

*Before T.S. Thakur, C.J. & Surya Kant, J.*

**GOVT. OF INDIA & ANOTHER,—Petitioners**

**versus**

**MADHU GARG & OTHERS,—Respondents**

L.P.A. No. 164 of 2006 in  
Crl. W.P. No. 1037 of 2003

10th December, 2008

*Constitution of India, 1950—Art. 226—Allegation of illegal detention—Whether High Court has jurisdiction to entertain & issue directions—Held, yes—High Court through a writ of habeas corpus can secure person of detenué to find out as to whether or not he has been kept in lawful custody—Husband of respondent no longer in custody at time of disposal of petition—Appropriate course to seek a remedy before an appropriate forum—Appeal allowed, order of Single Judge issuing directions for investigation in an infructuous matter set aside.*

*Held*, that this Court undoubtedly entertain a writ petition if the ‘cause of action’ or any part thereof had arisen within its territorial jurisdiction. The learned Single Judge, in order to assume jurisdiction in the matter, has relied upon two factors, namely (i) Narsi Ram Garg is stated to have been picked up from Ludhiana and (ii) the telegram from Madhu Garg was also received from Ludhiana”. Both these factors are irrelevant and do not constitute any ‘cause of action’ or part thereof. Regarding the alleged illegal detention of Narsi Dass Garg, his wife—Smt. Rakesh Garg had sent a separate telegram which was treated as Criminal Writ Petition and disposed of by this Court on 16th December, 2003 as having become infructuous. So far as the telegram sent to this Court by the respondent is concerned, that in no way amounts to a part of the ‘cause of action’.

(Para 15)

*Further held*, that admittedly the husband of the respondent-writ petitioner was at his Delhi residence when he was allegedly taken into

illegal custody by the DRI officials. While in custody, Vinod Garg was never taken out of Delhi and was produced before the Additional Chief Metropolitan Magistrate at Delhi only. Similarly, the alleged notices by the DRI to Vinod Garg were sent and served upon him at his Delhi address. His self-inculpatory statements were also recorded in Delhi only. All the events pertaining to the alleged "illegal detention" of Vinod Garg, thus, commenced and ended only in Delhi. While the respondent-writ petitioner being wife of the alleged detainee, had a 'right of action' but no 'cause of action' accrued to her within the territorial jurisdiction of this Court.

(Para 18)

*Further held*, that this Court could also entertain the writ petition and issue appropriate directions, if so warranted. A writ of habeas corpus is employed to bring a person before a Court most frequently to ensure that the imprisonment or detention of the party is not illegal. It, thus, implies that when there is a complaint of illegal detention, the High Court through a writ of habeas corpus can secure the person of the detainee to find out as to whether or not he has been kept in lawful custody. Contrary to it, the husband of the respondent was no longer in custody at the time when the petition came up for disposal on 25th October, 2005 and the same, in a way, had been rendered infructuous. In such state of affairs, the appropriate course could have been to give liberty to the alleged detainee or the writ petitioner to seek a remedy like 'compensation' or any other declaratory relief before an appropriate forum so that no prejudice is caused to either of the parties.

(Para 20)

Mohan Prasaran, Additional Solicitor General of India with Satish Aggarwal, and Kamal Sehgal, Advocates, *for the appellants*.

R.S. Cheema, Sr. Advocate with Pawan Girdhar, Advocate, *for respondent No. 1*.

Amol Rattan Singh, Addl. AG, Punjab, *for respondents No. 2 and 3*.

