

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 474 OF 2005

Smt. Kamalbai W/o Gangadhar (Patil) Biradar,
Age : 35 years, Occu : Household,
R/o Chakur, Tq. Degloor,
District : Nanded

...Petitioner

Versus

1. The State of Maharashtra,
Through the Chief Secretary,
Govt. of Maharashtra,
Mantralaya, Mumbai-32
2. The Dist. Magistrate/Collector,
Nanded.
3. The Dist. Superintendent of Police,
Nanded, Dist. Nanded.
4. The Dist. Superintendent of Police,
Parbhani, Dist. Parbhani.
5. The Dist. Superintendent of Police,
Bidar, Dist. Bidar (Karnataka).
6. The Police Inspector,
Police Station, Degloor,
Dist. Nanded.
- [7] Shri. Amrut Maharaj, | deleted as per
Age : 45 years, Occu: Nil, | Court's order dated
R/o Hunaji, Tq. Bhalki, | 29.11.2006
District : Bidar (Karnataka)
8. Vithal S/o Purbaji Gaikawad,
Age: 55 years, Occu: MLA,
R/o (1) Peth Shivani, Tq. Palam,
District : Parbhani,
(2) Gangakhed, Tq. Gangakhed,
District : Parbhani.
9. Rajesh S/o Vithal Gaikawad,
Age: 30 years, Occu: Agri.
R/o : Gangakhed, Tq. Kangakhed,
District : Parbhani.

10. Ramrao S/o _____ Suryawanshi,
Age : 30 years, Occu: Agri.,
R/o Gangakhed, Tq. Kangakhed,
District : Parbhani. ...Respondents

Mr P.P. Mandlik, Advocate for Petitioner
Mr S.J. Salgare, A.P.P. for State/Respondent Nos.1 to 6
Mr S.S. Jadhavar, Advocate for Respondent Nos. 8 to 10

**CORAM : V.K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.**

**RESERVED ON : 27.08.2021
PRONOUNCED ON : 28.10.2021**

JUDGMENT : (PER SHRIKANT D. KULKARNI, J.)

1. The petitioner, by invoking jurisdiction of this Court under Article 226 of the Constitution of India is seeking writ of *habeas corpus*.

2. Factual matrix -

(a) The petitioner is a wife of Gangadhar Patil, resident of village Chakur, Tq. Degloor, District – Nanded. Her husband Gangadhar Patil was running a proprietary concern, in the name and style as 'Mahesh Enterprises' dealing with the business of cotton in addition to his profession as an agriculturist. He used to purchase cotton from the farmers and businessmen and used to sell it to Vithal Gaikawad/Chairman of Dr. Babasaheb Ambedkar Magasvargiya Sahakari Soot Girni, Palam, Dist. Parbhani/Respondent No. 8. The said Soot Girni was liable to pay dues of Rs. 58,690/-, and therefore, husband of the petitioner many a times requested to the Chairman/respondent No. 8 to pay the outstanding bill. He has also filed complaint against respondent No. 8 to that effect before the Regional Director, Registrar, Co-operative Societies and also

Police complaints. Respondent No. 8 being a Chairman and M.L.A. along with his son Rajesh Gaikawad and close relatives threatened to the husband of the petitioner to kill him if he demanded the outstanding bill. The complaint was also filed to that effect to the Dy. Superintendent of Police, Parbhani and Dy. Superintendent of Police, Nanded. One Mr Amrut Maharaj resident of Hunaji, Tq. Bhalki, District Bidar (Karnataka) called husband of the petitioner on 20.05.2005 in respect of his outstanding bill. The petitioner's husband did not return to the house. As such, the petitioner was constrained to file complaint with Police Inspector, Police Station, Degloor. It is her apprehension that respondent Nos. 8 and 9 might have detained her husband by joining hands with respondent No. 7 - Amrut Maharaj. She has also raised suspicion and pointed her fingers towards respondent Nos. 7 and 8. The Police failed to trace out her husband.

(b) In this background, the petitioner has knocked the doors of this Court.

3. Heard Mr P.P. Mandlik, learned counsel for the petitioner, Mr S.J. Salgare, learned A.P.P. for State/Respondent Nos. 1 to 6 and Mr S.S. Jadhavar, learned counsel for respondent Nos. 8 to 10.

4. Perused reply-affidavit filed by the concerned Police Officers, reply-affidavit filed by respondent Nos. 8 to 10 and reports submitted by S.D.P.O. Degloor, Dist. Nanded from time to time.

