

INDER SINGH
v.
STATE OF PUNJAB AND ORS.

SEPTEMBER 15, 1994

[M.N. VENKATACHALIAH CJ, DR. A.S. ANAND
AND S.P. BHARUCHA, JJ.]

Constitution of India, Articles 21 and 32—Habeas Corpus—Senior Punjab Police Officer abducting seven persons—Case against officer registered after long lapse of time—Abducted persons remaining untraced—Investigation by Central Bureau of Investigation into abduction order.

Constitution of India, Article 32—Habeas Corpus Petition—Abduction of seven persons by senior police officer—Persons remaining untraced—Chargesheet against officer filed—Whether petition became infructuous—Held, no; on receipt of report court can also order compensation to next of kin of abducted persons.

In reply to a Habeas Corpus petition filed by the petitioner in July, 1994 the State of Punjab admitted that the third respondent, a senior officer of the Punjab Police and six other policemen had abducted the father, brother, son and four nephews of the petitioner in October, 1991 using official machinery.

In a separate affidavit the Director General of Police, Punjab stated that despite best efforts the seven persons could not yet be located. He admitted that although the petitioner's complaint had been received in January, 1992, a FIR had been lodged only in March, 1994 and thereafter chargesheet was filed to prosecute the third respondent and other policemen who were in judicial custody. It was asserted that trial would commence soon and the guilty punished, and that the writ petition had accordingly become infructuous.

Negating the contention, this Court

HELD : 1.1. An independent investigation at a very high level is called for. The inquiry shall be conducted personally by the Director of the Central Bureau of Investigation and he shall make a report to the Court

A within four weeks. Considering the leisurely manner in which the Punjab Police has acted upon the complaint, it is not unreasonable to conclude that the investigations by the Punjab Police will lead nowhere.

[581-C, 581-F, 580-C]

B 1.2. The investigation shall cover the circumstances of the abduction, the present whereabouts and whether there has been an attempt to cover-up the misdoings of police officers. [581-C, E]

1.3. The safety of the citizenry at the hands of such an errant, high-handed and unchecked police force is a cause for deep concern. [580-D]

C 2. The contention that the Writ Petition had become infructuous is outrageous. The Court will be free to make such orders after the receipt of the CBI report including orders for payment of compensation to the next of the kin of the seven persons. [580-F, 582-A, B]

D CRIMINAL ORIGINAL JURISDICTION : Writ Petition (Crl.) No. 221 of 1994.

(Under Article 32 of the Constitution of India.)

E K.T.S. Tulsi, Additional Solicitor General and R.S. Suri for the Petitioner.

R.S. Sodhi and Mukul Mudgal for the Respondents.

The following Order of the Court was delivered :

F This is a very disturbing matter. It is an habeas corpus petition to secure the release of Sadhu Singh, Gurdeep Singh, Amanjit Singh, Hardev Singh, Davinder Singh, Sukhdev Singh and Sharanjit Singh. It is filed by Inder Singh, who is the son of Sadhu Singh, the brother of Gurdeep Singh, the father of Hardev Singh and the uncle of Amanjit Singh, Davinder Singh, Sukhdev Singh and Sharanjit Singh, Sadhu Singh is said to about 85 years old and Sukhdev Singh and Sharanjit Singh to be about 17 and 14 years old respectively.

H It is the case of the petitioner that at or about 5.00 a.m. on 29th October, 1991, a police party under the command of Baldev Singh, D.S.P., who is the third respondent to the petition, came to his residence and directed that all those present be lined up in its courtyard. The third

respondent then ordered that the 7 persons in respect of whom the petition is filed be taken into custody. The police party accompanying the third respondent, accordingly, took the said 7 persons into custody and placed them in a police van (No. PB-06-3100). The petitioner and his family were told that they would be given the dead bodies of the said 7 persons if the third respondent's brother was not produced. The petition sets out the various police stations in which the said 7 persons were from time to time lodged until 28th December, 1991. The petition states that efforts to obtain the release of the said 7 persons having failed, the habeas corpus petition had been filed on 27th July, 1994.

The third respondent, who appeared before us through counsel on 30th August 1994 and today, has filed an affidavit in reply to the petition on 23rd August, 1994. Therein he denies the allegations made against him in the petition. He states therein that an FIR has been lodged in regard to the abduction of the said 7 persons on 23rd March, 1994, in P.S. Kathunagal, District Majitha, which is under investigation by Gurcharan Singh, Superintendent of Police In Charge, Crime Investigation Cell, Punjab. He states that on 21st October 1991 he was posted as D.S.P., Dera Baba Nanak Sub-Division in District Batala, and the residence of the petitioner fell outside his jurisdiction. He also states that he is cooperating in the investigation of the said FIR.

