

SUPREME COURT OF INDIA

Alsia Pardhi

Vs.

State of M.P.

CrI.A.No.2048 of 2013

(P. SathasivamCJ, Ranjana P. Desai and Ranjan Gogoi, JJ.)

06.12.2013

JUDGMENT

P.Sathasivam, CJ.

1. Leave granted.

2. This appeal is directed against the final judgment and order dated 09.04.2012 passed by the High Court of Madhya Pradesh in Writ Petition No. 3803 of 2011 whereby the Division Bench of the High Court dismissed the petition filed by the appellant herein.

3. Brief facts:

(a) On 10.02.2011, at about 4 p.m., a posse of forest officials of the Betul Range, District Betul, forcibly took away one Kusum, W/o Taarbabu Pardhi and Rajnandani, D/o Ankit Pardhi, aged about 14 years, from the fish market in their jeep. When the persons present at the site tried to resist the force of the forest officials, Kusum somehow managed to jump from the jeep but the minor girl Rajnandani was whisked away by them.

(b) Alsia Pardhi-the appellant herein, being the uncle of the kidnapped minor girl, on 13.02.2011, made a complaint to the SHO, Kotwali Betul, alleging that the minor girl is in the custody of the officials of the Forest Department and requesting to register a case of kidnapping against them.

(c) On 14.02.2011, the appellant and his community members made a complaint

to the Chief Conservator of Forests, Forest Range, Betul-Respondent No. 3 herein, requesting him to take punitive action against the forest officials and to get the minor girl released.

(d) When all the efforts in tracing the girl failed, the appellant, on 24.02.2011, approached the High Court by filing a writ of habeas corpus praying that Rajnandani be directed to be produced before the Court and the Superintendent of Police - Respondent No. 2 herein be directed to register an FIR against the forest officials involved in kidnapping and illegal detention of the minor girl as well as against those who have been instrumental in shielding and protecting the accused.

(e) On 01.03.2011, the High Court directed Respondent No. 2 herein to either produce the corpus of the missing girl or to submit the progress report. On 19.04.2011, the High Court, considering the seriousness of the matter, directed the appellant to produce Kusum before the CJM, Betul, on 02.05.2011, on which date, the CJM, Betul shall record her statement and send it to the Court.

(f) On 02.05.2011, the statement of Kusum was recorded. Vide order dated 13.07.2011, the High Court, taking note of the fact that Kusum also alleged against the forest officials who caught Rajnandani along with her, held that the matter deserves to be investigated fairly and effective steps need to be taken by the State for production of Rajnandani before the Court and also directed Respondent No. 2 to take effective steps to produce the minor girl on the next date of hearing.

(g) On 10.08.2011, i.e., on the next date of hearing, the Deputy Advocate General for the State filed a report in the matter and submitted that as per the report of the Police, Rajnandani was not detained by the Forest Officials. The High Court, after perusing the record and considering the report to be doubtful, granted further opportunity to the police to produce corpus of Rajnandani and also directed that in case Respondent No.2 fails to produce her on the next date of hearing, it would be compelled to direct the Central Bureau of Investigation (CBI) to take up the investigation into its hands. On 27.08.2011, Respondent No. 2 again submitted a progress report. The High Court, being not satisfied with the report, directed the Superintendent of Police, Betul to appear in person on the next date of hearing. On 12.09.2011, when Superintendent of Police, Betul explained the circumstances in which the investigation was being conducted, the High Court observed that no proper investigation had been done by the police with the forest officials against whom the allegations had been made and gave one more chance to the Respondent No. 2 to produce Rajnandani before the Court. On 17.10.2011, Respondent No. 2 again filed a progress report before the Court in which it was stated that Rajnandani had tried to contact her father thrice from different mobile numbers but still the police officials were not able to trace her.

(h) On 07.04.2012, Respondent No.2 filed an affidavit accepting the statements of forest officials and did not give any weightage to the statement of the eye-witness Kusum. It was also stated that the police accepted the version of the forest officials verbatim.

(i) On 09.04.2012, the High Court, by accepting the progress report dated 07.04.2012, without taking note of the statement of the eye-witness Kusum, dismissed the writ petition. The High Court also held that the present case is not of illegal and forceful confinement warranting issue of a writ of habeas corpus but is a case of missing person. It was also held that there is no allegation in the petition to the effect that Rajnandani has been subjected to wrongful confinement either by the forest authorities or the police.

(j) Being aggrieved, the appellant herein has filed this appeal by way of special leave.

4. Heard Mr. Prashant Bhushan, learned counsel for the appellant and Ms. Vibha Datta Makhija, learned senior counsel for the State of M.P.

5. The only point for consideration in this appeal is whether there is any lapse on the part of the State agency in carrying out the investigation and the facts and materials mandate for entrusting the investigation to the CBI?

