

CASE NO.:
Writ Petition (crl.) 337-338 of 1997

PETITIONER:
Rajkumari & Anr.

RESPONDENT:
S.H.O. Noida & Ors.

DATE OF JUDGMENT: 19/09/2003

BENCH:
S. Rajendra Babu & G. P. Mathur.

JUDGMENT:
JUDGMENT

With Contempt Petition (Crl.) Nos.16-17/97 in WP (Crl) Nos.337-338/97

G.P. Mathur, J.

1. These writ petitions under Article 32 of the Constitution have been filed praying that a writ of mandamus or any other appropriate writ be issued directing the respondents to stop arresting women between sunset and sunrise except in grave offences like murder and to ensure that if a woman is kept in police station, she should be allowed to have a relative with her and in her view. The other prayer made is to issue a direction to the Director General of Police, U.P. to take appropriate action to punish the police personnel involved in the arrest of petitioner no.1. Contempt petitions have also been filed against Shri Devinder Singh, SHO, P.S. Sector 20, Noida for punishing him for having committed contempt of the orders and directions issued by this Court.

2. The case set up in the writ petitions is that petitioner no.1, Smt. Rajkumari is resident of F-143, BHEL Colony, Sector 16, Noida and petitioner no.2, Smt. Brinda Karat is the General Secretary, All India Democratic Womens' Conference, which is an organisation concerned with the right to equality and democratic rights of women in the country. The workers of Noida Industrial Area, Faridabad and Delhi went on one day's strike on 11.8.1997. On the same day at the behest of the employers, cases were registered against leaders and other workers in Noida and in connection therewith 70 workers were arrested. At about 1.30 a.m. in the night intervening 15/16.8.1997 a police party consisting of one lady Constable and four other police personnel, came to the house of petitioner no.1 Smt. Rajkumari and starting banging on the front door. The son of petitioner no.1 opened the door and requested the police party to come in the morning and the husband of petitioner no.1 also said that if there was any warrant of arrest against her, he would ensure that she came to the police station in the morning. However, the police personnel barged inside and took petitioner no.1 in custody and thereafter she was taken to the police station in Sector 58, where she was interrogated for over 1-1/2 hours. The police personnel wanted to know the names of the main leaders who organised the strike and also the addresses of two other women workers, namely, Lata Singh and Manju. Though petitioner no.1 was alleged to have committed offences under Sections 147/323/427 IPC, which are bailable offences, yet, she was taken into custody and was brought to the police station. The provisions of Section 50 Cr.P.C. were not complied with and she was not informed as to why she was being arrested, nor the grounds of her arrest were disclosed to her. Similarly the safeguards contained in DO letter dated 10/14.3.1980 of the Home Secretary, Government of India were also not complied with. It is thus pleaded that the arrest of petitioner no.1 violated her fundamental rights guaranteed under Articles 14, 21 and 22(1) of the Constitution of India.

3. The writ petitions were heard on 20.4.1998 when an order was passed directing the petitioners to clearly indicate as to which of the directions

issued by this Court in Joginder Kumar v. State of U.P. & Ors. AIR 1994 SC 1349 and D.K. Basu v. State of West Bengal AIR 1997 SC 610 had been flouted by the respondents and if so, by whom? Thereafter, petitioner no.1 filed another affidavit and the principal pleas taken therein are that the police personnel including Shri P.R. Singh and Shri Devinder Singh, who came to arrest her, did not bear any name tags with designation; that no memo of arrest was prepared at the time of arrest of petitioner no.1; that petitioner no.1 was not informed of her right that she is entitled to meet her lawyer during interrogation and that there was no necessity to arrest her during the middle of the night.

4. In the contempt petitions it is averred that as Shri Devinder Singh, S.H.O., P.S. Sector 20, Noida arrested petitioner no.1 in disobedience of the law laid down and the directions issued in Joginder Kumar (supra) and D.K. Basu (supra), he has committed contempt of Court and is liable to be punished accordingly.

