
(2008) 06 KAR CK 0092
In the Karnataka High Court
Case No : Writ Petition (HC) No. 158 of 2007

Smt. Jayamma

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 17-06-2008

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2009) ILR (Kar) 38 : (2009) 2 KCCR 1149

Hon'ble Judges : L. Narayana Swamy, J;K. Sreedhar Rao, J

Bench : Division Bench

Advocate : C. Shashikantha, for the Appellant; N. Dinesh Rao, AGA for R1 and R2 and Varadarajan, for R-3 to 5, for the Respondent

Final Decision : Dismissed

Judgement

K. Sreedhar Rao, J.—One Nagaraj, husband of the petitioner and his son Dhananjaya, aged about 11 years went to Tirupati along with R-3 to R-5 on 12-5-2007. The petitioner states that on 13-5-2007, R-3 informed the petitioner over telephone that her husband Nagaraj is missing. The petitioner requested him to trace her husband and also to give complaint if necessary. R-3 to R-5 returned to village from Tirupati on 13-5-2007 instead of the scheduled date 14-5-2007. R-3 returned Rs. 2,000/- cash to the petitioner which he had taken from Nagaraj. On enquiry made by the petitioner, the respondents were unable to give satisfactory answers.

2. It is stated that on 12-5-2007 R-3 to R-5, Nagaraj and his son Dhananjaya first went to a hotel in Majestic to have tiffin. Nagaraj while climbing the steps fell down and R-3 to R-5 with great difficulty lifted him and put him in the bus to Tirupati. The petitioner gave a complaint to R-2 on 28-5-2007 reporting the missing of her husband. The police did not take action. Hence she gave complaint on 31 -7-2007 by registered post. According to the petitioner, the police have not made any sincere efforts to trace Nagaraj. She further states that she has reason to suspect that R-3 to R-5 are responsible for the mysterious

missing of her husband.

3. The State has filed objections stating that the enquiries reveal two versions regarding the circumstance under which Nagaraj went missing. One version according to Dhananjaya, (son of the petitioner) is that R-2 to R-5 and Dhananjaya were travelling in the bus to Tirupati. In the morning when the bus reached Tirupati, R-3 to R-5 told him that Nagaraj is missing from the bus. However, himself and R-2 to R-5 went to the Hill top, had Dharshan and came back to the village.

4. The other version according to R-3 to 5 and one Anil Kumar, who had accompanied them to the pilgrimage shows that the missing person travelled with them and all of them went to the hill top. Nagaraj was reluctant to come for Dharshan and hence leaving him outside the temple, they went for Dharshan. When they returned they found that Nagaraj is not available. They searched for him in vain and came back to the village.

5. The Tirupati police have registered a UDR case against Nagaraj on 28-8-2007. The said case is still under investigation. The second respondent verified the records relating to the UDR cases registered with the Tirupati police regarding unnatural death and none of the case has any reference to the "missing Nagaraj". R-2 in the objections statement submits that the petitioner was taken along with them to several places to make sincere and bonafide efforts to trace the whereabouts of Nagaraj but without result. R-2 however states that efforts would be continued to trace the missing person.

6. Sri C Shashikanth, learned Counsel for the petitioner strenuously argued that the police have not made required efforts for tracing the missing person. They are indifferent to the complaint lodged by the petitioner. It is the constitutional duty of the State under Article 21 of the Constitution of India to take necessary efforts and help the person whose constitutional rights have been violated.

7. It is well settled that writ of habeas corpus can be invoked not only against the State but also against any individual who is holding any person in unlawful custody or detention. It is the duty of the Police in such circumstances to make necessary efforts to see that the detainee is got released. The court u/A.226 apart from issue a writ of habeas corpus is also empowered to issue necessary direction to remedy the grievance of the petitioner. In the case of a missing person, there is no absolute duty on the police to produce the missing person before the court under all circumstances without excuse.

8. In the Writ of Habeas Corpus the police have a duty to make an effective and sincere enquiry and investigation. Despite such efforts, if a person is not found, the police cannot be put under undue pressure to do the impossible.

9. In the present case after going through the enquiries and the investigation made by the Police we are satisfied that the police have made required investigation and enquiry about the missing person and the police at Tirupati

have also registered a case and have done investigation. Since the police have registered the case and are making bonafide efforts to trace the whereabouts, we do not find it desirable to keep this petition pending.

10. In that view, this petition is closed. R-2 is directed to make all necessary efforts to trace the whereabouts of the missing person.