

PETITIONER:
SEBASTIAN M. HONGRAY

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT 23/04/1984

BENCH:
DESAI, D.A.
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DESAI, D.A.
REDDY, O. CHINNAPPA (J)

CITATION:
1984 AIR 1026 1984 SCR (3) 544
1984 SCC (3) 82 1984 SCALE (1)629
CITATOR INFO :
F 1986 SC 494 (3)

ACT:

Writ of Habeas Corpus served on Respondents directing them to produce the two named persons-Respondents fail to file a return but explain the reasons for not producing them-Appropriate mode of enforcing obedience to a Writ of Habeas Corpus, explained-Contempt of Court Act, 1971 Sections 2 (a) and 2 (b) "civil contempt" and willful disobedience", explained Exemplary Cost by way of Compensation ordered under Rule 6 of order XLVII of Supreme Court Rules, 1966.

HEADNOTE:

On November 24, 1983, the Court by its judgment and order directed that a writ of Habeas Corpus be issued-Though the 1st, 2nd and 4th respondents were served, they failed to file a return to the Writ. However a return on affidavit by one Ajai Vikram Singh Director, Ministry of Defence was filed on 12.12.1983 expressing their inability to produce the two named officers due to circumstances beyond their control and their failure to trace them even with the assistance of Central Bureau of Investigation. This was supported by a copy of the report by the Dy. Inspector General of Police (s).

Making the Rule absolute the Court,

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HELD 1. In compliance with the mandatory direction contained in the Writ of Habeas Corpus, the person to whom it is directed is under a legal obligation to produce the body of the person alleged to be unlawfully detained before the Court on the day specified and to make a formal return to the writ. Here, such a writ has been issued and there has been failure to produce the missing persons in respect of whom writ is issued and to file the return as mandated by law. [547E-F]

2:1 The Contempt of Courts Act, 1971 defines 'contempt of court' in Sec. 2(a) to mean 'civil contempt or criminal contempt'. 'Civil contempt' is defined in Sec. 2(b) to mean willful disobedience to any judgment decree, direction, order, writ or other process of a Court or willful breach of an undertaking given to a Court'. Willful disobedience to a

writ issued by the Court constitutes civil contempt. [547H; 548A]

2:2 Mere failure to obey the writ may not constitute civil contempt depending upon the facts and circumstances of the case. But willful disobedience to a writ issued by a Court constitutes civil contempt. Again it is well settled that the appropriate mode of enforcing obedience to a writ of habeas corpus is by committal for contempt. A committal order may be

545

made against a person who intentionally makes a false return to a writ of habeas corpus, but an unintentional misrepresentation on a return is not a ground for committal. [548B-C]

2:3 The view of this Court as expressed in the main judgment clearly indicates that the assertion of respondents 1, 2 and 4 that C. Daniel and C. Paul left Phungrei Camp where 21st Sikh Regiment were stationed is not correct and that to avoid responsibility flowing from the mysterious disappearance of C. Daniel and C. Paul an attempt was made to suggest that they had left alive in the company of their compatriots. On that conclusion one can say that there is a willful disobedience to the writ of habeas corpus by misleading the court by presenting a distorted version of facts not borne out by the record. It is thus established that the respondents 1, 2 and 4 have committed civil contempt by their willful disobedience to the writ. [548D-E]

3:1 Civil contempt is punishable with imprisonment as well as fine. In a given case, the court may also penalise the party in contempt by ordering him to pay the costs of the application. A fine can also be imposed upon the contemnor. [548F]

3:2 In the facts and circumstances of the case, keeping in view the torture, the agony and the mental oppression through which Mrs. C. Thingkhuala, wife of Shri C. Daniel and Mrs. C. Vangamla, wife of Shri C. Paul had to pass and they being the proper applicants, the formal application being by Sebastian M. Hongray, the court considered it proper and directed that as a measure of exemplary costs as is permissible in such cases, respondents Nos. 1 and 2 shall pay Rs. 1 lac to each of the aforementioned two women within a period of four weeks from April 23, 1984.

