

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

CrI. Revision Application. No. S-33 of 2024
(*Mujeeb Rehman Narejo and another Vs. Mst. Beebul & others*)

CrI. Revision Application No.S-24 of 2024
(*Zamir Ahmed Sahito Vs. Mst. Beebul & others*)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
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1. For hearing of main case.
2. For hearing of MA No. 2210/2024 (Stay)

Date of hearing and Order: 20-05-2024

Mr. Ameenuddin Khaskheli, advocate for the applicants.
Respondents No.1 and 2 present in person.
Mr. Zulfiqar Ali Jatoi, Additional P.G for the State.

ORDER.

Adnan-ul-Karim Memon J:- Applicants Mujeeb-ur-Rehman, Toto Khan and Zamir Ahmed have assailed the vires of the order dated 28.03.2024, passed by the learned Additional Sessions Judge/ Ex Officio Justice of Peace Moro in CrI. Misc. Application No. 151 of 2024, whereby a cost of Rs. 100,000/- was imposed upon the applicants for detaining respondent No.2 at Moro Police Station, besides registration of criminal case against the police officials of Police Station Moro, District Naushahro Feroze was ordered.

2. It is inter alia contended that the private respondent No.2 was indulged in many criminal cases as well as was arrested in Crime No. 88 of 2024 under section 353, 337-A(ii) PPC and under section 5 of Gambling Act, such mashirnama of arrest was prepared and roznamcha entry No.9 was kept in the daily diary of Police Station Moro on 12.3.2024, however, this factum was ignored by the raid Commissioner vide his report dated 12-03-2024, who submitted his report to the learned Additional Sessions Judge Moro, who in return imposed a cost of Rs. 100,000/- upon the applicants for the purported detention of the private respondent No.2. Learned counsel further submitted that there was/is no mala fide intention on the part of police officials to keep the respondent No.2 in police lockup as he was required to be produced in Court within 24 hours under the law; therefore, they timely approached this Court by filling Criminal Revision Application No. 26 of 2024 and this Court vide order

dated 15.04.2024 suspended the operation of the order dated 28.02.2024, however on the next date when the matter was fixed the applicants intimated to their counsel to put appearance on their behalf but due to his failure to appear on 06.05.2024, when the matter was fixed, this Court dismissed the Criminal Revision Application No. 26 of 2024 for non-prosecution vide order dated 06.05.2024. As per learned counsel, there is no provision under the Criminal Procedure Code to file a review application against the order dismissing the lis for non-prosecution; therefore the applicant Mujeeb-ur-Rehman filed the Revision Application No.33 of 2024 against the impugned order. He prayed for allowing both Revision Applications as prayed as there was no ill will on the part of the applicants to book the accused in false case.

3. Respondent No. 2 Abdul Majeed who is present along with his mother claims to be a detainee as per the raid Commissioner report submitted by the raid Commissioner; consequently, upon the intervention of learned Additional Sessions Judge/Justice of Peace Moro, who imposed costs of Rs. 100,000/- upon the applicants payable to the private respondent No.2 Abdul Majeed vide order dated 28-03-2024. An excerpt of the raid commissioner report dated 12-03-2024 is reproduced as under:-

"The undersigned after receipt of directions referred above conducted raid at police station Moror and found the detenu Abdul Majeed s/o Pir Bux Hulio, thereafter made such entry in the Roznamcha book. I found that the accused was not nominated in any FIR as per Roznamcha book but after some time WPC Zamir Sahito produced one-mashirnama of detention of detainee in Crime No. 88/2024 u/s Gambling Act but the detainee was not nominated in the said FIR. I asked the WPC to produce FIR book but he has not produced the FIR book though he was repeatedly asked for production of FIR book. The Deputy Officer ASI Abdul Majeed Dahar was present as Duty Officer, I enquired from for SHO Police Station Moror, who asked that the SHO has proceeded to ATC Court Naushahro Feroze. Thereafter accused was released from the police locked with direction to appear before the Honourable District & Sessions Judge, Naushahro Feroze on 13-03-2024 at 8:30 am. Direction in the roznamcha was also given by the undersigned to SHO to appear before the Honourable District & Sessions Judge, Naushahro Feroze on 13-03-2024 along with relevant record. (Statement of detainee and Khudmuchalka are submitted herewith)"

