
(2005) 06 MP CK 0021
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1833 of 2005

Smt. Indu Jain

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 23-06-2005

Acts Referred:

Constitution of India, 1950 — Article 20(3), 21, 22
Penal Code, 1860 (IPC) — Section 302, 304II, 330

Citation : (2005) CriLJ 3795 : (2006) ILR (MP) 1691 : (2005) 4 MPHT 230

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : Abdullah Usmani, for the Appellant; T.S. Ruprah, AAG (for Nos. 1 to 3) and Manish Datt, (for Nos. 4, 5, 6, 8, 9 and 10), for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.—The inscription on Statue of the Liberty reads as under :

"...Give me your tired, your poor.

Your huddled masses yearning to breathe free.

The wretched refuse of your teeming shore.

Send these, the homeless, tempest-tost to me.

I lift my lamp beside the golden door!"

The conception of liberty has paramountancy in a Welfare State and the Preamble of the Constitution has given substantial and profuse importance on the same. It is to be remembered that when liberty is lost the breath of life gets into oblivion. In the name of interrogation when a person in charge of the investigation burns the civilized notions and guillotines the fundamental element of law, humanity has to be the laser beam, for our compassionate constitution has emphasized on the humane facets and there has been amplification and expansion of human rights and no authority has power or prowess to vivisect and

dismember the same, or to put it differently, get the said perception atrophied. When a Senior Officer in the rank of Deputy Commissioner of Sales Tax is kept under custody in the office of Superintendent of Police of Lokayukt initially his liberty is restricted and constricted and afterwards when he breathes his last, the Sixty Four thousand million dollar question that arises for consideration is whether the said investigating officer and other officers are to be treated as per law or should they be allowed to play truant creating an incurable concavity in the conceptualization of basic rule of law solely because they are in the Police Establishment and can be law unto themselves and act at their whim and caprice without having any botheration and concern what has happened to a person who was called to the office for the purpose of interrogation ? Further, if they are brought under certain offences can they be allowed to remain at large as they have the fallacious normative notion who can take them to custody as they have the monopoly in custody? Would the law countenance that when a charge-sheet has been filed in the Court of law in respect of an offence punishable u/s 304 II of the Indian Penal Code (in short "the IPC") and the accused persons remain at large and appear and contest in writ petition through their counsel and no steps are taken for their arrest? This is the basic, essential and primary question that requires to be dwelled upon and answered in this writ petition.

2. In the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, it has been expressed as under :

"2. The king is under no man, but under God and the law" -- was the reply of the Chief Justice of England, Sir Edward Coke when James-I once declared "Then I am to be under the law. It is treason to affirm it", -- so wrote Henry Bracton who was a Judge of the King's Bench.

3. The words of Bracton in his treatise in Latin "quod Rex non debet esse sub homine sed sub Deo et Lege" (That the king should not be under man, but under God and the law) were quoted time and time again when the Stuart Kings claimed to rule by divine right. We would like to quote and requite those words of Sir Edward Coke even at the threshold.

4. In our democratic polity under the Constitution based on the concept of "Rule of law" which we have adopted and given to ourselves and which serves as an aorta in the anatomy of our democratic system. THE LAW IS SUPREME."

The law has to reign Supreme in all situations and its application can never be marginalized as such marginalization, in ultimate eventuate would lead to chaos, disorder, disaster and anarchy.

3. The factual exposition as has been elaborately adumbrated in the writ petition are that the husband of the petitioner was a Deputy Commissioner in Commercial Tax. His house was raided by the Special Police Establishment Lokayukt, Bhopal under the supervision of Deputy Superintendent of Police incharge of Special Police Establishment. Lokayukt, Bhopal on 14-7-2004 at about 3.00 p.m. and on the same day he and other officers took the deceased to

