

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 2964/2005

Date of order : 8th February, 2008

SATPAL @ PAPPU JAT Petitioner
Through Mr. R.D. Rana, Advocate.

versus

STATE & ORS. Respondent
Through Mr. Pawan Behl, APP.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

ORDER

1. Whether Reporters of restricted papers may be allowed to see the order? Yes
2. To be referred to the reporter or not? Yes
3. Whether the order should be reported in the Digest? Yes

Dr. S. Muralidhar, J. (open court)

1. This petition is directed against an order dated 16th May, 2005 passed by the learned Additional Sessions Judge ('ASJ'), Karkardooma Courts, Delhi dismissing the revision petition filed by the Petitioner against an order dated 24th December 2004 passed by the learned Additional Chief Metropolitan Magistrate ('ACMM') dismissing the complaint C.C. No. 914 of 2004.

2. Noting an anomaly in the details recorded about the arrest and the detention of the Petitioner Satpal @ Pappu Jat, Shri P.S. Malik, learned Metropolitan Magistrate (MM) passed an order dated 5th May 2004 and thereafter brought the facts to the notice of the learned ACMM by an order dated 13th May 2004. On receiving this order, the learned ACMM sent the

file back to the learned MM directing him to hold an enquiry. The learned MM examined as many as ten witnesses and in a detailed report dated 18th November 2004 of the learned MM concluded that there were “six different versions regarding the time of arrest of the accused.” The learned MM found that the application seeking remand of the petitioner to judicial custody had been filed after 2 pm on 19.11.2003. According to the IO he obtained the order for judicial remand at 4.30 pm. Thereafter when he took the petitioner to the lock up in the court premises for being taken to the jail, the lock up officials refused to take the petitioner. This version contradicted that of the lock up official which showed that the last jail van had been sent after obtaining permission from the MM on duty. Also, it contradicted the version of the police that the petitioner was arrested at 5 pm since there was no question of filing an application seeking judicial remand even before arresting a person. The learned MM found discrepancies regarding the documents that showed the place of detention. The learned MM therefore concluded that “the material is full of falsity, forgery and contradiction. If any one of the sources of information regarding the arrest of the accused is taken to be true then all other documents etc. are the false and forged ones.”

The summary of the findings of the learned MM were:

- “(i) Time of arrest of accused has been manipulated by the IO & SHO.
- (ii) Accused was not deliberately taken to the lock-up.
- (iii) The IO & SHO, ASI Chet Ram & Inspector V.P. Singh have not complied with the formalities mentioned by the Supreme Court in D.K. Basu’s Case.”

3. On the basis of the report, a complaint was filed by the learned MM on

18th November 2004 in the court of the learned ACMM under Sections 200

CrPC against Inspector V.P. Singh and ASI Chet Ram for the offences under Sections U/s 166/167/466/471/474/34 IPC. On the said complaint the learned ACMM by order dated 10th December 2004 called for a report from the Deputy Commissioner of Police (DCP) or the Additional DCP (ADCP) under Section 156 (3) CrPC.

4. Consequent thereto, a report of investigation was submitted to the learned ACMM by the Additional Deputy Commissioner of Police (ADCP) Mr. D.C. Shrivastava. The explanation given in the said report as regards the time of arrest being shown as 5 pm instead of 5 am was that it was “an inadvertent mistake by the IO”. The failure to send the petitioner to judicial custody and instead sending him to PS New Usmanpur was explained away by saying that “there are some problems with the authority at the administrative level”. The learned ACMM accepted the aforementioned report and observed: “I find substance in the conclusion of the Addl. DCP.” Accordingly, by the order dated 24th December 2004 the learned ACMM dismissed the complaint.

5. Aggrieved, the Petitioner filed Criminal Revision No. 46 of 2005 which was dismissed by the learned ASJ by the impugned order dated 16th May, 2005. A reading of the said impugned order shows that the learned ASJ has simply reproduced verbatim the entire order of the learned MM. Thereafter in one short paragraph of four sentences the ASJ concluded:

“I find from the record no infirmity in law and/or illegality in the observations and findings of the Ld. ACMM vide his impugned order dated 24.12.04 dismissing the subject complaint of the complainant as above said. Revision petition of the

revisionist against the same is hereby accordingly dismissed. Trial Court Record be sent back with an attested copy of this Order for information. File of this Court be consigned to Record Room.”

