

(2000) 02 BOM CK 0060

In the Bombay High Court

Case No : Criminal Writ Petition No. 396 of 1997

Trimbak Sonwane

APPELLANT

Vs

The State of Maharashtra and others

RESPONDENT

Date of Decision : 29-02-2000

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 439
Penal Code, 1860 (IPC) — Section 34, 379, 511

Citation : (2000) 5 BomCR 665 : (2000) BomCR(Cri) 665 : (2001) CriLJ 3614 : (2000) 2 MhLj 498

Hon'ble Judges : D.S. Zoting, J; B.H. Marlapalle, J

Bench : Division Bench

Advocate : A.B. Kale, for the Appellant; K.B. Choudhary, Assistant Public Prosecutor, for the Respondent

Judgement

B.H. Marlapalle, J.—This is a petition filed under Article 226 of the Constitution of India praying for directions to pay compensation for keeping the petitioner in jail illegally for 43 days and thereby violating his right of personal liberty as guaranteed under Article 21 of the Constitution.

2. Crime No. 143/96 came to be registered against the petitioner for offences punishable u/s 379 and 511 read with section 34 of I.P.C. on 27-10-1996 and on investigation Regular Criminal Case No. 15/97 came to be registered against the petitioner for the same offences on 26-2-1997. Simultaneously Crime No. 144/96 was also registered against the petitioner and same came to be transformed into Sessions Case No. 64/97 before the Sessions Judge at Aurangabad. He had applied for bail in the sessions case and his application was rejected by the learned Sessions Judge on 3-4-97. He therefore, approached this Court and the bail application was allowed on 22-4-97 and he was directed to be released on bail u/s 439 of Criminal Procedure Code. He was directed to furnish bond as well as sureties and he could do so only on 18-6-1997 and on that day the learned Sessions Judge issued release order directing the respondent No. 2 to release the

petitioner on bail on that day itself. However, the petitioner was not released because Regular Criminal Case No. 15/97 was awaiting trial and finally on 29-8-1997 the said case was decided in an acquittal by the learned Judicial Magistrate, First Class at Gangapur.

3. In spite of the acquittal order passed on 29-8-1997 and though it was in the knowledge of respondent No. 2, the petitioner was not released on bail and he continued to be in jail. When he was produced before the Sessions Court on 10-10-97 he raised a grievance that he has been illegally detained and the learned Sessions Judge directed the petitioner to be released forthwith and in obedience thereto, the petitioner came to be released from the jail on 11-10-97 by respondent No. 2. The petitioner claims that he remained in jail for 43 days and this detention was illegal and was caused by the acts of respondents Nos. 2 and 3.

4. The respondent No. 3 being a Court Officer, this Court by order dated 16-2-1999 ordered an enquiry to be conducted by the District Judge. The learned District Judge has conducted an enquiry and submitted his report dated 18-1-2000. On perusal of the report we had called upon the learned A.P.P. to address us as to why the petitioner's claim for compensation should not be allowed and if allowed to what extent. Respondent No. 2 as well as the Jailor Group-I Shri D.K. Gute, who filed affidavit before this Court on 3-12-1997, are both present in the Court and they have been heard through the learned A.P.P.

5. The report as submitted by the District Judge, at Aurangabad reveals as under :-

a) Though release order dated 18-6-1997 was issued by the Additional Sessions Judge and it was served on respondent No. 2 on the same day, the petitioner was not released because he was required in R.C.C. No. 15/97 which was pending before the J.M.F.C., Gangapur awaiting trial. On 29-8-97 R.C.C. No. 15/97 pending before the J.M.F.C., Gangapur resulted into an acquittal. On that day petitioner was not produced before the Court which is evident from the remand warrant (annexure B) to the report. The learned J.M.F.C. on 29-8-97 made the following endorsement.

"Accused not produced today. The accused are acquitted. Hence, he be released forthwith if not required in any other case or crime." Below this endorsement there was an endorsement of the jail authorities specifically stating that the accused was released on 29-8-97. This intimation of acquittal of the accused had been promptly passed on to the jail authorities by the J.M.F.C. at Gangapur and was duly received and noted in the office of the respondent No. 2.

b) In the prison register entry in respect of Crime No. 144/96 was encircled and endorsed to the following effect:-

"Acquitted on 29-8-97 as per endorsement of R/W dt. 29-8-97."

The said endorsement bears two initials of the same date i.e. 29-8-97. Before

the learned District Judge, Shri Gute, had appeared and categorically stated that he received the warrant on 29-8-97 and he made endorsement on the same day."

c) The petitioner accused made an application before the J.M.F.C. through his Advocate on 22-9-97 stating therein that though, he was acquitted, the jail authorities had not released him and therefore, he prayed for release order being passed. The learned J.M.F.C. allowed this application and immediately informed the respondent No. 2 by letter dated 22-9-1997 that the accused had been acquitted on 22-8-97 and he should be released forthwith if he is not required in any other case. This letter was in addition to the endorsement on the remand warrant whereby the accused was directed to be released if not required in any other case.

d) It was stated by Shri Gute, before the District Judge, that though on 29-8-1997 itself he made an entry of acquittal, he did not release because he did not come to know whether bail in sessions case was cancelled since sessions case was pending.

e) In Sessions Case No. 64/97 the Additional Sessions Court had sought production of the accused on 21-7-97. He was produced before the Sessions Court on 27-8-97, 30-8-97, 12-8-97, 29-8-97, 16-9-97 and 30-9-97. On 10-10-97 when he had made an application before the learned Additional Sessions Judge for directions to release him forthwith, the jail authorities made an endorsement on the same day that there was no other case pending against the applicant-accused in the jail record and Court should issue a remand warrant. This endorsement clearly indicated that respondent No. 2 was aware of the necessity of remand warrant in contrasted with the production warrant. The plea as taken in the affidavit of Shri Gute, originally filed before this Court was as Sessions Case No. 64/97 was pending, the jail authorities presumed that he was required to be detained in view of the pendency of the said case. What was directed by the Court was the production of the accused before the Court of Sessions (production warrant).

f) The fault lies with the jail authorities entirely in not releasing the petitioner immediately after the acquittal order dated 28-9-97 was passed by the learned J.M.F.C. at Gangapur, and this was solely due to the carelessness of the jail authorities, more so when had failed to refer to their own prison register.