***SURYA KANT, J.***

(1) This order shall dispose of LPA Nos. 164, 165 and 171 of 2006 as common questions of law and facts are involved in these appeals which have been preferred by the Union of India and its Joint Director, Directorate of Revenue Intelligence at Ludhiana. While LPA No. 164 of 2006 is directed against the order dated 25th October, 2005 passed by a learned Single Judge of this Court in Criminal Writ Petition No. 1037 of 2003, LPA No. 165 of 2006 questions the order dated 29th May, 2006 whereby the learned Single Judge has imposed costs of Rs. 10,000 on appellant No. 2. LPA No. 171 of 2006 also assails the same order dated 29th May, 2006 of the learned Single Judge to the extent that no orders on the objections dated 7th February, 2006 filed by the Directorate of Revenue Intelligence against the report of the Senior Superintendent of Police, Ludhiana, have been passed by the learned Single Judge. For brevity, the facts are taken from LPA No. 164 of 2006.

(2) A Telegram addressed to Hon'ble the Chief Justice of this Court, sent by Smt. Madhu Garg, resident of Ludhiana alleging that her husband—Vinod Garg who was there at their residence in Roop Nagar, Delhi and was in contact with her telephonically till 11 A.M., was picked up "by the Directorate of Revenue Intelligence Staff, Delhi" on Saturday, 23rd August, 2003 and his whereabouts were not known, having been treated as Criminal Writ Petition seeking a writ of *habeas corpus*, notice was issued to (i) the Union of India ; (ii) the Joint Director, Directorate of Revenue Intelligence (RU), Ludhiana and (iii) Senior Superintendent of Police, Ludhiana. The record reveals that another telegram received from Smt. Rakesh Garg, resident of ludhiana, alleging that her husband—Narsi Dass Garg (brother of Vinod Garg) was also arrested without any warrants by the Staff of Directorate of Revenue Intelligence, Ludhiana (hereinafter referred to as "the DRI"), was also treated as Criminal Writ Petition No. 1032 of 2003.

(3) While Criminal Writ Petition No. 1032 of 2003 (Smt. Rakesh Garg *versus* State of Punjab and others) was disposed of on 16th December, 2003 as having become infructuous after taking notice of the fact that the petitioner's husband was neither kidnapped nor detained in illegal custody, Criminal Writ Petition No. 1037 of 2003

remained pending as it was only on 12th January, 2005 that by the learned counsel for the State of Punjab made a statement that no allegations had been levelled against the Punjab Police and the matter pertained to the DRI Staff at Delhi. Notice was accordingly issued to the DRI, Delhi and the Commissioner of Police, Delhi, followed by fresh notices issued to the DRI, Delhi and to the Assistant Solicitor General of India at Chandigarh on 22nd March, 2005. On 11th August, 2005 an officer of the Delhi Police informed that they have not arrested any one named Vinod Garg. This Court, after observing that the said Vinod Garg might have been arrested by the DRI, adjourned the case for filing of the counter-affidavit. Meanwhile, the respondent-writ petitioner filed a detailed Criminal Misc. Application No. 379 of 2005 seeking certain directions, though, no counter-affidavit to the main petition was filed on behalf of the DRI.

(4) On 25th October, 2005, the learned Single Judge disposed of the writ petition with a direction to the SSP, Ludhiana to hold an inquiry into the matter of illegal detention and submit a report to this Court within a period of three months, after observing that the DRI, Delhi did not file any reply despite numerous adjournments and the relevant record revealed that Vinod Garg and his brother Narsi Dass Garg had remained in illegal custody from 23rd August to 25th August, 2003.

(5) It may be mentioned here that the respondent-writ petitioner in her Criminal Misc. Application alleged that her husband was kept in illegal custody by the officials of the DRI, Delhi on 23rd, 24th and 25th August, 2003 and was later on shown to have been arrested on 25th August, 2003 under Section 132 and 135 of the Customs Act. She further alleged that during the period of his 'illegal detention', her husband is alleged to have made a self-inculpatory statement recorded under Section 108 of the Customs Act, which was, however, retracted by him before the Additional Chief Metropolitan Magistrate, Delhi on 26th August, 2003. She further averred regarding the illegal detention of Narsi Dass Garg, brother of her husband and the telegram sent by Smt. Rakesh Garg wife of Narsi Dass Garg which was separately treated as Criminal Writ Petition No. 1032 of 2003. The respondent—

writ petitioner referred to in detail the alleged illegal action of the officials of the DRI, Delhi regarding the seizure of their lockers, FDRs etc. and in that backdrop, sought a direction for investigation “pertaining to the illegal detention of her husband at the hands of the DRI officials”.

