Shrimati Vidya Verma, Through Next ... vs Dr. Shiv Narain Verma on 11 November, 1955

Equivalent citations: 1956 AIR 108, 1955 SCR (2) 983

Author: Vivian Bose

Bench: Vivian Bose, Natwarlal H. Bhagwati, B. Jagannadhadas, Bhuvneshwar P. Sinha

PETITIONER:
SHRIMATI VIDYA VERMA, THROUGH NEXT FRIEND R.V.S. MANI

Vs.

RESPONDENT:
DR. SHIV NARAIN VERMA.

DATE OF JUDGMENT:
11/11/1955

BENCH:
BOSE, VIVIAN
BENCH:
BOSE, VIVIAN
DAS, SUDHI RANJAN
BHAGWATI, NATWARLAL H.
JAGANNADHADAS, B.
SINHA, BHUVNESHWAR P.

CITATION:
1956 AIR 108 1955 SCR (2) 983

ACT:
Fundamental Right, Infringement of-Detention by private person-Issue of writ-Power of Supreme Court-Constitution of India, Arts. 21, 82.

HEADNOTE:
No question of infringement of any fundamental right under Art. 21 arises where the detention complained of is by a private person and not by, a State or under the authority or orders of a State, and the Supreme Court will not, therefore, entertain an application for a writ of have a corpus, under Art. 32 of the Constitution.
Consequently a petition under Art. 32 of the Constitution

for a writ of habeas corpus founded on Art. 21 and directed against a father for alleged detention of his daughter does not lie.
A. K. Gopalan v. The State of Madras ([1950] S.C.R. 88) and P. D Shamdasani v. Central Bank of India ([1952] S.C.R. 391), relied on.

JUDGMENT:

ORIGINAL JURISDICTION: Petition No. 262 of 1955. Under Article 32 of the Constitution for a Writ in the nature of Habeas Corpus.

R. V. S. Mani, the next friend, in person.

M. C. Setalvad, Attorney-General for India (G.. N. Joshi and Porus A. Mehta, with him).

Naunit Lal, for the respondent.

1955. November II. The Judgment of the Court was delivered by BOSE J.-This is a petition under article 32 of the Constitution for a writ of habeas corpus. The petition was presented by Mr. R.V.S. Mani, an advocate of the Nagpur High Court, on behalf of Shrimati Vidya Verma and was directed against her father Dr. Shiv Narayan Verma of Nagpur. Mr. Mani bad no power of attorney from the lady and when the office pointed out that be could not present a petition without producing the necessary authority he amended the petition and described himself as the next friend of the lady.

When the matter first came up for hearing we directed a notice to issue to the father but later the same day it was brought to our notice that the opposite party was not either the Union of India or a State, nor was it some official acting under the orders of one or the other, but a private person. The question therefore arose of our power under article 32 to issue a writ of this kind against a private party. Accordingly, before the notice was sent out we recalled it and set the matter down for further hearing. Mr. Mani appeared again on the appointed date and was robed as he had been on the previous occasion. He was asked to clarify his position and when be said he had no power of attorney and explained that he was appearing in a private capacity as next friend he was told that at the next hearing he must address the Court without his robes. He was also warned that if he lost he might have to bear the costs of the other side personally. After hearing Mr. Mani for a time we decided to fix a date for the hearing of a prelimi- nary question only, namely, whether a fundamental right is involved when the detention complained of is by a private person and not by a State or under the authority or orders of a State. We directed that notices be issued to the opposite party as well as to the Attorney-General of India. At the adjourned hearing Mr. Mani appeared in person, unrobed as directed, but with the advocate on record sitting by his side. He asked for permission to address us himself. We declined to hear him unless he discharged the advocate on record. He did that on the spot and then proceeded to address us in person. As the question that arises here has been discussed at length in two earlier decisions of this Court we need not examine the matter, in any detail. The fundamental right that is said to be infringed is the one conferred by article 21: the right to personal

liberty. In A. K. Gopalan v. The State of Madras(1) four of the six learned Judges who were in that case held that the word "law" in article 21 referred to State-made law and not to law in the abstract. They rejected the contention that this was the same as the due process clause in the American Constitution. One learned Judge dissented and one expressed no opinion on this point. Patanjali Sastri., J. (as he then was) said at page 204 that as a rule constitutional safeguards are directed against the State and its organs and that protection against violation of rights by individuals must be sought in the ordinary law; and S. R. Das, J. dealing with the question of preventive detention said at page 324 that article 21 protects a person against preventive detention by the executive without the sanction of a law made by the legislature.

