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*** THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPT**
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

+ WRIT PETITION No. 36889 of 2014

% 20.01.2015

Besal Veeramma
Visakhapatnam and others

....Petitioners

Vs.

\$ The State of A.P.,
Rep. by its Secretary,
Department of Home, Secretariat,
Hyderabad and others.

.... Respondents

! Counsel for the Petitioners: Sri S.S. Viswanetra Ravi

Counsel for Respondents: Advocate General (AP)

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>Head Note:

? Cases referred:

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THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI
SENGUPTA

AND

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION No.36889 of 2014

DATE: 20.01.2015

Between:

Besal Veeramma
Visakhapatnam and others

... Petitioners

And

The State of A.P.,
Rep. by its Secretary,
Department of Home, Secretariat,
Hyderabad and others.

... Respondents

This Court made the following:

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION No.36889 of 2014

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Order: (per the Hon'ble the Chief Justice Sri Kalyan Jyoti Sengupta)

The respective wives of the four persons, namely, B. Arjun, B. Bheemdhara, G. Rama Rao and S. Rama Rao filed this application for issuance of a writ of habeas corpus or any other appropriate writ directing the respondents to produce the alleged detenus before this Hon'ble Court and set them free and order to conduct enquiry for their illegal detention and to pass such other order or orders as this Hon'ble Court deems fit, just and proper in the facts and circumstances of the case.

It is the case of all the petitioners that respondent Nos. 3 and 4 arrested their respective husbands without any reason on the following dates.

The first petitioner's husband, B. Arjun on 18th November, 2014; the second petitioner's husband, B. Bheemdar on 20th November, 2014; the third petitioner's husband, G. Rama Rao on 18th November, 2014 and the fourth petitioner's husband, S. Rama Rao on 21st November, 2014.

All the petitioners approached the police officials and requested them to release the alleged detenus forthwith. They approached Sub-Collector, Paderu on 24th November, 2014 complaining illegal arrest and detention and to take step for their release. They also appear to have approached the Ex.M.L.A, Paderu, Visakhapatnam, who wrote a letter to the Additional Superintendent of Police informing that the alleged detenus were arrested illegally and they should be set free. The incident of setting ablaze to the houses of petitioners 1 to 3 and arrest of the above persons

was also reported in the newspapers. Despite making all efforts, the alleged detenues were neither released by the police authority nor produced before the Magistrate. As a last resort, they made this application ready for filing on 28.11.2014 and finally, filed it on 01.12.2014.

When this matter came up for hearing before this Court on 02.12.2014, the learned Advocate General for the State of Andhra Pradesh sought time to obtain instructions. Accordingly, the matter was posted on 05.12.2014. On that date, the counter-affidavit is filed. In the counter-affidavit, it was informed that all the aforesaid detenues were arrested on 03.12.2014 in connection with a murder case and they could not be arrested earlier as they were absconding. It was also informed that all of them were produced before the appropriate Magistrate with a remand report mentioning the date of arrest and their production. The learned Magistrate remanded all these four persons to judicial custody.

The affidavit in reply has been filed.

After noticing the affidavit in reply and the counter affidavit, there was confusion as to what is the real date of arrest. Whether it was 03.12.2014 as alleged by the State or the respective dates as alleged by the petitioners. In order to find out the correct date of arrest, we asked the State to file additional affidavit and thus, the additional affidavits were filed and the documents in support thereof, namely, the order of remand passed by the learned Magistrate and also the remand report, are produced before us.

In the aforesaid factual background, and the sequence of events, which have taken place during the course of hearing, now the learned counsel for the petitioners argues that if the statements and averments in the writ petition as well as the affidavit in reply together with the documents annexed therewith are examined properly, it would appear that the date of arrest as alleged by the respondents i.e., 3rd December, 2014 is absolutely false and it is on the respective dates as mentioned in the writ petition. According to him, the period between the dates of arrest mentioned in the petition and 03.12.2014 i.e., the date of production

before the Magistrate was absolutely unauthorized detention. The State Government has failed to prove that the alleged detenus were arrested on 03.12.2014. From contemporaneous correspondence and also the complaint made by the petitioners, it would appear that they could not be arrested on 03.12.2014 and they must have been arrested on the dates as has been stated in the petition. Unfortunately, incorrect and manipulated information was supplied to the Magistrate. He says that although they were remanded to judicial custody, still this Court should hold an enquiry as to whether this detention from the respective dates of arrest as mentioned in the petition till 03.12.2014 was lawful or not. Upon enquiry, if it is found that what the petitioners state, is correct then appropriate measures shall be taken.

The learned Advocate General, on the other hand, basing on the statements in the counter affidavit, says that the alleged detenus were absconding and every attempt for arrest was frustrated by eluding. They were arrested on 03.12.2014 and after complying with the formalities of arrest, they were produced before the Magistrate 03.12.2014 itself, without any delay. He further submits that when they were produced before the Magistrate, they did not complain to the Magistrate that they were illegally detained for any period by the police. In the remand order, the learned Magistrate specifically recorded that there is no complaint of ill-treatment in the hands of the police.

On the aforesaid statement and assertion and counter assertion of the facts and submissions of the learned counsel for the parties, we have to examine whether we should order for an enquiry as has been asserted by the learned counsel for the petitioners to find out whether the alleged detenus were in unauthorized detention as alleged by the petitioners. According to us, a writ of habeas corpus can be issued when the Court finds that there has been unauthorized detention and it is continued so. But, in the counter-affidavit, it is stated that the alleged detenus were arrested in connection with a criminal case and they were produced before the learned Magistrate. We are unable to accept that they are in unauthorized detention for the present on 3rd December, 2014 and so

issuance of writ of habeas corpus does not arise. But, the alleged unauthorized detention between 18th November, 2014, 20th November, 2014, 21st November, 2014 and 24th November, 2014 respectively and 3rd December, 2014 as alleged by the petitioners in the writ petition and the respondents in the counter cannot be examined by this Court at this stage. We are of the view that the moment the alleged detenus are produced before any of the appropriate Courts, action of habeas corpus comes to an end. So, this Court cannot pass any order on this application at the instance of the petitioners, who are the wives of the accused persons. We are not commenting anything else, as the remand order of the learned Magistrate is not challenged before us.

In the remand order, we notice *prima facie* that none of the alleged detenus complained to the learned Magistrate about the alleged unauthorized detention. We hasten to add that whether there was unauthorized detention for any period or not is examined by us. But, from the material produced before us, it is difficult for us to conclude the same. According to us, for taking some other measure other than the writ of habeas corpus, viz., the grievance of unauthorized detention or illegal detention can only be examined at the instance of the persons, who were affected personally and not by any other person. Admittedly, the petitioners are not affected personally, for embarking upon enquiry with regard to the alleged unauthorized detention for the period mentioned in the writ petition. Apparently, at the time of production, they did not make any complaint whether they had or still have grievance or not.

In the circumstances, we close the Writ Petition giving liberty to the alleged detenus to approach the appropriate forum as only they can seek for an order enquiry with regard to the illegal detention. We are not exercising writ jurisdiction for issuance of any writ other than writ of habeas corpus.

K.J. SENGUPTA, CJ

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SANJAY KUMAR, J

Date: 20.01.2015
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Note: Reportable