4. The applicants being aggrieved by and dissatisfied with the order dated 28-03-2024 filed the Criminal Revision Application No. 26 of 2024 on the ground that the private respondent was arrested in Crime No. 88/2024 of PS Moro and such mashirnama dated 12-03-2024 was prepared. As per applicants, respondent No. 2 was/is a criminal type person and was/is involved in several criminal cases in District

Naushahro Feroze and is creating trouble for public at large. Upon perusal of the Crime No. 88 of 2024 of PS Moro, which explicitly shows that the name of the private respondent No.2 was not mentioned in the FIR and upon the further statement of ASI of that Crime the name of the private respondent No.2 was disclosed who later-on arrested and detained in police Lockup up Moro when the Raid Commissioner arrived at Police Station Moro, he found that the private respondent No.2 in alleged detention and was not nominated in any FIR as per Roznamacha book, but after some time WPC Zamir Ahmed produced one mashirnama of detention of the detainee in Crime No. 88 of 2024 under section 4 of the Gambling Act, however Raid Commissioner opined adversely against the police officials with certain reasoning. These all factums needs to be inquired by the SSP Naushahro Feroze on administrative side.

5. The entire case of the applicants depends upon the Roznamcha Diary dated 12.3.2024, which shows that the private respondent was arrested in in Crime No. 88 of 2024 under section 353, 337-A(ii) PPC and under section 5 of Gambling Act, which was lodged against unknown person and the private respondent was shown arrested upon further statement of the ASI Abdul Hameed of PS Moro recorded on 10.3.2024, whereas he did not disclose the names of any accused in the F.I.R and the applicants have based their case on the further statement of ASI to show the arrest of respondent-Abdul Majeed on 12 .3.2024 to avoid the punishment by keeping the private respondent in illegal detention, however when the raid was conducted no such policy entry was available or produced as per raid report, perhaps they managed the police record to justify the arrest of the respondent-Abdul Majeed. However the learned Additional Sessions Judge/ Ex Officio Justice of Peace Moro disbelieved their story and ordered imposition of cost of Rs. 100,000/- upon the applicants for detaining the respondent No.2 at Moro Police Station and registration of criminal case against the applicants. If this is the position, I do not see any illegality in the Order.

6. Touching on the core issues, primarily the police officials are unaware of the fundamental rights of the citizens which is assured under Article 14 of the Constitution which for reference sake is being mentioned hereunder:-

“14. Inviolability of dignity of man, etc. (1) The dignity of man and, subject to law, the privacy of home, shall be inviolable. (2) No person shall be subjected to torture for the purpose of extracting evidence.”

7. On the issue of fundamental rights of citizen, basically, the dignity of an individual, by the text of Article 14 of the Constitution, is secured and as a necessary consequence, every organ of the State is obliged to respect it. The Constitution is the most sacred legal document of a country and rights guaranteed to its subjects cannot be permitted to be encroached by the public functionaries/executives. The dogmatic approach of paying no respect to the rights of marginalized stratum is paving the way to retribution and resentment, often forcing even a noble soul to opt for a criminal life. The dignity of a man is mutilated, when he is publicly or privately humiliated, degraded, and ridiculed, more importantly due to his poverty and helplessness. Similarly, the dignity of an individual is traumatized when he is deprived of his liberty in violation of express provisions of law by a police officer. The protection of fundamental rights is not only the responsibility of the judiciary but also the obligation of public functionaries and executives as can be extracted from Article 5(2) of the Constitution.

8. To be precise, it can inexorably be concluded from Article 14 of the Constitution that insult, humiliation, and torture suffered by an individual due to his unlawful detention by police is not ignorable and to cater to such menace the Courts must come forward with a pragmatic approach.

9. In recent years, police work has taken a nosedive, mainly on account of non-adherence to Police Rules, 1934. According to Chapter-XX Rule 5 of Police Rules, 1934 every police station is essentially required to be inspected twice a year by a gazetted officer and at least once by the Superintendent of District. The details of such inspections are to be mentioned in Registrar No.XIII maintained under 22.64 of Police Rules, 1934. Unfortunately, even the mandatory requirement of police station' inspection has become obsolete. The reason behind these inspections is to ensure the smooth working of the police and to make sure that all affairs in police stations are carried out in the manner prescribed by law.

