 days. Because of timely intervention of brother in law of the petitioner No. 1, the learned Additional Sessions Judge, Shrirampur promptly took appropriate action and sent copy of the release order dated 9-5-2001 to the Superintendent, Yerwada Central Prison, Pune and acting on the copy of the said release order, the petitioner No. 1 was ultimately released from jail. It is, therefore, beyond doubt clear that there was illegal detention of the petitioner No. 1 for 238 days after acquittal order passed by the High Court. In our view, the petitioner No. 1 has made out very strong case for grant of compensation.

13. The constitutional and legal rights are sacrosanct. Therefore, every care is required to be taken in dealing with the fundamental and legal rights of an individual. The birth place of the fundamental rights is the Constitution and, therefore, everyone is required to respect the fundamental rights of the individuals. Because of lack of proper care and attention or because of gross negligence, if there is flagrant infringement of fundamental right to liberty, mere release from jail is not adequate remedy. In case of illegal abrogation of fundamental right to personal liberty, the irreparable damage is caused to the illegally detained person. Therefore, the State is under obligation to repair the damage done to such a person by its officers.

14. A reference with profit can be made to the case Rudul Sah Vs. State of Bihar and Another, . The Supreme Court has observed that the exercise of its jurisdiction under Article 32, the Supreme Court can pass an order for payment of money in the nature of compensation consequential upon the deprivation of a fundamental right to life and liberty of the petitioner. The Supreme Court has further observed that Article 21 of the Constitution of India, which guarantees

the right to life and liberty will be denuded of its significant content if the powers of the Supreme Court were limited to passing orders of release of illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 of the Constitution of India secured, is to mulct its violators in the payment of monetary compensation. The Supreme Court went on to observe that the administrative sclerosis leading to flagrant infringement of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right of compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. Respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights.

15. In the case of Rudal Sah (cited supra), the petitioner was detained illegally in the prison for 14 years after his acquittal in full dressed trial. He filed habeas corpus petition in the Supreme Court for his release from illegal detention. Taking into consideration the great harm done to the petitioner by the Government of Bihar, the Supreme Court ordered the State to pay to the petitioner a further sum of Rs. 30,000/- as interim measure in addition to the sum of Rs. 5,000/- already paid by it. The Supreme Court held that the order of compensation was in the nature of a palliative and did not preclude the petitioners from bringing a suit to recover appropriate damages from the State and its erring officers.

16. In the case of Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others, , the Supreme Court awarded compensation of Rs. 50,000/- to the petitioner whose arrest was mischievous and malicious. The Supreme Court observed that the constitutional and legal rights, if invaded, the mischief or malice and invasion may not be washed away by his being set free. In appropriate cases, the Court has jurisdiction to compensate the victim by awarding suitable monetary compensation.

17. In the case of K. Umapathy (cited supra) the petitioner was illegally detained for about three months after he was acquitted. Therefore, the petitioner moved the Andhra Pradesh High Court under Article 226 of the Constitution of India for grant of monetary compensation for contravention of fundamental rights. The Division Bench of the Andhra Pradesh High Court allowed the criminal writ petition and directed the State to pay compensation of Rs. 6,000/- to the petitioner for illegal detention.

18. In the instant case, the petitioner No. 1 was detained illegally for 238 days. The release order dated 9-5-2001 issued by the Additional Sessions Judge, Shrirampur was wrongly retained back by the jail authorities. Mere intimation of acquittal is not sufficient in law. The intimation must be coupled with the release order issued by the competent Court. In this case, the competent Court had issued the release order and also sent it to the Jailor. However, the release order was kept back and only intimation was passed on. It appears that the officers of

the State were too technical and did nothing. Having noticed illegal detention, even after passing of acquittal order, nobody bothered to contact the Additional Sessions Judge, Shrirampur for fresh release order. Nobody even bothered to correct the mistake. If slight care would have been taken and if the release order would have been promptly sent to the Superintendent, Yerwada Central Prison, Pune, there would not have been prolonged illegal detention. The very valuable fundamental right of personal liberty of the petitioner No. 1 was illegally suspended for no fault of the petitioner No. 1. Because of gross negligence, the petitioner No. 1 was illegally detained in Yerwada Central Prison, Pune for 238 days. Under the circumstances, the State is bound to repair the damage caused to the petitioner No. 1 by its officers.

19. We, therefore, direct the respondent No. 1 State to pay compensation of Rs. 25,000/- to the petitioner No. 1 within a period of four weeks. We clarify that grant of compensation of Rs. 25,000/- to the petitioner No. 1 is palliative in nature. This order, therefore, will not preclude the petitioner No. 1 from bringing a suit to recover appropriate damages from the State and its erring officers. We further clarify that the respondent State can, after due enquiry, initiate action of recovery of the monetary loss caused to the State from the erring officers.

20. This direction shall be complied with in letter and spirit and retirement of any officer is no excuse.

21. In the result, Criminal Writ Petition is allowed. Rule made absolute accordingly.