This principle was applied to articles 19(1) (f) and 31 (1) by a Bench of five Judges in P. D. Shamdasani v. Central Bank of India(1) who held that violation of rights of property by a private individual is not within the purview of these articles, therefore a person whose rights of property are infringed by a -private individual must seek his remedy under the ordinary law and not under article 32. Article 21 was not directly involved but the learned Judges referring to article 31(1) said at page 394:

> "It is clear that it is a declaration of the fundamental right of private property in the same negative form in which article 21 declares the fundamental right to life and liberty. There is no express reference to the State in article 21. But could it be (1) [1950] S.C.R. 88.
>
> (2) [1952] S.C.R. 391.

suggested on that account that that article was intended to afford protection to life and personal liberty against violation by private individuals? The words (except by procedure established by law' plainly exclude such a suggestions.

They held that the language of article 31 (1) was similar and decided that article 31 (1) did not apply to invasions of a right by a private individual and consequently no writ under article 32 would lie in such a case. For the same reasons we hold that the present petition which is founded on article 21 does not lie under article 32. It is accordingly dismissed.

As regards costs Mr. Mani has no power of attorney and has chosen to appear as next friend despite the warning given to him at the last hearing.

This is the fourth time the matter is being agitated in the Courts. The first attempt was an application under section 100 of the Criminal Procedure Code made by the person who, according to Mr. Mani, is the husband of the lady in whose interests he says he is acting. It was filed on 10-9-1954 and asked for a search warrant for the recovery of the lady. The application was dismissed and a revision filed against the order of dismissal also failed.

The same gentleman then applied to the High Court at Nagpur on 18-10-1954 under section 491 of the Criminal Procedure Code. The learned Judges examined the lady, who is 25 years old, in person,

on 20-10-1954 and on the strength of her statement, which they recorded, they held that she was not under any restraint either in the house or outside and so dismissed the application on 10-11-1954. Mr. Mani then took up the cudgels and filled a second petition in the High Court on 6-12,1954, also under section

491. The learned Judges again examined the lady, this time on two successive days. On 20-12-1954 she said that she did not want to live with her father but wanted to live with her uncle at Waraseoni. She appeared again the next day and clarified this by saying that she would go to her uncle in the company of her father. She said, that she had no discomfort in living with her father but was not at ease with him and would have more peace of mind with her uncle. She also said:

> "I have no need of any counsel and have nothing to talk to Shri R. V. S. Mani".

The girl was allowed to go to her uncle. Mr. Mani then applied for leave to withdraw the petition. This was allowed on 24-1-1955 and no order was made about costs. Then came the present petition on 22-8-1955. The petition does not disclose that Mr. Mani made any attempt to consult the person who he says is the husband of the lady (a fact which is disputed and on which we express no opinion) nor does it show that he made any attempt to contact either the lady or her father or even her uncle. He has had three hearings in this Court despite the warning he was given about costs and the learned Attorney-General was also asked by us to appear. When the arguments were fully concluded and Mr. Mani found that we were against him he adopted the same tactics as in the Nagpur High Court and asked for permission to withdraw the petition. That was refused. We invited him to show cause why he should not be made to pay the costs and have heard all he has to say. In the circumstances set out above, we feel this is a case in which he should be made to pay the costs personally. We dismiss the petition and direct that Mr. Mani pay the costs of the opposite party personally in addition to those of the learned Attorney-General and that he bear his own, also personally.