10. In the wake of the above discussion, the question of foremost importance arises what are the parameters within which the fate of a petition under Section 491 Cr. P.C. is to be decided, and how a victim of

unlawful detention is to be consoled? While deciding the fate of a habeas petition, the High Court has to carefully scan the record to ascertain that the victim is deprived of his liberty under law or otherwise. To achieve this objective, the Court can examine the facts of the case, information forming the basis of detention and the counter-defense put forth against such a plea. The powers of the Court exercisable in the matters arising out of Section 491 Cr. P.C are highlighted by the Supreme Court in case reported as Government of Sindh through The Chief Secretary, Karachi and 4 others v. Raeesa Farooq and 5 others (1994 SCMR 1283) and on account of its relevancy with the subject is being mentioned hereunder;

“The High Court is competent to examine and satisfy itself that the detenu is not being held in custody without lawful authority or in an unlawful manner. This can be achieved only when the Court examines the information, reasons, facts, and causes leading to the detention.”

11. If sufficient material is discernible from the facts and record of the case that an individual is kept in captivity unlawfully by a police official, the Courts have to come forward with a pragmatic approach for the protection of fundamental rights guaranteed under Articles 9,10 & 14 of the Constitution and must not hesitate in awarding even cost/compensation to the victim. Needless to mention here such an amount is to be paid by none other than the delinquent police officials, who are detaining the persons illegally. Even, in appropriate cases, the Court may pass an order for the registration of criminal cases as well as initiation of departmental proceedings against the delinquent police officials. Even otherwise, how a public functionary can be let off to go scot-free when he is found to have infringed the right of an ordinary individual, guaranteed to him under the Constitution. I am afraid to observe that such an approach would render the provisions embodied in Articles 9, 10 & 14 of the Constitution as a nullity. The Courts are saviors of the fundamental rights granted to the subjects of a State and must guard them enviously.

12. This Court is not oblivious of the fact that countless police personnel have laid their lives while fighting against the miscreants, in an endeavor to uphold the law and order in the country, thus we must acknowledge their sacrifices by paying them respect. At the same time, it is noticed that cases of police excess are on the rise, and so is the horror of

usurping the liberties of individuals through the menace of unlawful detention. Such a trend of police excess is required to be chained to guard the rights of citizens guaranteed under Articles 9, 10 & 14 of the Constitution. This objective can best be achieved by awarding compensation to the victims to be paid by the delinquent police officials. Such compensation on the one hand is destined to set right the police officials tending to act beyond prescribed spheres of law and on the other hand, is aimed at restoring the dignity of victims, protecting their fundamental rights, and restoring confidence in the legal system. A peep through the judicial archives reveals that even in the past, the Courts in our country have been awarding compensation to the sufferers. In this respect, reference can be made to the case of Rana (Khatoon Bibi v. The State, etc.) Muhammad Aslam v. Azmat Bashir and others (2011 SCMR 1420).

13. Since the Ex-Officio Justice of Peace has already arrived at an irresistible conclusion that the detinue fell prey to police excess of unlawful detention, attributable to applicants, thus deserves an award of compensation to be paid by the applicants/offending police officials as ordered by the learned Additional Sessions Judge/ Ex Officio Justice of Peace Moro as such no interference on the part of this Court is required at this stage. The impugned order is hereby maintained. SSP Naushahro Feroze is directed to see the state of affairs in his District and take prompt disciplinary action against all delinquent police officials who are indulged in these sorts of affairs and screen out all the police officials of the District, who are indulged in criminal activities.

14. So far as involvement of any accused in any criminal case is concerned, it does not mean that he/she shall be detained by the Police Officials without registration of any criminal case, as such the role of the applicants cannot be appreciated at all. SSP Naushahro Feroze is directed to resolve the controversy after hearing the parties and submit a compliance report through the Additional Registrar of this Court without delay.

15. On a departing note, the office is directed to transmit a copy of this order to SSP Naushahro Froze to ensure that under Article 10 of the Constitution, grounds of arrest must be provided to every accused immediately after taking him in police custody. Inspections of all police

stations of District Naushahro Feroze be conducted in terms of Chapter-XX Rule 5 of Police Rules, 1934, appropriate steps be taken for educating the police personnel in District Naushahro Feroze regarding torture during custody, interrogation, arrest, detention or imprisonment, etc.

16. In the above terms, the instant Criminal Revision Applications are disposed of.

J U D G E

Nasim/P.A