

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

213 CWP-16873-2018
Date of Decision: 21.09.2023.

MADAN LALPETITIONER

VS

STATE OF PUNJAB AND ORS ...RESPONDENTS

CWP-30562-2018

SUDESH KUMARPETITIONER

VS

STATE OF PUNJAB AND ORS ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Vaneet Kumar Sharma, Advocate
for the petitioner.

Mr. Rohit Bansal, Sr. DAG, Punjab.

VINOD S. BHARDWAJ, J. (ORAL)

Both these petitions are being decided by a common order as identical facts giving rise to similar legal issues arise for consideration in the present petitions. However, for facility of reference, facts have been extracted from CWP-16873-2018 titled as *Madan Lal Vs. State of Punjab and others*.

Allegations levelled in the present petition is that Raman Kumar-son of the petitioner was arrested by police on 19.05.2018 but he was shown to have been arrested on 27.05.2018. Respondents, thereafter produced the detainee Raman Kumar on 28.05.2018 before the Illaqa

Magistrate. It is averred that the factum of son of the petitioner having been taken in custody by the respondent on 19.05.2018 is duly established by the CCTV footage which have been appended along with the present petition as Annexure P-2.

A representation referring to the above said evidence was submitted by the petitioner to the Additional Director General of Police, Punjab on 29.05.2018 itself, however, no action was taken thereupon. No effort was made to determine as to whether son of the petitioner had been kept in illegal custody during the period from 19.05.2018 to 27.05.2018 or not.

It is averred that the veracity of the above said CD/CCTV footage as well as the allegations levelled were to be investigated by the respondents to ascertain the truth and to determine whether son of the petitioner was kept in illegal confinement by the respondents or not, but the same was not done.

Reply by way of an affidavit of Senior Superintendent of Police, Tarn Taran has been filed on behalf of respondent No.3 wherein it has been reiterated that the detenue-Raman Kumar, son the petitioner, was nominated as an accused in the case first time on 23.05.2018 on the statement of Gurnam Singh Inspector, Punjab Warehouse Corporation who had been arrested on 19.05.2018. Pursuant to the above said nomination, the son of the petitioner was arrested on 27.05.2018. No reference regarding the respective enquiry/investigation into the evidence, referred to by the petitioner, has been made in above said reply filed by the respondent No.3-Senior Superintendent of Police, Tarn Taran. A similar reply has also been filed by respondent No.4.

Learned counsel for the petitioner contends that considering the allegations of wrongful confinement/illegal detention to be serious more so when the evidence of illegal custody was submitted by the petitioner, it was obligatory on the part of the respondents authorities to examine the same before coming to any conclusion or to rule out the allegations levelled by the petitioner to be false or unsubstantiated. Having chosen to not look into the evidence, the respondents have abdicated their duties in law and are now covering their tracks of an illegality committed by them. He submits that he would be satisfied at this juncture in case respondents are directed to constitute a Special Investigation Team (SIT) to examine the evidence adduced by the petitioner and to thereafter determine as to whether Raman Kumar had been illegally confined by the respondents by taking him in custody on 19.05.2018 or not.

The respondents have on the other hand reiterated their stand in the reply and mentioned that Raman Kumar was taken in custody of 27.05.2018 and was produced before the Illaqa Magistrate on 28.05.2018. There was thus no illegal confinement.

I have heard learned counsel for the parties and have gone through the documents appended along with the record.

It transpires that the respondents have not responded to the veracity/admissibility of the evidence filed by the petitioner. So much so they have chosen not to deny the same as well. The basis for recording any finding or resorting to any stand without assessing the evidence is more like arriving at a conclusion before enquiry. This is contrary to law. The conclusion in any enquiry/investigation is deduced from assessment of evidence and not otherwise.

A question of illegal detention or deprivation of individual liberties has always been given top priority. An Agency of State cannot be an oppressor of constitutional guaranties and consider itself beyond law. Its actions are always subject to judicial scrutiny and checks. Any violation of constitutional rights and freedoms is a matter of serious concern and has to be given priority it deserves.

Taking into consideration the averments contained in the petition, response filed by the respondents as also the arguments advanced by the counsel appearing on behalf of the respective parties, I am view that the response by the respondents have been ministerial and they have chosen to ignore the evidence that has been relied upon by the petitioner to substantiate his claim that his son Raman Kumar had been taken into illegal custody by the Police Officers on 19.05.2018 and that his arrest was illegally shown and manipulated to have taken place on 27.05.2018.

The Senior Superintendent of Police, in his reply, has already impeached the above said evidence without having examined the same. Hence it would not be appropriate to direct the said Officer to examine the legality, validity and admissibility of the evidence relied upon by the petitioner.

The present writ petitions are accordingly disposed of with a direction that the present petition be treated as the representation by the Additional Director General of Police, Punjab (Public Grievances Division) and that an appropriate decision be taken by him after considering the evidence and granting an opportunity of hearing to the concerned parties. If on such consideration, a prima facie case is made out, appropriate steps for ensuring conduct of investigation shall also be undertaken, as per law.

The petitioner shall appear in the office of Additional Director General of Police (Public Grievance Division) on 03.10.2023 at 11:00 AM. Considering the matter has remained pending for a period of 5 years, a decision be taken by the Additional Director General of Police (Public Grievance Division) within a period of 04 months the petitioner appearing before the above authority for seeking redressal of his grievance.

A photocopy of this order be placed on the file of other connected case.

21.09.2023
pry

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No