

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRWP no. 442 of 1996(O&M)

Date of Decision : 10.04.2015

Avtar Singh

....Petitioners

Versus

State of Punjab and others

...Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

1)Whether reporters of local newspapers may be allowed to see the judgment?Yes

2) To be referred to the Reporters or not?Yes

3) Whether the judgment should be reported in the Digest? Yes

Present : None for the petitioner

Mr. P.J.S.Hundal, AAG, Punjab

Mr. S.P.S.Sidhu, Advocate for the respondent

MAHESH GROVER, J.

There is no representation on behalf of the petitioner.

This habeas corpus petition with unfortunate factual background was filed in the year 1996 alleging that the petitioner's brother Kulwinder Singh alias Bobby then aged 16 years was picked up by the police i.e respondents no. 3 and 4 on 20.11.1992 at about 8:30 A.M when he was going to school. It was alleged that the police came in a Gypsy and forcibly threw him in vehicle and went away. The police team was allegedly led by respondent no.4 namely Jawinderpal Singh.

Intensive pursuits by the petitioner to trace out the whereabouts of the minor were frustrated even though senior officials were contacted in this regard. Numerous representations were made to the officers placed in separate slots in the hierarchy including the Hon'ble Chief Minister with no

result and it is then that the instant petition was filed which languished in this Court for all these years with some responses filed by the present respondents. It is to be noticed that initially when notice was issued in this petition the reply of the State of Punjab and the respondents did not come on record till 2000 and that of respondent no.4 till 2001.

On 28.1.2013 this Court after noticing the facts passed the following order:-

“This petition pertains to the year 1996. The petitioner who is the brother of one KulwinderSingh alias Bobby filed this petition alleging that Kulwinder Singh alias Bobby has been illegally detained by respondent no.4 and was picked up by the police (respondents no. 3 and 4) while he was on his way to school. He was stated to be studying in Class X.

Reply to the petition was filed in which the allegations have been denied and it has been stated that possibly Kulwinder Singh alias Bobby was taken away by some unidentified persons which can be inferred from Annexure R-1 the report submitted by the father of Kulwinder Singh alias Bobby wherein no name was mentioned while referring to the disappearance of said Kulwinder Singh alias Bobby.

The respondents have stated that there was no occasion for them even to pick up the boy of Class X.

Similarly, respondent no.4 has filed a separate reply and has stated that there was no occasion to even want the presence of Kulwinder Singh alias Bobby, what to talk of contributing towards his disappearance when he was not

wanted in any case.

In this view of the matter and more particularly, when 16 years have elapsed this plea of illegal detention by respondent cannot be appreciated due to the visible constraints. However, this Court is constrained to observe that no FIR was registered by the police to ascertain the cause of disappearance of the brother of the petitioner. This sounds highly irresponsible as the entire thrust of the reply of the respondent is that the missing person was not with them, but as a Law Enforcing Agency it ought to have offered its services to ascertain the whereabouts of the missing person.

But before this Court proceeds in this matter, let a specific affidavit to this extent be filed as to whether any proceedings were taken by the police to trace out the brother of the petitioner.

Adjourned to 14.2.2013.”

This Court had noticed with concern that even though the official respondents who had filed the reply had virtually gone into denial mode to assert that the detainee was not with them yet they themselves as a law enforcing agency had not made any attempt to look into the disappearance of the alleged detainee i.e Kulwinder Singh alias Bobby. No FIR was registered. It would be relevant to extract para 6 of the reply dated 14.9.2000 submitted by respondents no.1 and 2

6. That in reply to the contents of this para, it is submitted that no representation stated to be given to SHO, PS Rawalpindi was received in said police station. The petitioner

has made up this story to create some sort of evidence. As regards, representation stated to be sent to the Director General of Police, Punjab. It is submitted that the same was received in District Police Office, Kapurthala through Inspector General of Police, Crime, Punjab Chandigarh and the same was got enquired into through Deputy Superintendent of Police (Detective) Phagwara and it was revealed that Kulwinder Singh @ Bobby had neither been arrested by the police of Kapurthala district nor he was brought in any police station. Reply was sent to the Inspector General of Police, Crime, Punjab Chandigarh vide this office letter no.1711-P dated 28.8.1993. Translated copy of the same is attached as annexure R/1.

It is pertinent to mention here that a bare reading of annexure P/1 stated to be submitted by Kirpla Singh, father of the alleged missing person, no name has been mentioned therein, which is the earliest version, reveals that he was taken away by some unidentified persons. This shows that alleged story of picking up Kulwinder Singh by Respondent no.3 and 4 is concocted one to create some sort of defence and to falsely implicate the police officials on false and flimsy grounds, which is an after thought.

