

Court No. - 48

WWW.LIVELAW.IN

Case :- CRIMINAL MISC. WRIT PETITION No. - 16386 of 2020

Petitioner :- Shiv Kumar Verma And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Ganesh Shanker Srivastava, Ashwini Kumar

Counsel for Respondent :- G.A.

Hon'ble Surya Prakash Kesarwani, J.

Hon'ble Shamim Ahmed, J.

1. Heard Sri Ashwini Kumar, learned counsel for the petitioners and Sri Manish Goyal, learned Additional Advocate General assisted by Sri S.K. Pal, learned Government Advocate and Sri Ali Murtuza, learned A.G.A. for the State-respondents.

2. This writ petition has been filed praying for the following reliefs:

"i) Issue a writ, order or direction in the nature of mandamus directing the respondents to give compensation to the petitioners in lieu of illegal detention from 12.10.2020 to 21.10.2020 in connection with Case Crime No.624 of 2020, State vs. Shiv Kumar Verma and another, under Section 151, 107 and 116 Cr.P.C., Police Station Rohania, District Varanasi."

3. In compliance to the order dated 27.1.2021, counter affidavit dated 2.2.2021 by the respondent no.1, counter affidavit dated 31.1.2021 by the respondent no.2, counter affidavit dated 1.2.2021 by the respondent no.3 and counter affidavit dated 1.2.2021 by the respondent no.4 have been filed today, which all are taken on record. In compliance to the aforesaid order dated 27.1.2021, Sri Tarun Gauba, Secretary Home, U.P. Lucknow is personally present in Court.

4. Briefly stated, facts of the present case are that there was some dispute relating to ancestral property between the petitioners and their family members. In paragraph 3 of the writ petition, it has been stated that some tiff arose between the petitioners and other family members, namely, Rajendra Prasad, Shiv Kumar Verma and Raj Kumar Verma

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regarding partition of ancestral land and in apprehension of breach of public peace, the police arrested the petitioners under Section 151 Cr.P.C. on 8.10.2020. A Challani Report dated 8.10.2020 was submitted by the Sub Inspector, Police Station Rohania, District Varanasi to the Sub Divisional Magistrate, District Varanasi under Section 151/107/116 Cr.P.C., which is in printed form and merely name of the petitioners and others, name of village and “land dispute” have been written by ink in the aforesaid Challani Report. On receipt of the Challani Report, the Sub Divisional Magistrate registered the case as Case No.624 of 2020 (State vs. Shiv Kumar Maurya and others) and passed the following order on 8.10.2020:

मु0स0 624 सन् 2020

सरकार बनाम शिवकुमार मौर्य आदि

धारा—515 / 107 / 116 द0प्र0सं0

थाना—रोहनिया

08.10.2020

आज थानाध्यक्ष रोहनिया जनपद वाराणसी द्वारा अन्तर्गत धारा 151 / 107 / 116 द0प्र0सं0 के अन्तर्गत चालानी रिपोर्ट सरकार बनाम शिवकुमार मौर्य आदि प्रस्तुत किया गया अभियुक्तगण के जमानत हेतु बन्ध पत्र व शपथ पत्र व मुचलका दाखिल नहीं किया गया।

अतः अभियुक्तगण के जमानत हेतु बन्ध पत्र व मुचलका के उपलब्धता तक अभियुक्तगण को निरूद्ध जेल किया जाता है। पत्रावली दिनांक 21.10.2020 को पेश हो।

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सत्यप्रतिलिपि

08.10.2020

5. It appears that on 12.10.2020 the petitioners submitted personal bond and other papers but the respondent no.3 has not released them and instead, under the pretext of verification, directed the file to be placed on 21.10.2020. The order dated 12.10.2020 passed by the respondent no.3 is reproduced below:

12.10.2020

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पत्रावली पेश। अभियुक्तगण द्वारा जमानत प्रार्थना पत्र व बन्ध पत्र/ मुचलका दाखिल किया गया बन्ध पत्र में संलग्न जमानदारी को खतौनी का मुल्यांकन हेतु तहसीलदार राजस्व को प्रेषित व राज पत्रिक अधिकारी द्वारा जारी अभियुक्तगणे का चरित्र प्रमाण पत्र दो प्रति अतः पत्रावली दिनांक 21.10.2020 को पेश हो।

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सत्यप्रतिलिपि

12.10.2020

6. Thereafter, on 21.10.2020 the petitioners were released. Aggrieved with the arbitrary and illegal action of the respondents and illegal detention, the petitioners have filed the present writ petition praying for the relief as afore-quoted.

