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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(CRL.) 482/2012

Decided on: 02.08.2013

AMIT BHANDARI

..... Petitioner

Appellant in person

versus

STATE & ORS.

..... Respondents

Through: Mr. Rajesh Mahajan,
Additional Standing Counsel
for the State with SI Satish,
P.S. N. Rohini, ASI Prempal
P.S. Kanjhawala and ASI
Krishna, PS Mangol Puri.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. This is a writ petition under Article 226 of the Constitution of India filed by the petitioner for taking appropriate punitive action against the respondent for violation of fundamental rights of petitioner under Article 14, 21 and 22 of the Constitution of India caused by not adhering to statutory guidelines necessary to be followed before arresting a person and thereby causing immense mental and physical harassment to the petitioner and also for giving a

compensation of Rs.20 lacs towards the torture caused to him.

2. Factual matrix of the case is:-

FIR No. 90/2010 under Section 498A/406 IPC dated 10th April, 2010, PS North Rohini was registered on the complaint of Smt. Deeksha Bhandari pursuant to the recommendation of CAW Cell, Outer District, Delhi. Smt. Deeksha Bhandari alleged in her complaint that she was married with the petitioner Sh. Amit Bhandari on 27th June, 2009 at Delhi. Her husband is based in Pune working in a lawyer's company. Soon after marriage, her mother-in-law and her husband started taunting and abusing her and her parents over the quality of things provided by them in the marriage. Her mother-in-law took away all the jewellery including Mangal Sutra. She was continuously subjected to cruelty on account of dowry. On the demand of her husband, her father has deposited Rs.1 lac in the account of her husband but the cruelty continued. On 28th August, 2009, her husband abused her and gave her beatings for not bringing enough and quality things from her parents. As such, the FIR was registered.

3. The punitive action against the respondent is sought basically

on the ground that in pursuance to the complaint lodged by wife of the petitioner Deeksha Bhandari, FIR was registered against the petitioner. He had filed an application for anticipatory bail wherein direction was given to serve seven days notice of pre-arrest. However, without serving pre-arrest notice, respondents No.2&3 visited the house of parents of the petitioner on 17th June, 2010 in order to arrest him without any arrest warrant or search warrant. The respondents were very well aware that petitioner was residing in Bangalore, as such, there was no need to visit Pune to search the petitioner. It was, however, alleged by the respondent that they had come to Pune in order to serve pre-arrest notice. If that was so, the notice could have been sent by registered post as was earlier done while sending notice under Section 160 Cr.P.C. Without any arrest warrant or search warrant, house of the parents of the petitioner was raided only with a view to harass the petitioner and his family members and to pressurise them to extort money. In the daily diary entry, it is nowhere mentioned that they were visiting Pune to serve pre-arrest notice. On the contrary, the DD entry merely states that the purpose of visit was investigation.

4. Due to illegal acts of the respondents in raiding the house of petitioner at Pune on 17th June, 2010, father of the petitioner was forced to travel from Bangalore to Pune in ill condition which resulted in mental trauma. He was a heart patient. Due to mental trauma and harassment done by the respondents, father of the petitioner suffered a massive heart attack and he passed away on 1st July, 2010.

5. The petitioner preferred a private complaint bearing CrI. Misc. Application No. 601/2010 before learned JMFC Cantonment, Pune for the illegal raid and harassment conducted by the respondent at Pune due to which his father passed away. The learned JMFC directed for investigation under Section 202 Cr.P.C. Thereafter processes were issued against the respondents and the complainant for knowingly causing death of father of the petitioner. The respondent filed criminal writ petition before the High Court of Judicature at Bombay. Vide order dated 19th December, 2012, the Bombay High Court allowed the application preferred by the respondent and quashed the issuance of process. The petitioner has filed special leave petition before the Supreme Court which is

pending.

6. The petitioner filed Writ Petition (Criminal) No. 1085/2010 before this Court on 24th July, 2010 for quashing of FIR or in the alternative to transfer the FIR to Bangalore. The writ petition was dismissed on 4th May, 2011. SLP is pending before the Hon'ble Supreme Court.

