

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO.108/2023

O.B.C. MAHASABHA

PETITIONER

VERSUS

STATE OF M.P. & ORS.

RESPONDENTS

WITH

WRIT PETITION (CRIMINAL) NO.350/2023

O R D E R

1. This order shall dispose of Writ Petition (Crl.) No.108/2023 and Writ Petition (Crl.) No.350/2023 as the genesis of both the cases lies in same set of facts.

2. OBC Mahasabha - the petitioner in the lead case seeks the following reliefs:

“(a) issue a Writ, Order or Directions in the nature of "Habeas Corpus" to the Respondents to produce the Man Singh Patel before this Hon'ble Court from the illegal detention of Respondent No.6, 7, 8 and 9 and;

(b) pass such other or further order/s as this Hon'ble Court may deem fit in the facts and circumstances of this case”

3. The initiation of proceedings before this Court, without first approaching the High Court, is said to be justified by the petitioner with the averments that highly influential persons are involved in the matter.

4. In the grounds pleaded in support of the prayer, the petitioner - OBC Mahasabha has averred as follows:

“A. Because respondent No.6 to 9 are

politically influential persons, and they always succeed to manage the local administration.

B. Because Respondent No.6 is seating MLA and holding cabinet Ministerial Post in Govt. of Madhya Pradesh.

C. Because Man Singh Patel had filed the criminal case against Respondent no.6 U/s 145 Cr.P.C. and stated therein that Respondent No.6 may be harm him, due to the land disputes.

D. Because the role of Respondent No.6 to 9 are very suspicious in missing/kidnapping/murder of Man Singh Patel.

E. Because non-action of Respondent No.1 is the clear violation of the Article 21 of the Constitution of India.

F. Because it is the duty of the Court to safeguard the freedom of citizen which has been guaranteed by the Constitution of India."

5. Notice was issued and counter affidavits have been filed, inter alia, disputing locus of the petitioner. The record reveals that no formal notice was issued to the private respondents against whom the above reproduced allegations are made, but these writ petitions were ordered to be heard along with SLP (Crl.) No.4823/2023 (Vinay Malaiya vs. State of Madhya Pradesh and Another), in which a prayer for anticipatory bail was made.

6. All these matters were heard on 25.09.2023 when interim pre-arrest bail granted earlier to Vinay Malaiya was confirmed and following directions were issued, so far as these two writ petitions are concerned:-

"1. We have heard Shri Kapil Sibal, learned senior counsel for the petitioner in W.P. (Crl.) No.108/2023 as well as learned counsel for the petitioner in W.P.(Crl.) No.350/2023.

We have also heard learned Solicitor General of India on behalf of State of Madhya Pradesh, Shri Maninder Singh, learned senior counsel on behalf of respondent no.6 and Ms. Meenakshi Arora, learned senior counsel on behalf of intervenor. The record has been perused.

2. In view of the stand taken by the State of Madhya Pradesh in paragraphs 7 and 15 of the counter affidavit dated 13.07.2023, we direct the Superintendent of Police, District Sagar to file an additional affidavit giving chronological details of the investigation conducted so far, along with the present status. The needful shall be done within two weeks."

7. Pursuant thereto, the Superintendent of Police, District Sagar, Madhya Pradesh has placed on record compilation of the chronological events along with his brief affidavit dated 06.10.2023.

8. In the chronological events, it is mentioned that Sita Ram Patel - son of the missing person Mansingh Patel made a complaint in August, 2016, *inter alia*, pointing out that his father was abducted on account of a land dispute. The aforesaid complaint undoubtedly disclosed a cognizable offence making it imperative upon the police authorities to register a case on receipt thereof. However, instead of FIR, a Missing Person Complaint No.9/2016 was lodged in Police Station, Civil Lines, Sagar on 26.08.2016. The District Police thereafter 'enquired' into that complaint and recorded the statements of family members of the missing person. Meanwhile, the complainant, namely, Sita Ram Patel is

said to have handed over an application along with affidavit on 09.09.2016, withdrawing his complaint dated 26.08.2016. In his later affidavit, he claims that he was instigated to make false complaint by Vinay Malaiya and Manoj Patel and that there was no land dispute between his father and respondent No.6.

