
(16) For all the reasons mentioned above, this petition succeeds and is accordingly allowed. The impugned order dated 3rd December, 1992 (Annexure P.4) and order dated 12th October, 1994 (Annexure P.10) are hereby quashed. As a consequence, the respondents are directed to take the petitioner back in service as a Constable Commando Force. The petitioner is deemed to be appointed on 15th April, 1992 (Annexure P.2) and shall be entitled to all consequential benefits except pay. However, he shall be entitled to re-fixation of his pay on the assumption that he was appointed and joined on 15th April, 1992. The question as to whether he shall continue to serve as a Constable in Commando Force or transferred/absorbed in any other unit of Haryana Police is left to the discretion of respondent No. 2. The aforementioned direction has become necessary because the petitioner has already crossed the age of 30 years. The needful shall be done within a period of two months from the date a certified copy of this order is received by the respondents

R.N.R.

BEFORE K.S. GAREWAL, J

DR. G.S. MAVI & ANOTHER,—*Petitioner*

versus

STATE OF PUNJAB & OTHERS,—*Respondents*

CRL. W.P. NO. 1547 OF 1996

AND CRL. M. NO. 156 & 157 OF 2004

4th April, 2005

Constitution of India, 1950—Art.227—Code of Criminal Procedure, 1973—Ss. 200 to 203—Petitioners seeking independent investigation into disappearance of their sons—Allegations against police officers—Petitioners failing to make a complaint under Section 200 Cr. P.C. to the Magistrate—Petitioners approached High Court after about 4½ years of occurrence—Delay and inaction on the part of petitioners—Matter out of the domain of criminal justice system—Inquiry into disappearance after about 15 years of occurrence declined—Petition dismissed while granting liberty to petitioner to file criminal complaint.

Held, that the criminal justice system as embodied in the Code of Criminal Procedure is a complete code and provides for every kind of situation. Therefore, it is a mystery why the petitioners did not present a complaint along with their witnesses before the Area Magistrate after they had failed to get an investigation marked to an independent agency. It is also a mystery why the petitioners waited for four and a half years to file the instant criminal writ petition. After a further period of eight and a half years the matter has come up for decision.

(Para 8)

Further held, that sons of the petitioners have not been seen or heard of since February 5, 1991. This is a grave matter of great concern but to start an investigation after fourteen years and expect a result would be very optimistic. The petitioners have, by their own inaction and delay, taken the case out of the domain of criminal justice system by failing to present a complaint under Section 200 Cr. P. C. The version of the petitioners kept on getting improved with each letter/representation/memorandum. Finally by August, 14, 1991 a clear cut version had crystallised but still no criminal complaint was filed. The petitioners cannot complain that the criminal justice system had let them down that for they never approached the Area Magistrate with a complaint. They waited for four years to come to this Court to enforce their human rights.

(Para 11 & 18)

R.S. Bains, Advocate *for the Petitioners*.

R.S. Ghai, Sr. Advocate with Bipan Ghai, Advocate.

R.S. Cheema, Sr. Advocate with Pawan Girdhar, Advocate.

K.S. Ahluwalia, *Advocate for respondent No. 5*.

JUDGMENT

K.S. GAREWAL, J.

(1) The petitioners' sons were two friends, Atamjit Singh (19) and Mohan Singh (20). The young men were on their way to college on a bicycle on February 5, 1991 having left the former's home at 9.30 A.M. They were picked up by the police. The petitioners suspect that their sons were taken into police custody, never to be seen alive again.

(2) The present petition was filed after four years on November 4, 1996. The petitioners have sought an independent investigation into the disappearance of Atamjit Singh and Mohan Singh, compensation to the tune of Rs. 10 lacs each and any other appropriate writ, direction or order.

(3) In support of the petition, petitioner No. 1 has placed on record copies of memoranda/press releases/letters/reports addressed to various authorities between February 9 and August 14, 1991 alleging that Atamjit Singh was in police custody (Annexure P-1 dated February 9, 1991 and Annexure P-2), that Atamjit Singh and another boy, Mohan Singh, were picked up by C.I.A. Staff in the Matador Van DL-3C-3066 and that it was feared that Atamjit Singh may have been subjected to physical and mental torture and may be eliminated in a fake encounter (memorandum to Governor, Punjab dated February 11, 1991 (Annexure P-5), the boys had been picked up by the police party at about 11 A.M. from near Bhai Wala Chowk in full view of a large number of people (memorandum to Governor, Punjab dated February 14, 1991, Annexure P-6).

