

(2009) 06 KAR CK 0093
In the Karnataka High Court
Case No : WP (HC) No. 211 of 2009

Shri Gurasiddappa Tirakannavar

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 04-06-2009

Acts Referred:

Citation : (2009) 06 KAR CK 0093

Hon'ble Judges : K.N. Keshavanarayana, J; D.V. Shylendra Kumar, J

Bench : Division Bench

Advocate : Shrikanth T. Patil, for the Appellant; P.H. Gotkhindi, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Petition by a father for production of his son had been directed to be listed for further hearing on 5.6.2009, as per our earlier order dated 1.6.2009.

2. However, the learned SPP moved this Court in the morning session to take up this matter in the afternoon session, submitting that the person for whose production the writ petition had been filed, has been traced and has been brought by the police; that the Superintendent of Police, Bagalkot District Mr. T.R. Suresh and the Sub-inspector of Police, Bilagi Police Station Mr. Ravikumar s/o Shivalingappa Kappattanavar have both come as per the direction of the Court as otherwise, they were to appear before this Court tomorrow (5.6.2009) and therefore, requested the matter to be listed today. The matter, on our directions, is listed before the Court today.

3. Petitioner alleges that his son by name Malappa had been arrested by the Sub-inspector of Police, Bilagi Police Station and other constables on 15.4.2009; that his son had been taken to the police station; that the Petitioner went to the police station to seek for the release of his son, but there was no release and he came back disappointed; that his son was never released in spite of repeated

requests and that a complaint in this regard had also been forwarded to the Superintendent of Police of the district on 18.4.2009 and even then, there being no release, the present writ petition had been filed on 22.4.2009.

4. The next day (23.4.2009), the learned Additional SPP had been directed to take notice. Matter had come up for orders on 24.4.2009 and on that day, with the learned State Public Prosecutor submitting before the Court, on instructions, that the police had not traced the son of the Petitioner and that the Petitioner asserting that his son had been taken away by the police and is still in their illegal custody, Respondents were directed to file counter in the form of affidavits. With the intervening vacation, the matter came up only on 26.5.2009 and as this Court found no response from the Respondents, following order was passed:

Though notice was issued to the Respondent -State in this habeas corpus petition as on 23.4.2009 and the learned Additional State Public Prosecutor was specifically directed to file counter on behalf of the Respondent, on the next day i.e., on 24.4.2009, so far no counter has been filed on behalf of the Respondent in a serious matter of this nature.

The complaint of the Petitioner is that the Petitioner's son was taken away by the Sub-inspector of Police of Bilagi Police Station from the house of the Petitioner on 15.4.2009 and he has not been produced before the jurisdictional Magistrate so far, nor his detention is authorised in law, and therefore, a writ of habeas corpus should be issued.

However, in the wake of the request made by Shri Gotkhindi, learned Additional State Public Prosecutor, list this matter on 28.5.2009. Not only the Additional State Public Prosecutor should file his objections but the concerned Sub-inspector of Police of Bilagi Police Station should also be present on the next date of hearing.

5. Again on 28.5.2009, there being no release and excuses being offered, order was passed as under:

Affidavit of Sri. Ravikumar S/o Shivalingappa Kappattanavar, Police Sub Inspector at Bilagi Police Station is placed before the Court as counter affidavit to the Writ Petition and it is stated in this affidavit that the deponent never took Petitioner's son to custody and further states that he did not hold a detailed interrogation or enquiry of Petitioner's son on 15.04.09 at about 8.00 a.m. On the other hand deponent was away elsewhere on the very same day and time in connection with his official work and in support of this version has sought to place before the Court the copies of a crime details form maintained at the station in Crime No. 51/09 dated 15.04.09 and a copy of the mahazar and proceedings dated 15.04.09 drawn between 8.15 a.m. and 9.15 a.m. near Saibar Restaurant. A copy of the station house diary dated 15.04.09 is also placed before the Court in support of the version of the deponent.

A rejoinder is filed by the Petitioner in the form of an affidavit asserting that the Petitioner's son in fact was arrested and taken away from his house on 15.04.09 at about 8.00 a.m. by Police Sub-Inspector R.S. Kappattanavar of Bilagi Police Station accompanied by

A.W. Gudagunti, Head Constable, S.S. Sanna Siddannavar, Police Constable and A.H. Sutagundar, Police Constable.

