

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice Gudiseva Shyam Prasad

Writ Petition No.3986 of 2018

Date: 21.02.2018

Between:

Smt.S.Fathima

... Petitioner

and

The State of Andhra Pradesh
Rep. by its Principal Secretary
Home Dept., Secretariat,
Amaravathi, Guntur District and 2 others

... Respondents

Counsel for the Petitioner: Mr.Nuthalapati Krishna Murthy

**Counsel for respondent Nos.1 to 3: AGP attached to
The Advocate-General (AP)**

The Court made the following:

Order: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This Writ Petition is filed for issue of a Habeas Corpus directing the respondents to produce the husband of the petitioner *viz.*, Moulali (for short 'the alleged *detenu*') before the Court.

In pursuance of the notice of this Court, the Circle Inspector of Police, Chebrole Circle, Guntur Urban District, filed a counter-affidavit, wherein it is stated that on 02.09.2015, the petitioner has given a report that about four months back, she borrowed a sum of Rs.10,000/- from one Irfan under whom she was working as a coolie; that she repaid Rs.5,000/-; that due to her ill health, she stopped attending the duties; that Irfan used to demand repayment of the amount over phone; that on her asking him to talk with her husband *i.e.*, the alleged *detenu*, the said Irfan made a phone call to him; and that on 27-08-2015, the alleged *detenu* did not return home from his work place; that as he did not attend to her repeated phone calls, and later switched off the cell phone, she called Irfan on phone, who has informed her that the alleged *detenu* was dropped at Guntur Market Center

at about 6-40 p.m; and that as the alleged *detenu* did not return home, she has given the said report.

It is further stated in the counter-affidavit that based on the said report, the Sub-Inspector of Police, Vatticherukuru Police Station, registered Crime No.71 of 2015 under the head of “man missing” from 02-09-2015 and took up investigation; that during the course of investigation, he examined and recorded the statement of the petitioner, collected descriptive particulars and photo of the alleged *detenu*, flashed radio message to all the Inspectors of Police in Guntur and Krishna Districts with the details of the ‘missing man’ and issued paper notifications with the descriptive particulars and photo of the missing man in the local newspapers. It is further averred that after getting telecasted in the television channels about the missing man, the Investigating Officer has prepared Talash Forms and Input forms with the photo and details of the missing man and sent the same to DCRB and SCRB, Hyderabad, for tracing his whereabouts; that later, the Investigating Officer visited the scene of offence and inspected the same, but, did not find any incriminating material; that during the course of further

investigation, the Investigating Officer has collected phone data of Irfan, who contacted the missing man twice on 27-08-2015 at 4.45 p.m., and 5.07 p.m., before he went missing; that on 17.11.2015, the Tahsildar, Vatticherukuru Mandal, sent a communication to the Vatticherukuru Police Station stating that Irfan has surrendered before him and gave a statement that he along with two coolies *viz.*, Virsingh and Mahavir, who were working in his mill, killed the alleged *detenu* on 27.08.2015 at his mill and threw the dead body packed in a gunny bag into a running drainage canal situated between Etukuru Junction and Budampadu Junction near Ashok Leyland Company; that on receiving the said information, the Investigating Officer sent constables to the office of the Tahsildar, and brought Irfan to the Police Station; that after recording the confessional statement of Irfan, FIR was put up for the offences under Section 354 (A) IPC, Section 2 (N) of the Sexual Harassment Act of Women at Working Places Act (Prevention, Prohibition & Redressal Act, 2013) and Sections 302 & 201 IPC on 17-11-2015; that though efforts were made to trace out the deadbody, the Police were not successful and they could recover only four plastic bags, plastic rope, light cement colour pant and a shirt; that Irfan identified the said

two articles used in the commission of the offence; that thereafter, the Police visited the house of Irfan and seized the cell phone of the missing man; that Irfan was arrested and produced before the XI Additional Junior Civil Judge's Court, Guntur, who remanded him to judicial custody; that later, he was enlarged on bail; and that as Irfan has violated the conditions of bail, Non-Bailable Warrants were issued against him, which are pending execution.

It is further averred in the counter-affidavit that during the further course of examination, A.2 was arrested on 21.02.2016 and on interrogation, he corroborated with the confession of A1. After judicial remand, accused No.2 was released on conditional bail and accused No.3- Mahavir is still absconding.

It is further averred that on 23-05-2016, charge sheet was filed against accused Nos.1 and 2 *vide* SC.No.10 of 2017 on the file of the VI Additional Junior Civil Judge, Guntur, and absconding chargesheet was filed against accused No.3. Based on the above facts, it was pleaded that as the alleged *detenu* was killed by the accused referred to above, Habeas Corpus Petition is not maintainable.

Mr.Nuthalapati Krishna Murthy, learned Counsel for the petitioner, submitted that the Police did not even trace the body of the alleged *detenu* and that therefore, the petitioner still believes that her husband is alive.

In our opinion, this Writ Petition is wholly misconceived. The version with which the respondents have come out in the counter-affidavit is not merely their *ipsi dixit*. Not only a Criminal Case was registered, but the same has also been numbered as Sessions Case for various offences including the one under Section 302 IPC and even a charge sheet has also been filed. If the Police Could not trace the body due to the circumstances beyond their control, it is not possible to believe the version of the petitioner that her husband is still alive. In any event, if the petitioner wants to be under that impression, she may be free to continue to have such an impression. Based on such an individual impression, she cannot seek a prayer, which is not possible to be granted. In the light of the facts of the case as discussed above, we cannot disbelieve the version of the Police that the alleged *detenu* is no more.

For the aforementioned reasons, the Writ Petition is dismissed.

(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad, J)

Dt: 21st February, 2018
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