The FIR is annexed to the affidavit of the third respondent and it says that the fourth respondent, who is alleged to have been part of the police party, is the brother of the third respondent.

Mr. K.T.S. Tulsi, learned Additional Solicitor General, appearing on behalf of the State of Punjab and K.P.S. Gill, Director General of Police, Punjab, the first and second respondents to the petition, made a submission before us on 30th August 1994, which is recorded thus :

"We record the statement of Sri K.T.S. Tulsi, Addl. Solicitor General appearing for Respondent Nos. 1 & 2, that the investigations have revealed that Respondent No. 3, the Deputy Superintendent of Police, was guilty of causing the abduction of the seven persons in 1991 in complicity with other policemen and that the investigations have not yet revealed whether the abducted persons are alive or have been killed by Respondent No. 3 and his police accomplices. It is also submitted that the Police are placing a

A charge-sheet against the third respondent and other police officers concerned. It is also stated that the third respondent is absconding."

B Mr. Tulsi then submitted that this was a rare case in which the Punjab Police admitted that one of its officers had been guilty of abducting citizens and that the Punjab Police should, therefore, be trusted to carry out the investigations into the matter thoroughly. He sought to file an affidavit in this behalf.

C It is amply clear from the submissions of Mr. Tulsi referred to above and the affidavits to which we shall now advert that the said 7 persons were not wanted by the Punjab Police in connection with any criminal offence or inquiry.

D An affidavit has not been filed on behalf of the State of Punjab, the first respondent to the petition. It states that the statement of the petitioner was recorded on 22nd May, 1994. The said FIR had been registered and that, during investigations, offences under sections 143, 147, 149, 365 and 452 of the Indian Penal Code had been added. Eye witnesses had named, apart from Baldev Singh, the third respondent, the following persons :
 E Balwinder Singh, Head-constable, the 4th respondent, Sukhwinder Singh, Head-constable, Nirmal Singh, Constable, Amrik Singh, Constable, Gurmukh Singh, Constable and Radhir Singh as Driver. The third respondent had been arrested on 2nd September, 1994 and the other accused between 27th August 1994 and 4th September 1994. Sufficient evidence had been collected against the accused. All the accused were in judicial custody. The
 F specific allegations in the petition that the said 7 persons had been lodged in the various police stations mentioned until 28th December, 1991, is not denied.

G The affidavit of K.P.S. Gill, Director General of Police, Punjab, the 2nd respondent to the petition, needs to be set out in some detail. He states that he was not the Director General of Police, Punjab, on 29th October 1991, when the incident of abduction of the said 7 persons took place. Upon enquiry, Mr. Tulsi stated that the 2nd respondent had taken charge as Director General of Police, Punjab, in November 1991. The 2nd respondent was, therefore, the Director General of Police, Punjab, on 25th
 H January, 1992, when, according to his own affidavit, the complaint in regard

to the abduction of the said 7 persons, which was addressed to him, was received in his office on 25th January 1992. A

On the same day, according to the 2nd respondent's affidavit, the complaint was marked by his P.A. to the Inspector General (Crime). Since the I.G. (Crime) was on leave, a report was called for by the D.I.G. (Crime) from the Senior Superintendent of Police, Majitha. The S.S.P., Majitha, sent the report on 23rd April, 1992, according to which the allegations in the complaint were found to be false. The report of the S.S.P., Majitha, was not found to be satisfactory by the D.I.G. (Crime) and an independent inquiry was ordered through the Superintendent of Police, Special Staff, attached to the office of I.G. (Crime). The report of the Superintendent of Police, Special Staff, made consequent upon the inquiry, showed that the third respondent was responsible for the abduction of said 7 persons. The Special Branch, accordingly, recommended registration of a case against the 3rd respondent under section 364, Indian Penal Code. The D.I.G. (Crime) then suggested that the facts of the case may be got verified through a senior officer, upon which the Additional Director General of Police (Intelligence) directed the D.I.G., Jalandhar Range, to inquire into the matter and send his report. This direction was given on 27th August, 1992. "Eventually", quoting the 2nd respondent's affidavit, "the report was received from the S.S.P. Majitha stating that the allegations against respondent no. 3 were not proved". We asked Mr. Tulsi what was the date upon which the report had "eventually" been received from the S.S.P., Majitha; we were told that it was received on 17th February, 1994. The 2nd respondent's affidavit states that, notwithstanding the difference of opinion between the Special Branch and the Crime Branch, the proposal of the I.G. (Crime) for registration of the case was approved by the Director General of Police (Intelligence) on 11th March, 1994 and the case was registered on 23rd March, 1994. The affidavit of the 2nd respondent states, "I further state that the aforesaid file was not put up to me at any stage and the matter was dealt with at the level of Director General of Police (Intelligence) and the I.G. (Crime). It is further submitted that the case came to my notice on the filing of the present writ petition.....". The result of the investigation showed that the 3rd respondent had abducted the said 7 persons on the suspicion that they had got his brother abducted through terrorists and it was "highly regrettable that a member of the police force should have resorted to retaliatory action and taken the law in his own hands". Paragraphs 7, 8 and 9 of the 2nd respondent's affidavit read thus: B
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A 7. That the police has made all possible inquiries about the whereabouts of the abducted persons. All possible clues with regard to whereabouts have been scrutinized by the Investigating Officer under the guidance of senior officer supervising the investigation inspite of the best efforts made to trace their whereabouts, the police has not been able to locate them out and there is no definite clue as to whether they are alive or not. Efforts to trace them will continue to be made and result of further investigation will be placed before the Court.

