
(2006) 4 MPLJ 391

Madhya Pradesh High Court (Gwalior Bench)

Case No: Writ Petition No. 2675 of 2006

Sughar Singh

APPELLANT

Vs

State of M.P. and
others

RESPONDENT

Date of Decision: June 29, 2006

Acts Referred:

- Arms Act, 1959 - Section 25, 27
- Constitution of India, 1950 - Article 226
- Madhya Pradesh Dakaiti Aur Vyapharan Prabhavit Kshetra Adhiniyam, 1981 - Section 11, 13
- Penal Code, 1860 (IPC) - Section 212, 216, 307, 365, 395

Citation: (2006) 4 MPLJ 391

Hon'ble Judges: S.M. Samvatsar, J; A.K. Gohil, J

Bench: Division Bench

Advocate: P.C. Chandil, for the Appellant; Ami Prabal, Dy. Advocate General and R.K. Sagar, SDO (P) Pohri, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Abhay K. Gohil, J.

Petitioner has filed this Habeas Corpus Petition under Article 226 of the Constitution of India. It has been contended in the petition that on 5-5-2006 petitioner had gone with Forest Guard Shri Shrivastava to collect the papers from Laghu Van Upaj Office, but in the way near place Buddhubai some police person stopped them and took away the petitioner with them. When the petitioner did not return the home till 7-5-2006, the family members of the petitioner went to the police station of Gopalpur and Subhashpura to see the petitioner but could not know his whereabouts. Thereafter father of the petitioner

Kamarlal complained to Collector Shivpuri on 9-5-2006. It was alleged that the petitioner is in custody of the police w.e.f. 5-5-2006 and the detention of the petitioner is illegal.

State has filed reply and denied the allegation. It is contended that Sughar Singh is not in custody of the police. He is absconding and vide order dated 5-6-2006 S.P. Sheopur has declared reward of Rs. 5,000/- on him. It is further contended that he is related with the "Gadariya gang" of dacoits. Earlier a criminal case at Crime No. 21/05 was registered against him under sections 212, 216, Indian Penal Code read with sections 11 and 13 of M.P.D.V.P.K. Act at Police Station Gopalpur, in which he has been acquitted. The another Crime No. 25/06 has been registered against him at P.S. Karahal District Sheopur under sections 395, 365, 307, 436, Indian Penal Code read with sections 25 and 27 of Arms Act and sections 11 and 13 of M.P.D.V.P.K. Act. It is contended that this case was registered in the month of March and in which eight persons were abducted by the "Gadariya gang" of dacoits. The abductees were released and their statements were recorded on 8-5-2006 and 16-5-2006 and all the eight abductees have stated against him that he was also involved in the abduction of the eight persons. This was a serious matter of abduction of eight persons by a Gang of dacoits.

In the rejoinder filed on behalf of the petitioner today he has stated that the petitioner is in illegal detention of the police but no proof has been produced on record that how the petitioner is in illegal custody of the respondents. The police has also recorded the statement of Forest Guard Brajendra Shrivastava and in his statement he has stated that though Sughar Singh was with him but in the way after seeing the police vehicle stopped the motorcycle, jumped and thereafter ran away towards the forest. He has also stated that the family members of Sughar Singh had enquired from him about the whereabouts of Sughar Singh but he has intimated to them that he does not know his whereabouts.

Shri P.C. Chandel, Learned Counsel for the petitioner while arguing this matter also alleged about some mala fides against the police. For that his contention was that there was no necessity for police to issue warrant of Rs. 5,000/- simply on the basis of one criminal case registered at Crime No. 25/06. At this stage, it will not be proper for this Court to examine that part of the matter whether in one case such reward can be passed or not or whether that will contribute to the mala fides of the police but apparently this fact is also clear that in Crime No. 25/06 of the abductees have made statement against the missing Sughar Singh that he was involved in their abduction on 28-3-2006.

After considering the aforesaid facts and records and from the perusal of the documents filed by the parties, it appears that missing Sughar Singh is not in police custody. No prima facie proof has been produced on record that he was ever arrested by police or he was ever detained in any of the police station.

Despite the paramount importance and the high efficacy of the writ of Habeas Corpus, its scope is circumscribed. No doubt, it is designed to afford immediate relief from illegal confinement or restraint and it is used for the vindication of the right to personal liberty by

scrutinizing the legality of the restraint. It is not meant for punishing the respondent. In these proceedings what the Courts have to see is whether particular detention complained of is lawful or not. The whole object of the proceedings for a writ of Habeas Corpus is to make them expeditious, to keep them as free of technicality as possible and to keep them as simple as possible and to follow a summary procedure of the enquiry about the detention of the person. Therefore, first requirement under this law is to consider whether the person is under the custody or not. If a person is in custody, the Court may consider whether his detention or restraint is legal or not and if the authority having his custody does not satisfy the Court that the deprivation of his personal liberty is according to the procedure established by law, the person is entitled to his liberty, but if the person is not under illegal detention or is not in the custody, it is difficult for the Court to order for his release or liberty. Therefore, in our considered opinion, the writ of Habeas Corpus can only be issued when there is a prima facie evidence of this nature that the person is in illegal detention or is in illegal custody. If it is not found proved or the party is unable to prove his custody, in such cases neither prayer for release can be granted, nor any direction can be issued. In the instant case from the aforesaid discussion, it is clear that the petitioner has failed to make out a case that the missing Sughar Singh was either ever arrested by the police or was taken in custody in any manner. So far as the evidence of Brajendra Shrivastava, Forest Guard is concerned, the same is also not helpful prima facie to prove this fact that he was detained or taken into custody by police persons. In such circumstances we do not find that any prima facie case is made out for illegal detention of the missing person by the police. Therefore, in view of the aforesaid facts, this Habeas Corpus Petition will not survive and no direction can be issued at this stage to the police to produce the corpus of the petitioner in the Court when the person is missing.

With the aforesaid observation this petition is dismissed.