

Zohra Bi Vs. State

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Court : Delhi

Decided On : Sep-29-1995

Reported in : 1995IVAD(Delhi)210; 1995(35)DRJ203

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

Acts : [Constitution of India](#) - Article 226; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 380 and 448

Appeal No. : Criminal Writ Appeal No. 376 of 1995

Appellant : Zohra Bi

Respondent : State

Advocate for Pet/Ap. : S.C. Bhuttan and; P.S. Sharma, Advs

Judgement :

M.S.A. Siddiqui, J.

(1) The petitioner Smt. Zohra Bi, in the Habeas Corpus petition under Article 226 of the [Constitution of India](#) seeks release of Shamshul Arfeen, Faizul Arfeen, Zainul Abdin, Waseem Ahmad, Mohd. Zubair, Nabi Ahmad, Zameer Ahmad, Shueb Ahmad, Sardar Ahmad, Faheem Ahmad and Smt. Nasreen Begum, from the alleged illegal detention of the police.

(2) It is beyond the pale of controversy that there is a dispute between the petitioner and the respondents No.6 and 7 in respect of the house No.3823, Gali Hafiz Bannewali, Churiwalan Delhi (hereinafter referred to as 'the disputed house') and a civil suit in respect of the said dispute is pending before the Civil Judge, Delhi. On 9.5.95, the respondent No.7 had lodged a report (F.I.R.No.138/95) under Sections 509/506 Indian Penal Code . at the Police Station Haus Qazi against Mohd. Zuber. Thereafter, on 8.6.95, the respondent No.7 lodged another report (F.I.R. No.186/95 at the P.S. Hauz Qazi) under Sections 448/380/34 Indian Penal Code . alleging therein that the petitioner Along with Sardar Ahmad, Shamsul Arfeen, Faizul Arfeen, Zainul Abdeen, Julkarnain, Zuber Ahmad, Nabi Ahmad, Zameer Ahmad, Shoeb Ahmad, and Faheem Ahmad committed house trespass by breaking open the lock of one of the rooms of the disputed house and dishonestly removed her jewellery, cash and other household articles there from. On 8.6.95, at about 1.30 p.m., the police had gone to arrest the aforesaid persons and the petitioner was arrested by the police but later on she was enlarged on bail by the Metropolitan Magistrate, Delhi.

(3) The petitioner complains that on 8.6.95 at about 1.30 p.m. a police party headed by the S.H.O. Dharampal of the P.S. Hauz Qazi committed house trespass by breaking open lock of one of the rooms of the disputed house and arrested the said persons including Smt. Nasreen Begum and now they are under illegal detention of the police.

(4) In response to the show cause notice issued to the State, the S.H.O. Dharampal of the P.S. Hauz Qazi has filed his counter-affidavits. According to the S.H.O. Dharampal on 8.6.95, at about 1.30 P.M. the police had visited the residence of the petitioner in search of the accused persons named in the F.I.R. No.186/95 but they, except the petitioner, were found absconding. He stated that on 24.8.95, Faizul Arfeen and Julkernain alias Wassem Ahmad were arrested and now they are under judicial custody. He further stated that Mst. Nasreen Begum is not wanted in connection with the investigation of the said criminal case and the remaining accused persons are absconding and the Metropolitan Magistrate, Delhi has issued non-bailable warrants against them.

(5) Admittedly, a criminal case under Sections 448/380/34 Indian Penal Code has been registered against the petitioner and others vide F.I.R. No.186/95. It is also undisputed that on 25.8.95, Faizul Arfeen and Julkernain alias Waseem Ahmad were produced before the Metropolitan Magistrate, Delhi in connection with the investigation of the said criminal case. Learned counsel for the petitioner could not indicate any material which would convince us that when Faizul Arfeen and Julkernain alias Waseem Ahmad were produced before the Metropolitan Magistrate, Delhi, they made any complaint about their alleged illegal detention by the police. It is also significant that the S.H.O. Dharampal has unequivocally stated in his affidavit that Mst. Nasreen Begum is not required in connection with the investigation of the said case but the petitioner wants us to believe that she is in police custody since 8.6.95. Another fatal blow to the petitioner's plea for the alleged detention of the persons named in the petition needs mention. The affidavit filed by the S.H.O. Dharampal shows that the remaining accused persons are absconding and the M.M. Delhi has issued non-bailable warrants against them. The very fact that non-bailable warrants have been issued against the remaining accused persons is consistent with the stand taken by the S.H.O., Hauz Qazi in his counter-affidavits. The aforesaid facts strike at the truthfulness of the petitioner considerably and would naturally detract immensely from the value to be given to her affidavit regarding the alleged arrest and illegal detention of the remaining accused persons named in the F.I.R. in question. Consequently, we see no reason to discard the affidavits filed by the S.H.O. Thus, the petitioner's assertion about the alleged detention of the persons named in the F.I.R. No.186/95 can safely be characterised as false.

(6) Bearing in mind the facts as stated in the F.I.R. No.186/95 and the plea taken by the petitioner before this court, we are satisfied beyond any manner of doubt that the petition filed by the petitioner was, to say the least, motivated with a view to exerting pressure on the Investigating Officer and to counter-blasting the criminal case under investigation. This, in our view, is a case of abuse of the process of the court.

(7) For the foregoing reasons, we find that there is no force in the petition and the same is dismissed.