(4) On February 16, 1991, Hari Singh Brar, President of Punjab Agricultural University Teachers Association (Dr. G.S. Mavi being a Professor at the said University) addressed a representation to the Prime Minister of India giving more details of the case. According to this representation, on February 5, 1991 Atamjit Singh (19) was abducted with his friend Mohan Singh by a police team led by D.S.P. Shiv Kumar Sharma and C.I.A. Inspector Manmohan Singh in a broad day light from Bhai Wala Chowk, Ludhiana in a Private Matador DL-3C-3066 and taken to C.R.P.F. Interrogation Centre, Dugri. Their bicycle was left by the police party at a nearby **dhaba** and was picked up later in the afternoon by a C.I.A. Constable. From Dugri the boys were taken to Police Station, Khanna Sadar, where they were asked to change their clothes and from there taken to Nasrali, where in an alleged encounter, they were allegedly murdered under the supervision of D.S.P. Shiv Kumar Sharma. In order to suppress the identity of the boys, not only their clothes were changed, their photographs were also tampered with. In the said representation it was prayed that a judicial inquiry be conducted by a sitting Judge of the High Court into the crime.

(5) The petitioners also relied upon a report of Punjab State Human Rights Organisation dated April 22, 1991 (Annexure P-8) and a report of Amnesty International dated May 20, 1991 (Annexure P-9).

(6) The allegations in the petition have been countered through affidavit filed by D.S.P. Gurnam Singh on behalf of respondents 1, 2 and 3. The other respondents 4 to 6 have also filed their respective replies.

(7) The course of action which the petitioners have adopted is flawed. If the petitioners felt that the police would not investigate the disappearance effectively after registering an F.I.R. under section 154 Cr. P.C., because the suspects were police officers, then the petitioners could have lodged a complaint before the Area Magistrate and presented their evidence. The Magistrate was duty bound to take cognizance of the offence and examine the petitioners and their witnesses. If the Magistrate formed the opinion that there was sufficient ground for proceeding, he could issue process under section 204 Cr. P.C. Alternatively, the Magistrate could postpone issue of process and either inquire into the case himself or direct an investigation to be made by a police officer or any such other person as he thought fit for the purpose of deciding whether or not there was sufficient ground for proceeding (Section 202 Cr.P.C.).

(8) The Criminal justice system as embodied in the Code of Criminal Procedure is a complete code and provides for every kind of situation. Therefore, it is a mystery why the petitioners did not present a compliant alongwith their witnesses before the Area Magistrate after they had failed to get an investigation marked to an independent agency. It is also a mystery why the petitioners waited for four and a half years to file the instant criminal writ petition. After a further period of eight and a half years the matter has come up for decision.

(9) The occurrence took place in February 5, 1991, fourteen years ago. At one stage this Court had given a direction on March 18, 2004 to the following effect :—

“Learned Sessions Judge, Ludhiana is hereby directed to enquire into the disappearance of Atamjit Singh Mavi and Mohan Singh and furnish his report to this Court by July 5, 2004. The learned Sessions Judge may devise his own procedure in conducting the inquiry and may dispense with cross-examination of the witnesses, unless deemed absolutely necessary.”

(10) However, as this order had been passed without hearing respondents 4, 5 and 6, the order was recalled on April 20, 2004 since it appeared to be somewhat unfair to them.

(11) Sons of the petitioners have not been seen or heard of since February 5, 1991. This is a grave matter of great concern but to start an investigation after fourteen years and expect a result would be very optimistic. The petitioners have, by their own inaction and delay, taken the case out of the domain of criminal justice system by failing to present a complaint under Section 200 Cr.P.C. The petitioners have infact opted to seek redress for violation of human rights by invoking what may be called "human rights justice system" as contradistinguished from "criminal justice system". Human rights law is centred around the Protection of Human Rights Act, 1993 Articles 14, 20, 21 and 22 of the Constitution of India whereas the criminal justice system is embodied in the Code of Criminal Procedure. Once the matter has been taken out of the domain of the Code of Criminal Procedure by sheer inaction and delay then it does become somewhat difficult to put the clock back.

(12) This Court has in a large number of cases required Sessions Judges to enquire into cases of disappearance/custodial deaths/police encounters etc. The reports furnished by Sessions Judges are made the basis of first information reports and cases go back into the criminal justice system for trial in accordance with law. The present petitioners can still do so but it would be a travesty of justice if the Court directs the Sessions Judge to enquire into the case, if respondents 4 to 6 have serious objection to it.

