

(2014) 04 KAR CK 0103
In the Karnataka High Court
Case No : WPHC No. 72 of 2014

Usharani

APPELLANT

Vs

The Commissioner of Police

RESPONDENT

Date of Decision : 24-04-2014

Acts Referred:

Constitution of India, 1950 — Article 136, 21, 226, 32
Penal Code, 1860 (IPC) — Section 201, 302

Citation : (2014) 3 AKR 677 : (2014) ILR 3312 : (2015) 2 KarLJ 511 : (2014) 4 KCCR 2982

Hon'ble Judges : N. Kumar, J;H. Billappa, J

Bench : Division Bench

Advocate : Shankarappa, Advocate for the Appellant; E.S. Indires, HCGP,
Advocate for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—This petition is filed by the wife for issue of a writ of habeas corpus directing the police authorities to produce her husband-Muniraju before this Court in person.

2. The averments in the writ petition in brief, are as under:-

The petitioner is permanently residing at Bharathi Layout, SG Palya, Bangalore. She is the wife of Sri Muniraju and they have three children by name (1) Priyanka, aged about 21 years studying third year B.E., at PES College, Banashankari, Bangalore; (2) Sneha, aged about 19 years, studying in first year BE., at PES College, Electronics City, Bangalore and (3) Prajwal Raj, aged about 9 years, studying in 4th standard in Christ School. The husband of the petitioner by name Muniraju is working at Madiwala as a mediator in auto consultancy and leading a happy life without any hurdles till the date of his whereabouts becoming unknown on 21.03.2014. The petitioner is residing with her husband and children for the last 20 years. On 21.03.2014, her husband left the house at about 11.30 am to Madiwala to his business place, close to his house by saying

that he will not come for lunch in the noon and would return home only in the evening. She waited till 9 p.m. When he did not turn up she gave a call to his mobile number 7411956899. The said mobile was switched off. She continued to give a call for more than half an hour. The mobile was not switched on. Therefore she was shocked and gave a call to all the relatives and friends and known people regarding the whereabouts of her husband. When she, her friends and relatives could not trace her husband, she lodged a complaint to the jurisdictional police (third respondent) on 23.3.2014 with all information and to take necessary action to find out the whereabouts of her husband. On her complaint, a case was registered in Crime No. 190/2014 and they assured her that her husband would be traced in two days. After two days, when she approached the police, they did not respond properly. Therefore, she requested her relative and cousin, Anand Kumar, Mahesh Charan, Arun Vardhan, who are all working for and studying in private concerns and colleges, to find out the call records of Muniraju. All of them requested third respondent to find out call logs, tower locations and voice records to trace the whereabouts of Muniraju. After five days, the police collected the call records of the mobile number of Muniraju. It was found that one Sri Gangadhar gave a call to Muniraju at 1.52 pm on 21.03.2014 and thereafter, it was switched off. From the call records, it was found that on the next day at about 9.51 a.m. it was switched on and it was switched off by 9.58 am. During the said time, the tower was located at Kodihalli, Paragi Mandal, Hindupur Taluk, Ananthpur District and therefore, the petitioner and her relatives requested the third respondent to act upon the investigation immediately by way of collecting the voice records and tower locations. The respondents did not show any interest. Because of the non co-operation of the police, she tried to lodge a complaint with respondent Nos. 1 and 2. However, the third respondent is threatening the petitioner and children not to go before respondent Nos. 1 and 2 and he has also threatened the petitioner saying that if she pursues further, she will face grave consequences. The third respondent Sri. Rajesh said that Muniraju was not a good person and owed money to several persons and let him go missing. He also said as to why he should go behind the said person unnecessarily. The third respondent, instead of searching for the missing person, is scolding the petitioner and her children, relatives and has not properly responded. It is a matter of one hour for the police to collect the voice records of the mobile of the missing person. But, the third respondent police has not collected the same even as on today nor tried to do the needful to trace the missing person. Therefore the petitioner and her relatives have printed pamphlets and circulated the same by mentioning the phone numbers of the petitioner and her relatives. Petitioner being aggrieved by the conduct of the police has filed this petition for a direction to the police to produce the missing person before the Court.