the office of Lokayukt, Bhopal at 8.00 p.m. and kept him under custody for the purpose of interrogation. He was detained in the night for the purpose of interrogation. After getting the information the relatives of the deceased, namely, Indrajeet Jain. Pradeep Bhadoriya, Neela Satbhaiya and Vikas Jain were allowed to meet the deceased where they found the deceased in a very frightened state and on an inquiry it was found from the deceased that during the course of interrogation he has been tortured, ill-treated and physically assaulted and that anything may happen to him. It is put forth that on 15-7-2004 Syen T. Pasha Inspector, Commercial Tax had gone to the office of Lokayukt. He found that the deceased was unconscious and no one was present in the office of Lokayukt and observing this situation the said Pasha called the policeman for help for carrying the deceased and took him to Gandhi Medical College, Hamidia Hospital, Bhopal where deceased was examined by Dr. Rakesh Jain who found that there was not recordable blood pressure, bruise over the neck region and no respiration and effort was made to resuscitate the respiratory system and eventually he was kept on artificial ventilation, but subsequently he was declared dead. A post-mortem was conducted on the deceased and the doctor opined that the deceased had breathed his last due to asphyxia. A ligature mark was found on the anterior aspect of neck and blunt injury on vertex and many other injuries were noticed. The brother of the deceased lodged an FIR on 15-7-2004 at about 11.10 a.m. at Police Station, Kohefiza, Bhopal of the murder of brother on account of torture and custodial violence by the respondents No. 4 to 10 but an offence u/s 330, IPC was registered. However, later on the matter was investigated by Criminal Investigation Department and an offence u/s 302, IPC was registered against the accused persons. The grievance that has been put forth is that none has been arrested. It is also highlighted that some of the respondents being apprehensive of their arrest moved this Court in M.Cr.C. No. 6087/2004 for grant of anticipatory bail but this Court by order dated 22-9-2004 rejected the said prayer. It is urged that the Investigating Agency has not taken steps to arrest the accused persons and that has left the accused persons to be at large to tamper with the evidence. In this factual backdrop a prayer has been made to arrest the accused persons in Crime No. 346/2004 registered u/s 302, IPC and to issue further directions.

4. A counter-affidavit has been filed on behalf of the respondents Nos. 1 to 3 contending, inter alia, that the investigation is over and a charge-sheet has been filed u/s 304 II, IPC before the appropriate Court.

5. A counter-affidavit has been filed by the respondents No. 4, 5, 6, 8, 9 and 10 controverting the allegations put forth in the petition and taking a stance that they are not liable for commission of the alleged offence and have been roped in, in a malicious manner.

6. I have heard Mr. Ahadulla Usmani, learned counsel for the petitioner, Mr. T. S. Ruprah, learned Additional Advocate General for the respondents Nos. 1 to 3 and Mr. Manish Datt, learned counsel for respondents Nos. 4, 5, 6, 8, 9 and 10.

7. It is submitted by Mr. Usmani that though a charge-sheet has been filed, the accused persons have not yet been arrested barring one K. S. Solanki, a Police Constable who is not a party to this case. It is his submission that the respondents are attending their office and contesting the matter in this Court, but for the reasons best known to the Criminal Investigation Department which had conducted the investigation no steps are being taken to arrest the accused persons, despite application for grant of anticipatory bail preferred by some of them has faced rejection. It is propounded by him that when the persons in power are allowed to move freely without any respect for law it is an anathema to the concept of law and order and, in fact, destroys the basic fabric of law.

8. Mr. T. S. Ruprah, Additional Advocate General has submitted that as the charge-sheet has been filed and non-bailable warrants of arrest have been issued this Court may issue appropriate directions as per law.

9. Mr. Manish Datt, learned counsel for the accused persons has supported the pleas put forth in the return filed by the accused persons.

10. In the case of Smt. Shakila Abdul Gafar Khan Vs. Vasant Raghunath Dhoble and Another, the Apex Court expressed its concern on the alarming increase in cases of torture, assault and death in police custody and held as under (Para 4 of Cri LJ) :--

"... Articles 20(3) and 22 of the Constitution further manifest the constitutional protection extended to every citizen and the guarantees held out for making life meaningful and not a mere animal existence. It is, therefore, difficult to comprehend how torture and custodial violence can be permitted to defy the rights flowing from the Constitution. The dehumanizing torture, assault and death in custody which have assumed alarming proportions raise serious questions about the credibility of the rules of law and administration of the criminal justice system. The community rightly gets disturbed. The cry for justice becomes louder and warrants immediate remedial measures. This Court has in a large number of cases expressed concern at the atrocities perpetrated by the protectors of law. Justice Brandeis' observations which have become classic are in the following immoral words :

Government as the omnipotent and omnipresent teacher teaches the whole people by its example. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself. (In *Olmstead v. United States* (1928) 277 US 438 , quoted in *Mapp v. Ohio* (1961) 367 US 643.)

5. The diabolic recurrence of police torture resulting in a terrible scare in the minds of common citizens that their lives and liberty are under a new and unwarranted peril because the guardians of law destroy the human rights by custodial violence and torture, invariably resulting in death. The vulnerability of human rights assumes a traumatic torture when functionaries of the State whose paramount duty is to protect the citizen and not to commit gruesome offences

against them, in reality perpetrate them...."