7. In pursuance to the directions of the Court, petitioner appeared in person before learned MM, Rohini Court, Delhi on 4th June, 2011. However, in gross violation of the Court order dated 12th May, 2010, whereby the respondents were directed to serve seven days' pre-arrest notice, the petitioner was arrested. Permission of arrest was taken from ACP which is in gross violation of standing order 330 of 2007 issued by the Commissioner of Police. The court hearing was over by 11:30 a.m. and immediately thereafter the respondents No. 2&3 arrested the petitioner from the Court premises but he was detained at police station till 5:00 pm and was not produced before the learned Magistrate which clearly shows the malicious intention so that petitioner could not seek bail on the same day. Respondent No. 2 took the petitioner for medical examination under the instructions of

respondent No.3, however, the medical examiner did not record the medical history of the petitioner and copy of the report was also not handed over to the petitioner, which is in violation of the guidelines given by Hon'ble Apex Court in *D.K. Basu Vs. State of West Bengal*. The petitioner was not informed about the charges for which he was being arrested, which is in violation of Section 5 Cr.P.C., Article 22(1) of Constitution of India and NHRC Guidelines for arrest. The family of the petitioner was not informed about the place of detention. The memo of arrest is forged as neither the petitioner nor his mother signed the said forged document. Due to illegal arrest of the petitioner, he was thrown out of job. His medical condition deteriorated and now, he is without any job and is fully dependent on the family members. Hence this writ petition.

8. Status report was filed by respondent No.1 wherein it was stated that:-

FIR No.90/2010, u/S 498A/406 IPC dated 10.04.2010, Police Station North, Rohini was registered on the complaint of Smt. Deeksha Bhandari, pursuant to the recommendation of the CAW Cell, Outer District, Delhi. After registration of FIR, the investigation was

taken up by IO W/ASI Krishna, the respondent No. 2. Petitioner Sh. Amit Bhandari moved Anticipatory bail application before Sessions Court, Rohini. As the permission for arrest was not on the file, Ld. Sessions Court vide order dated 12.05.2010, directed that in case of arrest of applicant, seven working days notice be given to him. On 18.05.2010, respondent No. 2 moved the file for seeking approval for arrest from ACP through the SHO concerned. On 21.05.2010, the approval for arrest of Sh. Amit Bhandari was given by ACP/Prashant Vihar. A notice dated 28.05.2010 was sent to Sh. Amit Bhandari to join the investigation. In response Sh. Amit Bhandari sent a letter dated 2.06.2010 by post expressing his inability to come to Delhi to join the investigation on the ground of ill health of his father. On 17.06.2010, the IO W/ASI Krishna along with other Police personnel and complainant went to Pune and after taking assistance of Local Police of Pune went at residence of petitioner at Flat No. 54, Building Lotus Parmar Garden, Pune and enquired about the petitioner but the petitioner Amit Bhandari was not found. Sh. Kapil Bhandari, brother of the petitioner Amit Bhandari, was present at the residence. He was explained by the IO that the permission for arrest of Sh. Amit

Bhandari has been obtained on file and Police intends to arrest the petitioner for the investigation of case. A seven days notice for arrest in respect of Amit Bhandari was also given but he refused to receive it. The notice was left at the house of petitioner by the IO W/ASI Krishna. The IO again visited the house of petitioner on next day, i.e., 18.06.2010 along with complainant and with assistance of local Police of Pune but could not find the petitioner. Search for recovery of Istridhan was also conducted at the house but complainant could not find her Istridhan in the house. A memo regarding this search was also prepared by the I.O. in this regard. The petitioner herein filed WP(Crl.) No. 1085/2010 titled Amit Bhandari Vs. Deeksha Bhandari, IO W/ASI Krishna and State before this Court with prayer for quashing of FIR or in the alternative transfer of investigation to the concerned police station having jurisdiction. This Court vide order dated 26th July, 2010 directed that petitioner shall not be arrested till further orders. The petition was finally dismissed vide order dated 9th March, 2011. On 4th June, 2011 at 12:45 p.m. petitioner Amit Bhandari was arrested by the IO at Delhi. At the time of arrest, petitioner was duly informed about the grounds of arrest.

Smt. Adarsh Bhandari, mother of petitioner was present along with petitioner at the time of arrest. She was told about the particulars and details of arrest of her son Sh. Amit Bhandari. She also signed the Arrest Memo prepared by the IO regarding arrest of the petitioner in the case. After the arrest, petitioner was got medically examined at Baba Saheb Ambedkar Hospital, Rohini, Delhi. Vide MLC No. 4363/2011 no fresh external injury was found on the person of petitioner. Petitioner was produced before Ld. Duty Magistrate, Rohini Courts on the same day and was remanded to judicial custody. On 06.06.2012 bail application moved by petitioner was dismissed by Ld. Metropolitan Magistrate, Mahila Court, Rohini Courts, Delhi. Thereafter on 10.06.2011 bail application of petitioner was dismissed by Ld. District Judge & Addl. Sessions Judge, Rohini Courts. On 15.06.2011 petitioner was granted bail by this Court, on the ground that petitioner agreed to deposit a sum of Rs.1.5 lacs towards Istridhan in the shape of Fixed Deposit in the name of trial court.

