

(1990) 12 MP CK 0033
In the Madhya Pradesh High Court
Case No : M.P. No. 2652 of 1990

Vijay Krishna Yogi and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 04-12-1990

Acts Referred:

Constitution of India, 1950 — Article 19, 20, 21, 22, 226

Criminal Procedure Code, 1973 (CrPC) — Section 107, 116(3), 151, 151(2)

Citation : (1991) JLJ 169 : (1991) MPJR 90

Hon'ble Judges : Shacheendra Dwivedi, J; R.C. Lahoti, J

Bench : Division Bench

Advocate : Vijay Krishna Yogi, for the Appellant; S.B. Mishra, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Shacheendra Dwivedi, J.

This is a petition for habeas corpus under Article 226 of the Constitution of India, sent by the Petitioners from Jail on 31.10.1990, praying for a direction that they be produced before this Court and since their detention is illegal, they be ordered to be set at liberty- It has further been prayed that any other suitable order in the interest of justice may be passed.

The petition dated 31.10.1990 was received in the office on 31.10.1990 itself and was placed before the Court on 1.11.1990. Thereon, order was passed directing issuance of rule "nisi" to the Superintendent, Central Jail, Gwalior, to produce the Petitioners -- several in number -- in Court on 7.11.1990.

When the matter came up for hearing on 7.11.1990, a report was sent by the Superintendent, Central Jail, Gwalior, submitting that the Petitioners were released on 31.10.1990, itself, by the order of the Executive Magistrate, Gwalior.

Out of several Petitioners, one Petitioner, Shri V.K. Yogi, who is also an Advocate of this Court, appeared in Court and submitted orally that the detention of the

Petitioners was illegal and that they are entitled for compensation from the State.

The fact that the Petitioners were released on 31.10.1990, by the Order of the Executive Magistrate, Gwalior is not disputed. The petition does not disclose as to on which date and at what time, the Petitioners were taken in custody. But the report, received from Central Jail, Gwalior, on 7.11.1990 makes a mention that the Petitioners so arrested were kept in judicial custody on 29.10.1990. Time of arrest has not been given in the report and the petition is silent even about the date of arrest. The above report shows that the Petitioners were detained under Sections 151, 107 and 116(3) of the Code of Criminal Procedure, 1973. Mr. V.K. Yogi has mainly submitted that though all the Petitioners have been released, their arrest was illegal, not justified under law and their personal liberty having been jeopardised, they are entitled to be compensated. In his oral submissions, Petitioner, Mr. V.K. Yogi, referred to the cases of A.K. Gopalan Vs. The State of Madras, A.K. Gopalan Vs. The Government of India, Supdt., Central Prison Fatehgarh and Anr. v. Dr. Ram Manohar Lohiya AIR 1960 SC 663 and Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others,

It is not disputed that the Petitioners have all been released from Jail and are no more in custody. It is also not in dispute that they all were arrested on 29.10.1990 and have been released on 31.10.1990. The only question for consideration, now, as submitted by Petitioner, Mr. V.K. Yogi, is whether the arrest and detention of the Petitioners was illegal and if that be so, are they entitled to any compensation.

The petition was made to the Jail Authorities for being submitted to this Court on 31.10.1990 and when the case was placed before this Court on 1.11.90, all the Petitioners were no more in custody, but this fact was not brought to the notice of this Court and rule nisi was directed to be issued against Supdt. Central Jail, Gwalior, on 1.11.1990, when the Petitioners were no more in custody. As the Petitioners were not in custody, even on the date, on which rule nisi was ordered to be issued, i.e. 1.11.1990, the petition for habeas corpus was infructuous. Yet, the question, whether Petitioners' arrest was illegal or not, survives for consideration of this Court. If the arrest of the Petitioners is found to be illegal, violating the procedure established by law, their mere release from custody would not disentitle them from claiming compensation.

Personal liberty of a citizen having been guaranteed and protected under Articles 19 - 22 of the Constitution, and it being the basis of all fundamental rights, utmost importance has been attached to this right, which cannot be lightly taken away or abridged. Article 21 of the Constitution provides that:

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

In A.K. Gopalan Vs. The State of Madras, it is held that:

Procedure established by law "means procedure prescribed by the law of the

State. These words are to be taken to refer to a procedure which has a statutory origin, for no procedure is known or can be said to have been established by such vague and uncertain concepts as "immutable and universal principles of natural justice."