In response, Sri.P.H. Gotkhindi, learned Additional State Public Prosecutor submits that though Police Sub-Inspector has not taken the person into the custody, given some time for P.S.I. to trace the said son of the Petitioner and produce him before the Court he will be able to do so and requests that the matter may be called on 01.06.09.

P.S.I.R.S. Kappattanavar who is present before the Court as per direction also states that he will be able to produce the son of the Petitioner before the Court by 01.06.09.

List this matter on 01.06.09. P.S.I.R.S. Kappattanavar to produce the son of the Petitioner on 01.06.09.

6. The matter came up on 1.6.2009. Yet again, the situation was no different and we passed the order as under;

Sub-Inspector of Police, Bilagi Police Station, 3rd Respondent in this petition who had assured this Court on 28.5.2009 that he will trace the son of the Petitioner and produce him before this Court on 1.6.2009 and recording the same, an order was made on that day, has now come up with an affidavit to indicate that after returning from the Court work at Dharwad, he had deputed Police Constables to go and search for the missing person at Nagara village, Davaleshwar village in Bilage taluk, Jainapur in Bijapur taluk, Kolar in Basvabagevadi taluk, Honnihal, Yatinitti, Badardini and Manikere villages, but all the constables have given a report that the person is not traceable and therefore, is seeking further time to trace the missing person and to produce him before the Court.

2. We find that the affidavit is only to indicate that the Sub-inspector deputed some constables and they reported failure of their mission. Affidavit, on the face of it, indicates that the Sub-inspector who gave assurance before this Court that he will definitely produce the missing person by 1.6.2009, has not done anything by himself to translate his words into action, but is depending on some constables to produce results for him.

3. Sub-inspector who gave us the impression that he knows about the whereabouts of the missing person and will definitely be able to produce him and had sought time till 29th and we adjourned the matter to today as 30th happened to be a Saturday, is now singing a different tune by not only indicating that he did not give any such impression, but the whereabouts of the missing person is not known. Report of the constables is to indicate that the missing person is not to be found at all the places where they searched and therefore,

seeks for another two weeks" time to trace the missing person to produce him before the Court.

4. Habeas Corpus petition involving illegal detention of a citizen and his liberty, is a serious solemn proceeding and we are given to the impression that the Sub-inspector is taking matters very casually and even to the extent of giving false assurances and making false statements before the Court.

5. The very Sub-inspector is accused by the Petitioner of taking away his son from his house on 15.4.2009 and further, that the Petitioner had seen his son at the Bilagi Police Station the same day, but the version of the Sub-inspector is to the contrary; that he had never taken the son of the Petitioner into his custody nor was he at any time in Bilagi Police Station at the relevant time.

6. Respondent No. 3 -Sub-inspector of Police who is virtually accused of causing disappearance of the Petitioner's son and who is filing affidavits before the Court to the contrary does not inspire confidence in us to believe that he is making any true statement or placing the correct position before this Court. It is high time that a superior Police Officer, in fact, Respondent No. 2 himself being the Superintendent of Police, Bagalkot District, acts for some action.

7. When notice is issued in a habeas corpus petition, it is the responsibility of all the Respondents to answer the notice and not merely that of a lower ranking officer like the Sub-inspector of Police who gives us the impression that he is not coming out with truth or correct facts.

8. We direct Respondent No. 2 -Superintendent of Police, Bagalkot District to look into the matter and come up with a report. He is further directed to be present before this Court with the report on 5.6.2009 along with Sub-inspector of Police, Bilagi Police Station.

Furnish a copy of this order to the learned Additional Government Advocate.

List on 5.6.2009.

