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some hard cases—, is scarcely worth notice because such hardship inevitably arises on every attempt at classification, for wherever the line is drawn certain cases very close to that line will occur. That, in my opinion, cannot be a ground for stretching the meaning of the classification, and as I have already said the plain language of the notification in question leaves no doubt that a claim was admissible only in respect of a building which taken by itself was of the minimum value mentioned in the notification. I would, therefore, hold that the decision of this Court in *Bhagat Ram Soni's case* (1), was correct, and there is no reason to depart from it.

In the result, this appeal must fail, but I would in the circumstances not burden the appellant with costs.

Falshaw, J.

FALSHAW, J.—I agree.

Dua, J.

DUA, J.—I agree.

B.R.T.

CRIMINAL MISCELLANEOUS

Before Tek Chand, J.

KIDAR NATH,—*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Criminal Miscellaneous No. 686 of 1959.

1959

Sept., 17th

Constitution of India (1950)—Article 226—Writ of habeas corpus—*Nature, scope and extent of—Writ, whether punitive—Return to the writ—Whether can be filed by a third party—Criminal jurispondence—Resort to inquisitonial methods of brutality for detecting crime—Whether countenanced.*

(1) L.P.A. 121 1956

Held, that the writ of "*Habeas Corpus*" is a prerogative writ of highest consitutional importance, being a remedy available to the meanest against the mightiest. It is acclaimed as a palladium of liberty of the common man. Despite the paramount importance and the high efficacy of the writ of *habeas corpus,* its scope is circumscribed. The writ of *habeas corpus,* is designed to afford immediate relief from illegal confinement or restraint and is used for the vindication of the right to personal liberty by scrutinising the legality of the restraint. It is a process devised in the main for obtaining deliverance from unlawful detention, and its great object is the liberation of those who may be kept under wrongful restraint or captivity. This writ cannot be employed as a means of securing judicial determination of any other question outside the illegal confinement or restraint whether partial or plenary.

Held, that the writ of *habeas corpus* is not of punitive or corrective character. It cannot serve for punishing the respondent or for affording reparation or redress to the person wronged. It is not designed to punish the official guilty of oppression, or of illegal confinement. It is not even devised to secure damages for the injured party. Resort in such cases must be had to the ordinary remedies which the writ of *habeas corpus* does not purport to duplicate. It remedies a wrong done, by releasing the wronged, but does not permit itself to be used as an instrument for punishing the wrongdoer. After a person kept in unlawful custody is released, the purpose of the writ has been served and it cannot be utilised for any other collateral object. It then ceases to be operative, when the illegal detention has ceased whether before or during the pendency of the application.

Held, that in a *habeas corpus* proceeding, the return to the writ is the principal pleading of the person against whom the writ is directed. A return must be made to the writ in accordance with the rule issued. A return by another person who is not a respondent in the case and who is not named in the proceedings as a party thereto is not in accordance with any rule of pleading and is valuless.

Held, that neither for purposes of obtaining confessirn, nor for eliciting information, law lends contenance to

either form of coercion, whether the target is the mind or the muscle, or the focal point of attack is the body or the nerves, or the form of torture is subtle or severe. Law does not permit perversion of its process for the purposes of ferreting out crime either by fear or force or by other means equally objectionable. Despite the difficulty, the detective process must harmonise with fair and humane standards. It is a matter of least moment that suspicions which fall on such a person are well founded. Even on that assumption resort to inquisitorial methods of brutality cannot be countenanced. Regardless of the nature of the crime the method adopted for its detection must not be barbarous or fall below permissible civilised norms.