[548G-H; 549A]

4. Further adjourning the matter to enable the respondents to trace or locate the two missing persons is to shut the eyes to the reality and to peruse a mirage. The two officers have not met their tragic end in an encounter as is usually claimed and the only possible inference that can be drawn from circumstance of the case is that both of them must have met an unnatural death. Prima facie, it would be an offence of murder. Who is individually or collectively the perpetrator of the crime or is responsible for their disappearance will have to be determined by a proper, thorough and responsible police investigation. It is not necessary to start casting a doubt on anyone or any particular person. But prima facie there is material on record to reach an affirmative conclusion that both Shri C. Daniel and Shri C. Paul are not alive and have met an unnatural death. And the Union of India cannot disown the responsibility in this behalf. [549B-E]

(The Court issued a writ of mandamus to the Superintendent of Police, Ukhrul, Manipur State to treat all the papers in the Writ of Habeas Corpus as "information of a cognizable offence and to commence investigation as" prescribed by the relevant provisions of the Code of

Criminal Procedure.)

[549E-F]

546

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petition (Criminal) No. 148 of 1983.

(Under article 32 of the Constitution of India)

Ms. Nandita Haksar and C.S. Vaidyanathan for the Petitioner. Ms. A. Subhashini for Respondent.

Mrs. Urmila Kapoor for Respondent.

V.C. Mahajan, P.N. Puri S.K. Mehta and Balbir Singh Shant for Respondent.

The Judgment of the Court was delivered by

DESAI, J. On Nov. 24, 1983, the Court by its Judgment and order directed that a writ of habeas corpus be issued. The operative portion of the order reads as under:

"Accordingly, this petition is allowed and we direct that a writ of habeas corpus be issued to the respondents 1, 2 and 4 commanding them to produce C. Daniel, retired Naik Subedar of Manipur Rifles and Headmaster of the Junior High School of Huining Village and C. Paul, Assistant Pastor of Huining Baptist Church, who were taken to Phungrei Camp by the jawans of 21st Sikh Regiment on March 10, 1982 before this Court on Dec. 12, 1983 and file the return."

The Registry issued the writ and served the same upon first respondent-Union of India, second respondent-Secretary, Ministry of Home Affairs and 4th respondent-Commandant, 21st Sikh Regiment, Phungrei Camp. Pursuant to the writ, it was obligatory upon respondents 1, 2 and 4 to file the return and to produce C. Daniel and C. Paul. A return on affidavit by one Ajai Vikram Singh, Director, Ministry of Defence dated December 9, 1983 was produced in the Court on December 12, 1983 stating therein "that with all the will and the best efforts, the respondents are unable to produce S/Shri C. Daniel and C. Paul for the reasons set out in the affidavit and crave for indulgence of the Hon'ble Court for their inability to produce the above-named individuals due to circumstances beyond their control." It was reiterated that C. Daniel and C. Paul were not in the custody or control of respondents 1, 2, and 4. To this return several affidavits and messages were
547

annexed saying that the Army authorities conducted an extensive search for tracing C. Daniel and C. Paul but nothing fruitful has been achieved. One Surendra Kumar, Deputy Secretary, Ministry of Home Affairs had also filed the return stating that C. Daniel and C. Paul are neither in the custody or control of respondent No. 2. It was stated that Central Bureau of Investigation (CBI for short) have been directed to conduct enquiries to locate the aforementioned two persons and to intimate the result thereof. The matter was adjourned to enable the respondents to pursue their efforts. Nothing fruitful came up even though the matter was twice adjourned at the request of learned Attorney General who entered appearance on behalf of respondents Nos. 1, 2 and 4. The writ petition was posted for further hearing and orders on April 19, 1984. On that day, a summary of enquiry made by CBI was submitted to the Court in which it was stated that 'the field enquiries made by the CBI and the efforts made to locate the two persons have yielded no results and it has not been possible to

locate Sri Daniel and Sri Paul', The report was submitted by the Dy. Inspector General of Police (S).

