

(1998) 11 DEL CK 0118

In the Delhi High Court

Case No : Criminal Writ No. 606/96 and Cr. M. 4203 of 1998

Shahid Khan @ Munna

APPELLANT

Vs

State (N.C.T. of Delhi) and Others

RESPONDENT

Date of Decision : 09-11-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 411

Citation : (1998) 76 DLT 865

Hon'ble Judges : N.G. Nandi, J;Devinder Gupta, J

Bench : Division Bench

Advocate : R.M. Tiwari, for the Appellant; S.K. Aggarwal, for the Respondent

Judgement

Devinder Gupta, J.—The grievance, which the petitioner has made in this petition is about his alleged illegal custody and torture by the police from 10.4.1996 to 16.4.1996 during the said period with a consequential prayer to quash FIR No. 112/96 registered at Police Station, Rohini, Delhi for offence u/s 411 of the Indian Penal Code (for short "I.P.C.") and to direct holding of an inquiry into the alleged incident by an independent Investigating Agency.

2. It is alleged that on 10.4.1996 at about 5 p.m. the petitioner was taken by SI Rakesh Dahiya, In-charge Police Post to Police Post at Church Mission Road, Delhi and was told that Inspector Ved Pal Singh Rana, S.H.O., Police Station, Shalimar Bagh was coming with his staff. On arrival, the petitioner was given ruthless beating by Shri R.A. Sanjeev, A.C.P. and Inspector Ved Pal Singh Rana. A ransom of Rs. 1,00,000/- was demanded in case the petitioner wanted to be saved from the clutches of the police. In the meanwhile, a wireless message was flashed from Additional Commissioner of Police at about 10.40 p.m. directing S.H.O., Police Station, Shalimar Bagh to report to Shri V.K.Gupta, Additional Commissioner of Police, Northern Range at Police Station, Lahori Gate along with the petitioner after half an hour. At about 11 p.m. Inspector Ved Pal Singh Rana along with the petitioner reached Police Station, Lahori Gate. The family members

of the petitioner happened to see the petitioner at the Police Station, Lahori Gate in handcuffs in the presence of ACP V.K. Gupta, ACP R.A. Sanjeev, Inspector S.Tomar and SI Ramesh Dahiya. At about 1.30 a.m. on 11.4.1996 the petitioner was taken back to Police Station, Shalimar Bagh by SI Ved Pal Singh Rana. Again the petitioner was tortured for the said ransom money of Rs.1,00,000/-.

3. It is alleged that in the early hours of 11.4.1996 the family members of the petitioner went to Police Station, Lahori Gate to enquire about the petitioner. They were informed that police officers of Police Station, Shalimar Bagh had already taken back the petitioner during the intervening night of 10th and 11th April, 1996. On arrival of the family members at Police Station, Shalimar Bagh they were not permitted to meet the petitioner. They were driven away. Feeling helpless, the family members of the petitioner moved an application for bail in the Court of Shri Mahavir Shingal in which notice was directed to be issued to S.H.O., Police Station, Shalimar Bagh. At about 6 p.m. S.H.O., Police Station, Shalimar Bagh received information regarding bail application of the petitioner. The said application was marked to SI. Narain Singh under whose illegal custody, it is alleged that the petitioner was kept. At 6.30 p.m. Inspector Ved Pal Singh Rana, S.H.O. contacted Smt. Ramo Devi @ Sethani at telephone and handed over the receiver to the petitioner sq as to enable the petitioner to talk to her for the ransom money for release of the petitioner. The petitioner thereafter was taken in taxi along with SI Narain Singh and at about 8.30 p.m. SI Narain Singh received a sum of Rs. 15,000/- from Smt. Ramo Devi as an Installment of the petitioner's release. Despite request by Smt. Ramo Devi, SI Narain Singh did not release the petitioner. The petitioner was brought back to Police Station, Shalimar Bagh and again handed over to Ved Pal Singh Rana, S.H.O. along with the ransom money of Rs. 15,000/-, which Narain Singh had taken from Smt. Ramo Devi. Again during the intervening night of 11th and 12th April, 1996 the petitioner was tortured by Inspector Ved Pal Singh Rana and a poisonous substance in liquid form was poured in the petitioner's mouth. On 12.4.1996 at about 12 noon SHO, Police Station, Shalimar Bagh filed his report in the Court of Shri Mahavir Shingal denying that the petitioner was in police custody.