5. The main counter affidavit in the writ petitions has been filed by Shri Rama Kant Prasad, Dy. S.P., Noida and the pleas taken therein are that petitioner no.1 Smt. Rajkumari is a leader of workers of Phoenix Shoe Company. At about 11.30 a.m. on 11.8.1997 she led a mob of about three thousand workers which forcibly entered the factory of Shri R.C. Joshi situate at A-8, Sector 15, Noida and caused extensive damage to property, regarding which an F.I.R. was lodged against the workers on the same day under Sections 147/323/427 IPC. The workers armed with lathis, steel rods, etc. forcibly entered another factory situate at A-60, Sector 16, Noida and caused extensive damage to two cars and other property of the factory and also assaulted some persons. An FIR of this incident was lodged by Chheda Lal and a case was registered on the same day at the police station. The evidence collected during investigation indicated that petitioner no.1 was leading the mob of workers and therefore, it was decided to arrest her and accordingly the police party went to her residence at F-143, BHEL Colony, Sector 17, Noida, at about 5.30 a.m. on 16.8.1997 and she was arrested by a lady Constable Saroj Sharma in the presence of two witnesses, namely, Irfan son of Bashir and Aas Mohd. son of Abdul Karim. Bail was offered to her but, her husband Shri Nagender Singh told the police party that she is a 'Neta' and her profession is 'Netagiri' and if she obtained bail, her image amongst the workers will go down and they will no longer trust her. Since the petitioner no.1 flatly refused to get bail, she was taken to the police station. The petitioner no.1 was not arrested at about 1.30 a.m. in the night but was arrested at 5.30 a.m. in the morning. It is also pleaded that the provisions of Section 50 Cr.P.C. were fully complied with and the directions issued in the case of Joginder Kumar (supra) and D.K. Basu (supra) were not violated. It is further averred that after completing investigation two charge sheets have been submitted against petitioner no.1 in the Court of concerned Magistrate on 14.7.1998.

6. In the contempt petitions a counter affidavit has been filed by Shri Devinder Singh. It is averred therein that he was posted as S.H.O., P.S. Sector 20, at the time of the incident and prior to that he was posted as S.H.O., P.S. Sector 58, Noida. In May, 1997, an altercation took place between the workers' union of Phoenix Shoe Company and the management in which the workers turned violent and caused destruction to property and injury to some persons. A case was registered under Sections 148/148/323/308/427/506 IPC in which some workers were arrested and they were released after two to three months when they were granted bail by Allahabad High Court. The petitioner no.1 is a union leader and she approached him several times and requested him not to charge sheet the workers. The respondent, however, did not accede to her request and performed his duty in accordance with law and due to this reason, she was annoyed with him. Regarding the main incident, it is averred that Shri P.R. Singh, S.H.O., P.S. Sector 58, Noida arrested the petitioner no.1 on 16.8.1997 as two criminal cases being Case Crime No.327G under Sections 147/323/427 IPC and Case Crime No.327H under Sections 147/323/427/506 IPC had been registered against her and that he was not present at the time of her arrest. Copies of charge sheets submitted in the aforesaid two criminal cases have been filed along with the affidavit.

7. A second counter affidavit has been filed by Shri P.R. Singh, who was

posted as S.H.O., P.S. Sector 58, Noida at the relevant time. It is averred therein that the leaders of CITU had given a call for strike on 11.8.1997 relating to their demands of (i) review of Supreme Court judgment whereby direction had been issued for shifting and closure of industries in Delhi; (ii) payment of minimum wages of Rs.3100/- to the workers; and (iii) giving of facilities to persons living in jhuggi clusters who had encroached upon public land. The workers who had resorted to strike on 11.8.1997 turned violent in which managerial staff and family members of the owners of industrial units were badly assaulted and property worth crores of rupees was damaged. The management and also the owners of the industrial units lodged several FIRs at the police station. They blamed the authorities, namely, the District Magistrate, the S.S.P. and other officers for not taking any action against the erring persons. The investigation conducted in the aforesaid criminal cases revealed that Smt. Rajkumari, petitioner no.1, was leading a mob of workers and was inciting them to show their strength by beating the employers or any one who came in their way and to teach them a lesson by destroying their property. The higher authorities reprimanded the police personnel of the concerned police station as they had not been able to arrest petitioner no.1 who had incited the violence. Since the atmosphere in Noida was quite surcharged and tense and the management of industrial units apprehended further violence, therefore, to maintain peace and public tranquility, it was thought necessary to arrest all the CITU leaders who had led and incited the workers to resort to violence. Since it was revealed that petitioner no.1 used to leave her house early in the morning and come back late in the night it was decided to arrest her in the early morning before she left her house. A police party consisting of Shri P.R. Singh, S.H.O., Shri B.D. Dubey, S.I., Shri Suresh Chandra Khatheria, S.I., constables Natha Singh and Mohd. Nadeem and one lady constable Saroj Sharma reached the house of petitioner no.1 at about 5.30 a.m. on 16.8.1997 and arrested her after sunrise. The petitioner no.1, her son and also husband Shri Nagender Singh were informed that she had been arrested in Case Crime Nos.327G and 327H and a memo of arrest was prepared and was handed over to her, but she refused to sign the same. The petitioner no.1 and also her husband were informed that she will be released on bail in case she furnished the necessary bail bonds but she said that her obtaining bail would have a demoralizing effect on the workers. She was thereafter brought to P.S. Sector 58 where her son, husband and other relatives were also present and after completing other formalities, she was sent to the Court of concerned Magistrate at Ghaziabad at 9.15 a.m. where she was granted bail. Before the Magistrate she did not make any complaint to the effect that she had been arrested in the night. It is further averred that the arrest of petitioner no.1 was made on the directions issued by the District Magistrate and SSP Ghaziabad.