It is now necessary to deal with the failure of respondents 1, 2 and 4 to file the return to the writ of habeas corpus. After a preliminary enquiry and after hearing the respondents and after negating their contentions that Shri C. Daniel and Shri C. Paul were not seen last alive in the custody of the 4th respondent, the Court directed to issue a writ of habeas corpus. The writ of habeas corpus was issued and was served on respondents 1, 2 and 4. In compliance with the mandatory direction contained in the writ of habeas corpus, the person to whom it is directed is under a legal obligation to produce the body of person alleged to be unlawfully detained before the Court on the day specified and to make a formal return to the writ. (1) Such a writ has been issued and there has been failure to produce the missing persons in respect of whom writ is issued and to file the return as mandated by law.

The next question therefore, is : what is the appropriate mode of enforcing obedience to a writ of habeas corpus ?

The Contempt of Courts Act, 1971 defines 'contempt of court' in Sec. 2(a) to mean 'civil contempt or criminal contempt'. 'Civil con

548

tempt' is defined in Sec. 2(b) to mean wilful disobedience to any judgment decree, direction, order, writ or other process of a Court or wilful breach of an undertaking given to a Court.' Wilful disobedience to a writ issued by the Court constitutes civil contempt. The question is : whether this disobedience is wilful ? Mere failure to obey the writ may not constitute civil contempt depending upon the facts and circumstances of the case. But wilful disobedience to a writ issued by a Court constitutes civil contempt. Again it is well-settled that 'the appropriate mode of enforcing obedience to a writ of habeas corpus is by committal for contempt. A committal order may be made against a person who intentionally makes a false return to a writ of habeas corpus, but an unintentional misrepresentation on a return is not a ground for committal.'(1)

The view of this Court as expressed in the main judgment clearly indicates that the assertion of respondents 1, 2 and 4 that C. Daniel and C. Paul left Phungrei Camp where 21st Sikh Regiment were stationed is not correct and that to avoid responsibility flowing from the mysterious disappearance of C. Daniel and C. Paul an attempt was made to suggest that they had left alive in the company of their compatriots. The Court has rejected this submission as untenable and incorrect. On that conclusion one can say that there is a wilful disobedience to the writ of habeas corpus by misleading the court by presenting a distorted version of facts not borne out by the record. It is thus established that the respondents 1, 2 and 4 have committed civil contempt by their wilful disobedience to the writ.

Civil contempt is punishable with imprisonment as well as fine. In a given case, the court may also penalise the party in contempt by ordering him to pay the costs of the application. (2) A fine can also be imposed upon the contemnor.

Now in the facts and circumstances of the case, we do not propose to impose imprisonment nor any amount as and by way of fine but keeping in view the torture, the agony and the mental oppression through which Mrs. C. Thingkhula, wife of Shri C. Daniel and Mrs. C. Vangamla, wife of Shri C. Paul had to pass and they being the proper applicants, the

formal application being by Sebastian M. Hongray, we direct that as a measure of exem-

549

plary costs as is permissible in such cases, respondents Nos. 1 and 2 shall pay Rs 1 lac to each of the aforementioned two women within a period of four weeks from today.

A query was posed to the learned Attorney General about the further step to be taken. It was made clear that further adjourning the matter to enable the respondents to trace or locate the two missing persons is to shut the eyes to the reality and to pursue a mirage. As we are inclined to direct registration of an offence and an investigation, we express no opinion as to what fate has befallen to Shri C. Daniel and Shri C. Paul, the missing two persons in respect of whom the writ of habeas corpus was issued save and except saying that they have not met their tragic end in an encounter as is usually claimed and the only possible inference that can be drawn from circumstance already discussed is that both of them must have met an unnatural death. Prima facie, it would be an offence of murder. Who is individually or collectively the perpetrator of the crime or is responsible for their disappearance will have to be determined by a proper, thorough and responsible police investigation. It is not necessary to start casting a doubt on anyone or any particular person. But prima facie there is material on record to reach an affirmative conclusion that both Shri C. Daniel and Shri C. Paul are not alive and have met an unnatural death. And the Union of India cannot disown the responsibility in this behalf. If this inference is permissible which we consider reasonable in the facts and circumstances of the case, we direct that the Registrar (Judicial) shall forward all the papers of the case accompanied by a writ of mandamus to the Superintendent of Police, Ukhrul, Manipur State to be treated as information of a cognizable offence and to commence investigation as prescribed by the relevant provisions of the Code of Criminal Procedure.

S.R.

Rule made absolute.

550