9. A Criminal Miscellaneous application bearing No. 601/2010 was filed by petitioner Amit Bhandari against Deeksha Bhandari (wife of petitioner), Ramesh Sethi (father of Deeksha), IO W/A.S.I.

Krishna and ASI Prempal u/s 156(3) Cr.P.C. before Ld. Junior Judicial Magistrate, First Class, Pune, Maharashtra with the prayer for registration of FIR u/s 302 or 304/120B/166/34 IPC. The Court vide order dated 09.09.2011, issued process u/s 304/120-B/166 IPC against the IO W/ASI Krishna, ASI Prempal. Further non-bailable warrants against the above Police officials were issued by the Pune Court. Against this order, an appeal vide Criminal Application No. 1204/2011 was filed before High Court, Mumbai by IO W/A.S.I. Krishna and A.S.I. Prempal. The Mumbai High Court vide order dated 23rd November, 2011 has given *ad-interim* relief. The investigation of case FIR 90/2010 has been completed and charge-sheet is being filed in Court. In view of the above, it is submitted that there is no merit in the petition and it deserves to be dismissed.

10. Respondent No.2&3 filed their affidavits reiterating the averments made in the status report.

11. I have heard the petitioner in person and Sh. Rajesh Mahajan, Additional Standing Counsel for the State at great length.

12. During the course of arguments, the petitioner has reiterated the averments made in the petition and that his arrest was illegal.

Although, as per the standing order, it was incumbent upon the respondent to have obtained sanction from the DCP concerned, however, sanction was obtained from the ACP. Moreover, seven days' prior notice was required to be served upon the petitioner but without serving any notice, the police officials went to the house of his parents on 17th June, 2010 and wanted monetary consideration from his father. He was harassed to such an extent that he ultimately expired for which private complaint was filed before the Pune Court. Thereafter, the petitioner was arrested illegally in violation of the law of arrest as provided under Section 41A of Cr. P.C. and guidelines laid down by Hon'ble Supreme Court. The pre-arrest notice is on a plain piece of paper without any attestation and is fabricated one. The arrest memo is also fabricated inasmuch as neither the petitioner nor his mother signed the same. He was not informed about the grounds of arrest nor his mother was informed about the place of his detention. Due to illegal acts of the respondent, the petitioner has suffered immensely and as such, action is required to be taken against them.

13. Repelling the contention of the petitioner, learned Additional

Standing Counsel for the respondent, at the outset, challenged the maintainability of the writ petition on the ground that disputed questions of facts are involved, as such, the writ petition does not lie. Moreover, it was submitted that there is no violation of any of the procedure prescribed by law. As per the standing order, ACP was competent to grant permission to arrest the petitioner. Accordingly, after seeking the permission from the ACP, notice under Section 160 Cr. P.C. was served upon the petitioner. However, he expressed his inability to appear before the Investigating Officer due to illness of his father. Thereafter, in order to serve the pre-arrest notice, the police officials went to Pune on 17th June, 2010. However, petitioner was not available, as such, notice was tried to be served upon his brother who refused to receive the same. As regards the DD entries, it was submitted that the purpose of DD entry was only to show the arrival and departure and, therefore, it was not required to be mentioned in those DD entries the purpose of visit of the police officials to Pune. Father of the petitioner was suffering from illness and as such, died. The petitioner filed the private complaint before the Pune Court wherein the police officials were ordered to be

summoned. A writ petition was filed before the Bombay High Court and the FIR has been quashed. As such, it was submitted that there is no merit in the writ petition and the same is liable to be dismissed.

14. There is force in the submission of the learned counsel for the respondent that in this writ petition, the petitioner has raised disputed questions of facts inasmuch as admittedly as per the order of the Session Court, in case of arrest, seven days pre-arrest notice was to be served upon the petitioner and his family members. It is the case of respondent that on 18th May, 2010, approval from ACP for arrest of the petitioner was sought which was accorded on 21st May, 2010. Petitioner has relied upon standing order issued by the Commissioner of Police, Delhi vide Circular No.80033-132/C&T (AC-5) PHQ dated 21.12.2007 whereby various guidelines have been given for arrest and as per those guidelines in case of arrest of the main accused in cases under Section 498A/406 IPC, prior written approval of DCP is required. However, learned Additional Standing Counsel has placed on record the standing order No. 51, Order Book No.02/Record Branch (PHQ) dated 08.10.2008, whereby the aforesaid standing order issued vide No. 80033-132 dated 21st December, 2007 was

withdrawn and as per this standing order, arrest of the main accused can be done with prior approval of ACP/DCP. As such, the standing order on which reliance has been placed by the petitioner stands withdrawn and as per the standing order dated 8th October, 2008, ACP was also competent to accord approval for arrest of the main accused.