9. It is averred that the police made search for the missing person in the local area, made some inquiry from auto-drivers and all such attempts were duly recorded in the daily diary. Thereafter, the revenue record was corrected by the Tehsildar and the names of Mansingh Patel and Uttam Singh Patel were restored in the revenue record. The search of missing person made by the police remained an exercise in futility. The police even went to Dhanbad and Jamtara in Jharkhand, but they could not trace out the missing person. From September, 2017 to September, 2019, the police is claimed to have visited various places to locate the missing person, but all in vain.

10. It is important to bring it on record that meanwhile, Sita Ram Patel son of the missing person filed Writ Petition (Crl.) No.22/2023 before this Court, alleging that his father was missing since 22.08.2016 and that despite him constantly approaching the Police Authorities, no efforts were being made to find out the whereabouts of his father.

11. Unfortunately, that writ petition was withdrawn by him, for reasons best known to him.
12. Meanwhile, Vinay Malaiya, against whom allegations of instigating Sita Ram Patel were levelled, was sought to be criminally implicated, prompting him to approach this Court through the Special Leave Petition (Crl.) No.4823/2023, in which he was protected against arrest. The said Special Leave Petition has been later on disposed of confirming the anticipatory bail granted to him as briefly mentioned in paragraph 6 of this order.
13. To our dismay and surprise, the police, after frantic inquiry, has eventually registered FIR No.23/2023 on 28.01.2023 in which Sita Ram Patel is claimed to have stated that "his father Mansingh Patel, most of the times, stays out of home, he goes on pilgrimage then he does not come back home for many days, however, he keeps coming home and going back....."
14. On 05.05.2023, Superintendent of Police, Sagar is said to have constituted a Special Investigating Team (SIT) "for the search of missing person in Missing Person Report No.9/2016". We have seen the composition of that SIT which is primarily comprising the officials in the rank of Constables, ASIs etc.
15. It is in this backdrop that we have heard learned counsel for the petitioner as well as learned senior counsel/counsel for the respondent(s) besides learned

Additional Advocate General on behalf of the State of Madhya Pradesh. Since we have not issued any notice to respondent No.6 or other private respondents, we wish to clarify that the observations made in this order are not meant to cause any prejudice to them.

16. The short question that falls for consideration in this case is whether the Police of District Sagar, having been apprised of the fact that as a sequel to some property dispute, the father of the complainant had gone missing, was obligated to take cognizance of the gravity of the reported crime and whether the local police has failed to hold a fair, free, independent and dispassionate investigation into the matter?

17. At the outset, it may be noted that according to learned Additional Advocate General for the State, the instant writ petition on behalf of OBC Mahasabha is not maintainable. We are, however, not impressed by the objection. The reporting of commission of a cognizable offence is a statutory obligation on one and all. Where such reporting has been discarded by the police, deliberately or otherwise, the vigilant section of society or social help groups are expected to espouse such cause for securing justice to the voiceless victims and/or those who have been silenced under mysterious circumstances. All that the petitioner - OBC Mahasabha has sought is only a fair investigation into the

allegations of conspicuous disappearance of a person, who was robbed off his highly valuable property before he eclipsed from the scene. There is no gainsaying that the lurking suspicion in the mind of those who are known to the missing person ought to be satisfactorily removed, even in the interest of those against whom needle of suspicion is raised.

18. At this stage, we wish to address the statement said to have been made by Sita Ram Patel, which led to registration of FIR No.23/2023. Given that statement; (i) Mansingh Patel is not missing; and (ii) Mansingh Patel has been frequently coming and going from his home. If that is so, we fail to understand as to why the local police has not been able to trace out him and take a specific stand before us that the very allegation mentioned in Missing Report No.9/2016 is false and has no factual foundation. There is not an iota of evidence to suggest that Mansingh Patel is alive or has been seen in recent years after he was reported to be missing in 2016. Even the latest affidavit of the Superintendent of Police, Sagar is conveniently silent about his whereabouts.