6. The submissions of Shri R.D.Rana, the learned counsel for the petitioner and of Shri Pawan Behl, learned APP for the State have been heard. Learned counsel for the petitioner submits that the report of the learned MM returning detailed findings have not been discussed in the order of either the learned ACMM or the ASJ. He submits that the impugned order of the learned ASJ is without reasons and the revision petition ought to be remanded for a fresh decision. Mr.Pawan Behl, learned APP for the State, sought to suggest that the petitioner here was a Bad Character who had several criminal cases against him. Nevertheless, he fairly stated that the impugned order of the ASJ was indeed a non-speaking one and that the State would have no objection if the revision petition is remanded for a fresh decision by the ASJ.

7. On the face of it, the impugned order is bereft of reasons and in the view of this Court ought to be set aside on this short ground. The manner of disposal of the criminal revision petition by the learned ASJ is unsatisfactory considering the serious nature of the complaint. To recall, the complaint was about the failure of the police to comply with the mandatory provisions of the CrPC concerning arrest and detention as explained by the Supreme Court in *D.K. Basu v. State of West Bengal 1997 (1) SCC 416*. The complaint had been filed by a judicial officer, viz., the learned MM who had himself conducted a detailed enquiry in which as many as ten witnesses were examined. That enquiry by the learned MM and the prima facie conclusions

reached therein were obviously different from those reached in the subsequent police investigation by the ADCP. The learned ACMM who dismissed the complaint accepted the report of the ADCP without explaining the reasons for such conclusion. Without commenting in any way on the merits of either report, this Court would like to observe that given the background of the case, it was incumbent on the learned ASJ to have discussed the contents of the two reports and stated the reasons for his conclusions. However, as already noticed the learned ASJ offers no reasons for his conclusion in the impugned order.

8. The submission that the petitioner was a bad character with several cases against him cannot constitute a justification for the police to violate the mandatory provisions of the CrPC. The Supreme Court in *D.K. Basu v. State of W.B.*, explained the rationale thus (SCC, p. 435):

“33. There can be no gainsaying that freedom of an individual must yield to the security of the State. The right of preventive detention of individuals in the interest of security of the State in various situations prescribed under different statutes has been upheld by the courts. The right to interrogate the detenus, culprits or arrestees in the interest of the nation, must take precedence over an individual’s right to personal liberty. The Latin maxim *salus populi suprema lex* (the safety of the people is the supreme law) and *salus republicae suprema lex* (safety of the State is the supreme law) coexist and are not only important and relevant but lie at the heart of the doctrine that the welfare of an individual must yield to that of the community. The action of the State, however, must be “right, just and fair”. Using any form of torture for extracting any kind of information would neither be “right nor just nor fair” and, therefore, would be impermissible, being offensive to Article 21. Such a crime-suspect must be interrogated —

indeed subjected to sustained and scientific interrogation — determined in accordance with the provisions of law. He cannot, however, be tortured or subjected to third-degree methods or eliminated with a view to elicit information, extract confession or derive knowledge about his accomplices, weapons etc. His constitutional right cannot be abridged in the manner permitted by law, though in the very nature of things there would be qualitative difference in the method of interrogation of such a person as compared to an ordinary criminal. Challenge of terrorism must be met with innovative ideas and approach. State terrorism is no answer to combat terrorism. State terrorism would only provide legitimacy to “terrorism”. That would be bad for the State, the community and above all for the rule of law. The State must, therefore, ensure that various agencies deployed by it for combating terrorism act within the bounds of law and not become law unto themselves. That the terrorist has violated human rights of innocent citizens may render him liable to punishment but it cannot justify the violation of his human rights except in the manner permitted by law. Need, therefore, is to develop scientific methods of investigation and train the investigators properly to interrogate to meet the challenge.”

9. Indeed, the functioning of the criminal justice apparatus in a system governed by the rule of law is tested most on the adherence by the law enforcement agency to the procedure established by law. The CrPC permits a legitimate exercise of state power to curtail liberty subject to statutory safeguards that are consistent with the constitutional guarantee of the right to life and liberty. Any indifference displayed by the state to its constitutional obligation of abiding by these statutory norms will require to be viewed seriously by the courts when approached with complaints of such violation.

10. For the aforementioned reasons, the order dated 16th May 2005 passed

by the learned ASJ is hereby set aside. The revision petition Criminal No. 646 of 2005 is restored to the Court of the ASJ.

11. A copy of this order be sent to the learned District Judge, Delhi by the Registry within five days for allotting the criminal revision petition to any other ASJ for its disposal on merits in accordance with law as expeditiously as possible.

12. The petition is allowed with no orders for costs.

13. The trial court record be sent back immediately.

Crl.M.A. 1487 of 2005

14. Learned counsel for the Petitioner seeks leave to withdraw this application to approach the trial court.

15. Accordingly, the application is dismissed as withdrawn with liberty as prayed for.

S. MURALIDHAR, J.

FEBRUARY 08, 2008
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