Petition under Article 226 of the Constitution of India and under Section 491 Criminal Procedure Code praying that a writ in the nature of Habeas Corpus *be issued to the respondents to set at liberty Shri Moti Lal son of L. Jagan Nath Aggerwal of Ludhiana, from the illegal confinement and further praying that Shri Moti Lal should be medically examined immediately by the Civil Surgeon, Ludhiana.*

L. D. KAUSHAL, for Petitioner.

M. R. SHARMA, for Respondents.

ORDER

Tek Chand, J. TEK CHAND, J.—This is a petition by Kidar Nath of Ludhiana under Article 226 of the Constitution of India praying for the issuance of writ of *habeas corpus* against the three respondents, the State of Punjab, Shri Chaman Lal, Assistant Sub-Inspector in charge Police Division No. 3, Ludhiana, and S. Pritam Singh Brar, City Inspector of Police, Ludhiana. It is conceded at the Bar that no case is made out against respondents Nos. 1 and 3, and no relief is pressed against them. The petition relates to the wrongful detention of Moti Lal aged 18 years, younger brother of the petitioner, who was said to be in the illegal detention of Ludhiana Police and in particular of respondent No. 2.

The facts leading up to the presentation of this petition are that in the early hours of 13th of

June, 1959, a theft had been committed in the house of one Babu Ram of Ludhiana who occupied the upper storey of a building on the ground-floor of which was the shop of Ram Dulara Gupta, maternal uncle of Moti Lal, where the latter worked as a salesman. First information report was lodged at Police Division No. 3, Ludhiana, by Babu Ram in which he stated, that he had no suspicion on any person who might have committed the theft. In police diary, dated 15th of June, 1959, name of Moti Lal was mentioned as a suspect. On the evening of 15th of June, 1959, he was called to the police post but allowed to depart at 8 p.m. This went on for some days. On 19th of June, 1959, the investigation of the case was handed over to C.I.A., but the theft remained untraced and the investigation was again re-transferred to respondent No. 2, as the Assistant Sub-Inspector in charge of the police post. On 16th of August, 1959, when Moti Lal was going in the morning to a barber's shop to get his hair cut, a constable approached him and told him that he was wanted by respondent No. 2 for investigation. Moti Lal went to the police station but did not return home even after nightfall. Kidar Nath, petitioner, his elder brother, went to Division No. 3, and made inquiries from respondent No. 2 about the whereabouts of his younger brother but on not getting any satisfactory information, the petitioner began to suspect that his brother was kept in police custody and was being given beating. He then sent an express telegram addressed to the Chief Secretary, Punjab Government, Chandigarh, with a copy to the Superintendent of Police, Ludhiana. Copy of the telegram is produced as annexure 'A', And runs as follows :—

> "My younger brother Motiram under police custody since 14 hours—No allegation

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against him—Unnecessary harassment and beating—Whereabouts unknown—Kindly intervene."

The petitioner could not discover the whereabouts of his brother and no reply had been received to his telegrams. On 19th of August, 1959, Moti Lal was seen being taken to the house of Ved Vyas who was also suspected to be concerned in the theft. A police constable of Division No. 3 was accompanying Moti Lal. The petitioner learnt from Moti Lal that he had been severaly beaten by the police. Thereupon the petitioner sent five telegrams addressed to the President of India, the Governor of Punjab, the Chief Minister, Punjab, the Chief Secretary Government of Punjab, and the Inspector-General of Police, Chandigarh, the subject-matter being—

> "My brother Motiram aged 18 under Ludhiana Police custody since 16th August, without judicial orders— Whereabouts unknown—Kindly intervene.
>
> Kidranath".

(*vide* annexeure 'B'). On 21st of August, 1959, the present writ petition was filed in this Court and on the same day the Hon'ble the Chief Justice passed an order that the detenue Moti Lal be produced in this Court on Monday, the 24th of August, 1959. After the rule *nisi* had been issued, Moti Lal was said to have been released by the police from custody on 22nd of August, 1959, at 11 a.m. Within half an hour of his release, his maternal uncle took him to the civil hospital at 11.30 a.m. and the Assistant Surgeon who was in charge of the civil hospital, examined him and found on his person the following injuries :—

> (1) Red contusion mark 4" × ½" on the outer side of right upper arm, middle part anterior-posterior.

(2) Red contusion mark 5″ × 1″ on back of right shoulder upper part.