7. In paragraph 8 of the counter affidavit dated 2.2.2021, the respondent no.1 has stated that the State Government has taken corrective action in the matter vide letters/circulars dated 30th January, 2021 and 31st January, 2021. The aforesaid letters/circulars dated 30th January, 2021 and 31st January, 2021 are reproduced below:

Letter/Circular dated 30th January, 2021

फैक्स / ई-मेल / महत्वपूर्ण

संख्या- 159 / 6-पु०-11-21-05 रिट / 2021

प्रेषक,

तरुण गाबा,
सचिव,
उत्तर प्रदेश शासन।

सेवा में,

पुलिस महानिदेशक,
उत्तर प्रदेश।

गृह(पुलिस)अनुभाग-11 लखनऊ: दिनांक:30 जनवरी,2021

विषय:- किमिनल (मिस०) रिट याचिका संख्या- 16386 / 2020, शिव कुमार वर्मा व अन्य बनाम उ०प्र० राज्य व अन्य में पारित मा० उच्च न्यायालय के

आदेश दिनांक 13.01.2021 के अनुपालन में दिशा-निर्देश निर्गत करने के सम्बन्ध में।

महोदय,

उपर्युक्त विषयक किमिनल (मिस0) रिट याचिका संख्या- 16386/2020, शिव कुमार वर्मा व अन्य बनाम उ0प्र0 राज्य व अन्य में पारित मा0 उच्च न्यायालय के आदेश दिनांक 13.01.2021 (प्रति संलग्न) का कृपया अवलोकन करने का कष्ट करें।

2- इस सम्बन्ध में मुझे यह कहने का निदेश हुआ है कि मा0 उच्च न्यायालय, इलाहाबाद द्वारा पारित उपर्युक्त आदेश दिनांक 13.01.2021 के दृष्टिगत निम्नलिखित बिन्दुओं को सम्मिलित करते हुए समस्त सम्बन्धित अधीनस्थ अधिकारियों को अपने स्तर से विस्तृत दिशा-निर्देश निर्गत करने का कष्ट करें :-

(1) 107/116/116 (3) सीआरपीसी व 151 सीआरपीसी इत्यादि निरोधात्मक कार्यवाही का चालानी रिपोर्ट प्रिन्टेड प्रोफार्मा पर प्रेषित न किया जाए।

(2) प्रत्येक मामले में विवाद से सम्बन्धित पूर्ण/सुस्पष्ट एवं तथ्यात्मक विवरण(सुविचारित कारणों सहित) अंकित किया जाए।

(3) प्रत्येक चालानी रिपोर्ट के साथ प्रकरण से सम्बन्धित आवश्यक प्रपत्र, जैसे प्रार्थना पत्र, एनसीआर की प्रति इत्यादि अवश्य संलग्न किये जाए।

(4) प्रत्येक चालानी रिपोर्ट यदि किसी चौकी प्रभारी अथवा उप निरीक्षक द्वारा तैयार की जाती है तो उस पर सम्बन्धित प्रभारी निरीक्षक/थानाध्यक्ष द्वारा परीक्षण कर अपनी स्पष्ट एवं तथ्यात्मक टिप्पणी अंकित करने के उपरान्त ही अग्रिम कार्यवाही हेतु प्रेषित की जाए।

संलग्नक: यथोपरि।

भवदीय

(तरूण गाबा)
सचिव।

Letter/Circular dated 31st January, 2021

मा0 उच्च न्यायालय प्रकरण/सर्वोच्च प्राथमिकता/ समयवद्ध/क्यू मेल

मुख्यालय पुलिस महानिदेशक उत्तर प्रदेश | टावर-2, सप्तम्
तल, पुलिस मुख्यालय, गोमतीनगर विस्तार, लखनऊ।

संख्या: डीजी-आठ-94(निर्देश)2021

दिनांक: लखनऊ जनवरी 31, 2021

सेवा में,

- 1- समस्त जोनल अपर पुलिस महानिदेशक,
उत्तर प्रदेश।
- 2- समस्त पुलिस आयुक्त,
उत्तर प्रदेश।

विषय:- क्रिमिनल (मिस0) रिट याचिका संख्या-16386/2020, शिव कुमार
वर्मा व अन्य बनाम उ0प्र0 राज्य व अन्य में पारित मा0 उच्च न्यायालय के
आदेश दिनांक 13.01.2021 के अनुपालन के सम्बन्ध में।