(6) It appears that the appellants came to know about the order dated 25th October, 2005 passed by the learned Single Judge when in compliance thereto, the SSP, Ludhiana wrote a letter dated 13th December, 2005 to the Joint Director, DRI at Ludhiana. The appellants accordingly moved a Criminal Misc. No. 20 of 2006 praying for recalling the order dated 25th October, 2005. Besides taking the plea that no notice was ever served upon them and no counsel, therefore, could be engaged to appear in the matter, it was explained that on 23rd August, 2003 various business premises of Vinod Garg were searched but he was not found present at any one of them. The said Vinod Garg, however, presented himself in the office of the DRI, Delhi Zone, Delhi in the evening of 23rd August, 2003 and pleaded innocence. Vinod Garg was again directed to appear on 24th August, 2003 when he tendered a voluntary statement under Section 108 of the Customs Act, 1962 but as his statement could not be completed on that day he was again summoned,—*vide* notice dated 25th August, 2003 for appearance on 25th August itself. In his statement dated 24th August, 2003, Vinod Garg allegedly disclosed that he owned another residential premises at 7/3, Roop Nagar, Delhi. The said premises was also searched on 25th August, 2003 when Vinod Garg again made a ‘voluntary statement’ disclosing as to how he had been earning DEPB Credit by way of over-invoicing etc. with the alleged connivance of certain Customs Officers. Thereafter, he was arrested on 25th August, 2003 and remanded to judicial custody on production before the learned Additional Chief Metropolitan Magistrate, New Delhi. Meanwhile, notices were sent to his brother Narsi Dass Garg to appear on 23rd and 24th August, 2003 at the DRI, Ludhiana who did appear and his statements were also recorded. It was further disclosed that a similar telegram was sent by the respondent-writ petitioner to Hon’ble the Chief Justice of Delhi High Court also which was treated as a Criminal Misc. No. M-3970 of 2003 before the Delhi High Court but the same was dismissed as withdrawn on 4th November, 2003. The appellants, thus, alleged that

the respondent concealed material facts from this Court while seeking directions contained in the order dated 25th October, 2005.

(7) The afore-stated recalling application has been dismissed by the learned Single Judge,—*vide* his order dated 29th May, 2006 holding, *inter-alia*, that the officers of the DRI were duly served ; they had knowledge of the proceedings being pending in this Court; the Assistant Solicitor General of India had instructed the empaneled counsel to appear in the matter and his junior was very much present at the time when the order dated 25th October, 2005 was passed. The learned Single Judge also deprecated the conduct of the DRI, especially its Joint Director—Dhiraj Rastogi and imposed a cost of Rs. 10,000 which was directed to be paid by him from his pocket to the High Court Legal Services Committee. The aforesaid subsequent order has given rise to the two connected appeals, as stated earlier.

(8) Meanwhile, a detention order dated 20th October, 2003 was passed against Vinod Garg—husband of the respondent under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. That order was assailed by the respondent before this Court in a Criminal Writ Petition which was dismissed,—*vide* order dated 4th April, 2004. The respondent preferred Criminal Appeal No. 821 of 2004 before the Supreme Court and the same was allowed by their Lordships,—*vide* judgment dated 21st September, 2004 after observing that since one of the grounds mentioned in the detention order was that the material imported by the husband of the respondent was Metal Scrap and not Alloy Steel but upon chemical analysis, it had been found that the samples were made up of Alloy Steel only, the detention order could not sustain in law.

(9) For the reasons best known to the respondent, her Criminal Misc. Application No. 379 of 2005 was blissfully silent on this material aspect of the matter as well.