8. The investigating officer of the case Shri B.D. Dubey, S.I., P.S. Sector 58, Noida has also filed an affidavit stating that petitioner no.1 Rajkumari, as a trade union leader, led a mob causing physical injury to several persons connected with the management and ownership of the industrial units and also caused damage to their property on 11.8.1997 and on their complaints cognizable offences were registered. He made all possible efforts to search petitioner no.1 but she could not be traced as she was evading her arrest. The superior officers of the district reprimanded the police personnel of the concerned police station on account of their failure to arrest petitioner no.1. It was revealed during investigation that her arrest was possible only in the early morning as thereafter she used to leave her house and used to come late in the night. It was in these circumstances that the police party went to the house of petitioner no.1 and arrested her at about 5.30 a.m. on 16.8.1997. The formal arrest was made by lady Constable Saroj Sharma and an arrest memo was prepared which was signed by some respectable persons of the locality. The petitioner no.1, her son and husband were told about the grounds for arrest and she was informed that she can be released on bail but she refused to do so on the ground that her obtaining bail would have a demoralizing effect on the workers. Her family members including her son and husband and some others accompanied her to the police station and after completing all the formalities, she was sent to the Court of the concerned Magistrate at Ghaziabad.

9. Shri Devinder Singh, Shri P.R. Singh and Shri B.D. Dubey have also averred in their respective affidavits that they are tendering unconditional and unqualified apology in case any act or action of theirs may be treated as contempt of the orders passed by this Court.

10. We have heard Ms. Kirti Singh for the petitioners and S/shri Pramod Swarup, Shakil Ahmed Syed and R.A. Mishra for the respondents at some length and have also perused the original record of the criminal cases.

11. The affidavit filed by the parties show that Rajkumari, petitioner no.1 is a leader of CITU. A call for strike on 11.8.1997 was given by the union leaders and their demands were that the judgment of the Supreme Court by which directions had been issued for shifting and closure of industries from Delhi should be reviewed, the workers should be paid a minimum wage of Rs.3100/- and some facilities should be provided to jhuggi dwellers who had in fact encroached upon public land. The strikers went on rampage and turned violent. They caused extensive damage to the property of some industrial units and also caused injuries to several persons. In this connection an FIR was lodged by Shri R.C. Joshi, Manager of a factory situate at A-8 and A-9, Sector 57, Noida on 11.8.1997 under Sections 147/323/427/506 IPC at P.S. Sector 58 Noida and on the basis of the same a case was registered as Case Crime No.327H. Another FIR was lodged by Chheda Lal Shukla, Director of M. Plast India Ltd., A-15, Sector 60, Noida under Section 147/323/427 IPC at the same police station and a case was registered as Case Crime No. 327G. The owners of the industrial units were feeling insecure on account of the assault made upon them and the damage caused to their property and they were feeling aggrieved on account of the inaction of the district authorities in not taking the desired steps against the erring persons. On account of the pressure built by them, the District Magistrate and the S.S.P. issued directions to the police personnel of the concerned police station to arrest the leaders of the workers who had resorted to violence. According to the respondents, the investigation done by them showed that petitioner no.1 Rajkumari was leading a mob of workers and had incited them and as a result whereof, they caused injuries to the managing staff and owners of the industrial units and caused damage to the property. In fact, the police after completing investigation has submitted charge sheet against petitioner no.1 under Sections 147/323/427 IPC in case Crime No. 327G and under Sections 147/323/427/506 IPC in Case Crime No.327H on 11.10.1998. The concerned ACJM has taken cognizance of the offences and has issued process against petitioner no.1 vide his orders dated 2.11.1998. The petitioner no.1 is now facing trial in the aforesaid two criminal cases.