6. The learned District Judge concluded that the jail authorities were negligent in not acting on the directions of the Court as given from time to time and the petitioner was detained illegally from 30-8-1997 to 11-10-97 i.e. for period of 42 days.

7. The report of the District Judge clearly makes out a case that the petitioner was kept in jail without any authority of law and he ought to have been released on his acquittal in R.C.C. No. 15/97 which was decided by the learned J.M.F.C., Gangapur on 29-8-1997 and the right of the petitioner as guaranteed under Article 21 of the Constitution was violated solely due to the carelessness and

negligence on the part of respondent No. 2 and his subordinates. Shri Kale, learned Counsel appearing for the petitioner therefore, urged before this Court that it is a fit case to grant compensation of Rs. 1,00,000/- as prayed for.

8. In support of his contentions Shri Kale, had relied upon the judgments of the Supreme Court in the following cases.

- 1) Rudul Sah Vs. State of Bihar and Another,
- 2) Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others,
- 3) Severina Ribeiro " Cardinho (Mrs.) and Others Vs. Union of India (UOI) and Others,
- 4) State of Maharashtra and Others Vs. Ravikant S. Patil,
- 5) Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others,

He has also relied upon a judgment of this Court in the case of Chandrabhan Dhengle Vs. Indarbai Dhengle and others, .

9. In Chandrabhan's case a show cause notice was issued against him to show cause as to why he should not be ordered to execute a bond of Rs. 5,000/- with two sureties as in the opinion of the Special Executive Magistrate there was sufficient ground for proceeding against him u/s 109 and 110 of the Criminal Procedure Code, the Police had arrested him on the same day, he was kept in illegal custody i.e. in District Jail at Osmanabad from 25-4-95 till 26-6-95 and was released on 26-6-95 only when the respondent State authorities learnt that he was approaching this Court. While allowing his petition filed under Article 226 of the Constitution of India, a Division Bench of this Court. (A.D. Mane and D.D. Sinha, JJ.) upheld his contentions that he was deprived of his right under Article 21 of the Constitution and the State of Maharashtra was directed to pay a sum of Rs. 50,000/- to the petitioner by way of compensation. The State was permitted to recover the said amount proportionately from the officers concerned and in addition, departmental enquiry into the conduct of the said officers was also directed.

10. It is well established by a catena of decisions and the above cited enunciations amongst others that if the rights guaranteed under Article 21 of the Constitution have been denied by an illegal action by the State or by its officers, the person concerned is entitled for compensation though, the loss to the personal liberty or deprivation of personal liberty cannot be compensated in exact monetary terms. In Clerk and Lindsell on Torts (17th Edn., 1995) Para 12-17 false imprisonment is correctly defined as complete deprivation of liberty for any time, however short, without lawful excuse. It is common ground that false imprisonment is a type of trespass to the person and that it is actionable without proof of special damage.

11. In the instant case, as has been rightly observed by the learned District Judge, the petitioner was continued and kept in jail for about 42 days illegally

and in gross violation of the orders passed by the competent courts. The jail authorities have acted with sheer negligence in implementing the Court orders though, they were aware of these Court orders for the release of the petitioner on his acquittal on 29-8-1997. It is also equally evident that but for the directions given by the learned Additional Sessions Judge on 10-10-97 the jail authorities would not have released the petitioner on 11-10-97 and one does not know what could have been his fate, if he had not approached this Court. The case displays a very pathetic situation in the Aurangabad Central Prison, and we leave it for the wisdom of the concerned State authorities to take appropriate administrative actions to set the house right. Though the petitioner has claimed an amount of Rs. 1,00,000/- by way of compensation, we will have to consider his prayer to grant him some monetary compensation though, the learned Counsel for the petitioner has relied upon the judgment of this Court in Chandrabhan's case (supra).

12. The petitioner is an agricultural labour. By his illegal detention for about 42 days he lost his earnings and as per the Minimum Wages Act, applicable to the agricultural labour, he would have earned about Rs. 60/- to Rs. 75/- per day during this period. In addition we have to consider the fact that he was deprived of his personal liberty and his role as a family member to look after his wife and children. We have considered these factors only to work out a reasonable amount of compensation though as has been rightly submitted by the learned Counsel for the petitioner that the compensation amount cannot be equated with damages.

13. For the reasons stated in the foregoing paragraphs we allow the writ petition and direct the respondent No. 1 State of Maharashtra to pay an amount of Rs. 10,000/- by way of compensation to the petitioner for his illegal confinement in jail from 30-8-97 to 11-10-97. We further direct the State to recover the said amount from the salaries of the officers concerned and also to institute a departmental action as may be permissible under the Maharashtra Civil Services (Discipline and Appeal) Rules against the said officers. The amount of compensation be deposited in the Registry of this Court, within four weeks from today. The Additional Registrar of this Court to allow the petitioner to withdraw the said amount. Rule made absolute accordingly.

14. Parties to act on the basis of a Steno copy of this order duly authenticated by the Court Sherestedar.

15. Petition allowed.