(10) The record, thus, would bear out that much before the issuance of directions by the Learned Single Judge on 25th October, 2005 to the Senior Superintendent of Police, Ludhiana, to investigate the alleged illegal detention of the husband of the respondent by the DRI officials, not only he had been already released from such detention,

but his preventive detention order also stood quashed by the Hon'ble Supreme Court.

(11) Why the respondent-writ petitioner was still keen on an 'investigation' into the alleged 'illegal detention' of her husband by the DRI officials, is no longer a mystery. As noticed earlier, the husband of the respondent, namely, Vinod Garg is stated to have made two self-inculpatory disclosure statements before the DRI officials on 23rd and 24th August, 2003. Notwithstanding the quashing of the preventive detention order, it appears that Vinod Garg and his brother—Narsi Dass Garg are facing quasi-judicial action under Chapter XIII and XIV of the Customs Act, 1962 for the alleged fraudulent availment of credit under the Public Entitlement Pass Book Scheme against export of goods at grossly over-invoiced price. Since the self-inculpatory statements are likely to be relied upon as a material piece of evidence against them by the Revenue, Vinod Garg and his family is desperate to demolish their evidentiary value by suggesting that those statements were not made voluntarily.

(12) We may also mention here that while issuing notice in these appeals, operation of the order dated 29th May, 2006 passed by the Learned Single Judge was stayed. Thereafter, a Division Bench of this Court,—*vide* order dated 31st January, 2007 directed that the report of investigation conducted by the Senior Superintendent of Police, Ludhiana, as directed by the Learned Single Judge, be produced. In deference thereto, the said investigation report has been placed on record in a sealed cover and we are told that the SSP, Ludhiana has concluded that the husband of the respondent was 'illegally detained' by the officials of the DRI between 23rd to 25th August, 2003.

(13) We have heard Shri Mohan Prasaran, Learned Additional Solicitor General of India on behalf of the appellants and Shri R.S. Cheema, Learned Senior Counsel for the respondent-writ petitioner at some length and perused the record.

(14) Two fundamental questions arise for our consideration. Firstly, as to whether this Court had got territorial jurisdiction to entertain the criminal writ petition and issue directions and secondly,

could such directions be issued in a petition seeking a writ of *habeas corpus* when the alleged detenu had already been released and even the subsequent preventive detention order had also been set aside by the Apex Court ?

(15) This Court could undoubtedly entertain a writ petition if the 'cause of action' or any part thereof had arisen within its territorial jurisdiction. The Learned Single Judge, in order to assume jurisdiction in the matter, has relied upon two factors, namely, "(i) Narsi Dass Garg is stated to have been picked up from Ludhiana ; and (ii) the telegram from Madhu Garg was also received from Ludhiana". In our considered view, both these factors are irrelevant and do not constitute any 'cause of action' or part thereof in the present case. As noticed earlier, regarding the alleged illegal detention of Narsi Dass Garg, his wife—Smt. Rakesh Garg had sent a separate telegram which was treated as Criminal Writ Petition No. 1032 of 2003 and disposed of by this Court on 16th December, 2003 as having become infructuous. So far as the telegram sent to this Court by the respondent is concerned, that in no way amounts to a part of the 'cause of action' which, by now, is a well defined connotation. In **National Textile Corpn Ltd. versus Haribox Swalram (1)**, their Lordships of the Supreme Court held that, "the mere fact that the writ petitioner carries on business at Calcutta or that the reply to the correspondence made by it was received at Calcutta, is not an integral part of the cause of action and, therefore, the Calcutta High Court had no jurisdiction to entertain the writ petition".

(16) In **Kusum Ingots & Alloys Ltd. versus Union of India & another (2)**, the Apex Court held that to assume jurisdiction and to entertain writ petition, the High Court would find out as to whether the integral facts pleaded in support of the 'cause of action' do constitute a cause so as to empower it to decide the dispute and that the entire or part of such cause arose within its jurisdiction.