4. Thus according to the petitioner, a false report was submitted to the Metropolitan Magistrate by Inspector Ved Pal Singh Rana, though the petitioner was under illegal custody of SI Narain Singh to whom the bail application had been marked. During the same night at about 9.45 p.m. vide D.D. No. 25A, a case (FIR No. 112/96) was registered against the petitioner at Police Station, Rohini for offence u/s 411, I.P.C. On 13.4.1996 the petitioner was produced before the Metropolitan Magistrate. One day's police remand was asked by SI Narain Singh. On 14.4.1996 Police Post of Shalimar Bagh produced the petitioner in Tis Hazari Courts. The petitioner was remanded to judicial custody and on 16.4.1996 the petitioner was enlarged on bail. On 18.4.1996 the petitioner was admitted to St. Stephen's Hospital where he underwent major surgical operation of his stomach. Thus the petitioner complaining illegal detention, torture and extraction of money with demand of bribe, has sought the aforementioned

reliefs. The petition was instituted on 17.9.1996 on which show cause notice was directed to be issued to the respondents. On 3.10.1997 a reply was filed on behalf of the respondents on the affidavit of Shri S.Vasudeva, Deputy Commissioner of Police, New Delhi.

5. The reply states that in the intervening night of 22nd/23rd March, 1996 a notorious burglar Mukesh @ Rajesh was arrested, in case FIR 180/96 of Police Station, Shalimar Bagh for offence u/s 457, IPC. During investigation he confessed involvement in several other burglaries in the area of Police Station, Shalimar Bagh along with co-accused Dabbu. On 23.3.1996 he also confessed to have committed burglary on 15.1.1996 in No. LU-102, Pitampura, Delhi. A case under Sections 457/380, IPC was registered vide FIR No. 32/96 of Police Station Shalimar Bagh. The accused Mukesh was granted police custody remand up to 2.4.1996. The case was being investigated by SI Karan Singh of Police Station, Shalimar Bagh, being the In-charge, Police Post-Pitampura. On 30.5.1996 during further interrogation Mukesh revealed his involvement regarding burglary in another house on 13.3.1996 regarding which FIR 162/96 was registered for offence under Sections 457/380, IPC. He also led the police party headed by SI Narain Singh with other staff to House No. BS-10, Shalimar Bagh, Delhi. During investigation Mukesh revealed that he had sold the stolen properties including T.V., V.C.R. etc., recovered from the aforementioned house to a person known as Munna @ Shahid having Shop No. 73, Sanjay Market, Fatehpuri, Delhi. Police party headed by SI Karan Singh was led to the said shop. Pointing out memo was duly prepared. The shop was found closed. Search of accused Munna continued. Even on 31.3.1996 Mukesh took the police party in search of co-accused. On 2.4.1996 SI Karan Singh produced Mukesh in Court. He was sent to judicial custody in case FIR No. 32/96 and FIR No. 162/96.

6. It is stated in the reply that though Mukesh had confessed his involvement and had pointed out houses where burglary was alleged to have been committed, no specific request was made for police remand by SI Karan Singh. The complainant met and complained several Senior Police Officers about the conduct of SI Karan Singh. Reply further states that perusal of case diary of FIR 32/96 revealed that Mukesh was taken to the shop of Munna on 20.3.1996 and 28.3.1996 but surprisingly no pointing out memo or disclosure memo is available on record of the case. Thus the grievance of the complainant against IO Karan Singh appeared to have some grain of truth. IO Karan Singh was directed to arrest the co-accused Dabbu and Shahid Khan @ Munna and recover the case property at the earliest. Despite direction SI Karan Singh did not make any effort to arrest Shahid @ Munna or recover the case property. However, during the intervening night of 10th and 11th April, 1996 at about 12.40 a.m. S.I. Karan Singh left Police Post, Pitam Pura for petrol duty. At about 1.20 a.m. he informed the Duty Office at the Police Post that he had suddenly fallen sick, while on duty and was proceeding to hospital. He also informed that his duties shall be performed by A.S.I. Paras Nath, who incidentally was absolutely new to the job and was posted for the first time in the police station. Both these informations

were recorded vide D.D.Nos. 44 and 45. At 5.10 a.m. Constable accompanying Karan Singh came back and recorded entry that SI Karan Singh was firstly taken to Private Nursing Home and then to Ram Manohar Lohia Hospital where he was treated and was advised complete bed rest for two weeks.

