

Apari Vs. State and ors.

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Court : Delhi

Decided On : Feb-16-1996

Reported in : 1996IAD(Delhi)887; 1996CriLJ3941; 61(1996)DLT844

Judge : A.B. Saharya and; M.S.A. Siddiqui, JJ.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Criminal Writ No. 153 of 1995

Appellant : Apari

Respondent : State and ors.

Advocate for Pet/Ap. : R.S. Jena and; S.K. Agarwal, Advs

Judgement :

M.S.A. Siddiqui, J.

(1) The petitioner has filed this writ petition under Article 226 of the [Constitution of India](#) for the issue of a writ of Habeas Corpus to direct the respondents to produce her minor children namely Dhanna, Sardariya and Kalu, alleged to have been kidnapped on 22.8.92 and 23.12.94 respectively. In response to the notice issued to the respondents, Dharmendra Kumar, Deputy Commissioner of Police (South District) filed his counter affidavit dated 10.7.94 stating therein that on 23.12.94, the petitioner lodged a report at the police post Nehru Place (P.S. Kalkaji) to the

effect that her son Kalu had been missing for the last 20 days. Consequently, D.D. No. 13 dated 23.12.94 was recorded and the same was entrusted to Head Constable Rajendra for inquiry. On inquiry, it was revealed that Kalu was last seen near fly over, Chiragh Delhi where he used to sell newspapers. It is further stated that after institution of the present writ petition, two cases being F.I.R. No. 2335/95 under Section 363 Indian Penal Code . at Police Station, C.R. Park, New Delhi and F.I.R.No.166/95 under Section 363 Indian Penal Code at Police Station Greater Kailash, New Delhi have been registered in respect of the petitioner's missing children and concerted efforts are being made to trace them out and the investigation is under progress.

(2) On 18.7.95, after receipt of the affidavit of D.C.P Dharmendra Kumar, the petitioner was directed to supply to the Investigating Officer clues and suggestions for facilitating further investigation and the State was directed to file additional counter affidavit, indicating the latest position. On 20.9.95, the learned Standing Counsel for the State informed the Court that one of the three missing children of the petitioner namely, Kalu, aged 11 years has since been recovered from Rajasthan on 1.8.95 and custody of that child has been handed over to the petitioner under orders of the concerned Magistrate and that search for the remaining two children is still going on. Pursuant to the directions of this Court, K.S. Bedi, Assistant Commissioner of Police filed his counter affidavit dated 7.10.95 stating therein that on 29.7.95 S.I. Darban Singh of P.S. C.R. Park, interrogated one Gyarasa and on the basis of the information supplied by the said Gyarasa, the police reached at Village Kotiya (Rajasthan) and recovered Kalu from the house of the petitioner's mother and that search for the remaining children is still on.

(3) Learned Standing Counsel has contended that the petitioner has not come to this Court with clean hands inasmuch as she has made a deliberate concealment of material facts with a view to mislead the Court. We have given our careful consideration to the arguments advanced by the learned Standing Counsel. In the petition dated 21.2.95 initially filed by the petitioner it was pleaded that the petitioner's two minor sons namely Dhanna and Sardariya were kidnapped on 22.8.93 and her third son Kalu was kidnapped on 23.12.94. The tenor of that

petition shows that she suspected involvement of one Mullah (name not known) r/o D-47, D.D. Flats, Greater Kailash - 1, New Delhi in her sons' kidnapping. Petitioner has filed a copy of the D.D. No. 23 dated 23.12.94 (Annexure-D), lodged by her at the P.P. Nehru Place. According to the said report, the petitioner's son Kalu had been missing for the last 20 days. Petitioner has also filed a copy of the report dated 6.2.1995 sent to the S.H.O. P.S. Greater Kailash, which shows that Kalu was kidnapped on 23.12.94. Thus, there are material contradictions between these two reports and the petition with regard to the date of the alleged kidnapping of Kalu.

(4) It is significant that the petitioner filed her amended petition dated 18.4.1995 and in that petition she omitted certain paragraphs of her original petition containing accusation against one Mullah. In para No. 4 of the amended petition, it was pleaded that Kalu had been kidnapped in the first week of Dec. 94. On contrary, in the prayer clause, date of Kalu's kidnapping has been shown as 23.12.94. It appears that she herself is not certain about the date of the alleged kidnapping of her son Kalu.