15. It is not in dispute that after seeking approval from ACP, a notice under Section 160 Cr. P.C. was served upon the petitioner for appearance, however, the petitioner expressed his inability to appear due to ill health of his father. According to the respondents, thereafter, pre-arrest notice was tried to be served upon his brother Kapil Bhandari, who refused to receive the same. The petitioner has disputed this fact by alleging that the notice is on a plain piece of paper which is unattested and it was never sought to be served upon his brother nor he refused to receive the same. This fact is required to be proved by means of evidence.

16. Thereafter, it is alleged that on 4th June, 2011, the petitioner was arrested by respondents No. 2&3 when he came out of the Court after attending the court proceedings in Rohini Court. Even this fact

has been denied by the respondents by alleging that the petitioner was arrested from Sector 7-8 Dividing Road, Rohini, Delhi. It is the case of the petitioner that he was arrested around 11:00 a.m. whereas according to the respondents, he was arrested at 12:45 pm and the arrest memo was prepared. Mother of the petitioner was with him. Petitioner as well as his mother signed the arrest memo. This fact has been challenged by the petitioner by stating that his mother had gone to the office of DCP seeking his release and neither he nor his mother signed the arrest memo. Copy of the arrest memo which has been placed on record bears his signatures. As such, the time of arrest of the accused and whether it was signed by the petitioner and his mother at the time of preparation of arrest memo, again is a matter of trial. Similarly, it is the allegation of the petitioner that neither he was informed about the grounds of arrest nor his mother was informed about the place of detention which fact is also disputed by the respondent. According to the respondent, after his arrest, he was medically examined and thereafter, produced before the Metropolitan Magistrate who remanded him to judicial custody. Under the circumstances, time and place of arrest of petitioner, disclosure of the

grounds of arrest, signing of the arrest memo by him and his mother are disputed questions which cannot be gone into in this writ petition. It is only after the parties lead evidence then it can be decided whether there is any violation of procedural law or directions given by the Hon'ble Supreme Court from time to time.

17. As regards, the visit of the respondent at Pune and subsequent demise of his father, it is not in dispute that complaint was filed by the petitioner before the Pune Court and the respondents were ordered to be summoned. However, it is a matter of record that FIR has been quashed by the Mumbai High Court.

18. The petitioner has raised pure question of facts for determination in the writ proceeding. It is well known that in a writ petition, ordinarily such disputed question of facts is not to be entertained. The moment there is a debatable area in the case, it is not amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution. This Court in exercise of jurisdiction under Article 226 of the Constitution cannot adjudicate the matter where the foundational facts are disputed. Rival contentions of the parties cannot be decided in a writ proceeding as held in *Himmat Singh Vs.*

State of Haryana & Ors., (2006) 9 SCC 256; *Mukesh Kumar Aggarwal Vs. State of Uttar Pradesh & Ors.*, (2009) 13 SCC 693; *Bhagavat Singh and etc. Vs. State of Tamil Nadu and Ors.*, 1998 Cr.LJ 3513. This Court is not required to embark upon an enquiry whether the allegations in the petition which are controverted by the respondents are correct or not.

19. *Subhashree Das @ Mili Vs. State of Orissa and Ors.*, (2012) 9 SCC 729 was also a case where the writ petition was filed under Article 21, 22 (2), 226 and 136 of the Constitution of India for illegal detention by police and compensation was claimed. It was held that the claim of the appellant that she had been illegally detained could not have been determined on the basis of disputed facts. In such a case, claim raised by such a petitioner must be determined on the basis of factual position acknowledged by respondent. High Court in exercise of jurisdiction under Article 226 of the Constitution would ordinarily not adjudicate a matter where the foundational facts are disputed.

20. Things are substantially same in the instant case. The question whether the petitioner has been illegally arrested cannot be

determined on the basis of disputed facts. Since all the averments made by the petitioner require adjudication, same cannot be done in the writ petition.

21. The petition is accordingly dismissed. Petitioner is, however, at liberty to seek appropriate remedy as may be available to him under law.

**SUNITA GUPTA
(JUDGE)**

AUGUST 02, 2013
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