6. Before going into the merits of the claim of both the sides, it is useful to refer the decision of the Constitution Bench of this Court in *State of West Bengal and Ors. vs. Committee for Protection of Democratic Rights, West Bengal & Ors*¹, in respect of entrusting the investigation to the CBI in respect of a cognizable offence when the State has already initiated enquiry through its agency. The Constitution Bench, after referring earlier decisions, formulated guidelines in paragraphs 68 and 69 which are as under:

"68. Thus, having examined the rival contentions in the context of the constitutional scheme, we conclude as follows:

(i) The fundamental rights, enshrined in Part III of the Constitution, are inherent and cannot be extinguished by any constitutional or statutory provision. Any law that abrogates or abridges such rights would be violative of the basic structure doctrine. The actual effect and impact of the law on the rights guaranteed under Part III has to be taken into account in determining whether or not it destroys the basic structure.

(ii) Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. The said article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. The State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers. In certain situations even a witness to the crime may seek for and shall be granted protection by the State.

(iii) In view of the constitutional scheme and the jurisdiction conferred on this Court under Article 32 and on the High Court's under Article 226 of the Constitution the power of judicial review being an integral part of the basic structure of the Constitution, no Act of Parliament can exclude or curtail the powers of the constitutional courts with regard to the enforcement of fundamental rights. As a matter of fact, such a power is essential to give practicable content to the objectives of the Constitution embodied in Part III and other parts of the Constitution. Moreover, in a federal constitution, the distribution of legislative powers between Parliament and the State Legislature involves limitation on legislative powers and, therefore, this requires an authority other than Parliament to ascertain whether such limitations are transgressed. Judicial review acts as the final arbiter not only to give effect to the distribution of legislative powers between Parliament and the State Legislatures, it is also necessary to show any transgression by each entity. Therefore, to borrow the words of Lord Stein, judicial review is justified by combination of "the principles of separation of powers, rule of law, the principle of constitutionality and the reach of judicial review".

(iv) If the federal structure is violated by any legislative action, the Constitution takes care to protect the federal structure by ensuring that the Courts act as guardians and interpreters of the Constitution and provide remedy under Articles 32 and 226, whenever there is an attempted violation. In the circumstances, any direction by the Supreme Court or the High Court in exercise of power under Article 32 or 226 to uphold the Constitution and maintain the rule of law cannot be termed as violating the federal structure.

(v) Restriction on Parliament by the Constitution and restriction on the executive by Parliament under an enactment, do not amount to restriction on the power of the Judiciary under Articles 32 and 226 of the Constitution.

(vi) If in terms of Entry 2 of List II of the Seventh Schedule on the one hand and Entry 2-A and Entry 80 of List I on the other, an investigation by another agency is permissible subject to grant of consent by the State concerned, there is no reason as to why, in an exceptional situation, the Court would be precluded from exercising the same power which the Union could exercise in terms of the provisions of the statute. In our opinion, exercise of such power by the constitutional courts would not violate the doctrine of separation of powers. In fact, if in such a situation the Court fails to grant relief, it would be failing in its constitutional duty.

(vii) When the Special Police Act itself provides that subject to the consent by the State, CBI can take up investigation in relation to the crime which was otherwise within the jurisdiction of the State police, the Court can also exercise its constitutional power of judicial review and direct CBI to take up the investigation within the jurisdiction of the State. The power of the High Court under Article 226 of the Constitution cannot be taken away, curtailed or diluted by Section 6 of the Special Police Act. Irrespective of there being any statutory provision acting as a

restriction on the powers of the Courts, the restriction imposed by Section 6 of the Special Police Act on the powers of the Union, cannot be read as restriction on the powers of the constitutional courts. Therefore, exercise of power of judicial review by the High Court, in our opinion, would not amount to infringement of either the doctrine of separation of power or the federal structure.

69. In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly."

7. After saying so, the Constitution Bench has also outlined paragraph 70 which reads thus:

"This extraordinary power must be exercised sparingly, cautiously and in exception situations where it becomes necessary to provide credibility and instill confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights "

8. In the light of the principles enunciated by the Constitution Bench, let us consider whether the appellant has made out a case for interference by this Court.

9. Mr. Prashant Bhushan, learned counsel for the appellant has brought to our notice that the High Court proceeded on a wrong assumption that there is no allegation in the petition to the effect that Rajnandani had been subjected to wrongful confinement either by the forest authorities or the police in spite of the fact that the appellant had made a specific allegation against the forest officials. It is also stated that the High Court has failed to take note of the statement of the eye-witness Kusum under Section 164 of the Code of Criminal Procedure, 1973 (in short 'the Code') wherein she had stated that the forest officials abducted herself and Rajnandani but she somehow managed to escape and the officials took Rajnandani with them. Finally, it is pointed out that Pardhi community, being a denotified tribe, is constantly harassed by the police and forest officials due to the stigma attached to them and are often arrested for any crime committed in the nearby area. He further pointed out that the investigating agency chose to believe the version of the accused officials rather the eye-witness account who was abducted along with the minor girl.