(13) Investigation into crimes are always conducted behind the back of the suspects. Provisions of Chapter XII (Information to the police and their powers to investigate), no where require that collection of evidence is done in the presence of the accused. Similarly, provisions of Chapter XV (complaints to Magistrates) also do not require the presence of the accused.

(14) However, if a Sessions Judge has been called upon to investigate the case, the suspects would demand a right of hearing and cross-examination. Their appearance before the Sessions Judge, who is to conduct the inquiry would also lead to them demanding

cross-examining the witnesses. This is contrary to what would be the case if a police officer or a Magistrate was to conduct the investigation/inquiry under the provisions of the Code of Criminal Procedure. In case the suspects do not appear before the Sessions Judge and choose to stay away, the statements of the witnesses would remain unchallenged and the verdict of the Inquiry Officer (Sessions Judge) may go against them. If they appear and cross-examine the witnesses, there would be a voluntary surrender of rights available to them under the Code of Criminal Procedure, the most important of which is the right to silence.

(15) Therefore, in cases where the police officers object to the inquiry by a Sessions Judge, such a course of action should not be adopted. The petitioners should be left to move against the suspects under the provisions of Code of Criminal Procedure (Sections 200 to 203) and expect that the matter will be decided expeditiously and effectively.

(16) This Court in *Hakim Singh versus State of Punjab and others*, CWP No. 10667 of 1996 had declined to institute an inquiry where the incident had taken place in 1993 and the petition was filed three years later. In *Mahender Singh versus S.S.P. Mansa and others*, Cr. W.P. 1654 of 1996 decided on December 17, 2003, this Court had declined to institute an inquiry after twelve years of the alleged disappearance. In *Sardul Singh versus State of Punjab and others*, Civil Appeal No. 224 of 1991 decided on March 24, 2004, the Hon'ble Supreme Court of India had declined to institute an inquiry where more than ten years had lapsed.

(17) However, on the other hand, inquiries had been instituted in ***Kamaljit Kaur versus State of Punjab (1)***, ***Swaran Kaur versus State of Punjab (2)***, ***Smt. T. Joicy versus The Union of India and others (3)***, ***Smt. Sukheli Sema versus Union of India and others (4)***, ***Vinod Kumar versus The State of Punjab and others (5)***, ***Mohammad Sultan Mir versus State of J&K (6)*** and ***Inder Singh versus State of Punjab and others (7)***.

(1) 1998 (4) R.C.R. (Crl.) 244

(2) 1998 (2) R.C.R. (Crl.) 37

(3) 2000 CrL. L.J. 764

(4) 1999 CrL. L.J. 49

(5) 1996 (1) P.L.J. 325

(6) 2001 CrL. L.J. 301

(7) AIR 1995 S.C. 312

(18) The facts of the cases cited by the learned counsel for the petitioners were naturally different and reasons for directing C.B.I. inquiries were also different. In the present case, it is felt that the version of the petitioners kept on getting improved with each letter/representation/memorandum. Finally by August 14, 1991 a clear cut version had crystallised but still no criminal complaint was filed. The petitioners cannot complain that the criminal justice system had let them down for they never approached the Area Magistrate with a compliant. They waited for four years to come to this Court to enforce their human rights.

(19) It is clear that the jurisdiction enjoyed by criminal courts and exercised by the criminal justice system operates in an arena different from the human rights jurisdiction. These jurisdictions are mutually exclusive and do not overlap at all. When a crime is committed or suspected to have been committed, the complainant has a right, nay duty, to report the matter, either to the police or to the Magistrate. In the present case it is quite understandable that the complainant was reluctant to file F.I.R. There could be three reasons for this :— (a) lack of reliable evidence, (b) fear of the police or (c) lack of the faith in police investigation. All three above mentioned factors seem to be evident in this case. Nevertheless, the case cannot be taken away from the criminal justice system because the complainant could always have filed a criminal complaint. This is where the so called “human rights activities” failed the petitioners and scuttled the prosecution which the petitioners were seeking. The petitioners were given vainglorious hopes whereas what they needed was dogged prosecution by competent criminal layers. The result is that the petitioners are still at square one.

(20) Resultantly, this petition is dismissed with liberty to the petitioners to file a criminal complaint, if so advised.

R.N.R.