Similarly, as per the contents of annexure P/2, no name is disclosed therein. It is specifically mentioned therein that the police has no case against him (Kulwinder Singh). So, there was no occasion or cause with the police to pick him up,

as alleged. It is also relevant to point out here that in the representation the date of alleged occurrence is stated as 23.11.1992 whereas the same is given as 20.11.1992 in the petition. So, the averments are self contradictory.”

The aforesaid extracted paragraph is of no surprise considering that the primary allegations of abduction of the minor were against the official respondents themselves.

This Court would not like to comment upon the credibility of the inquiry conducted by the Deputy Superintendent of Police detective Phagwada in the absence of any material in this regard but suffice it to say that the allegations were primarily against the police officials themselves, it was their bounden duty to offer an investigation of an inspiring standard. Rather pursuant to the orders dated 28.11.2013 of this Court the respondents filed an affidavit with assertions that would mock the situation by stating that the petitioner did not approach the concerned police station for redressal of his grievance.

The Court then observed in its order dated 14.2.2013 by noticing this assertion of the petitioner's failure to seek redressal from the concerned police station and stated that it is not understandable why the police did not act when they were alerted to the plight of the petitioner in the year 1992 itself or soon after the incident or atleast in the year 1996 when notice was issued in this petition. The order dated 14.2.2013 is also extracted herebelow:-

“Affidavit has been filed which does not satisfy the concerns of the court. It is now being projected that the petitioner did not approach the concerned police station for

redressal of his grievance. It is not understandable that when the respondents were alerted to the plight of the petitioner in 1996 itself, even then, except for going into the denial mode, no attempt was made to register the FIR and undertake efforts to trace out the missing son of the petitioner.

Prima facie, this indicates sheer negligence for which the respondents ought to be burdened with pecuniary liability as no other remedy seems to be feasible after such a considerable lapse of time.

At this stage, learned counsel for the State prays for time to place on record the inquiry report of the Superintendent of Police.

Adjourned to 5.3.2013.”

It is then that the respondents registered the FIR no.15 dated 2.3.2013 under Section 365 IPC against unidentified persons on the basis of the statement suffered by the petitioner and in the subsequent reply they have washed off their hands in totality by filing an untraced report which to the mind of this Court after a lapse of so many years is hardly surprising.

The Court is now confronted with the situation where the respondents initially accused of abduction of the minor and though on notice regarding the disappearance of the child did not act upon the complaint of the petitioner for an inordinately long period.

Granting the benefit to the respondents that they had conducted a self-effacing inquiry exonerating themselves of the allegations then also they had a bounden duty as a law enforcing agency to atleast register an FIR at the time when disappearance of a minor was brought to their notice but to

shirk off the responsibility on the ground that the petitioner did not approach the concerned police station when all and sundry of the hierarchy of the police were in the know of the incident leading also to an inquiry would be akin to adding insult to injury.

Hon'ble Supreme Court in case titled as '**Lalita Kumari vs. Govt. of UP and others**' reported as 2014(1) SCC (Crl) 524 held as under:-

“110) Therefore, in view of various counter claims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given *ex facie* discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there

is always an option to prosecute the complainant for filing a false FIR.”

It is a classic case where the law enforcing agencies have clearly let down a citizen of the country by completely ignoring their duties and demonstrating apathy. A State and its agencies cannot shirk their primary responsibility in not even registering an FIR when such a serious matter is brought to their notice. It is a different matter that complexity of the situation may lead to a failure but to offer explanation of failure on account of self prescribed inaction would be unacceptable. If the police had acted but failed to trace out the missing person it could have been a situation well accepted by all concerned knowing the enormity of the task but to wish away a situation merely through inaction by an agency bestowed with a sacred duty to safeguard citizens can be an acceptable situation only at the peril of inviting a complete institutional breakdown.

In the considered view of this Court the State through its law enforcing agency has miserably failed to instill confidence in a citizen by adopting such an apathetic attitude where a minor has gone missing and not even an FIR was registered except in the year 2013 when the orders of this Court probably pulled them out of their slumber.

After a lapse of about 23 years it is evidently difficult and a hopeless situation beyond redemption to find out a missing person but by their conduct the respondents have shattered the confidence of a citizen so vital to the vibrance and health of an institution in a democratic set up.

The Court is also of the opinion that the respondents need to be burdened with exemplary consequences in monetary terms for having failed in their duty.

The State of Punjab would therefore recompense the petitioner by paying him Rs.15 lacs within a period of two months from the date of receipt of the certified copy of this order.

Home Secretary, Punjab or Director General of Police would be at liberty to hold a separate inquiry to affix the responsibility of persons responsible in not even registering the FIR despite being alive to the situation and recover the aforesaid amount from the personal pay of the said officers.

Disposed of.

A copy of this order be sent to the petitioner.

April 10, 2015
rekha

(MAHESH GROVER)
JUDGE