10. Ms. Vibha Datta Makhija, learned senior counsel for the State, by filing status report, highlighted that the concerned police authorities have already registered a case and intensive efforts are being made by them to trace the girl in question who is missing since 10.02.2011. It is further pointed out that in view of the categorical reports by the police and of the fact that the police authorities have already registered a case of missing girl and are taking all possible steps to trace out Rajnandani, the High Court has rightly dismissed the writ petition for issuance of a writ of habeas corpus. Accordingly, there is no need for fresh investigation or entrusting the same to the CBI in particular.

11. It is seen from the materials placed that on 10.02.2011, at around 4.00 p.m., forest officials of the Betul Range, District Betul, came to the fish market and forcibly took away Kusum and Rajnandani. It is also the claim of the appellant that when the people present there tried to resist the force of the forest officials, Kusum jumped from the jeep but Rajnandani was whisked away by the forest officials. It is also the assertion of the appellant that Rajnandani-the kidnapped minor girl is his niece (sister's daughter).

12. On behalf of the State, it is claimed that on 10.02.2011, the forest officials got a tip off that some of the members of the Pardhi community are illegally indulging in the sale of prohibited species of animals in the fish market at Betul. When the forest officials reached the spot, they found 2-3 women selling the prohibited species, consequently, they were arrested and the prohibited species were seized. However, before taking any action by the forest officers, about 100-150 members of the Pardhi community had suddenly assembled and resisted their detention and managed to free all of them except one Sangeeta Pardhi who was able to slip away after causing injury to the lady Forest Guard Sunanda Tekam. The said claim of the Forest officials has strongly been disputed by the appellant and their community people.

13. It is useful to refer the letter dated 13.02.2011 by Alsia Pardhi, President of the Pardhi Rehabilitation Sangh, Betul addressed to the SHO, Kotwali Betul, which reads as under:

"Pardhi Rehabilitation Sangh, Betul Utkrisht School Maidan, Pardhi Camp Betul (M.P.)

To

The SHO Kotwali Betul

Subject: Regarding kidnapping of Pardhi girl By Forest Officials.

Sir,

On Thursday, 10.2.2011 at 4 p.m. from near the Fish Market, Kusum W/o Tar Babu and Rajnandani D/o Ankit Pardhi, aged 14 years sitting in the Fish Market were being forcibly taken away by the Forest Officials of Betul Range in their jeep. After resistance by Pardhi community, they released Kusum but Forest Officials succeeded in forcibly kidnapping Rajnandani. On our reaching Range Office and in spite of repeatedly asking, the officials of Forest Department are not ready to tell anything. The parents of victim have been very upset and shocked after strenuous efforts to locate their daughter. We have come to know that the girl is in the custody of Forest Department.

You are, therefore, requested that the case of kidnapping may be registered against officials of Forest Department and Rajnandani may be got freed.

Dated: 13.2.2011

Applicant,
S d / -
Alasia
(Alasia
Pardhi)
President
Pardhi Rehabilitation
Sangh
Betul
(M.P.)

Witnesses:-

1. Sangita w/o Alasia
2. Saudagar s/o Sadashiv
3. Param Singh s/o Balwant
4. Guni Bai w/o Nandu Dhimar Mohila Mission School, Patel Ward
5. Gudiya w/o Kamal

Bhagrati Bai w/o Savne Dhimar, Mohila Mission School, Patel Ward

Saudagir, Suddi, Kapurri, Lalita, Rajesh, Salim, Babu, Alagwanti Laxmi, Latia, Gajra, Kusandi, Langad, Vatia, Kusandi, Langad, Vatia, Guddi, Anita, Rukhmani, Lagde, Manji, Bharat Singh, Kishori, Nana Saheb, Durgesh, Sanju, Ritu, Kesho, Bugda, Indura, Rahul"

14. Again, on 14.02.2011, i.e., on the next day, similar letter was sent by the appellant to the Chief Conservator of Forests, Forest Range, Betul regarding kidnapping of minor Pardhi girl by forest officials.

15. An analysis of the above letters shows that there is a specific reference about the picking up of two persons, viz., Kusum and Rajnandani.

16. After filing of the Writ Petition before the High Court, pursuant to the request made, the High Court directed the petitioner therein to produce Kusum before the Chief Judicial Magistrate, Betul on 02.05.2011 for recording of her statement. Her statement before the Magistrate is also relevant, which reads as under:

"As per Order of the Hon'ble High Court in Writ Petition No. 3803/11
Witness No. 1 for ...Deposition taken on 02.05.2011.
Witness apparent age 25 years.