7. The reply further states that on 11.4.1996 in the morning Shri Ved Pal Singh Rana, the then SHO, after coming to know of the aforementioned facts went to the house of SI Karan Singh to enquire about his illness and for any other help. SI Karan Singh was not present. His whereabouts were not known. This caused a great suspicion. An official of the Police Post was left at his house. As S.I. Karan Singh had been exposed and was feigning about his illness, his wife sent a telegram to the High Court on 11.4.1996. The complainant in FIR 162/96 has felt aggrieved against the conduct of S.I. Karan Singh that he was mixed up on the ground that despite Munna Having pointing out their house on 30.3.1996 and having confessed that he has sold the stolen property to Munna, who was searched on 26.3.1996 and 28.3.1996, yet neither any disclosure statement nor any pointing out memo was prepared by the IO and Mukesh was sent to judicial custody. Accordingly search of Munna was intensified. As the connivance of SI Karan Singh and Munna, who was fearing his arrest, became evident, the petitioner with a view to create a false defense, in connivance and under the advice of SI Karan Singh moved an application on 11.4.1996 in the Court of Metropolitan Magistrate to the effect that he was picked up on 10.4.1996 at 6 p.m. and was in police custody and a telegram was sent in the evening. However, on 12.4.1996 a report was submitted to the Court that Munna was not in the custody of police. SI Karan Singh in order to save Munna and to save himself and to spoil the efforts of the Investigating Agency to recover stolen properties, got the petitioner arrested u/s 411, I.P.C. at Police Station, Rohini in FIR No. 112/96. He was found in possession of stolen T.V., which ultimately was connected to FIR 162/96 of Police Station. Shalimar Bagh. As such FIR 112/96 of P.S. Rohini was cancelled on 10.5.1996. On 13.4.1996 the petitioner was formally arrested by the Police of Shalimar Bagh in FIR No. 162/96 in the Court. He was got medically examined under orders of the Court. He was sent to judicial custody on 14.4.1996 and granted bail on 16.4.1996.

8. Reply further states that on 16.4.1996 SI Karan Singh was placed under suspension. In the pocket diary of accused Munna, telephone number of SI Karan Singh was also found. The instant writ petition was filed only in the month of September, 1996 after a period of almost five months and after SI Karan Singh had been issued the summary of allegation in July, 1996. Reply states that on 30.8.1996 after completion of the investigation, challan was filed in case FIR No. 162/96 for offence under Sections 457/411, I.P.C. The Trial Court took cognizance and on 17.12.1997 charges were framed against the accused persons. Accused Mukesh pleaded guilty. He was sentenced to undergo rigorous imprisonment for 1 1/2 years. Charge u/s 411, I.P.C. was also framed against the petitioner on 17.12.1996. Case is pending trial. The respondents have thus specifically denied that the petitioner was ever kept under alleged illegal custody

or that he was ever subjected to torture, as alleged. The respondents specifically denied having taken a sum of Rs. 15,000/- from Smt. Ramo Devi, as alleged. Annexure-R.10, appended to reply is list of cases in which the petitioner was arrested and recoveries were effected from him, namely, FIR No. 28/97 dated 14.1.1997 for offence under Sections 302/411/34, I.P.C. of Police Station, Timar Pur, Delhi; FIR No. 291 dated 13.7.1997 for offence under Sections 395/397/411/34, I.P.C. of Police Station Timar Pur, Delhi; and FIR No. 562 dated 22.7.1997 for offence u/s 411, I.P.C. of Police Station, Seelampur, Delhi.

9. Learned Counsel for the parties were heard at length.

10. Learned Counsel for the petitioner vehemently contended that it is a fit case where inquiry deserves to be ordered to be conducted by C.B.I, with respect to the alleged illegal confinement. Reference has been made by learned Counsel for the petitioner to the two documents (Annexures-P.8 and P.9), the photo copies of Wireless Log Book and Diary contending that an effort has been made to twist the facts. The petitioner was under illegal confinement but the facts have been twisted in the reply suggesting that the petitioner was not illegally confined and was not tortured.