(17) In **Union of India & others versus Adani Exports Ltd. and another (3)**, the Apex Court observed that the High Court must

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(1) (2004) 9 S.C.C.786

(2) 2004 (6)S.C.C. 254

(3) AIR 2002 S.C. 126



be satisfied from the entire facts pleaded in support of the 'cause of action' that these facts do constitute a cause so as to empower the court to decide a dispute which is at least arising in part within its jurisdiction. Each and every fact pleaded by the party does not *ipso-facto* lead to the conclusion that those facts give rise to a 'cause of action' within the court's territorial jurisdiction unless those pleaded facts are such which have a nexus or relevance with the *lis* that is involved in the case.

(18) In the present case, admittedly the husband of the respondent-writ petitioner was at his Delhi residence when he was allegedly taken into illegal custody by the DRI officials. While in custody, Vinod Garg was never taken out of Delhi and was produced before the Additional Chief Metropolitan Magistrate at Delhi only. Similarly, the alleged notices by the DRI to Vinod Garg were sent and served upon him at his Delhi address. His self-inculpatory statements were also recorded in Delhi only. All the events pertaining to the alleged "illegal detention" of Vinod Garg, thus, commenced and ended only in Delhi. While the respondent-writ petitioner being wife of the alleged detainee, had a 'right of action' but no 'cause of action' accrued to her within the territorial jurisdiction of this Court.

(19) Assuming that it was a case where both this Court as well as the Delhi High Court could exercise jurisdiction, yet the respondent could choose any one of the fora. She opted to send telegrams to both the High Courts which were treated as Criminal Writ/Misc. Petitions. Her petition in the Delhi High Court having been dismissed as withdrawn on 4th November, 2003, the least that was expected of her was to disclose this fact to this Court while moving Criminal Misc. No. 379 of 2005.

(20) We, however, further proceed on the assumption that this Court could also entertain the writ petition and issue appropriate directions, if so warranted. A writ of *habeas corpus* is employed to bring a person before a Court most frequently to ensure that the imprisonment or detention of the party is not illegal. It, thus, implies that when there is a complaint of illegal detention, the High Court through a writ of *habeas corpus* can secure the person of the detainee

to find out as to whether or not he has been kept in lawful custody. Contrary to it, the husband of the respondent was no longer in custody at the time when the petition came up for disposal on 25th October, 2005 and the same, in a way, had been rendered infructuous. In such state of affairs, the appropriate course could have been to give liberty to the alleged detenué or the writ petitioner to seek a remedy like ‘compensation’ or any other declaratory relief before an appropriate forum so that no prejudice is caused to either of the parties.

(21) The record of the case does reveal that the appellants were not properly served and their plea of *bona-fide* lack of communication between the authorities and their counsel, ought not to have been brushed aside lightly by the Learned Single Judge.

(22) For the reasons afore-stated, we are of the considered view that there was no occasion for the Learned Single Judge to issue the directions for investigation in an infructuous matter. We accordingly set aside the order dated 25th October, 2005 to that extent. As a sequel thereto, the subsequent order dated 29th May, 2006 passed by the Learned Single Judge must necessarily go and the same is also set aside. It would mean that the investigation report submitted by the Senior Superintendent of Police, Ludhiana is of no legal value or sanctity.

(23) The observations made here-in-above or the conclusions arrived at by us, however, shall not be taken as an expression of view on the question as to whether the husband of the respondent was in illegal detention of the DRI officials from 23rd to 25th August, 2003. We leave it open for the respondent to prove, in appropriate proceedings, that Vinod Garg was actually illegally detained or that the self-inculpatory statements were extracted from him during that period of illegal detention. Similarly, the appellants would be entitled to either justify the alleged detention of Vinod Garg during the said period or to prove that he was never detained by them and was rather, for the first time, arrested on 25th August, 2003 only.

(24) The appeals are accordingly disposed of, however, with no orders as to costs.

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**R.N.R.**