

of a full Bench of this Court in **Vijay Kumar and others versus State of Punjab and others, (21)** and the judgment of the Hon'ble Supreme Court in **State Bank of India versus M. R. Ganesh Babu, (22)** and **Uma Devi's case** (supra). Thus, the writ petition filed by the Administration challenging grant of minimum of the pay scale plus dearness allowance is to be dismissed. The judgments referred to by the learned counsel for the Administration have been considered by us in the judgments referred to above. Thus, we do not find that the said question can be permitted to be reagitated by the respondents at this stage.

(41) In view of the above, we find no merit in all the writ petitions, which are dismissed, except CWP No. 2237-CAT of 2002, which is dismissed as having rendered infructuous.

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**R.N.R.**

**Before M. M. Kumar and Sabina, JJ**

**KIRAN FOUNDATION,—Petitioner**

*versus*

**STATE OF PUNJAB AND OTHERS,—Respondents**

C.W.P. No. 6659 of 2008

20th May, 2008

***Constitution of India, 1950—Art. 226—A registered Society running Drug De-addiction Centre under a Scheme of Central Government—Allegations of wrongful confinement—DSP and Civil Surgeon finding complaints false against Centre—Registration of FIR is complete misuse of power vested in Police—Neither any notice served on petitioner nor any steps taken directing petitioner to obtain licence under the Mental Health Act, 1987—Petition allowed, FIR against petitioner quashed.***

*Held*, that there is nothing on the record to show that either any notice has ever been served on the petitioner or any steps have been taken directing it to obtain licence under the Mental Health Act, 1987.

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(21) 2002(1) SLR 694

(22) (2002)4 S.C.C. 556

The Centre has been started under a Scheme of the Central Government. We further take notice of the fact that numerous areas of Punjab are infested with the drug peddlers and in that context it is appreciable that this Drug Counselling has been made available to the drug addicts. On the one hand, the respondent-State has not been able to take any effective steps to control the menace of drug addiction and import of drug in the State and on the other hand its officers are adopting the policy of even closing the Centre aiming at drug de-addiction. It is sad revelations on the working of the State machinery.

(Para 8)

B.D. Sharma, Advocate, *for the petitioner.*

Suvir Sehgal, Addl. A.G. Punjab, *for the respondents.*

***M. M. KUMAR, J.***

(1) This instant petition filed under Article 226 of the Constitution prays for quashing of FIR No. 111 dated 25th February, 2008 registered at Police Station Sadar, Amritsar, under Sections 420, 342, 343, 344 IPC (P-4) against the petitioner and other employees of a De-addiction Centre run by the petitioner known as Kiran Foundation, Amritsar. The petitioner has prayed for issuance of directions to respondents No. 1 and 3 to provide protection to the petitioner-society and its staff so as to enable them to run the Navjeevan Drug Counselling and Rehabilitation Centre, Tehsil and District Amritsar.

(2) Facts are not much in dispute. The petitioner is a society registered under the Registration of Societies Act, 1860 with the Registrar of Societies, Amritsar (Annexure P-1). The society established a De-addiction Centre in the name of Navjeevan Drug Counselling and Rehabilitation Centre (for brevity 'the Centre') as per the scheme and programmes concerning Voluntary Organisation 2004 issued by the Ministry of Social Justice Empowerment, Government of India (Annexure P-2). The scheme has provided the norms for setting up of 15 bedded treatment-cum-rehabilitation Centres. It also stipulates the arrangement

of services of various employees including Project Director, Accountant-cum-Clerk, Sweeper/Chowkidar, Medical Officer (Part time), Counsellor/Community/Worker/Special Worker, Yoga/other Therapist (Part time), Nurse/Ward Boys etc.