12. The main allegation in the writ petitions as also in the contempt petitions is that petitioner no.1 was arrested by the police at about 1.30 a.m. in the night intervening 15/16.8.1997. On the other hand, the specific case of the respondents is that she was not arrested in the night, as alleged, but was arrested at about 5.30 a.m. on 16.8.1997. In support of her version, the only affidavit on record is that of petitioner no.1 herself. She has not filed affidavit of any other person to corroborate her version of the incident. On the other hand, Shri Rama Kant Prasad, Dy. S.P., Noida, Shri Devinder Singh, Shri P.R. Singh and Shri B.D. Dubey have filed affidavits denying the version of petitioner no.1 and have averred that she was arrested at 5.30 a.m. in the morning hours. A rejoinder affidavit has also been filed by petitioner no.1 herself and no other affidavit or corroborative material has been filed to support her version of the time of her arrest. In view of these conflicting affidavits and no independent or corroborative material having been filed on behalf of the petitioners, it is not possible to hold that petitioner no.1 had been arrested at 1.30 a.m. in the night intervening 15/16.8.1997 or that the version given by the respondents that she was arrested at 5.30 a.m. on 16.8.1997 is not correct. In case the investigation officer of Case Crime No.327G and 327H came to the conclusion that petitioner no.1 had committed cognizable offences, he was perfectly within his right to arrest her and no exception can be taken to such a course of action.

13. Regarding the plea taken by petitioner no.1 that the directions issued by this Court in Joginder Kumar (supra) and D.K. Basu (supra) had not been violated, it may be stated at the very outset that admittedly petitioner no.1

was produced in the Court of concerned Magistrate on that very day i.e. on 16.8.1997. She applied for bail in both the cases and in the bail applications, the pleas taken by her were (i) that she had been falsely implicated in the case; (ii) that she had no criminal background; (iii) that there is no public witness of the crime in question; (iv) that she is a lady and belongs to a respectable family; (v) that she is prepared to furnish adequate surety; and (vi) that there is no apprehension of tampering with prosecution witnesses from her side. She did not state anything nor did she make any grievance before the concerned Magistrate regarding non-compliance of the directions issued in the aforesaid two cases, though her bail application was drafted and filed by a lawyer. If the plea taken now in the writ petitions was correct, in normal course grievance regarding the same should have been made on that very day when she was produced before the Magistrate especially when the legal aid and advice of a counsel was available to her.

14. In the affidavits filed by the respondents, it is averred that the name plate showing their name and designation was affixed on the uniform of all the police personnel; that it was a lady Constable Saroj Sharma, who had formally arrested petitioner no.1; that the grounds of arrest were disclosed not only to her but also to her son and husband; that her family members including her son and husband, some relations and friends were throughout present at the police station and that she was sent to the Court of the concerned Magistrate at 9.15 a.m. It is averred that an arrest memo was prepared at the time of her arrest and she was asked to sign the same but she refused to do. It is further averred that the police personnel who arrested her informed that she would be released on bail in case she furnished bail bonds but she declined to do so by saying that she was a 'Neta' and her obtaining bail would lower her image before the workers and they would feel demoralized. A copy of the arrest memo has also been placed on record. Apart from her own affidavit, petitioner no.1 has not filed affidavit of any other person to show that the version given by the respondents is not correct. She could have easily filed affidavits of her son and husband, but she has chosen not to do so. On the material which is available on record, it is not possible to hold that the directions issued in Joginder Kumar (supra) and D.K. Basu (supra) were flouted or were not complied with by the respondents. In these circumstances, we are of the opinion that no ground has been made out for initiating any action against the respondents.

15. Learned counsel for the petitioners has not made any submission regarding the prayer made in the writ petitions that a general direction may be issued to the respondents to stop arresting women between sunset and sunrise except in grave offences like murder. We are also of the opinion that this is not a fit case where some general directions may be issued and this may be done in a more appropriate case.

16. Subject to the aforesaid observations, the writ petitions and the contempt petitions are dismissed.