(5) However, the affidavit dated 10.7.95 filed by Dharmendra Kumar, D.C.P. shows that after filing of the present writ petition, two cases being F.I.R. No. 235/95 under Section 363 I.P.C. at P.S. C.R. Park, New Delhi and F.I.R. No-166/95 under Section 363 Indian Penal Code . at P.S. Greater Kailash, New Delhi, have been registered in respect of missing boys on the report lodged by the petitioner and that efforts are being made to trace out the missing children and the investigation is under progress. The affidavit further shows that during investigation a detailed enquiry was made from the petitioner but she did not give any clue about her son Kalu. Consequently on 18.7.95 the petitioner was directed to supply to the I.O. clues and suggestions for facilitating further investigation. Thereafter on 20.9.95, learned Standing Counsel, informed the Court that Kalu has since been recovered from Rajasthan on 1.8.94 and custody of that child has been handed over to the petitioner under orders of the concerned Magistrate. On 9.10.94, K.S. Bedi, Assistant Commissioner of Police, Greater Kailash filed his affidavit stating therein that on 29.7.95, S.I. Darban Singh of P.S. C.R. Park, interrogated one Gyarasa and on the basis of the information supplied by him, the

police reached at Village Kotiya (Rajasthan) on 1.8.95 and recovered Kalu from the house of the petitioner's mother. On 16.10.95, the petitioner sought an adjournment for filing rejoinder to the affidavit filed by K.S. Bedi, Asstt. Commissioner of Police. Thereafter, on 3.10.94, the petitioner filed her rejoinder. She has stated in para No. 3 and 4 that :

'In reply to this para the petitioner respectfully submits that her son Kalu who was kidnapped came back to her house/Jhuggi situated at Saheed Hans Raj Sethi camp, Nehru Place, in the month of July, 1995. The petitioner is not able to remember the exact date when Kalu returned to her Jhuggi. The same day the petitioner was not at home as she has gone outside. The petitioner returned home at about 3 or 4 p.m. and found her child Kalu in her Jhuggi. In the same evening, the neighbours belonging to Bagri community informed the petitioner that two men came in a car and asked about her child Kalu. The petitioner apprehending the danger to the life of Kalu, next morning the petitioner sent Kalu by her daughter in law to her village, Kotiya (Rajasthan). That after about 10-12 days one Police Sub Inspector named Darban Singh of P.S. C.R. Park came to the house of the petitioner and asked her about Kalu and the petitioner narrated him the entire story of Kalu. She also informed him that she had already sent Kalu to her village Kotiya, Rajasthan. After two days the said Sub Inspector came to the house of the petitioner with Kalu and handed over Kalu to the petitioner. The petitioner submits that the said Police Sub Inspector brought Kalu with her to Patiala House Court for recording his statement and his statement was recorded on 7th August, 1995 before the Hon'ble Metropolitan Magistrate. The petitioner does not know whether Gyarasa was interrogated by the police.'

(6) It is undisputed that on 1.8.94, Kalu was recovered by the Delhi Police from the house of the petitioner's mother in village Kotiya (Rajasthan). The petitioner wants us to believe that Kalu had returned to her house in the month of July, 1994 but on the next day she had sent him to her village Kotiya as she had certain apprehensions about his safety. It is pertinent to mention here that after filing of the affidavit of Dharmendra Kumar dated 10.7.95, the petitioner was directed by this Court to supply to the investigating officer clues and suggestions for facilitating further investigation (vide order dated 18.7.95). The case came up for hearing

before this Court on 4.7.94, 18.7.94, 20.9.95 and 16.10.95 but the petitioner did not inform the Court about the said facts. The petitioner also did not inform to the police about Kalu's arrival at her house or his presence in village Kotiya (Rajasthan). The above conduct of the petitioner spells out a disastrous consequences for her case and thus further receives a burial to her version that Kalu had returned to her house in the month of July, 1994. It is ex facie false since neither she informed this Court nor to the police about Kalu's return to her house in the month of July, 1995. Falsehoods cannot dovetail the fact.