(3) Two contusions red abraded 6″ × ½″ and 5½″ × ½″ on the back of chest right lower part, crossing each other obliquely.

(4) Red contusion mark 6″ × ½″ on back of chest left side lower part oblique outwards and downward.

(5) Red abraded contusion marks two, 8″ × ½″ and 6″ × ½″ crossing each other obliquely on back of chest side middle part.

(6) Red contusion mark 2″ × ½″ just below the angle of left scapula.

(7) Abrasion ½″ × 1/8″ on back of right scapula middle part.

(8) Blister bluish 5/8″ × ¼″ on inner side of right leg lower part.

These injuries had been caused by blunt weapon and the medical certificate, described them as "simple, within few hours".

The affidavit filed by Moti Lal in this Court on 25th of August, 1959, contains the full details as to the maltreatment to which he was subjected. He stated that when he was taken by the police constable from the bazar to the police station on 16th of August, 1959, respondent No. 2, told him, that he had committed the theft and recovery had to be made from him and he had abused him and had further told him that he would be set right, the suggestion being that he would be belaboured. On the 17th night he was kept at the City Kotwali and respondent No. 2, sent for him

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at about 3 or 4 p.m. in the Kotwali premises and also sent for two constables. He could recognise them but their names were not known to him. In the words of Moti Lal "they (two constables) spread down a blanket on the floor and made me absolutely naked and asked me to lie down on that blanket. The sandles that I was wearing were put off. Shri Chaman Lal then with those sandles of mine gave me a beating on my head, buttocks, feet and ankles. One of the constables brought a cane. Shri Chaman Lal then gave me a cane beating on the ankles of my feet. Thereafter they made me to run in the sun."

As to the treatment meted out to him on the night between 21st and 22nd of August, 1959, para 9 of the affidavit of Moti Lal runs as under :—

> "* * * that Shri Chaman Lal thereupon called two constables and two canes. One of the constables bound my feet and hands and placed a *danda* under my legs and I was made naked and asked to lie down on my breast. One constable and Shri Chaman Lal therupon began to give a beating with the canes on my back. I cried out and told them that I was innocent. Upon this Shri Chaman Lal put his shoes on my mouth by turning my mouth upwards. They continuously beat me for about an hour. I kept crying. Then I was asked to go out of the room. I had become very weak and could not get up when I made an attempt to do so. Shri Chaman Lal put his lighted cigrette on my leg and said that now you will get up ; otherwise he told me that he would give me more beating."

The injuries on his body bear out the truth of his affidavit.

On a rule *nisi* being issued, no return was filed by the respondents. A memorandum was addressed by the Superintendent of Police, Ludhiana, to the Deputy Registrar of the High Court, stating that Moti Lal was not detained by respondents 2 and 3 and enclosing a para-wise reply to the petition. In this reply, the material allegations were denied and it was stated that when the investigation was taken up by respondent No. 2, after it had been re-transferred by the C.I.A., Babu Ram, complainant had again said that his suspicions fell on Moti Lal and on Ved Vyas. Respondent No. 2 sent for them on 16th of August, 1959, but they were not available and it was found that they along with Ram Dulara had gone to Jullundur side to avoid the interrogation. It was also said that as Moti Lal did not come on 16th of August, 1959, or even subsequently, no question of his detention arose. It was denied that Moti Lal was ever under restraint or in confinement. According to the statement, the police never contacted Moti Lal after the transfer of the investigation from C.I.A. staff. No written statement or affidavit of respondents 2 and 3 had ben filed, giving their version of the incident.

I may state here that the return filed under the signatures of the Superintendent of Police, Ludhiana, who was not a respondent in this case, is open to serious objection, as he did not purport to represent any respondent. In a *habeas corpus* proceeding, the return to the writ is the principal pleading of the person against whom the writ is directed. A return must be made to the writ in accordance with the rule issued. The respondents in this case failed to make a return. It was necessary that the return must be made by the person

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to whom the writ was issued and on whom it was served. A return on behalf of another officer, who is not a respondent in the case, and who is not named in the proceedings as a party thereto is not in accordance with any rule of pleadings. The respondents in not filing the return did not comply with the order of this Court. Even the written reply sent by the Superintendent of Police was neither supported by an affidavit nor by a verification. Such a return as has been filed in this case by the Superintendent of Police is valueless.