5. Mr Mandlik, learned counsel for the petitioner submitted that the State Government and Police machinery have failed to produce the husband of the petitioner. The State Government has failed to assign any reason as to why action was not taken against respondent No. 8, who was M.L.A. at the relevant time and respondent No. 9 happened to be son of respondent No. 8 and respondent No. 10 happened to be his nephew. The State Government and Police Officers did not clarify as to why F.I.R. was not registered against respondent Nos.8 to 10 when there were specific allegations against them levelled by the petitioner in her complaints. The petitioner is fighting this litigation since the year 2005, but there was no progress in the investigation. The State and the Police Officers have miserably failed in discharging their duty. The State Government is liable to pay Rs. 60 lakhs as exemplary costs in view of the Judgment of the Hon'ble Supreme Court in case of **Sebastian Hongray Vs. Union of India** reported in **1984 AIR 1026**.

6. Mr Mandlik, learned counsel for the petitioner has also placed reliance on the following decisions in support of his argument :-

- (i) ***The Division Bench decision of this Court in Criminal Writ Petition No. 422/2013 (Smt. Sanjeevni Wd/o Begya Pawar and Ors. Vs. The State of Maharashtra and Ors.) decided on 23rd February, 2021.***
- (ii) ***Nilibati Behera Alias Lauti Behera Vs. State of Orissa reported in 1993 (2) SCC 746***
- (iii) ***D.K. Basu Vs. State of West Bengal reported in 1997 (I) SCC 416***
- (iv) ***Rudal Sah Vs. State of Bihar reported in 1983 (4) SCC 141***

7. Mr S.J. Salgare, learned A.P.P. for the State/respondent Nos.1 to 6 invited our attention to the various reports submitted by the S.D.P.O. Degloor. He submitted that the Police machinery has taken sincere efforts to trace out the petitioner's husband. The investigation was conducted by the Police Officer by all the angles. There was no laxity on the part of the Police machinery in tracing out the petitioner's husband. Unfortunately, the petitioner's husband could not be traced out despite all best efforts made by the Police machinery.

8. In view of the above scenario, the State Government/Police Officers cannot be blamed when they have taken sincere efforts to find out the petitioner's husband. It is not a case to award exemplary costs.

9. Mr S.S.Jadhavar, learned counsel for the respondent Nos.8 to 10 submitted that the respondent Nos. 8 to 10 are not any way concerned with the petitioner's husband. It is collusive petition filed by the petitioner with her alleged missing husband with ulterior motive to escape from the demand of number of businessmen to pay their arrears of bills towards supply of cotton. The petitioner's husband has received the payment towards supply of cotton. The record in respect of the transactions between the Gangadhar Patil/ petitioner's husband and Dr. Babasaheb Ambedkar Magasvargiya Sahakari Soot Girni, Peth Shivani, is available. There were no dues. He submitted that petitioner's husband was required to face demands of cotton suppliers and payment thereof. He went underground and only with an intention to escape from other consequences, this petition has been filed with *mala fide* intention. He

submitted that there are no allegations against respondent Nos. 8 to 10 that they have detained the husband of the petitioner in their custody. The main allegations are against one Amrut Maharaj whose name came to be deleted as party-respondent. Mr S.S. Jadhavar, learned counsel for respondent Nos. 8 to 10 submitted that prayer for writ of habeas corpus is not genuine. It has political colour. The petition is liable to be dismissed.

10. We have considered the submissions of learned counsel for the petitioner, learned A.P.P. for the State/respondent Nos. 1 to 6 and learned counsel for respondent Nos. 8 to 10.

11. One Amrut Maharaj (respondent No.7) being close associate of respondent Nos. 8 to 10 intervened in the matter and met Gangadhar Patil and assured that payments would be made to him from the Chairman of Spinning mill.

12. It is evident from the record that on 23.09.2005, this Court was pleased to issue notices to the respondents. This Court issued Rule on 11.06.2007 in the matter. The Superintendent of Police was directed to personally monitor the investigation by order of this Court dated 31.07.2014. The Police machinery has submitted the reports from time to time to this Court. On 18.06.2006, this Court expressed the dissatisfaction with the manner in which the investigation has been made so far.