कृपया उपर्युक्त विषयक पुलिस महानिदेशक, उ0प्र0 को सम्बोधित उ0प्र0
शासन के पत्र संख्या-159/06-पु0-11-21-05 रिट/ 2021 दिनांक 30.01.
2021(छाया प्रति संलग्न) का अवलोकन करने कष्ट करें, जिसके माध्यम से
क्रिमिनल (मिस0) रिट याचिका संख्या-16386/2020 शिव कुमार वर्मा व अन्य
बनाम उ0प्र0 राज्य व अन्य में पारित मा0 उच्च न्यायालय के आदेश दिनांक 13.
01.2021 द्वारा 107/116/151 सीआरपीसी की निरोधात्मक कार्यवाही में
चालानी रिपोर्ट के सम्बन्ध में दिशा निर्देश निर्गत किये जाने की अपेक्षा की गयी
है।

2- मा0 उच्च न्यायालय द्वारा पारित आदेश दिनांक 13.01.2021 के
अनुपालन में गृह विभाग द्वारा निर्गत निर्देश आदेश दिनांकित 30.01.2021 के
क्रम में निम्नलिखित दिशा निर्देश निर्गत किये जाते हैं:-

1. 107/116/116(3) सीआरपीसी व 151 सीआरपीसी की
निरोधात्मक कार्यवाही का चालान रिपोर्ट प्रोफार्मा पर प्रेषित न किया
जाये।
2. प्रत्येक मामले में विवाद से सम्बन्धित पूर्ण/सुस्पष्ट एवं
तथ्यात्मक विवरण (सुविचारित कारणों सहित) अंकित किया जाये।
3. प्रत्येक चालानी रिपोर्ट के साथ प्रकरण से सम्बन्धित
आवश्यक प्रपत्र, जैसे-प्रार्थना पत्र, एनसीआर की प्रति इत्यादि अवश्य
संलग्न किये जायें।

4. प्रत्येक चालानी रिपोर्ट यदि किसी चौकी प्रभारी अथवा उप निरीक्षक द्वारा तैयार की जाती है तो उस पर सम्बन्धित प्रभारी निरीक्षक अथवा थानाध्यक्ष द्वारा परीक्षण कर अपनी स्पष्ट एवं तथ्यात्मक टिप्पणी अंकित करने के उपरान्त ही अग्रिम कार्यवाही हेतु प्रेषित की जाये।

3— उपरोक्त सम्बन्ध में अमित जानी केस संख्या—10759/2020 दिनांक 17.06.2020 में निहित निर्देशों का अक्षरशः अनुपालन कराया जाना अपेक्षित है।

4— अतः आपको निर्देशित किया जाता है कि मा० उच्च न्यायालय द्वारा परित आदेश दिनांक 13.01.2021 के अनुक्रम में उपरोक्त दिशा—निर्देशों का कड़ाई से अनुपालन कराना सुनिश्चित करें। त्रुटि न हो।

संलग्नक:यथोपरि।

(एच०सी०अवस्थी)

पुलिस महानिदेशक

उत्तर प्रदेश।

8. From the facts briefly noted above and the counter affidavit of respondent no.1, it stands admitted that the police authorities are arbitrarily and illegally submitting Challani Reports under Sections 107/116 Cr.P.C. Since the respondent no.1 has taken steps to correct the mistakes and illegalities, therefore, we do not propose to issue any further direction in that regard, except **that the afore-quoted Circulars dated 30th January, 2021 and 31st January, 2021 shall be strictly implemented in the whole of the State of Uttar Pradesh.**

9. In the counter affidavit dated 1.2.2021, **the respondent no.3 has stated in paragraph 5 and 8 that “the petitioners submitted the applications through their counsel that they are ready for furnishing personal bonds as well as bail bonds, therefore, they may be released on bail and the answering respondent directed the concerned Tehsildar to verify the revenue records produced by the sureties and on verification the petitioners shall be released on 21.10.2020 on bail.”**

10. In his counter affidavit, the respondent no.3 has tried to justify his arbitrary action and clear breach of statutory duty cast upon him as well as the fundamental rights guaranteed under Article 14 and 21 of

the Constitution of India. In this regard, it would be appropriate to refer to the provisions of **Section 107, 111 and 116 of the Code of the Criminal Procedure, 1973**, which are reproduced below:

“107. Security for keeping the peace in other cases.

(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

(2) Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction.

“111. Order to be made. *When a Magistrate acting under section 107, section 108, section 109 or section 110, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.”*

“116. Inquiry as to truth of information.