(3) On 6th June, 2007 an anonymous complaint was made against the Centre, which was investigated by Deputy Superintendent of Police, Sadar, Amritsar. In his report dated 16th July, 2007 (Annexure P-4) he has recorded a finding of fact that the Centre is a double storey building constructed in 450 square yards, which is comprised of three hall rooms, two rooms for residence purpose in which attached bathrooms and toilets have been constructed. For patients even special air-coolers have been fitted with a special arrangement of generator also. The report further points out that for the treatment of patients, two doctors, namely, Dr. Amandeep Mehta and Dr. Rajnish Sharma, B.A.M.S. are also employed to give treatment to patients. In the Centre, 60 patients were found admitted and on enquiry from them, it was also found that the drug addicted patients are properly treated as all the facilities are being provided. Even statements of admitted patients were recorded which were attached with the report. The complainant, Iqbal Singh, was sought to be associated with the enquiry but he had given wrong address resulting in his non joining. The Deputy Superintendent of Police has concluded that false complaints have been made for harassing the owner of Kiran Foundation unnecessarily. He further recommended to consign the complaint to record.

(4) The Director, Health and Family Welfare, Punjab also got another complaint against the Centre which was marked to the Civil Surgeon, Amritsar, who in his report dated 28th November, 2007 (Annexure P-5) has reached to the same conclusion. He refers to the inspection undertaken by the Drug Inspector, Amritsar on 27th November, 2007. The Drug Inspector in his report has recorded that the Centre is registered with the Registrar of Societies since 4th April, 2005 and in the Centre, two doctors, namely, Dr. Amandeep Mehta and Dr. Rajnish Sharma, B.A.M.S. have been working. On the spot, Dr. Amandeep Mehta was found present. It has again been reiterated that the Centre

is a double storey building constructed in 450 square yards which provides full facilities for treatment of drug addicted patients. A reference has also been made to the enquiry report filed by the Deputy Superintendent of Police, Sadar, Amritsar which has been noticed in the preceding para. However, the Drug Inspector recorded the statements of witnesses on the spot. Rejinder Kumar son of Kashmir Singh, Member Panchayat had made a statement that the residents of the village did not have any complaint and the village Panchayat has fully supported the working of the Centre. The complaint was found to be false and similar recommendation of consigning the complaint to record was made.

(5) However, respondent No. 4, S.H.O., Police Station Sadar, Amritsar, has recorded an FIR on 25th February, 2008 which reads as under :—

“S.H.O. Sahib PS SADAR Jai Hind Today IASI with HC Punjab Rai 1803, HC Tarsem Singh 3459, HC Palwinder Singh 395, in connection with the round and looking for ill-reputed persons were present in a Nakain Chowk Mahal that one special informer gave the information that Gurvinder Singh Cheema 2. Dr. Amandeep Mehta 3. Dr. Lokinder Kumar 4. Ravinder Kumar 5. Rahul Kumar and other persons have opened a Drug De-addiction Centre in the name of Navjeevan Centre where they by mis-guiding the innocent people admit them and charge 6,000 to 8,000 of rupees. There is no competent M.B.B.S. doctor available in the institute and at present also 60/70 boys were admitted. They have no authorization Information is solid. The abovementioned persons have committed offence 420, 342, 343, 344 IPC by illegally keeping the innocent people by misguiding them.”

(6) A perusal of the FIR shows that it is contrary in all details to the report submitted by the DSP, Sadar, Amritsar dated 16th July, 2007 (Annexure P-4) and the report submitted by the Civil Surgeon,

Amritsar dated 28th November, 2007 (Annexure P-5). According to these two reports submitted earlier, the Centre is treating the drug addicted patients and the statements of patients have also been recorded. There is no requirement that only M.B.B.S. doctors were to run the Centre and it has come on record that B.A.M.S. doctors have been employed, which is consistent with the rehabilitation scheme given by the Central Government for the welfare of persons with disability (Annexure P-2). The scheme permit the running of such a Centre by a medical doctor, who may be M.B.B.S. or with an equivalent degree recognised by the Department of Indian Systems of Medicine. By no stretch of imagination, the B.A.M.S. doctor could be considered to be not equivalent to the degree of M.B.B.S. There is no provision of any Act recorded in the FIR, which could be alleged to have been violated by virtue of the fact that non-M.B.B.S. doctors have been treating the patients in the Centre.