States on affirmation that my name is Kusum wife of Tar Babu, Occupation - Labour, address Utkrisht School Ground, Betul, Distt. Betul.

The incident is about two three months old. I had gone to Betul to buy fish. There woman named Nandini was selling partridges when vehicle of Forest Department came there, the staff in the Forest Department vehicle apprehended Nandini, when I went for her rescue, the Forest Staff apprehended me too and put me in the vehicle, then after some time, I got down from the vehicle and went to my Dera and I shouted in the Dera that Forest staff are taking away Nandini, Forest staff has taken away Nandini and since then whereabouts of Nandini is not known.

RO& AC	Typed out on my direction
Sd/-	Sd/-
K.C. Yadav	K.C. Yadav
Chief Judicial Magistrate Betul.	Chief Judicial Magistrate Betul"

17. In her statement, Kusum stated that the forest officials picked up both of them viz., herself and Rajnandani, and after some time she somehow managed to jump from the vehicle. However, the forest staff took Rajnandani and her whereabouts is not known to her. As rightly pointed out, her statement under Section 164 of the Code before a Magistrate has not been properly looked into by the High Court.

18. It is the grievance of learned counsel for the appellant that the police authorities have inquired only the forest officials and in spite of the fact that many local people were also present in the fish market, they were not inquired and their statements were not recorded.

19. In the light of the above allegation, we perused the statements recorded by the police. It is clear that one Durgesh Kushram, Forest Guard, Office of Forest Range Betul, in his statement, mentioned that two women were found selling Titar and Bater and they were

apprehended by the lady Forest Guard Sunanda Tekam. He also stated that the people of Pardhi community resisted the action being taken and got freed both women by manhandling the Forest Guard Sunanda Tekam and started stone pelting at their party. In the same way, one Sanjay Dhote, another Forest Guard, has also made a similar statement about taking of two women and how both were got freed by manhandling the Forest Guard. Yogesh Chaudhary, Chandra Shekhar Singh and Pandhri Nath, Forest Guards, also made similar statements. One Laxmi Prasad Gautam, Forest Range Officer, in his statement, also reiterated the same. Similarly, all other officials of the forest department made similar statements.

20. A perusal of the above shows that based on the complaint of the appellant, the I.O. has only recorded the statements of the officials of the Forest Department. It is not clear as to why the police authorities did not inquire about the same from the persons present at the spot when both the women were picked up from a busy fish market and also in the light of the statement of Kusum before the Magistrate under Section 164 of the Code specifically alleging that she alone managed to escape and Rajnandani was taken in a vehicle by the forest officials.

21. It is relevant to note that the statements of Forest Range Officers, Betul, viz., Dhanraj Singh, Pandari Nath, L.P. Gautam as well as the lady Forest Guard Sunanda Tekam have been recorded and as per their statements, on interrogation, only one lady, viz., Sangeeta Pardhi was to be taken into custody against the offence under the Wildlife (Protection) Act, 1972 being committed by her on 10.02.2011, but she escaped and no other lady or person had been taken into custody by them. Though they stated that one person was taken in the jeep but even that person got released by their community people. In the light of the conflicting statements by the officers mentioning that initially two persons were taken into their jeep and they were released by the Pardhi community, it was proper on the part of the I.O. concerned to obtain statement from the public who assembled in the fish market at the relevant time. Admittedly, for the reasons best known to the police, they had not examined anyone or obtained statements from the local people available within the area in question. In the light of the said infirmity and in view of the categorical statement of Kusum under Section 164 of the Code before the Magistrate, we are prima facie satisfied that proper and sincere efforts were not made by the State police in tracing/producing the girl before the High Court in a habeas corpus petition.

22. In addition to the above relevant aspect and of the assertion that the kidnapped girl-Rajnandani belongs to Pardhi community, being a denitrified tribe and also of the assertion that the Pardhi community people are being constantly harassed by the police and forest officials, we feel that the appellant has made out a case for fresh investigation by other agency, viz., Central Bureau of Investigation. Though in the writ petition before the High Court, a prayer was made for production of the abducted girl Rajnandani, in view of our discussion and prima facie conclusion, we mould the relief and appoint the CBI to investigate and proceed further according to law.

23. The analysis of the materials placed before us clearly brings the case within the principles laid down by the Constitution Bench of this Court in Committee for Protection of Democratic Rights (supra). We hereby direct the respondents to hand over all the documents to the CBI within a period of two weeks from the date of receipt of copy of this order. The CBI is directed to investigate the case in question, viz., whereabouts of Rajnandani who is alleged to have been taken by the forest officials on 10.02.2011 and submit its report before the court concerned, within a period of six months thereafter. It is further made clear that the above discussion is only for entrusting the investigation to the CBI and we have not expressed anything on the merits of the case.

24. With the above observations, the appeal is allowed.

Judgment referred

12010 (3) SCC 0571