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ANGREJ KAUR

v.

UNION OF INDIA AND ANR.

MAY 3, 2005

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[ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Constitution of India, 1950; Article 32 :

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A Constable of Border Security Force reported to be missing—Issuance of Certificate by the authorities to the effect that the constable had died while on duty and family pension granted—Wife of the constable came to know of her husband being alive—Writ of habeas corpus—Held: Status report submitted by B.S.F./Authorities indicating the necessary steps taken by them and holding meetings with Pakistan authorities to find out whereabouts of the missing constable—Though the Court is satisfied with the efforts made by the authorities so far, but they are directed to continue their efforts to find out the actual position expeditiously and intimate the petitioner, wife of the Constable and also to file status report for consideration by this Court.

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Husband of the writ petitioner was working as Constable in the Border Security Force. He was reported to be missing while on duty. The authorities issued a certificate to the effect that the said Constable had died for all official purposes and granted family pension to his wife, the petitioner. Later, the petitioner came to know that her husband was alive and languishing in a Jail in Pakistan. She wrote to various authorities for taking immediate steps to trace out her husband. She was not satisfied with the efforts made by the authorities, hence, she filed a writ of habeas corpus before this Court. This Court directed the authorities concerned to submit a status report.

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On consideration of the status report submitted by the BSF authorities, the Court

HELD : Writ petition is disposed of with the direction that the authorities shall continue the efforts to find out the actual position and expeditiously intimate the petitioner, the results of the efforts/inquiries made by them. Status report indicating the latest development in the

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matter be filed and placed for further consideration by this Court.

[1143-D]

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 36 of 2005.

(Under Article 32 of the Constitution of India):

Gaurav Jain and Ms. Abha Jain for the Petitioner.

Amrendra Sharan, Additional Solicitor General, Hemant Sharma, Ms. Sushma Suri and Mrs. Anil Katiyar with him for the Respondents.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. This writ petition filed under Article 32 of the Constitution of India, 1950 (in short the 'Constitution') presents some unusual features. In mythology Sati Savitri's prayer ensured that her husband Satyaban escaped jaws of death. Petitioner Smt. Angrej Kaur is the wife of one B.S.F. Constable named Surjit Singh. Though he has been declared to have died in the Indo-Pak war in 1971, the petitioner on the basis of certain materials believes that he is alive and is languishing in Kot Lakhpat Rai Jail, Pakistan.

The factual scenario in the present petition as projected by the petitioner runs in somewhat similar lines and even at first flush may appear fictional. It is in essence prayer for writ in the nature of habeas corpus. Though technically it may appear to be unacceptable as the concerned person is stated to be in custody in a Pakistan jail, yet the petitioner's human emotions refuse to accept this legal landline.

First the factual background as projected by the petitioner needs to be noted.

Surjit Singh was Constable in 57 Battalion of B.S.F. and he was posted in Chhamb Sector on 3rd/4th December, 1971. Initially he was reported to be missing. A communication dated 26.7.1972 was received by the petitioner from the concerned authorities granting her family pension of Rs. 130 as Surjit Singh was reported to be missing. On 26.9.1974 the Commandant of the concerned authority issued certificate to the effect that for all official purposes he had died on 4.12.1971 while on duty. A letter to this effect was also received by the petitioner. In spite of these informations, the petitioner believes that her husband is alive and she did not believe that he could have died. Her unflinching faith on the almighty made her believe that the information was wrong. She awaited for information about Surjit Singh being alive, as

A her prayers were coming from her heart. Her son Amrik Singh was hardly one year of age at the time his father was reported dead. Now he is in his thirties. Though more than three decades passed by, she refused to believe that her husband has died. She read in the newspaper (Punjabi Daily) 'Ajit' on 3.9.2004 that one Khushi Mohammad had returned from Pakistan Jail after 14 years. The news report indicated that though Khushi Mohammad and few others were released there were as many as eighty five Indians Still lying in jails of Pakistan in pitiable circumstances and the name of one Surjit Singh was mentioned along with others. The petitioner believes that said Surjit Singh was none other than her husband. On 4.9.2004 Amrik Singh went to meet aforesaid Khushi Mohammad at Nishant Colony, Malerkotla City, Punjab

B and showed him the photograph of his father Surjit Singh. Khushi Mohammad immediately identified the person in the photograph and confirmed having seen him in 'Kot Lakhpat Rai Jail' in Pakistan. This news was of a great solace and joy to the petitioner and her family members. On 16.9.2004 Amrik Singh met other persons who had been released along with Khushi Mohammad. They also identified the photograph of Surjit Singh and confirmed having seen in Kot Lakhpat Rai Jail in Pakistan. On 24.9.1994 the petitioner sent representation to various authorities, functionaries and dignitaries requesting that efforts be made to bring back Surjit Singh from Pakistan Jail. Making a grievance that she had not received any positive response to her petition, the writ petition was filed. On 7.2.2005 direction was given to the opposite parties to look into the grievance of the petitioner within a period of four weeks. An affidavit has been filed on behalf of the Union of India, Ministry of Home Affairs and the Directorate of B.S.F. Various steps taken by the authorities have been indicated. From the status report, we find that steps have been taken to find out actual position. It also appears that initial response of the Pakistan authorities was that they have checked various jails but Constable Surjit Singh could not be traced. It appears that the matter has been discussed at the B.S.F. and Pakistan Rangers meetings. In the India-Pakistan Quarterly Meeting (DIG level), the matter was discussed on 29.12.2004. In February, 2005, the Pakistan authorities intimated that steps were being taken to trace Constable Surjit Singh and he will be repatriated if found in Pakistan.

C Since there was a negative response from the Pakistan authorities, later matter appears to have been taken up at Bio-Annual meeting and the B.S.F. authorities have requested their counterparts in B.S.F. to take up the matter expeditiously. We are satisfied that the B.S.F. authorities have taken all possible steps to find out the petitioner's husband. Let the Ministry of External Affairs which was requested by B.S.F. authorities to look into the matter also intervene in the matter. If a soldier, while fighting for the country's security, is captured

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and taken to other country's prison contrary to the official belief that he was dead, it would be in the interest of not only petitioner and her family members but also for the armed forces of this country to see that he is brought back to our country. It is not to be understood that we are issuing a writ of habeas corpus to any authority outside India. Our directions essentially relate to Indian officials. But it cannot be lost sight of that law cannot ever be a combination of meaningless and purposeless combination of words. The judicial system reaches its pinnacle when it serves the ultimate object of all laws; i.e. delivering justice to the recipient who deserves it, not shackled by pitfalls and landmines of technicalities. Within the four corners of legal framework, the reliefs can be moulded to achieve the ultimate objective, that is to deliver justice.

We, therefore, dispose of this writ petition with the direction that the authorities shall continue the efforts to find out the actual position and expeditiously intimate the petitioner, the results of the efforts/inquiries made by them. Though we are disposing of the writ petition, let status report indicating the latest development in the matter be filed within three months, which shall be placed before us.

The writ petition is accordingly disposed of.

S.K.S.

Writ Petition disposed of.