11. Despite repeated questioning, learned Counsel for the petitioner was not prepared to disclose the source from which photo copies of the Wireless Log Book and Diary (Annexures-P.8 and P.9) came in petitioner's possession. The same form part of secret documents maintained by the police. The petitioner is not a person who would be allowed to have access to such documents. The petitioner has given meticulous details, e.g. names of the persons involved, precise time of his removal from one place to other and other particulars with respect to his alleged confinement, yet we are of the view that no reliance can be placed thereon even for the purpose of entertaining the petitioner's request for issuing direction for holding inquiry by C.B.I, for want of sketchy affidavit annexed to the petition, which is not in consonance with the High Court Rules and Order. The affidavit nowhere states that which part or para of the petition is true to the petitioner's personal knowledge and which para thereof is true to his belief. Source of information is also not disclosed in the affidavit. The contents of the petition have been verified to be true and correct to the best of knowledge and belief, which is as vague as can be. Without stating the source of information, no reliance can be placed thereon. Moreover, as per the petitioner's own version, his family members had seen him in handcuffs at Police Station, Lahori Gate at 11 p.m. on 10.4.1996. This version appears to be highly doubtful inasmuch as in the application for grant of bail, alleged to have been moved on behalf of the petitioner, the very next day. This important fact was not disclosed. Otherwise in all probabilities had this been true, a mention thereof ought to have been made in the first bail application, which was moved. The petitioner moved application (Annexure-R.1) wherein the date of his arrest is mentioned by his Counsel as 13.4.1996. In case reference is made to the contents of the rejoinder, which the petitioner has filed in this case, the very act of filing of the instant

petition appears to be a camouflage or a proxy litigation by SI Karan Singh. In para 6 of the rejoinder, certain additional facts have been alleged, which according to the rejoinder came to the notice of the Counsel for the petitioner on enquiry made from S.I. Karan Singh. The said facts are stated in Sub-paras (a) to (c) of Para 6 of the reply. It further fortifies our inference about the real nature of petition that it is a proxy litigation at the behest of S.I. Karan Singh. Needless to add that on the basis of an order dated 16.4.1996 S.I. Karan Singh was placed under suspension with immediate effect pending departmental enquiry. By order dated 10.6.1996 (Annexure-P.9) departmental enquiry has been ordered against S.I. Karan Singh. The order says:

"It is alleged against SI Karan Singh No. D-2436 (PIS No. 28882004) that while he was posted at P.S., Shalimar Bagh, Delhi, one notorious burglar named Mukesh son of Kuber Nath r/o P.S. Kalwari, Distt. Bihar was arrested by the officials of P.S. Shalimar Bagh. On his arrest 12 cases of burglary were worked out. The investigation was being conducted by SI Karan Singh I /C P.P., Pitam Pura under the close supervision of Addl. SHO/Shalimar Bagh, Delhi. Accused Mukesh disposed off jewellery items and electronic goods to one Shahid Khan @ Munna. Police party led by Addl. SHO and S.I. Karan Singh raided the shop of Shahid Khan in Sanjay Market, Fatehpuri, Delhi but Munna managed to escape. Subsequently, SI Karan Singh contacted Munna through Const. Sushil Tyagi posted at P.P. Church Mission Gate, P.S. Lahori Gate and took Rs.10,000/- as illegal gratification from him in order not to implicate him. Munna used to have frequent talks on phone with SI Karan Singh No. D-2436 in P.P. Pitam Pura as well as at his residence. The telephone No. were given to him by the SI which were found in his diary cover. Besides, when the matter came to the notice of Senior Officer, SI Karan Singh went on two weeks' medical rest without informing his Senior Officers in violation of S.O. No. 111. Firstly, he made a D.D. entry for patrolling and after one hour he asked through phone to Duty Officer, P.P. Pitam Pura to make entry of his medical rest. If he was actually ill and he has been advised bed rest he would have been present at his residence, but he was not found there when checked by SHO/ Shalimar Bagh and ASI Ram Kumar with constable Parveen.

The above act on the part of SI Karan Singh No. D-2436 amounts to gross misconduct, remissness and unbecoming of a Government servant in the discharge of his official duty."

12. The instant petition was filed after departmental proceedings were initiated against S.I. Karan Singh. FIR No. 112/98 registered at Police Station, Rohini already stands cancelled, which was sought to be quashed by the petitioner. Investigation in the other FIR, in which the petitioner was arrested, namely, FIR No. 162/96 of Police Station, Shalimar Bagh, was complete before filing of the instant petition. Challan was presented and trial is in progress. We do not find it to be a fit case for quashing the said FIR No. 162/96 of Police Station, Shalimar Bagh. In view of the highly disputed questions of fact and finding it to be a proxy

litigation by the petitioner at the behest of SI Karan Singh while leaving it open to the petitioner to seek appropriate relief in a Civil Court regarding damages, if any, alleged to have been suffered by him regarding his alleged illegal confinement or alleged torture, in which proceedings the disputed questions of fact can be gone into, we are of the view that no direction deserves to be issued in this petition. Ordered accordingly.