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C 8. That the Punjab Police is proud of the dedication, courage and sense of sacrifice of its officers and men and incidents of the kind mentioned in the petition are deviant behaviour and an aberration on the part of individual member of the force. It is, thus, being dealt with severely and the Majesty of Law will prevail eventually by bringing the guilty to the court of law for receiving suitable punishment.

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E 9. In view of the fact that the chargesheet has already been filed in the court of competent jurisdiction, this writ petition has become infructuous and Your Lordships may be graciously pleased to dispose of the same in view of the fact that the trial into the incident is likely to commence soon in the criminal court.

Seven persons ranging in age from 85 to 14 are alleged to have been abducted by a senior police officer and sundry policemen using official machinery for the purpose. The first complaint in this behalf was made to the 2nd respondent and received in his office as far back as 25th January, 1992. The 2nd respondent says in his affidavit that he knew nothing about the matter until the writ petition was filed in July 1994. In January, 1992, the complaint had been marked by his P.A. to the I.G. (Crime). If so, the complaint was not deemed to be of such importance that it merited the attention of the officer in over-all command of the Punjab Police and to whom it was expressly addressed. We find this surprising.

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H The I.G. (Crime) being on leave, a report was called for by the DIG (Crime) from the S.S.P. Majitha. The S.S.P. Majitha reported on 23rd April, 1992, that the allegations were false. However, the D.I.G. (Crime) found the report of the S.S.R., Majitha, unsatisfactory and ordered an

"independent inquiry" through the Superintendent of Police, Special Staff, attached to the office of I.G. (Crime). The report of the S.P., Special Staff, showed the 3rd respondent to be responsible for the abduction of said 7 persons and, accordingly it recommended the registration of a case against him under section 364, Indian Penal Code. No case was registered. No disciplinary action was taken against the 3rd respondent. He was not suspended. Even at this stage the case was not brought to the notice of the 2nd respondent. We asked Mr. Tulsi whether reports as serious as that of the S.P., Special Staff, against so senior an officer of the Punjab Police as a D.S.P., were not, under the dispensation of the 2nd respondent, considered unusual enough to merit his notice. Mr. Tulsi replied that those were dire times in the State of Punjab and many such accusations were made. No comment appears necessary.

The D.I.G. (Crime) instead of registering a case against the 2nd respondent, upon receipt of the report of the S.P., Special Staff, suggested that the case may be verified by a senior officer and, upon that, the Additional Director General of Police (Intelligence) directed the D.I.G., Jalandhar, to inquire and send his report. The direction was given on 27th August, 1992. No report was forthcoming till 17th February, 1994, i.e., for about 18 months, and when the report was received it was not from a "senior officer", the D.I.G., Jalandhar Range, who had been directed to inquire into the matter, but from the S.S.P. Majitha. No explanation whatever is given as to why the report took 18 months and why, when it came, it was made by the S.S.P., Majitha, and not the D.I.G. Jalandhar Range. It will be remembered that the S.S.P., Majitha, had on 23rd April, 1992, already come to the conclusion that the complaint against the 3rd respondent was not true. We asked Mr. Tulsi whether the person occupying the position of S.S.P., Majitha, on 17th February, 1994, was the same person who had occupied the position on 23rd April 1992; he was unable to tell us.