3. After service of notice, the police investigated the matter. The third respondent-Sri. Rajesh, Police Inspector of Mico Layout Police Station, Bangalore has filed an affidavit. He submits that the petitioner herein lodged a complaint

stating that her husband Sri Muniraju was missing from 21.03.2014 and the said complaint was filed on 23.03.2014 and accordingly, the Station House Officer registered FIR in Crime No. 190/2014 of Mico Layout Police Station. Immediately thereafter, information with regard to the details of the husband of the petitioner was taken and accordingly, the details were sent to all the Police Stations in the State of Karnataka. Thereafter, lookout notice was taken and the information was sent through E-Mail to all the Police Stations. The petitioner has stated that the said Muniraju is having mobile No. 7411956899 and the said mobile is switched off and he sought for the call details with regard to the aforesaid phone number and the said mobile is switched off since 22.03.2014. The last location found in the mobile was near bus stand, Kodihalli Village, Parigi Mandal, Ananthpur District, State of Andhra Pradesh. Thereafter, he sent A.S.I. Ramaiah to visit the Parigi Police Station and the said A.S.I., along with the officials of the Police Station, Parigi made thorough search in and around the Parigi Police Station and were not able to find any clue about the missing person.

4. He further submits that the occupation of Muniraju was Auto Consultation with the third parties. Accordingly, he interrogated the close associates of the said Muniraju viz., Vijay Kumar and Rajesh. On enquiry, it was found that the said Muniraju had visited the Sendil Labour Body Works Garage on 21.03.2014. Thereafter, he interrogated Sri Abdul Suban and sent his sub-ordinate officers to visit all the Mortuaries and to get information of all the UDRs in Bangalore and the same did not yield any information with regard to the whereabouts of the missing person. The brother-in-law of the said Muniraju one Narayan Swamy made a statement stating that the said Muniraju had availed loan to an extent of Rs. 64,000/- from one Manju, a resident of Nangli Village, near Mulabagal and in this regard, he sent HC 4704 Sri Shivanand, HC 5372 Shiva Kumar to Nangli Village to get information about the missing person and accordingly, the said Manju had given a statement that the Muniraju had borrowed Rs. 2 lakhs from him. On enquiry, it was found that the Muniraju had borrowed money from one Venugopal, a resident of K.R. Puram and accordingly, the statement of Venugopal was also taken on record and he has stated that the said Muniraju has borrowed Rs. 1 lakh from Mr. Venugopal. The petitioner has informed that her husband Muniraju is an alcoholic and there were certain disputes with regard to the financial matters in the house. Muniraju is constructing house in Bovi Colony, Tavarekere and the said construction is under progress and in this regard, he has availed loan to complete the construction work. On verification of the call details of the said Muniraju, he found that the last call was made to one Gangadhar and accordingly, he obtained the address of the said Gangadhar and the statement of Gangadhar was recorded. It revealed that the Muniraju had requested the said Gangadhar to make arrangements for Rs. 5,000/- and in this regard, pursuant to the telephonic conversation, he came to Tavarekere Main Road bus stop near Chikka Adugodi Bus Stop and thereafter, he tried to contact Muniraju on his mobile, but it was switched off. Accordingly, he has no contact with Muniraju. He also recorded the statement of Sri Siddique and Sathyanarayana Reddy, who are