11. The present case frescoes a picture which is beyond tolerance latitude of dispensation of criminal justice. A horrified and mentally tormented widow has knocked at the doors of this Court as a victim on the foundation that her husband has died in police custody and despite charge-sheet having been filed in the Court of law the accused persons have remained undeterred and the investigating agency has shown lax-ness and exhibited an apathetic and lukewarm proclivity in arresting the persons as per law to face trial which has irrefragably a be tenore and an anathema to the basic conception of rule of law. It cannot be forgotten that the Welfare State is governed by the rule of law which has the paramountcy. It has been said by Edward Biggson "The laws of a nation form the most instructive portion of its history." The Constitution as the organic law of the land has unfolded itself in manifold manner like a living organism in the various decisions of the Apex Court about the rights of a person under Article 21 of the Constitution of India. When citizenary rights are sometimes dashed against and pushed back by the members of City Halls there has to be rebound and when the rebound takes place Article 21 of the Constitution springs up to action as the protector. It is worth nothing that the law requires of effective measure for investigation and prosecution of criminal. A high placed officer cannot be maligner of law and allow the law to languish in a stale of stagnation. In this regard I may profitably refer to a passage from Mallimath Committee relating to Criminal Justice System. The Committee has dwelled upon the victims' rights that have been recognized internationally and its essential paradigm in Criminal Justice System. It reads as under :--

"6.9.1 Victims of crime are important players in criminal justice administration both as complainant/informant and as witness for the Police/prosecution. Despite the system being heavily dependant on the victim, criminal justice has been concerned with the offender and his interests almost subordinating or disregarding the interest of victim. In the civil law systems generally, the victims enjoyed a better status in administration of criminal justice. Towards the last quarter of the twelfth century, the common law world realized the adverse consequences arising from this inequitable situation and enacted laws giving rights of participation and compensation to the victims. "Victims" mean the persons or persons who have suffered financial, social, psychological or physical harm as a result of an offense, and includes, in the case of any homicide, an appropriate member of the immediate family of any such person. In the Constitutions of certain countries, rights of victims have been recognized thereby forcing changes in criminal justice goals and procedures. In the United States Supreme Court ruled that consideration of Victim Impact Statements during sentence hearing was Constitutionally permissible (Payne v. Tennessee (1991) III S. Ct. 2597). This enabled victims to describe the extent of any physical, emotional, or psychological effects caused by the crime. Eventually in U. S., Victim Impact Statements became part of plea bargains and parole hearings."

12. In the aforesaid back drop, the anguish, agony and desperation of the petitioner is to be appreciated. It is to be borne in mind that she has approached this Court being dissatisfied with the inaction of respondents Nos. 1 to 3 who have forgotten that the social order in a democratic body polity is founded on a criminal justice system as that is the conscience of the social setting. The role of police for protecting the life and liberty of the people in a civilized society cannot be allowed to take the back seat. The police have to believe and act on the normative perception of serviceability. It has to have accountability and it must stand committed to the basic fabric of rule of law. The performance of police in adequate and proper manner establishes an edifice of upliftment of social serenity. When the question arises who has to police the police, there is a pathological disorder. It had been said by John Coatman that care and quality of country's police force provides touchstone of spirit and quality of its Government and civil administration. Police in the name of search for truth cannot pave the path of perversion to victimize people and confer the protective panorama to a panic-stricken landscape. True it is, the police have the responsibility to maintain law and order but simultaneously it should not be forgotten that the police force in a way has an obligation and responsibility to act as trustees for peace in society. In no circumstances it can take law unto on its own hands and create a vista of horrified society. When the police do not perform its duty it creates an apprehension in the mind of citizens and destroys the arterial flow through the body polity and creates a colossal sense of distress.

13. In the case at hand though the accused persons have been charge-sheeted, and warrants of arrest have been issued, yet they have not been taken to custody. Indubitably, it is not a good sign. The accused persons are to be treated as accused persons for all purposes and are to be dealt with as per law, law is respecter of none.