In answer to the petition, which came up before me on 24th of August, 1959, the respondents neither appeared in person nor through counsel. I, therefore, directed that respondent No. 2 should file a proper and detailed affidavit to the petition para-wise. Moti Lal, who had in the meanwhile been set at liberty, appeared in Court and he was required to file a duly sworn affidavit which was done on 25th of August, 1959, and portions from which have been reproduced above.

Respondent No. 2 has now filed an affidavit, dated 2nd of September, 1959. According to this affidavit, he never came into contact with Moti Lal on or after 16th of August, 1959. He also stated that when Babu Ram, conveyed his suspicions to him against Moti Lal and one Ved Vyas on 15th of August, 1959, he sent for them on 16th of August, 1959, but they could not be traced. He denied the allegations of maltreatment made against him.

I have given careful thought to the contents of the affidavits of Kidar Nath and Moti Lal on the one side, and of respondent No. 2 on the other. According to the affidavit of respondent No. 2, he

never came into contact with Moti Lal, after June when the investigation was handed over to the Criminal Investigation Agency. If, on 16th of August, respondent No. 2, learnt that both Moti Lal and Ved Vyas, the two suspects, had gone away towards Jullundur, his affidavit does not disclose what steps, if any, were taken to contact them for purposes of investigation and interrogation. A telegram was also sent to the Superintendent of Police, Ludhiana (*see* annexure 'A'), in which serious allegations were made, but surprisingly enough the 'para-wise' reply filed by the Superintendent of Police makes no reference to the telegram mentioned in para 6 or to any action taken after it was received on 16th of August, In reply to the telegram no communication was sent to the petitioner that Moti Lal was not in the custody of the police or that he was not beaten. It has not been disclosed so far what action, if any, was taken on the telegram. The second telegram (annexure 'B') sent on 19th of August, 1959, fits in with the story of the petitioner. More serious beating took place on the night of 21st and 22nd of August. The medical certificate was obtained soon after the release. and the number and nature of the injuries given to Moti Lal corroborate his allegations. The circumstances of this case and the affidavits of Kidar Nath and of Moti Lal lend strong support to the allegations made in the petition. On the record before me the conclusion is inescapable that Moti Lal was subjected to corporal violence at the hands of the police while he was in police custody. I will not like in any manner to prejudice the opinion of the magistrate, who may at a future occasion, be called upon to make an inquiry into this matter, by expressing my views with any positivity as to the particular persons at whose instance and at whose hands Moti Lal was belaboured.

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I cannot, however, overlook the tell-tale marks of a brutal assault, which were still visible on his back. The injuries which were found on the person of Moti Lal by the Assistant Surgeon on 22nd of August, 1959, bear out the fact that they were caused in a wanton and cruel manner, calculated to inflict extreme pain of the body, and anguish of the mind, with the intent, that under fear of suffering, he should confess to the crime or disclose evidence of the theft. I can not help giving expression to my feelings of abhorrence at the calculated cruelty inflicted on this youth while in custody which is not only obnoxious to the constitutional guarantees but is offensive to all civilised standards of crime detection. The torture that this boy underwent at the hands of the custodians of law and liberty, transports one back to the centuries past, when it was resorted to for obtaining proof of guilt and was recognised as a normal incident of judicial procedure. Even when *leges barbarorum* held sway, the enlightened opinion was opposed to it. Justinian in his Digest declared :—

> "Torture (*quaestio*) is not to be regarded as wholly deserving or wholly underserving of confidence ; indeed, it is untrustworthy, perilous and deceptive. For most men, by patience or the severity of the torture, come so to despise torture that the truth cannot be elicited from them ; others are so impatient that they will lie in any direction rather than suffer torture, so it happens that they depose to contradictions and accuse not only themselves but others."
>
> *vide.*—Dig. 48.18