Even after the cases was registered against the 3rd respondent on 23rd March, 1994, the 2nd respondent's affidavit states, the 2nd respondent was not informed. The "file was not put up to him at any stage and the matter was dealt with at the level of Director General of Police (Intelligence) and the I.G. (Crime)." Mr. Tulsi submitted that the D.G. (Intelligence) occupied a position equal to that of the 2nd respondent, but he

A then admitted that it was the 2nd respondent who occupied the highest chair in the Punjab Police. This is also clear from the 2nd respondent's affidavit where he states that the matter was dealt with "at the level of" the D.G. (Intelligence).

B The 2nd respondent's affidavit states that all possible inquiries had been made and clues scrutinised but the police had been unable to locate the 7 abducted persons - admittedly abducted by the police - and "there is no definite clue as to whether they are alive or not". We are not surprised. Considering the leisurely manner in which the Punjab Police has acted upon the complaint received so far back as January 1992, and that despite
C an affirmative report on "independent inquiry", it is not unreasonable to conclude that the investigations of the Punjab Police will lead nowhere. We are deeply concerned about the safety of the citizenry at the hands of such an errant, high-handed and unchecked police force.

D Paragraphs 8 and 9 of the 2nd respondent's affidavit have been quoted above. We do not, for the reasons aforesaid, subscribe to the 2nd respondent's bland assertion that the "Majesty of Law will prevail eventually by bringing the guilty to the court of law for receiving suitable punishment", not if things are left to the Punjab Police. Apart from which, in our
E view, the majesty of the law will prevail - and this aspect the 2nd respondent does not appear to have considered - if the 7 abducted persons are found alive or - which is more likely - dead. We, therefore, find the submission in the 2nd respondents' affidavit that, in view of the fact that the charge-sheet had already been filed, "this writ petition has become
F infructuous and Your Lordships may be graciously pleased to dispose of the same" outrageous.

It will be remembered that the petition set out the various police stations in which the said 7 persons were from time to time lodged until 28th December, 1991, and that there is no denial thereto. We cannot but
G wonder whether Station House Officers of police stations in Punjab are not alert to the fact that there are strangers in their lock-ups and do not feel it necessary to find out how these strangers come to be there. There is not a word in the affidavits filed on behalf of the State of Punjab and by the 2nd respondent which states that any investigation has been made into the
H conduct of those in-charge of these named police stations and other police

officers and policemen therein. They were obviously also involved in illegally detaining the said 7 persons within the precincts of the police stations. We are, therefore, unimpressed by the assertion of the 2nd respondent in his affidavit that "incidents of the kind mentioned in the petition are deviant behaviour and an aberration on the part of individual member of the force".

For the reasons that we have already set out. We are unwilling to entrust the investigation of the abduction and presumable liquidation of the said 7 persons to the Punjab Police. We are satisfied that an independent investigation at a very high level is called for. The investigation shall cover : (a) the circumstances of the abduction of said 7 persons; (b) their present whereabouts or the date and circumstances of their liquidation; (c) how it was that the inquiry into the complaint was delayed from 25th January, 1992, when it was received by the office of the 2nd respondent, till 23rd March, 1994, when the case was registered; (d) whether it is in conformity with good police administration that a complaint of abduction of 7 citizens by a high ranking police officer should not be required to be brought to the attention of the officer in command of the police force even after the allegations made in the complaint had been found to be correct on inquiry by a specially designated officer; (e) whether there has been an attempt to cover-up the misdoings of police officers and policemen involved in the abduction of the said 7 persons and their subsequent incarceration or liquidation; and (f) if so, who was involved therein.

The inquiry shall be conducted personally by the Director of the Central Bureau of Investigation and he shall made a report to us within 4 weeks from today. For the purposes of recording statements and such other purposes, the Director shall be free to utilise the services of officers of the rank of Deputy Director, CBI, and above. The report shall be submitted in a sealed envelope to the Registrar-General of the Supreme Court and it shall be opened by us.

We direct the State of Punjab to ensure all assistance to the CBI for the purposes of the inquiry ordered as aforesaid in view of the observations made by us.

We appreciate that we are casting a considerable burden upon an officer who must, no doubt, be already heavily burdened but we think it

A imperative in the public interest to do so.

We make it clear that we shall be free to make such orders as are deemed necessary when we receive the report of the Director, CBI, including orders for payment of compensation by the respondents to the next of kin of the said 7 persons.

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The Registry shall send copies of this order forthwith to the Director, C.B.I., the Secretary, Ministry of Home Affairs, Government of India, and the Secretary, Home Ministry, State of Punjab.

To be placed on Board after 4 weeks from today.

S.M.

Disposed of.