
(2016) 03 P&H CK 0078
In the Punjab And Haryana At Chandigarh
Case No : CRWP No. 382 of 2016

Tahir Hasan

APPELLANT

Vs

State of Haryana & others

RESPONDENT

Date of Decision : 18-03-2016

Acts Referred:

Prevention of Cruelty to Animals Act, 1960 — Section 11

Citation : (2016) 3 RCRCriminal 253

Hon'ble Judges : Fateh Deep Singh, J.

Bench : Single Bench

Advocate : Munish Sharma, Asstt. Advocate General, Haryana, for the Respondent

Final Decision : Disposed Off

Judgement

Fateh Deep Singh, J. - Report of the Warrant Officer dated 17.03.2016 received. State does not intend to file any reply and relies on the facts detailed in this report.

Heard.

2. Petitioner is the unfortunate father of one Mustain, a young man aged around 27 years, a labourer by profession, who as per the contentions of the petitioner on 05.03.2016 around 9.00 a.m. had left his house for Shahbad (Haryana) for purchasing a buffalo for domestic needs and for which he had taken RS. 41,000 in cash with him. It is alleged by the petitioner that when his son did not return back in the evening, on 06.03.2016 he started searching for his son at various places including his relations and acquaintances and when he failed to do so he on 09.03.2016 lodged a report with Police Station Gangoh, District Saharanpur (UP), the native place of petitioner, by way of DDR (Annexure P2). It was during the course of events, as has been canvassed by the petitioner that on 11.03.2016 he from his acquaintances received information that on 05.03.2016 in the area of Shahbad they had seen Mustain in the company of Gurcharan

Singh, Salinder Singh and Bhisham Singh, respondents No.4 to 6 respectively. It is on the basis of this information, the petitioner on 12.03.2016 went to Police Station Shahbad, District Kurukshetra where on enquiry the police initially promised to release his son but thereafter did not provide him any information and rather abused the petitioner and threatened him and thus, apprehending that his son might have been eliminated by the police of Police Station Shahbad, had moved the office of Superintendent of Police, District Kurukshetra by way of complaint (Annexure P3) and hence sought prayer by way of writ petition for habeas corpus seeking production/release of his son from the alleged detention of Police Station Shahbad under respondents No.2 and 3.

3. This Court vide orders dated 16.03.2016 had appointed a Warrant Officer, who submitted his report. The same illustrates that an incident has taken place during the intervening night of 5th and 6th March, 2016 when members of Gau Raksha Dal headed by Harbhajan Singh son of Sarup Singh resident of village Dau Majra, District Kurukshetra along with others had accosted a vehicle make Mahindra Pick-up bearing registration No.UP-11T-9236 carrying five cattle and the members of the Gau Raksha Dal had blocked the road leading to firing of shots and that the occupants of the vehicle ran away, regarding which FIR No.124 dated 06.03.2016 under Section 11 of the Prevention of Cruelty to Animals Act read with Section 307 IPC and Section 25 of the Arms Act was registered at Police Station Shahbad.

4. The State did not prefer to file reply to the petition and has replicated and reiterated what has been detailed in the report of the Warrant Officer.

5. Appreciating the arguments of the two sides, what is evident from the averments of the petitioner and what is sought to be the stand of the State, what meets the eye is that certainly an incident during the intervening night of 5th and 6th March, 2016 has taken place in the area/jurisdiction of Police Station Shahbad, District Kurukshetra, in which so called vigilante group so constituted with the backing of political bosses and senior functionaries governing the State including police under the name and style of Gau Raksha Dal has sought to take law in its own hands. The local administration, be it the police or otherwise, by their muteness and connivance are allowing unleashing terror upon the persons carrying on such a trade in animals. It is not out of place to remark here that it has also come to the notice of this Court on earlier occasions that such like groups are bent upon circumventing law and fleecing poor persons who are ferrying their animals, be it for any personal/domestic use or otherwise. This is not the first instance that has come to the notice of this Court in the State of Haryana which is abound by such incidents where the State, which is supposed to follow rule of law and to give good governance, is looking the other way round.

6. Under Article 21 of the Constitution of India, there is nothing like "a right to life". The Hon'ble Apex Court in "State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat" AIR 2006 SC 212, had made the observations to the effect that the Court should guard zealously Fundamental Rights guaranteed to the citizens

of the society. The indolent attitude of the senior police officers on report being lodged is in itself suggestive of the role of police in this episode and apparently even the District Magistrate has failed to perform his duties. The mere assumption that the occupants of the vehicle were committing cruelty to animals by mere transporting them is wholly unjustified as Article 21 provides right to pursue and carry on a legitimate occupation. Thus such a restraint and by such a vigilante group which has no legal backing and authority, that too when a person is doing so within social order, this Court would not hesitate to hold that it is duty bound to act into the matter.

7. There are serious allegations against the private respondents as well as the official respondents whereby apparently a precious human life has been lost or done away with and which the local police and the administration in spite of being in knowledge of, are trying to hoodwink the law and rather acting as an impediment in its smooth implementation of due process of law.

8. Though the Courts needs to be slow in taking recourse to such a process of law but at the same time the Court cannot shut its eyes and allow the State police authorities to give fillip in such a way under the garb of protecting animals and rather it is detrimental to the social order as well as setting about a wild-west where brazen muscle power and force works, thus, undermining the law.

9. As has been conceded by the State that they have registered an FIR (Annexure "A") pertaining to this incident but nothing worth to convince this Court about fruitful results into this disappearance has come forth and rather from this stand, it elicits that there is a feigned attempt under this FIR to wash off the hands of such vigilante groups having backing of the local police and therefore, this Court has every apprehension that the local police would not only circumvent the law but would also not carry on fair and impartial investigation which this Court wants them to do.

10. Having regard to the fact that even representation of the petitioner to the Superintendent of Police of the District has not met with any response apparently reflects that even the senior functionaries of the police are hand-in-glove with such vigilante group, obviously to achieve the sinister design and pursuing a definite agenda and it appears that the local police may not carry on the investigations in the right earnest and seeking support from "Rubabbuddin Sheikh v. State of Gujarat" (2010) 2 SCC 200; "Subrata Chatteraj v. Union of India and others" (2014) 8 SCC 768; and "State of Punjab v. CBI" (2011) 9 SCC 182, this Court holds that it would be appropriate that the matter be handed over to an investigating agency of repute. Though this Court understands that even Central Bureau of Investigation (CBI) is flooded with such matters and with its constraints of manpower and paraphernalia but holding that such constitutional rights of an individual are over and above the same, this Court deems it necessary to direct independent investigations to be conducted by the CBI into the incident and circumstances leading to the disappearance of Mustain son of the petitioner.

11. In view of the peculiar facts and circumstances of the case, as even the private individuals who appear to be prima-facie involved are highly influential and cannot allow the investigating agency to proceed into the matter as there is apparently political backing as well and thus, not only to instil confidence of the people in the system but also to ensure credible investigations, an exceptional situation has arisen in this case which impels this Court and the Court is satisfied that extraordinary powers to transfer the investigation to the CBI exists in the present set of situation.

12. In the light of the same, let notice to the CBI through its Standing Counsel be issued for 9th May, 2016.