the close associates of Muniraju and in this regard, Siddique has revealed that the said Muniraju has borrowed money from one Vishwas and others and repayment has not yet been made. The said Sathyanarayana Reddy has stated that Muniraju had informed him that he was not getting well and therefore he was staying in his residence. He sent PC 2235 Sri Raghavendra to collect information in respect of UDRs along with the details of the missing person. Accordingly, he visited Victoria Hospital, Bowring Hospital and Ambedkar Hospital, but could not get any information about the missing person. He also recorded the statement of said Vishwas and he has stated that the Muniraju has borrowed money from him and the balance amount payable is Rs. 30,000/-. He further stated that Muniraju was in the habit of borrowing money from his friends in the guise of doing Auto Consultant business. One of the associates of the said Muniraju, Manjunath has reiterated the same. On 31.03.2014, he sent PC 12235 along with details of the detenues to visit all the Police Stations in Tumkur City and in this regard, thorough enquiry was made in the Police Stations in Tumkur City and also he had visited the residence of the said Muniraju and on enquiry, it was found that the said Muniraju was constructing of the house and on certain occasions, he had left the house without informing the family members. The photograph along with the details of Muniraju was notified in different places viz., bus stand, Restaurants, malls in Bangalore City and such other places.

5. The above writ petition was listed before this Court on 11.4.2014 and this Court was pleased to direct the Police Authorities to investigate the matter seriously, since the petitioner had made out certain allegations against the Police Officers in not conducting the investigation in accordance with law and expeditiously. Third respondent took up the investigation seriously and watched the movements of the petitioner, and during the course of investigation, he found that the petitioner was in frequent connection with one Mahesh and Suresh. On 21.4.2014, he made a thorough enquiry with the petitioner and during the course of investigation, the petitioner revealed that, on 21.3.2014 she made her husband to drink butter milk and further she had put sleeping tablets into the butter milk and when her husband was in sleep, she called Mr. Mahesh and Suresh to her house between 12.00 midnight and 1.00 a.m., and she murdered her husband and the dead body was carried to Appusandra Village at Hoskote by Tata Indica Car and all three of them poured 5 liters of petrol on the and put fire to the dead body and returned home. She further revealed that with an intention to see none would suspect her for his illegal act, she had sent the Mobile of her deceased husband to Parigi Mandal Town in Ananthpur District, State of Andhra Pradesh. He took the petitioner to the place where the body was burnt i.e., near Appusandra Village, Hoskote Taluk and collected the skull, teeth etc., and they have been seized and sent to Forensic Lab for further investigation. All three accused persons were arrested and produced before the VI A.C.M.M. in Crime No. 265/2014 for the offences punishable under Sections 302 and 201 of IPC on 22.04.2014 and the Hon'ble Court was pleased to remand the petitioner/accused No. 1 to judicial custody and accused Nos. 2 and 3 to Police custody. Along with

his affidavit, the third respondent has produced all the statements recorded by him and other supporting documents.

6. From the aforesaid facts, it is clear that it is not the case of the petitioner that her husband was detained illegally either by the police or by any other person. She had lodged a missing complaint with the jurisdictional police. Police were not prompt in investigation. On the contrary, they are blaming her and therefore she wanted this Court to direct the police to search the missing person and produce him before the Court.

7. Recently, we have noticed, a marked raise in the missing complaints being converted into a Habeas Corpus Writ Petition. When Court orders notice to the respondents, the entire Government machinery is set in motion to search the said missing person. Now the question for consideration is this extra-ordinary writ of habeas corpus, is meant for that purpose. Therefore, it is necessary to notice the law dealing with writ of Habeas Corpus.

8. In Halsbury's Laws of England, it is stated thus:

"The writ of habeas corpus ad subjiciendum" unlike other writs, is a prerogative writ, that is to say, it is an extraordinary remedy, which is issued upon cause shown in cases where the ordinary legal remedies are inapplicable or inadequate. This writ is a writ of right and is granted ex debito justitiae. It is not, however, a writ of course. Both at common law and by statute, the writ of habeas corpus may be granted only upon reasonable ground for its issue being shown. The writ may not in general be refused merely because an alternative remedy by which the validity of the detention can be questioned. "Any person is entitled to institute proceedings to obtain a writ of habeas corpus for the purpose of liberating another from an illegal imprisonment and any person who is legally entitled to the custody of another may apply for the writ in order to regain custody. In any case, where access is denied to a person alleged to be unjustifiably detained, so that there are no instructions from the prisoner, the application may be made by any relation or friend on an affidavit setting forth the reason for it being made.