(7) It appears that after recovery of Kalu from the house of the petitioner's mother, the petitioner seriously must have thought that she must come out from the red and make a statement before this Court explaining circumstances leading to recovery of Kalu from her mother's house. It took almost three months for the petitioner to invent the said story. Eliminating the petitioner's version about Kalu's arrival at her house in the month of July, 1994, the fact remains on the record that it was the petitioner who had sent Kalu to her mother's house in village Kotiya (Rajasthan).

(8) We may point out here that certain staggering circumstances have surfaced on the record which unveil the petitioner's motive for filing the present petition. In her petition dated 21.2.1995 initially filed by the petitioner, averments were made to the effect that on 3.2.1995, Geeta (aged 9 years) sister of Ranglal and Shankar (aged 11 years) son of Sona Ram were kidnapped by one Mullah (name not known) r/o D-47, D.D. Flats, Greater Kailash -1, New Delhi. Ranglal and Sona Ram, who were eye witnesses of the alleged kidnapping, followed the said Mullah to his residence and asked him to hand over these children but he declined to do so. Thereafter, on the next morning, they again went to the said Mullah's residence and after waiting for some time near his gate, they went to the Police Station, Greater Kailash. In the meanwhile, the said Mullah also came there and made false allegations against parents of Geeta and Shanker. He also offered money to their parents for these two children but due to police intervention, custody of these two children was handed over to them.

(9) It was also averred that the said Mullah even disclosed to the police that he knew whereabouts of the petitioner's three missing children. On coming to know these facts from Ranglal and Gyarsi, the petitioner approached the said Mullah on 5.2.1995 and made enquiries about her children. Incensed by this, the said Mullah used abusive language and threatened the petitioner with dire consequences. However, he assured the petitioner to hand over custody of her son Kalu to her. According to the petitioner, on 6.2.1995, she also reported the matter to the police for taking appropriate action against the said Mullah. Surprisingly, she abandoned the said story in her amended petition dated 18.4.1995. Even otherwise, the aforesaid story does not inspire confidence, if we taste the bottom of it.

(10) However, H.S. Gill, S.H.O. Police Station, Greater Kailash has, in his comprehensive affidavit dated 10.1.1996, thrown some light on the petitioner's motive for filing the present petition. It is stated in para No. 6 of the affidavit that after registration of cases in respect of the petitioner's missing children, her statement was recorded by the Investigating Officer and in that statement she suspected involvement of S.S. Hayat, r/o 47-D, Masjid Moth, New Delhi in the alleged kidnapping of her children. Consequently, S.S. Hayat, who is a Canadian citizen, was interrogated. According to S.S. Hayat, he found one boy and a girl begging on the road and he, therefore, took them to Greater Kailash and dropped them at their residence, which is near the Jhuggi of the petitioner. Thereupon, the petitioner suspected him and started abusing him. H.S. Gill further stated in his affidavit that enquiries made from him did not yield any clue with regard to the missing children of the petitioner. The petitioner has not filed her affidavit to rebut the said facts. Relying upon the said affidavit, we find that the petitioner has deliberately given a false coloring to the alleged kidnapping of her son Kalu with a view to harass S.S. Hayat through the police.

(11) Screened against this back drop and the contradictions pointed out earlier with regard to the dates of Kalu's disappearance from New Delhi, the conclusion appears to be irresistible that the petitioner has tried to invent a story of Kalu's alleged kidnapping with a view to mislead the Court as well as the police. It is not open to the petitioner under Article 226 of the [Constitution of India](#) to mislead or deceive the Court by making false statement or omitting to mention or suppressing

a material fact which goes to the root of the case and claim indulgence of the Court. The petitioner who has behaved in this manner is not entitled to any consideration at the hands of this Court.

(12) As stated earlier, F.I.R. No. 166/95 under Section 363, Indian Penal Code . has been registered in respect of missing sons of the petitioner, namely Dhanna and Sardariya on the basis of the report lodged by the petitioner and the investigation is under progress. Consequently, no further directions are necessary in this case. The petition is accordingly disposed of.

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