Personal liberty has been subjected to reasonable restrictions and when a person is arrested. Clauses (1) and (2) of Article 22 of the Constitution, come into play, providing procedure to be followed. Thereunder four rights are ensured:

- (a) to know the reasons for his arrest and to be informed of the grounds of such arrest;
- (b) a right to be defended and a right to consult a legal practitioner;
- (c) to get himself produced before a Magistrate within a period of 24 hours; and
- (d) a right of freedom from detention beyond 24 hours, unless there be an order of the Magistrate.

The personal liberty of a citizen cannot be hampered without due process of law. In our democratic set-up, any attempt to curtail this right, must be viewed with all strictness by the Courts.

In the instant case, the Petitioners allege that they were arrested u/s 151 Code of Criminal Procedure. However, the report submitted by the Superintendent of Central Jail, Gwalior, mentioned above, shows that they were kept in judicial custody under Sections 151, 107 and 116(3) of the Code of Criminal Procedure. However, Section 151(2), Code of Criminal Procedure provides that:

No person arrested under Sub-section (1) shall be detained in custody for a period exceeding twenty-four hours from the time of his arrest unless his further detention is required or authorised under any other provisions of this Code or of any other law for the time being in force.

Under the provision of Clause (2) of Section 151, Code of Criminal Procedure, the Petitioners could not have been kept in custody for more than 24 hours, except with the aid of Section 107 and 116(3) of Code of Criminal Procedure. The Petitioners have not shown any ground or circumstances and have not filed any document on record to support their allegation of illegality of their detention. Their bare assertion would not go to establish that their arrest u/s 151, Code of Criminal Procedure, was illegal, or that their detention by the application of provisions of Sections 107 and 116(3), Code of Criminal Procedure, was not warranted under the law.

In the case of *Supdt., Central Prison v. Dr. Ram Manohar Lohiya* (supra) their Lordships of the Supreme Court were not dealing with the like situation. In that case, the question was whether the "Grounds for Detention" were within the purview of "reasonable restrictions" which could be imposed on fundamental rights. In that case, it was observed that for a legislation, which seeks to restrict purview of fundamental rights, must be "reasonable" and in order to be

reasonable, restrictions must have reasonable relations to the object, which the legislation seeks to achieve and must not go in excess of that object. In F.B. decision on Hon'ble Federal Court in Rex v. Basudeva AIR 1950 FC 67, Patanjali Shastri, J., as he then was, pointed out that:

activities such as these are so remote in the chain of relation to the maintenance of public order that preventive detention on account of them cannot, in our opinion, fall within the purview of entry I of list II....

The connection contemplated must, in our view, be real and proximate, not far-fetched or problematical.

In the present case, there is no challenge to the substantive law and no procedural defect or illegality has been shown. Court can interfere when deprivation of liberty is otherwise than in accordance with procedure established by law.

The legality of arrest and detention u/s 151, Code of Criminal Procedure, came to be considered by this Court in Dongarwal's case 1961 J LJ 1378 : 1961(2) Cr LJ 875. When there be a situation which creates a reasonable apprehension in the minds of the police officers on duty that there is danger to commit a cognizable offence, the arrest is for the prevention of offence. Sections 151, 107 and 116 Code of Criminal Procedure are the preventive measures and fall within the purview of "reasonable restriction". The detention under Code of Criminal Procedure is evidently different from detention under laws made for preventive detention. This Court in Dongarwal's case (supra) found that:

...at times it may turn out that a person arrested u/s 151, Code of Criminal Procedure, does not design or prepare to commit a cognizable offence and the police are mistaken, even then, if the police are acting under an honest impression or on data and appearance, and from which a reasonable man would infer the design or possibility of the commission of a cognizable offence, then arrest is justified.

No such circumstances have been brought on record nor effort has been made to show that the Petitioners were not liable to arrest. No procedural defect has been pointed out to show that arrest or detention thereafter, was illegal and unconstitutional.

The State could only be saddled with compensation when its action was not justified and was illegal. In Bheemsingh's case (supra), the circumstances were brought out and it was established that the initial arrest and thereafter the detention was illegal and unconstitutional. He was detained without being produced before the Magistrate and the mala fide intention in the background of his detention was also shown. There being no such situation in this case, the case cited above is of no help to the Petitioners. Similarly, the other cases on the point, viz., Rudul Sah v. State of Bihar and Anr. AIR 1983 SC 1986 and Sebastian M. Hongray v. Union of India AIR 1984 SC 1026, have no bearing on the present

case.

On the above discussion and in the facts and circumstances, in our opinion, no case is made out establishing the arrest of the Petitioners and their detention as illegal and unjustified, justifying a claim for compensation.

The Petitioners have already been released, and as such rule "nisi is discharged and the petition being without merit is dismissed. No order as to costs.