(7) Further allegation is that the Centre has no authorisation and they are alleged to have committed offences under Sections 420, 343, 343, 344 IPC. According to Section 342 IPC, which provides punishment for wrongful confinement, which under Section 340 IPC means that if a person wrongfully restrains any other person in such a manner as to prevent that person from proceedings beyond certain circumscribed limits then it is said to be wrongful confinement of that person. The other congnate Sections 343 and 344 IPC deal with aggravated form of the offence if wrongful confinement exceeds particular number of days. Under Section 420 IPC, the definitions of cheating and dishonesty are given. The charges taken at their face value do not fulfil the basic ingredients of the substantive penal provision. It is strange that the patients admitted in the Centre have been considered as captive. Can it be said that there was a credible information with respondent No. 4. We fail to understand that on the face of the two reports given by the DSP and Civil Surgeon, Amritsar dated 16th July, 2007 and 28th November, 2007 (Annexures P-4 and P-5) respectively, where statements of various patients have been brought on record, how the allegation of wrongful confinement could be substantiated. This is a sheer figment of imagination of respondent No. 4. The information in the FIR is far

from creditworthy. It is apparent that the FIR against the petitioner has been recorded on some extraneous consideration by respondent No. 4. The report of DSP, Sadar, Amritsar could have easily guided respondent No. 4 that the Centre is neither mis-guiding the innocent people by admitting them in the Centre nor it is violative of any penal law. Therefore, the registration of FIR is complete misuse of the power vested in the police and the same cannot be commended by us. In support of our view we place reliance on the judgments of Hon'ble the Supreme Court in the cases of **State of West Bengal versus Swapan Kumar Guhu (1)**, **State of Haryana versus Bhajan Lal (2)** and **Sunita Jain versus Pawan Kumar Jain (3)** Respondent No. 4 should have held a preliminary enquiry before registration of FIR against the petitioner and its employees as it is permissible in law. In that regard reliance could be placed on the recent view of Hon'ble the Supreme Court in the case of **Shashi Kant versus C.B.I. (4)** Had respondent No. 4 followed that legal process he would have come across the two reports of DSP and Civil Surgeon (Annexures P-4 and P-5) and unnecessary harassment to citizens could be avoided.

(8) In the additional affidavit filed by Shri Balkar Singh, DSP, Sadar, Amritsar, it has been stated that the petitioner was required to produce a licence under the Mental Health Act, 1987. There is nothing on the record to show that either any notice has ever been served on the petitioner or any steps have been taken directing it to obtain licence under the Mental Health Act, 1987. The Centre has been started under a scheme of the Central Government. We further take notice of the fact that numerous areas of Punjab are infested with the drug peddlers and in that context it is appreciable that this Drug Counselling Centre has been made available to the drug addicts. On the one hand, the respondent-State has not been able to take any effective steps to control the menace of drug addiction and import of drug in the State and on the other hand its officers are adopting the policy of even closing the Centre aiming at drug de-addiction. It is sad revelations on the working of the State Machinery.

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- (1) (1982)1 S.C.C. 561
  - (2) 1992 Supp. (1) S.C.C. 335
  - (3) (2008)2 S.C.C. 705
  - (4) (2007)1 S.C.C. 630

(9) In view of above, the writ petition is allowed. FIR No. 111, dated 25th February, 2008 registered at Police Station Sadar, Amritsar, under Sections 420, 342, 343, 344 IPC against the petitioner is quashed. If there is any requirement of law for the petitioner to obtain licence under any law then it shall be permitted to move an appropriate application to the competent authority which shall be considered in accordance with law. It is made clear that any act at the instance of respondents No. 3 and 4 to harass the Centre or its employees shall be taken seriously. The petitioner shall be entitled to the costs which is quantified at Rs. 25,000.

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***R.N.R.***