It is not necessary, in the present day, to conjure up the spirits of Jeremy Bentham or Cesar

Beccaria for discovering arguments in favour of discontinuance of the practice of extorting information or confession from persons in custody, by resort to means that from all civilised standards are debasing and brutal. We take legitimate pride in the fact that our criminal law and procedure is accusatorial and not inquisitorial. Whether the young lad was put through "third degree" method by the police, under the promptings of a mistaken zeal, or, some sinister sadistic impulse provided the motive therefor, or, some other undisclosed consideration impelled them to commit acts of torture, is a matter of idle speculation. What is of moment is, that the body of the boy was brutally basted while he was in police custody. Human callousness and moral insensibility was visibly stamped on the body of the boy.

Whether the police employs instruments of crude brutality or resorts to a long inquisitorial ordeal, highlighted by browbeating, intimidation, invectives or coarse profanity; the result is the same. Neither for purposes of obtaining confession, nor for eliciting information, law lends countenance to, either form of coercion, whether the target is the mind or the muscle, or the focal point of attack is the body or the nerves, or the form of torture is subtle or severe. Law does not permit perversion of its process for the purposes of ferreting out crime either by fear or force or by other means equally objectionable. Despite the difficulty, the detective process must harmonise with fair and humane standards. It is a matter of least moment that suspicions which fall on such a person are well founded. Even on that assumption resort to inquisitorial methods of brutality cannot be countenanced. Regardless of the nature of the crime the method adopted for its detection must not be barbarous or fall below permissible civilised

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norms. The practice, still prevailing with some police officers of putting a suspect through "third degree" treatment, or subjecting him to what is called a "sweating" process, in the hope of discovering clues or obtaining confession, by torturing his body or by tormenting his mind, is most dangerous and more often hampers than helps in the discovery of the truth. In criminal jurisprudence there is no room for the procedure that has been adopted in this case.

Moti Lal was not merely threatened with, but actually subjected to corporal violence. It is the duty of police to locate the violator of law but not by employing violence. Volition and violence cannot co-exist.

However, lamentable the treatment meted out to Moti Lal in this case was, the pivotal question which arises in this case is, whether this Court within the circumscribed periphery of its powers under Article 226 of the Constitution can grant any relief to the injured person after his release from unlawful custody.

The writ of 'Habeas Corpus' is a prerogative writ of highest constitutional importance, being a remedy available to the meanest against the mightiest. It is acclaimed as a palladium of liberty of the common man. Despite the paramount importance and the high efficacy of the writ of *habeas corpus,* its scope is circumscribed. The writ of *habeas corpus* is designed to afford immediate relief from illegal confinement or restraint and issued for the vindication of the right to personal liberty by scrutinising the legality of the restraint. I am not adverting to other uses of the writ as in cases of extraditing, or in matters involving validity of detention of the insane or rights to the custody of

children. It is a process devised in the main for obtaining deliverance from unlawful detention, and its great object is the liberation of those who may be kept under wrongful restraint or captivity. This writ cannot be employed as a means of securing judicial determination of any other question outside the illegal confinement or restraint whether partial or plenary. It certainly cannot serve for punishing the respondent, or for affording reparation or redress to the person wronged.

The writ is not of punitive or corrective character. It is not designed to punish the official guilty of oppression, or of illegal confinement. It is not even devised to secure damages for the injured party. Resort in such cases must be had to the ordinary remedies which the writ of *habeas corpus* does not purport to duplicate.

As observed by Davis, J., in *People ex rel.* Klee v. *Klee* (1),—

> "the province of the ancient writ of *habeas corpus* was to free the petitioner from unlawful restraint and imprisonment, but it had no purpose to punish the respondent, or to afford redress to the petitioner for the restraint."