7. Today, the scene has dramatically changed. All actors in the drama are present before the Court. Father, the Petitioner sees his son for whose release, he had been fighting all these days, and the status report and affidavits of the Sub-inspector of Police, Bilagi Police Station and the Superintendent of Police, Bagalkot district, are only to indicate that while all earlier attempts on the part of the police force to trace the missing person in and around his village Nagaral, had failed, the police received information from the residents of Jainapur, the place which the police claim to have visited earlier and had left instructions for informing the police, if the missing person should turn up there and the information was that he has turned up at Jainapur and such information was received at the Bilagi police station through a phone call at about 2 p.m. on 3.6.2009. Report further says that the police reached the place around 7 p.m. along with punch witnesses; that the Petitioner identified his son; that a panchanama was drawn after taking Malappa into custody; that the Police Sub-

inspector, along with three Police Constables and the Petitioner, reached Bilagi at 6 sum. on 4.6.2009, informed the Superintendent of Police of the developments and sought permission to proceed to Dharwad to produce the said Malappa before the Court and the developments were informed to the learned SPP.

8. While the identity of Malappa, the person for whose production the writ petition had been filed, is confirmed by the Petitioner and he is produced before the Court by the police and normally, a writ of this nature should come to an end with the production of the missing person before this Court, we must, before concluding the matter, express our considerable dissatisfaction over the manner in which the police have responded to the notice issued by this Court for the production of a missing person, particularly, if the petition averment alleging that the Sub-inspector of Police had taken his son into custody and thereafter, his whereabouts have become unknown to the Petitioner, is to be believed.

9. Our earlier orders quoted above indicate that the Sub-inspector of Police, who had occasion to file three reports, has given us the impression that he is not coming out with the true version and it is in this state of affairs, we were constrained to direct the Superintendent of Police of Bagalkot District also, to appear with his status report.

10. It is more than a mere coincidence that the moment we had directed the Superintendent of Police to appear with his status report, things start falling in place and results are produced.

11. It is rather an unfortunate development that, unless this Court directs a superior or higher Police Officer to be present personally in the Court and explain things, the officials at the lower level take things very lightly and do not respond with commensurate promptitude or sincerity and file affidavits and status reports not necessary true or accurate as a matter of routine, in a very casual manner.

12. We strongly deprecate such conduct and response on the part of the Respondents and more so, in the present case, the petition averment rather allegation being that the Sub-inspector of Police at Bilagi himself had taken the Petitioner's son into custody and had not caused his production either before any Court nor was he released.

13. It was a serious allegation and the allegation was countered by the very Police Sub-inspector who had allegedly taken the person into custody and we are also very annoyed that the matter did not receive commensurate attention at the higher level for responding to this Court. The State of Karnataka by Home Secretary and the Superintendent of Police, Bagalkot are the first and second Respondents and have equal responsibility in answering a notice issued by this Court and more so, in a serious matter like the petition for issue of a writ of habeus corpus. The Superintendent of Police, Bagalkot District, who is present in person, has sought to explain that the remiss, if any on the part of the Police Sub-inspector and on the part of the higher officials was, if at all, due to the pressure of election duty. Such an explanation does not necessarily either

convince us or we would believe the same as a proper explanation. Responding to a notice in a habeus corpus petition is as much the duty of the police as attending to bundobust duty while elections are in progress.

14. With neither the Petitioner nor his son complaining of any untoward incident except that the Petitioner's son being afraid of continued harassment by the police and therefore, though he was asked to appear before the police station the next day of his arrest, he did not choose to go back to the police station and had avoided contact with the local people by moving far away along with a herd of sheep, himself being a shepherd and with the police officials also indicating that the person is not involved in commission of any offence nor is he required for any interrogation or investigation, he need not apprehend any threat or fear or any further adverse action against him on the part of the police.

15. However, we do direct the Superintendent of Police to cause further investigation as to the correctness and truthfulness of the reports and affidavits placed before the Court by the Sub-inspector of Police, Bilagi and if it should give cause for any action, to ensure that commensurate action is taken against the Sub-inspector of Police. The Superintendent of Police, Bagalkot district is directed to place a report before this Court in about two weeks as to the outcome of the same.

16. With the person who has been produced before the Court expressing that he will go back to his house along with his father, we order so and the person is at liberty to go to his native village to join his family. No need for the police to take any further action so far as the person whom they have produced before the Court is concerned.

17. While this petition for issue of a writ of habeus corpus does not survive with the production of the person and the person being free to go back to his village, the matter is directed to be listed only for the purpose of examining the report of the Superintendent of Police and we direct the matter to be listed only for such purpose, on 24.6, 2009.