9. In Corpus Juris Secundum, the nature of the writ of habeas corpus is summarized thus:-

"The writ of habeas corpus is a writ directed to the person detaining another, commanding him to produce the body of the prisoner at a designated time and place with the day and cause of his caption and detention to do, submit to, and receive whatsoever the court or judge awarding the writ shall consider in that behalf." "Habeas corpus" literally means "have the body". By this writ, the court can direct to have the body of the person detained to be brought before it in order to ascertain whether the detention is legal or illegal. Such is the predominant position of the writ in the Anglo-Saxon Jurisprudence.

10. In Constitutional and Administrative Law by Hood Phillips & Jackson, it is

stated thus:

The legality of any form of detention may be challenged at common law by an application for the writ of habeas corpus. Habeas corpus was a prerogative writ, that is, one issued by the King against his officers to compel them to exercise their functions properly. The practical importance of habeas corpus as providing a speedy judicial remedy for the determination of an applicant's claim for freedom has been asserted frequently by judges and writers. Nonetheless, the effectiveness of the remedy depends in many instances on the width of the statutory power under which a public authority may be acting and the willingness of the Courts to examine the legality of decision made in reliance on wide-ranging statutory provision. It has been suggested that the need for the "blunt remedy" of habeas corpus has diminished as judicial review has developed into an ever more flexible jurisdiction. Procedural reform of the writ may be appropriate, but it is important not to lose sight of substantive differences between habeas corpus and remedies under judicial review. The latter are discretionary and the court may refuse relief on practical grounds; habeas corpus is a writ of right, granted *ex debito justitiae*.

11. The ancient prerogative writ of habeas corpus takes its name from the two mandatory words "habeas" and "corpus". "Habeas Corpus" literally means "have his body". The general purpose of these writs as their name indicates was to obtain the production of the individual before a court or a judge. This is a prerogative process for securing the liberty of the subject by affording an effective relief of immediate release from unlawful or unjustifiable detention, whether in prison or in private custody. This is a writ of such a sovereign and transcendent authority that no privilege of power or place can stand against it. It is a very powerful safeguard of the subject against arbitrary acts not only of private individuals but also of the Executive, the greatest safeguard for personal liberty, according to all constitutional jurists. The writ is a prerogative one obtainable by its own procedure. In England, the jurisdiction to grant a writ existed in Common Law, but has been recognized and extended by statute. It is well established in England that the writ of habeas corpus is as of right and that the court has no discretion to refuse it. Unlike certiorari or mandamus, a writ of habeas corpus is as of right to every man who is unlawfully detained. In India, it is this prerogative writ which has been given a constitutional status under Articles 32 and 226 of the Constitution. Therefore, it is an extraordinary remedy available to a citizen of this Country, which he can enforce under Article 226 or under Article 32 of the Constitution of India.

12. It is the duty of the Court to issue this writ to safeguard the freedom of the citizen against arbitrary and illegal detention. Habeas corpus is a remedy designed to facilitate the release of persons detained unlawfully, not to punish the person detaining and it is not, therefore, issued after the detention complained of has come to an end. It is a remedy against unlawful detention. It is issued in the form of an order calling upon the person who has detained

another, whether in prison or in private custody, to "have the body" of that other before the Court in order to let the Court know on what ground the latter has been confined and thus to give the Court an opportunity of dealing with him as the law may require. By the writ of habeas corpus the Court can cause any person who is imprisoned to be brought before the Court and obtain knowledge of the reason why he is imprisoned and then either set him free then and there if there is no legal justification for the imprisonment, or see that he is brought speedily to trial. Habeas Corpus is available against any person who is suspected of detaining another unlawfully and not merely against the police or other public officers whose duties normally include arrest and detention. The Court must issue it if it is shown that the person on whose behalf it is asked for is unlawfully deprived of his liberty. The writ be addressed to any person whatever-an official or a private individual-who has another in his custody. The claim (for habeas corpus) has been expressed and pressed in terms of concrete legal standards and procedures. Most notably, the right of personal liberty is connected in both the legal and popular sense with procedures upon the writ of habeas corpus. The writ is simply a judicial command directed to a specific jailer directing him or her to produce the named prisoner together with the legal cause of detention in order that this legal warrant of detention might be examined. The said detention may be legal or illegal. The right which is sought to be enforced by such a writ is a fundamental right of a citizen conferred under Article 21 of the Constitution of India, which provides:

21. Protection of life and personal liberty.-No person shall be deprived of his life or personal liberty except according to procedure established by law.

13. If a prima facie case is shown that a man is unlawfully detained, it is for the one who detains him, to make a return justifying it. After the detinue is brought before the Court, the Court can examine the validity of the detention and if he is illegally detained, the Court has no option except to direct release. If he is validly detained, the question of issuing a writ of habeas corpus would not arise. Its object is not the punishment of the wrongdoer but to secure the release of the prisoner without which he may not be in a position to pursue his legal remedies against the wrongdoer. It is essentially a procedural writ and its proceeding is summary. Therefore, the condition precedent for presenting a petition for habeas corpus is the person for whose release, the petition is filed must be in detention. He must be under detention by the authorities or by any private individual. It is the "detention" legal or illegal which gives the cause of action for maintaining the writ of Habeas Corpus. If the averments in the Writ Petition read as a whole do not disclose the detention, in other words, there is no allegation of illegal detention, the Writ Petition is liable to be rejected in limine. The principles of Order VII Rule 11 CPC equally apply to a writ of Habeas Corpus. However, in the case of minor girls, or young women who are kidnapped by persons in the business of trafficking in women for the purpose of forcing them to prostitution, may be the parents would not be in a position to specifically give the details of the persons who have detained them or they may not be knowing the reason for

missing of their wards. In such cases, on that ground the relief cannot be denied. It would be an exception to the aforesaid rule.

14. In this case, nowhere in the petition it is stated that the petitioner's husband is detained either by the police authorities or by any other person. On the contrary, the grievance is that after he left the house, he has not returned home. Efforts are made to trace. Police complaint is lodged. Police are not taking prompt action in searching for him. It is not a case of illegal detention of the detainee by the police or by any private persons. Therefore, the allegations in the petition would not constitute a cause of action for maintaining a petition for habeas corpus. This extraordinary remedy is abused frequently for ulterior purposes. It is time this tendency is checked and the mischief is nibbed in the bud. Otherwise it may go haywire.

15. What is abuse of the process of the Court was" the subject matter of a decision of the Apex Court in the case of *Kishore Samrite Vs. State of U.P. and Others*, . After reviewing the entire case law, the Apex Court has laid down the following principles which constitute the abuse of process of court:-

32. The cases of abuse of process of court and such allied matters have been arising before the courts consistently. This Court has had many occasions where it dealt with the cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while approaching the court for redressal of any grievance and the consequences of abuse of process of court. We may recapitulate and state some of the principles. It is difficult to state such principles exhaustively and with such accuracy that would uniformly apply to a variety of cases. These are:

32.1. Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the courts, initiated proceedings without full disclosure of facts and came to the courts with "unclean hands". Courts have held that such litigants are neither entitled to be heard on the merits of the case nor are entitled to any relief.

32.2. The people, who approach the court for relief on an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where then litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.

32.3. The obligation to approach the court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.

32.4. Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have overshadowed the old ethos of litigative values for small gains.

32.5. A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or

final.

32.6. The court must ensure that its process is not abused and in order to prevent abuse of process of court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the court would be duty-bound to impose heavy costs.

32.7. Wherever a public interest is invoked, the court must examine the petition carefully to ensure that there is genuine public interest involved. The stream of justice should not be allowed to be polluted by unscrupulous litigants.