(1) When an order under section III has been read or explained under section 112 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant, issued under section 113, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

(2) Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trial and recording evidence in summons- cases.

(3) After the commencement, and before the completion, of the inquiry under sub- section (1), the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under section 111 has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded: Provided that-

(a) no person against whom proceedings are not being taken under section 108, section 109, or section 110 shall be directed to execute a bond for maintaining good behaviour;

(b) the conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of

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their liability, shall not be more onerous than those specified in the order under section 111.

(4) For the purposes of this section the fact that a person is an habitual offender or is so desperate and dangerous as to render his being at large without security hazardous to the community may be proved by evidence of general repute or otherwise.

(5) Where two or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the Magistrate shall think just.

(6) The inquiry under this section shall be completed within a period of six months from the date of its commencement, and if such inquiry is not so completed, the proceedings under this Chapter shall, on the expiry of the said period, stand terminated unless, for special reasons to be recorded in writing, the Magistrate otherwise directs: Provided that where any person has been kept in detention pending such inquiry, the proceeding against that person, unless terminated earlier, shall stand terminated on the expiry of a period of six months of such detention.

(7) Where any direction is made under sub-section (6) permitting the continuance of proceedings, the Sessions Judge may, on an application made to him by the aggrieved party, vacate such direction if he is satisfied that it was not based on any special reason or was perverse.”

11. Section 107 Cr.P.C. requires the Magistrate receiving the information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity **and is of opinion that there is sufficient ground for proceeding**, he may, in the manner hereinafter provided, **require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.** Perusal of the order dated 8.10.2020 passed by the respondent no.3 would reveal that there is no such satisfaction recorded by the respondent no.3. The aforesaid order dated 8.10.2020 would further reveal that the respondent no.3 has not required the petitioners to show cause that why they should not be ordered to execute a bond with or without sureties. **Thus, the respondent no.3 has committed clear breach of mandate of Section 107 Cr.P.C.**

12. Section 111 Cr.P.C. provides that **when a Magistrate acting under section 107, section 108, section 109 or section 110, deems it necessary to require any person to show cause under such section, he**

shall make an order in writing, setting forth **(i)** the substance of the information received, **(ii)** the amount of the bond to be executed, **(iii)** the term for which it is to be in force, and **(iv)** the number, character and class of sureties (if any) required. **These necessary ingredients of Section 111 Cr.P.C. are totally absent in the order dated 8.10.2020 passed by the respondent no.3. Thus, it is evident on record that the respondent no.3 has acted arbitrarily and illegally.**

13. It would further be relevant to note that admittedly **the petitioners have submitted personal bond on 12.10.2020** although the order passed by the respondent no.3 dated 8.10.2020 does not specify the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties, if any, required. **Despite submission of personal bond and other papers on 12.10.2020 by the petitioners before the respondent no.3, they were not released by the respondent no.3 and that too against its own order dated 8.10.2020 that the petitioners shall be detained till presentation of personal bond/bond. Non release of the petitioners by the respondent no.3 even after submission of personal bond/bond and other papers, is a clear breach of Article 21 of the Constitution of India, by the respondent no.3 which resulted in illegal detention of the petitioners at least since 12.10.2020 to 21.10.2020.**

14. The facts, afore-noted, leave no room of doubt that the respondent no.3 has acted arbitrarily and not only failed to discharge his duty cast upon him under Section 107 and 111 Cr.P.C. but also committed breach of Article 14 and 21 of the Constitution of India. Such type of instances need to be stopped by the State Government.

15. Learned Additional Advocate General and the Secretary, Home, U.P. Lucknow jointly state that the State Government shall develop a mechanism and shall also issue appropriate guidelines so as to ensure that such instances may not repeat again. They further state that the

State Government shall consider to grant monetary compensation to the petitioners for breach of their fundamental rights under Article 21 of the Constitution of India.

16. Considering the joint request of the learned Additional Advocate General and the Secretary Home, U.P. Lucknow, as afore-noted, we grant four weeks time to the State Government to take appropriate action in terms of the statement, as afore-noted and file an affidavit of compliance on the next date fixed.

17. On the next date fixed, the respondent no.3 shall also file his personal affidavit explaining his conduct, as briefly noted above.

18. Put up in the additional cause list on **3.3.2021** for further hearing.

19. Personal appearance of Secretary Home, U.P. Lucknow, is exempted until further orders.

Order Date :- 2.2.2021

SP