14. In view of the obtaining factual matrix and keeping in view the fact that the charge-sheet has been filed and the accused persons are at large, I am inclined to direct that the Director General of Police shall see to it that the persons against whom charge-sheet has been filed by properly dealt with and taken to custody within a period of seven days so that the petitioner's faith in the investigation system would stand restored and rule of law shall stand reinforced. This Court hopes and trusts that the Director General of Police who is the head of the Police Administration would rise to the occasion and show no deviancy. Be it noted, any deviation shown, moreso, in this situation would only create an incurable dent in the criminal investigation system and usher in malignancy. It is better to have prevention at this juncture than to think of cure. There is still time and sooner the action is taken, as directed above, better it is as that would diminish the apprehension in the mind of the petitioner and further faith in the investigation and make the system victim sensitive. Let a copy of the order be handedover to Mr. Ruprah, learned Additional Advocate General who shall transmit the same to the Director General of Police by FAX, E-mail, Special Messenger as well as by registered post with acknowledgement due, Registry is

directed to handover a copy of the order to Mr. Ruprah.

15. The writ petition would not come to an end with the aforesaid direction. The petitioner has a sanguine believe that her husband has died in custody. That is for the trial Court to determine. But, a pregnant one, there has to be speedy trial. A speedy trial is imperative in the case at hand inasmuch as charge-sheet has been filed against high police official and a Deputy Commissioner of Sales Tax has died, as alleged, in the police custody. It can be said with certitude that the delay in a case of this nature would absolutely defeat justice. A victim cannot be allowed to watch and become mute because of delay. In the case of Kartar Singh v. State of Punjab reported in their Lordships expressed the view thus (Para 91 of Cri LJ) :--

"The concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averred."

16. In this context I may fruitfully refer to the decision rendered in the case of Zahira Habibulla H. Sheikh and Another Vs. State of Gujarat and Others, wherein the Apex Court expressed the view as under (Paras 38, 57 and 59 of Cri LJ) :--

"35. This Court has often emphasized that in a criminal case the fate of the proceedings cannot always be left entirely in the hands of the parties, crimes being public wrongs in breach and violation of public rights and duties, which affect the whole community as a community and are harmful to the society in general. The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interests of society are not to be treated completely with disdain and as persona non grata. Courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice-often referred to as the duty to vindicate and uphold the "majesty of the law". Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a Court of law in the future as in the ease before it. If a Criminal Court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit: all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. Court administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still

possible, except at the risk of undermining the fair name and standing of the Judges as impartial and independent adjudicators.

xxx xxx xxx 54. Though justice is depicted to be blindfolded, as popularly said, it is only a veil not to see who the party before it is while pronouncing judgment on the cause brought before it by enforcing law and administer justice and not to ignore or turn the mind/ attention of the Court away from the truth of the cause or lis before it, in disregard of its duty to prevent miscarriage of justice. When an ordinary citizen makes a grievance against the mighty administration, any indifference, inaction or lethargy shown in protecting his right guaranteed in law will tend to paralyse by such inaction or lethargic action of Courts and erode in stages the faith inbuilt in the judicial system ultimately destroying the very justice-delivery system of the country itself. Doing justice is the paramount consideration and that duty cannot be abdicated or diluted and diverted by manipulative red herrings.

xxx xxx xxx 56. As pithily stated in *Jennison v. Baker* (1972 (1) All ER 997, 1006) :

"The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope."

Courts have to ensure that accused persons are punished and that the might or authority of the State are not used to shield themselves or their men. It should be ensured that they do not wield such powers which under the Constitution has to be held only in trust for the public and society at large. If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil trying to hide the realities or covering the obvious deficiencies, Courts have to deal with the same with an iron hand appropriately within the framework of law. It is as much the duty of the prosecutor as of the Court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice."

I have referred to the aforesaid judgment only to highlight the role of Court in the dispensation of criminal justice system and how their Lordships have laid emphasis on the concept of upholding the Majesty of Law. The majesty of law can be upheld when there is speedy trial and, more so, in a case of this nature.

17. In view of the aforesaid it is directed that as charge-sheet has been filed the learned trial Judge would be well advised to dispose of the trial by end of October, 2005 positively with due compliance to the Registry of this Court. Registry is directed to send a copy of the order to the learned District and Sessions Judge, Bhopal to do the needful in this regard.

18. In addition, I am also inclined to direct that if the petitioner at any point of time seeks protection for herself or her family members and approaches the Director General of Police the said prayer shall be acceded to, unless it is found that there is no base for the same.

19. At this juncture I think it condign to clarify that the learned trial Judge while

disposing of the matter shall not be influenced by any observation made in this writ petition and would be totally at liberty to deal with the trial as envisaged in law.

20. The writ petition is allowed. There shall be no order as to costs.