32.8. The court, especially the Supreme Court, has to maintain the strictest vigilance over the abuse of process of court and ordinarily meddlesome bystanders should not be granted "visa". Many societal pollutants create new problems of unredressed grievances and the court should endure to take cases where the justice of the lis well justifies it.

33. Access jurisprudence requires courts to deal with the legitimate litigation whatever be its form but decline to exercise jurisdiction, if such litigation is an abuse of process of court. In *P.S.R. Sadhanantham Vs. Arunachalam and Another*, , the Apex Court held in para. 15 as follows:-

15. The crucial significance of access jurisprudence has been best expressed by Cappelletti:

The right of effective access to justice has emerged with the new social rights. Indeed, it is of paramount importance among these new rights since, clearly, the enjoyment of traditional as well as new social rights presupposes mechanisms for their effective protection. Such protection, moreover, is best assured to be a workable remedy within the framework of the judicial system. Effective access to justice can thus be seen as the most basic requirement the most basic "human-right"-of a system which purports to guarantee legal rights.

16. We are thus satisfied that the bogey of busybodies blackmailing adversaries through frivolous invocation of Article 136 is chimerical. Access to justice to every bona fide seeker is a democratic dimension of remedial jurisprudence even as public interest litigation, class action, pro bono proceedings, are. We cannot dwell in the home of processual obsolescence when our Constitution highlights social justice as a goal. We hold that there is no merit in the contentions of the writ petitioner and dismiss the petition.

34. It has been consistently stated by this Court that the entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties, as truth is the basis of the justice-delivery system.

35. With the passage of time, it has been realized that people used to feel proud to tell the truth in the courts, irrespective of the consequences but that practice no longer proves true, in all cases. The court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who

has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. Therefore, the truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the courts to become active seekers of truth. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood, must be appropriately dealt with. The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the court with clean hands. It is the bounden duty of the court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the court must ensure that there is no wrongful, unauthorized or unjust gain to anyone as a result of abuse of process of court. One way to curb this tendency is to impose realistic or punitive costs.

16. Therefore, it is clear that, access to justice to every bona fide seeker is a democratic dimension of remedial jurisprudence even as public interest litigation, class action, pro bono proceedings, are. Effective access to justice can thus be seen as the most basic requirement, the most basic "human-right" of a system which purports to guarantee legal rights. Access jurisprudence requires courts to deal with the legitimate litigation whatever be its form but decline to exercise jurisdiction, if such litigation is an abuse of process of court. It is the bounden duty of the court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the court must ensure that there is no wrongful, unauthorized or unjust gain to anyone as a result of abuse of process of court. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood, must be appropriately dealt with. One way to curb this tendency is to impose realistic or punitive costs.

17. In the light of the said statement of law by the Apex Court and in the facts of this case, we are satisfied; that the petitioner has made an attempt to over-reach the Court. If ultimately what the police say is true and proved in a Court of law after trial, it is clear that by initiating this proceeding, the petitioner is not only trying to shield herself, but also has attempted to mislead the police. It is our experience that this type of frivolous petitions in the recent days is on the rise. Because it is a habeas corpus petition and the personal liberty of a citizen is involved, this court being the Constitutional Court has to reach out to the rescue of those innocent people. We are giving top priority to these cases. We are putting pressure on the police to investigate and secure and release these persons. But we find from our experience that in most of the cases, there is no cause much less sufficient cause for the parties to approach this Court. Litigants and members of the bar appear to have not understood the importance and seriousness of this extraordinary writ of habeas corpus. It is high time that we have to send a clear message, that the Courts will not encourage such litigants and tolerate such abuse of the judicial process. To curb this tendency as held by

the Apex Court we have to impose realistic and punitive costs.

18. In that view of the matter, we are of the view that it would be proper to dismiss this petition by imposing cost of Rs. 1,00,000/- on the petitioner, who has approached this Court with unclean hands by suppression of true facts. If the cost is not deposited in Court within one month from today, the High Court Registry shall send the papers to the Deputy Commissioner for recovery of the said amount as land revenue.

Accordingly petition is dismissed.