

Minati Dash Vs. State of Orissa and Others

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Court : Orissa

Decided On : Aug-27-2013

Appellant : Minati Dash

Respondent : State of Orissa and Others

Advocate for Pet/Ap. : Mr. S. Pradhan

Judgement :

ORISSA HIGH COURT: CUTTACK. W. P.(CRL). No.416 OF 201.In the matter of an application under Articles 226 and 227 of the Constitution of India. -----
Minati Dash Petitioner -VersusState of Orissa & others For Petitioner Opp. parties : M/s. S. Pradhan, G. N. Sahu , P. Sahoo & S. Jena. For opp. parties: Addl. Government Advocate. (For O.Ps 1 to 6 & 9) ----- Date of Judgment:

27. 08.2013 -----PRESENT : THE HONOURABLE SHRI JUSTICE M.M. DAS AND THE HONOURABLE DR. JUSTICE A.K.RATH M. M. DAS, J.The petitioner claiming to be the mother of one Abhay Kumar Dash has filed the present writ petition seeking issuance of Writ of Habeas Corpus directing production of her son Abhay Kumar Dash on the ground that the detention of said Abhay Kumar Dash is illegal and without authority of law, the FIR lodged at Baripada Police Station during investigation of which the said son of petitioner has been arrested does not bestow the Baripada police with any jurisdiction to investigate into the said FIR, remand order of the son of the petitioner suffers from

lack of jurisdiction and suppression 2 of registration of an earlier FIR for the self-same incident vitiates the investigation, and, hence, the son of the petitioner has been illegally detained.

2. It is the case of the petitioner that her son Abhay Kumar Dash, who is at present under unlawful detention at Baripada Circle Jail was one of the informants along with twelve others in the joint FIR lodged before the I.I.C., Madhupatna Police Station on 16.1.2013, which has been registered as Madhupatna P.S. Case No.6 of 2013 corresponding to G.R. Case No.89 of 2013 pending in the court of the learned S.D.J.M, Sadar, Cuttack. Copy of the FIR lodged in Madhupatna Police Station, Cuttack has been annexed to the writ petition from which, it purportedly appears that the said Abhay Kumar Dash was one of the informants. Thereafter, another FIR was lodged in Baripada Town Police station registered as Baripada Town P.S. Case No.23 of 2013 by two persons, namely, Kamal Kumar Tosniwal and Smita Nanda. It appears that both the said informants were also persons who lodged the FIR jointly with the son of the petitioner before Madhupatna Police Station.

3. In the FIR lodged before the Madhupatna Police Station, it was alleged by the informants that the complaint made against one Mr. Arvind Kumar Seth earlier, should be considered seriously as he has been cheating various clients all over Orissa giving assurance for a good return on investment and the informants under such false commitment invested money with assurance of high 3 yield, but he failed to fulfill the commitment and cheated them. In the FIR lodged before the Baripada Town Police Station, the two informants, who are residents of Baripada, made allegation against the Company, namely, Mirror Forex Academy Pvt. Ltd. having its office at Sector - 10 Noida, Uttar Pradesh founded by the said Arvind Kumar Seth of Banaras stating that he operated through the son of the petitioner, i.e., Abhay Kumar Dash, who managed to persuade the informants to invest money with the assurance that it will yield very handsome interest. Believing such assurance, the informants invested huge amounts which were never returned to them.

4. From the records, it is revealed that though the son of the petitioner was one of the informants before the Madhupatna Police Station, but in course of investigation, he was arrested as one of the accused in the said case and on being produced before the learned Magistrate was remanded to judicial custody on his prayer for bail being rejected. In the case registered at Baripada Town Police Station, the son of the petitioner was also arrested and produced before the learned Magistrate and was remanded to the custody on rejection of his prayer for bail. Thereafter, he unsuccessfully moved the learned Additional Sessions Judge, Baripada for grant of bail. On rejection of his prayer by the learned Additional Sessions Judge, he moved this Court in BLAPL No.7565 of 2013. This Court by order dated 14.5.2013 also rejected his prayer for bail after having found that a prima facie case has been made out against him for the 4 offences under which the FIR has been registered, i.e., under sections 419/420/34 IPC.

5. Mr. S. Pradhan, learned counsel for the petitioner vehemently urged that in the FIR registered by the Baripada Town Police Station, the place of occurrence has been mentioned as (place not noted (Mirror Forex Academy Pvt. Ltd.)). He therefore, submits that the Baripada police could not have registered the said FIR, as place of occurrence having not been disclosed by the informants, the Baripada Town police had no jurisdiction to cause investigation on the allegations made. Mr. Pradhan relied upon various case laws in support of his contention that if the Court finds that the detention is illegal, a Writ of Habeas Corpus can be issued directing release of the son of the petitioner. However, from the written information lodged before the Baripada Town Police Station, it is evident that the informants are residents of Baripada and they alleged to have been cheated by the son of the petitioner though in the formal FIR drawn up by the police, it has been mentioned in the prescribed column providing to mention place of occurrence as place not noted (Mirror Forex Academy Pvt. Ltd.). Hence, it cannot be said that the occurrence did not take place within the jurisdiction of the Baripada Police Station. With regard to the case laws cited by Mr. Pradhan in support of his contention, it would be appropriate to state that all the said case laws have been comprehensively dealt with in the case of Manubhai Ratilal Patel through Ushaben v. State of Gajarat and 5 others (2013)¹ SCC 31. wherein, the Honble Supreme Court taking note of several earlier judgments of the said Court as well tracing out

the history of Writ of Habeas Corpus laid down that it is a wellaccepted principle that a Writ of Habeas Corpus is not to be entertained when a person is committed to judicial custody or police custody by the competent court by an order which prima facie does not appear to be without jurisdiction or passed in an absolutely mechanical manner or wholly illegal. Referring to the judgment in the cases of Col. B.Ramachandra Rao v. State of Orissa, (1972)3 SCC 25.and Kanu Sanyal v. District Magistrate, Darjeeling (1974)4 SCC 14.the Honble Supreme Court reiterated that the Court is required to scrutinize the legality or otherwise of the order of detention which has been passed. Unless the Court is satisfied that a person has been committed to jail custody by virtue of an order that suffers from the vice of lack of jurisdiction or absolute illegality, a Writ of Habeas Corpus cannot be granted. With regard to the question as to whether investigation can be considered to be an enquiry or trial, it was propounded that investigation as has been dealt with in various authorities of the Honble Supreme Court is neither an enquiry nor trial and it is within the exclusive domain of the police to investigate and is independent of any control by the Magistrate.

6. Keeping the above position of law in view and applying the same to the facts of the present case, it is found that the son of the petitioner was arrested in connection with a case registered 6 by the Madhupatna Police Station, where his prayer for bail has been rejected inasmuch as his prayer for bail on being arrested in the case registered by the Baripada Town Police Station on being remanded to the custody has also been rejected by the courts below as well as this Court, thereby implying that he has been remanded to custody pursuant to the judicial order passed. Hence, it cannot be said by any stretch of imagination that the detention of the son of the petitioner in judicial custody is illegal and without jurisdiction.

7. We, therefore, conclude that in such circumstances, as disclosed from the facts of the present case, no Writ of Habeas Corpus can be issued directing the opp. parties either to produce the son of the petitioner before us or to set him at liberty.

8. In the result, the writ petition being devoid of merit stands dismissed. M.M. Das, J.Dr.A.K.Rath, J.I agree. Dr.A.K. Rath, J.Orissa High Court, Cuttack. August 27th

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