13. We cannot overlook the fact that the State machinery has failed to take effective and concrete steps to secure the presence of the petitioner's husband. On perusing the reports submitted by the Police machinery, we

do not find satisfactory answer for unsuccessful exercise to trace out the husband of the petitioner after registration of crime. No effective investigation seems to have conducted. The investigation was lacking devotion to achieve the goal. Mere paper work of investigation seems on record. C.R. No. 108 of 2006 under section 364 of I.P.C. seems to have been registered but no further investigation except arrest of one Amrut Maharaj and paper work. Why remaining suspects are not arested. No satisfactory reason is forthcoming. The investigation lacks whole hearted efforts. Article 21 of the Constitution of India guarantees that no person shall be deprived of his life or personal liberty except according to a procedure established by law. Right to life and personal liberty is the primordial right which every human being everywhere at all times ought to have it. In India, right to life and personal liberty is provided in Article 21 of the Constitution of India. This aimed at achieve "Justice" mentioned in the preamble for the development of the citizens. The State is required to protect life of every person.

14. For the last 13 years, the petitioner is fighting to secure presence of her husband. The State machinery has failed to produce the petitioner's husband, even after a decade, it is sad state of affairs on the part of State machinery.

15. In case of ***Sebastian Hongray Vs. Union of India and others (supra)***, it is held by the Hon'ble Supreme Court as under :-

"Where the Supreme Court by a writ of habeas corpus required the Government of India to produce two persons and the Government eventually failed to produce them expressing

its inability to do so and the assertion of the Government that the persons left certain camp near which a certain army regiment is stationed alive, is untenable and incorrect, the Government and other respondents, held, would be guilty of civil contempt because of their willful disobedience to the writ. The Supreme Court, in the circumstances, keeping in view the torture, the agony and the mental oppression through which the wives of the persons directed to be produced has to pass, instead of imposing a fine, directed that as a measure of exemplary costs as is permissible in such cases, the respondents shall pay Rs.1 lac to each of the two women."

16. In case of **Smt. Sanjeevni Wd/o Begya Pawar and Ors. Vs. The State of Maharashtra and Ors. (Criminal Writ Petition No. 422/2013)** (*supra*), the Division Bench of this Court was pleased to grant ex-gratia compensation of Rs. 6,32,000/- to the petitioner Smt. Sanjeevni for custodial death of her husband, Begya Pawar.
17. In case of **Nilibati Behera Alias Lauti Behera Vs. State of Orissa** (*supra*), the Hon'ble Supreme Court by exercising Article 32 and 142 was pleased to award compensation having regard to the facts of the case.
18. In case of **D.K. Basu Vs. State of West Bengal** (*supra*), the Hon'ble Supreme Court was pleased to issue mandatory directions to the police authorities in respect of the custodial violence, torture, etc. and monetary compensation.
19. In case of **Rudal Sah Vs. State of Bihar** (*supra*), the Hon'ble Supreme Court was pleased to award interim compensation of Rs.30,000/- to the petitioner.

20. Having regard to the legal position made clear by the Hon'ble Supreme Court in cases cited supra and by considering the provisions of Chapter XVIII of The Bombay High Court Appellate Side Rules, 1960, the petitioner has made out a case to award exemplary costs. Right to life and personal liberty is guaranteed under Article 21 of the Constitution of India and only available against the State. For more than 13 years, the petitioner-lady is fighting this litigation to secure presence of her husband. It is very sad that she could get fruits. There are no chances to secure presence of the petitioner's husband. The State machinery has failed in securing life of the husband of the petitioner. It is a clear case of infringement of right to life and personal liberty guaranteed under Article 21 of the Constitution of India. We express our displeasure the way in which the State machinery has conducted investigation in the case. Since the efforts of the Police Officer/S.D.P.O. Degloor Sub Division have not yielded any result, despite their efforts, according to us, no useful purpose would now be served by keeping this petition alive. By taking into consideration peculiar facts and circumstances of the case and the time spent by the petitioner almost more than a decade to exercise fundamental right guaranteed under the Constitution, we are of the considered view to award Rs. 50,000/- (Rupees Fifty Thousand Only) to the petitioner by way of exemplary costs.

21. We proceed to pass the following order :-

ORDER

(i) The Criminal Writ Petition stands disposed of as under.

- (ii) Respondent Nos. 1 to 6/State machinery shall pay Rs. 50,000/- (Rupees Fifty Thousand Only) to the petitioner by way of exemplary costs within a period of three months from today. In case of failure, the petitioner is at liberty to recover the same by exercising appropriate legal remedy.
- (iii) We, however, direct S.D.P.O. Degloor to continue with his investigation for tracing the whereabouts of the petitioner's husband. The investigation should not be closed on account of disposal of this writ petition.
- (iv) This order will not preclude the petitioner from bringing a suit to recover appropriate damages from the State and its erring officials.
- (v) Rule discharged.

[SHRIKANT D. KULKARNI, J.]

[V.K. JADHAV, J.]

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