19. Owing to the serious nature of allegations and the persons whom such allegations are attributed, the composition of SIT is a mere eye-wash. It won't be possible at all for that SIT to take the investigation to

a logical conclusion which can inspire the confidence of the family, near and dear ones of the victim or the public in general.

20. Consequently, and without expressing any opinion on the merits of the allegations, especially when the private respondents have not been heard in that regard, we dispose of these Writ Petitions with the following directions:

(i) The Director General of Police, Madhya Pradesh is directed to constitute an SIT comprising of:

(a) An Officer in the rank of Inspector General of Police (as Head of SIT);

(b) An Officer in the rank of Senior Superintendent of Police;

(c) Another Officer in the rank of Superintendent or Additional Superintendent of Police - as members.

(ii) All the three officers shall be Direct Recruit members of the Indian Police Service having their roots in a State other than Madhya Pradesh, though serving in the Madhya Pradesh Cadre. The SIT shall be at liberty to associate some junior Police Officers to assist it in the course of investigation.

(iii) Missing Person Registration No.9/2016 shall be immediately registered as an FIR, though initially against unknown persons only. The FIR No.23/2023, shall,

for the time being, be kept in abeyance and the SIT will not take cognizance thereof. In other words, the SIT will not take the version of the complainant Sita Ram Patel, as a gospel truth, knowing well that he keeps on changing his statement - for reasons best known to his conscience. We will not comment further in this regard. Least we say better it is.

(iv) The SIT is directed to join office bearers and members of the OBC - Mahasabha and other responsible persons of the area in the course of investigation. Their statements shall be video-graphed. In the case of vulnerable witnesses, their statements must be recorded under Section 164 of Cr.P.C.

(v) The measures such as witness protection; a congenial environment for recording statements under Section 161/164 Cr.P.C.; infusion of confidence to persuade people to come forward; etc., shall be meticulously taken.

(vi) The documents, including revenue record, indicating the genesis of the civil dispute *re:* ownership/transfer of land will be minutely scrutinized to find out as to what had actuated the sudden disappearance of Mansingh Patel.

(vii) The SIT shall conclude the investigation within four months. The necessary consequences shall follow thereafter.

(viii) Aggrieved parties will be at liberty to approach this Court, if need be to have recourse to other stringent measures.

.....J.
(SURYA KANT)

.....J.
(UJJAL BHUYAN)

New Delhi;
August 06, 2024

ITEM NO.2

COURT NO.4

SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Criminal) No(s).108/2023

O.B.C. MAHASABHA

Petitioner(s)

VERSUS

STATE OF M.P. & ORS.

Respondent(s)

(IA No. 204218/2023 - APPROPRIATE ORDERS/DIRECTIONS, IA No.62719/2023 - EXEMPTION FROM FILING O.T., IA No. 54754/2023 - EXEMPTION FROM FILING O.T., IA No.62718/2023 - INTERVENTION APPLICATION)

WITH

W.P.(Crl.) No.350/2023 (X)

(IA No. 157768/2023 - EXEMPTION FROM FILING O.T.)

Date : 06-08-2024 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE UJJAL BHUYAN

For Petitioner(s) Mr. Varun Thakur, Adv.
Mr. Varinder Kumar Sharma, AOR

For Respondent(s) Mr. Saurabh Mishra, AAG (Sr. Adv.)
Ms. Mrinal Gopal Elker, AOR

Mr. Maninder Singh, Sr. Adv.
Mr. Nikhil Jain, AOR

Mr. Zulfiquar Alam, Sr. Adv.
Mr. Brajesh Pandey, Adv.
Mr. Sandeep, Adv.
Mr. Kanchan Kumar Jha, Adv.
Mr. Anilendra Pandey, AOR

UPON hearing the counsel the Court made the following
O R D E R

1. The Writ Petitions are disposed of in terms of the signed order.
2. All pending applications, if any, also stand disposed of.

(ARJUN BISHT)
ASTT. REGISTRAR-cum-PS

(signed order is placed on the file)

(PREETHI T.C.)
ASSISTANT REGISTRAR