It remedies a wrong done, by releasing the wronged, but does not permit itself to be used, as an instrument for punishing the wrongdoer. After a person kept in unlawful custody is released by the respondent either on learning that the jurisdiction of this Court has been invoked, or in obedience to the order made, after cause has been shown by the person detaining, the purpose of the writ has been served, and it cannot be utilised for any other collateral object. It then ceases to be

(1) 195 N.Y.S. 778

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operative, when the illegal detention has ceased whether before or during the pendency of the application. Moti Lal before his release had been wantonly wronged, but for that wrong done to him, writ of *habeas corpus* cannot provide a panacea, and he has to look for his remedy elsewhere. The scope of this writ cannot be stretched so as to convert these proceedings into a criminal trial for punishing the wrong-doers for their guilt.

The writ was conceived to meet an emergency and was intended to be used in a summary and speedy manner and that is why Sir Edward Coke described it as *festinum remedium*—expeditious remedy.

The origin and the name of the writ also define its real purpose. It was styled as writ of *habeas corpus ad faciendum, subjiciendum, et recipiendum*,—to do, submit to receive, whatsoever the judge or Court awarding such a right shall consider in that behalf. '*See* Blackstone's Commentaries, Volume III, page 131.

In *Barnardo* v. *Ford Gosage's case* (1), Lord Herschell said :—

> "The terms of the writ require the recipient to have the body of the person named in it 'taken and detained under your custody, as is said, together with the day and cause of his being taken and detained, to undergo and receive all and singular such matters and things as the said Court shall then and there consider of concering him in this behalf.' This indicates that the very basis of the writ is the allegation and the *prima*

(1) 1892 L.R. Appeal Cases 326(339)

facie evidence in support of it, that the person to whom the writ is directed is unlawfully detaining another in custody. To use it as a means of compelling one who has unlawfully parted with the custody of another person to regain that custody, or of punishing him for having parted with it, strikes me at present as being a use of the writ unknown to the law and not warranted by it."

Following the above decision, Scrutton, L.J., said—

"The object of the writ is not to punish previous illegality, but to release from present illegal detention."

[*vide R.* v. *The Secretary of State, for Home Affairs Ex-parte O'Brien* (1)].

It is for the State to set into motion the machinery of criminal law for the prosecution of those, who had, while Moti Lal was in their custody, committed acts of torture. All that this Court can say is that it is eminently a suitable case for instituting a magisterial inquiry, because the kind of wrongs done to persons in custody—in consequence of violent acts of official oppresion—as have been typified by this case—should not remain unredressed or unpunished.

Shri Lachhman Das Kaushal has raised two further issues. Firstly, he has urged that in this case respondent No. 2 by filing a false affidavit has intentionally given false evidence in a stage of a judicial proceeding and has committed an offence under section 193, Indian Penal Code, and therefore, this Court should make a complaint under the

(1) L.R. (1923) 2 K.B. 361(391)

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provisions of section 476 read with 195 of the Criminal Procedure Code. He has next urged that respondent No. 2 has committed contempt of Court. He has referred me to a recent decision of the Supreme Court in *Ranjit Singh* v. *State of Pepsu* (1), Without expressing at this stage any opinion upon the merits of the submission, I think that this Court should adjudicate upon these questions not during the course of these proceedings but only if and when its jurisdiction is propely invoked.

The result, therefore, is that on the release of Motil Lal from police custody on 22nd August, 1959, this petition, which was made on 21st August, 1959, had become infructuous, and, therefore, I discharge the rule.

A copy of this order may be sent to the Punjab Government.

K.S.K.

APPELLATE CIVIL

Before Shamsher Bahadur, J.

THE AZAD HIND CHEMICALS LTD.,—*Appellant.*

versus

RAM LAL AND ANOTHER,—*Respondents.*

First Appeal from Order No. 82 of 1957.

1959

Sept., 18th

Indian Arbitration Act (X of 1940)—Sections 9 and 40—Party absenting himself from arbitration proceedings in spite of notice—Arbitrator recording evidence ex parte*—Absenting party moving the Court for setting aside the appointment of the arbitrator—Application dismissed—Arbitrator announcing the award without further notice*

(1) A.I.R. 1959 S.C. 840