

Supreme Court of India

Afzal vs State Of Haryana on 8 December, 1993

Equivalent citations: 1994 SCC (1) 425 JT 1993 Supl., 176

Author: M Venkatachalliah

Bench: Venkatachalliah, M.N.(Cj)

PETITIONER:

AFZAL

Vs.

RESPONDENT:

STATE OF HARYANA

DATE OF JUDGMENT 08/12/1993

BENCH:

VENKATACHALLIAH, M.N. (CJ)

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VENKATACHALLIAH, M.N. (CJ)

MOHAN, S. (J)

CITATION:

1994 SCC (1) 425 JT 1993 Supl. 176

1993 SCALE (4) 624

ACT:

HEADNOTE:

JUDGMENT:

## ORDER

1. These writ petitions have been preferred under Article 32 of the Constitution of India. The petitioners are citizens of India. It is averred in the + Under Article 32 of the Constitution of India petitions that on October 11, 1993, Respondent 4, SHO (Police) GRP Faridabad (H.R.) along with some police personnel accompanied by third respondent came to Agra at 11 a.m. to the residence of the petitioners. They enquired about Rahim Khan stating that he was wanted in connection with some criminal cases relating to theft of railway property. Smt Munni Begum, mother of first petitioner (Afzal Khan) told them that Rahim Khan was out of station since October 8, 1993. Respondents 3 and 4 along with other police personnel forcibly entered the house and made a search and broke glasses of window panes and created terror. They damaged various articles like radio and tape-recorder. The damage is estimated at Rs 2000. Finding that Rahim Khan was not there, Respondents 3 and 4 became infuriated and took away the minor petitioners with them

notwithstanding the protest of Munni Begum. Though Munni Begum made enquiries about the whereabouts of the petitioners she could not locate them. On October 12, 1993 again Respondents 3 and 4 came and told Munni Begum that they were taking away the petitioners with them and they would be returned only when Rahim Khan was made available. Though a plea was made for the release of the minors who were not involved in any case that was of no avail. All attempts to procure their release through complaints to the Governor of Uttar Pradesh and the Home Minister, Government of India, New Delhi proved futile. When the whereabouts of the petitioners was not known Munni Begum sent Mr Ismail Khan, an Advocate of Agra to Faridabad and Ambala. The said advocate went to Ambala Cantonment and met Inspector Ishaq Ahmad of GRP (CIA) Ambala Cantt. He saw the petitioners in the police station. Both the petitioners started weeping on seeing the advocate who was familiar to them. Ishaq Ahmad told the advocate that the petitioners were in his custody and would be released only when Rahim Khan surrendered.

2. On October 24, 1993 Ahmad, father of petitioner 2, Habib, sent a complaint to District Magistrate, Agra to secure the release of the petitioners. Inasmuch as the petitioners had not been produced before any Magistrate for remand and they were in illegal custody, the writ petition for habeas corpus is filed alleging that there is a violation of Article 21 of the Constitution of India. By an order dated October 29, 1993 this Court issued notice to the respondents. A counter-affidavit dated October 30, 1993 was filed on behalf of the third respondent, M.S. Ahlawat, Superintendent of Police, GRP (CIA), Ambala Cantonment. It is submitted therein that the petitioners are guilty of suppressing true and correct facts. The petition has been filed to preempt investigation being conducted in two cases wherein the petitioner's father had been implicated in a case of fraud, forgery, cheating etc. FIRs have been preferred to the effect that forgery of four railway receipts (sic) and four consignments were illegally misappropriated. There are also other cases of misappropriation against Rahim Khan who is the main accused in three cases of forgery, fraud, cheating and misappropriation. It is denied that the children were arrested or taken away. They were neither arrested nor illegally detained.

3. The fourth respondent, Randhir Singh, Station House Officer, Govt. Railway Police, Faridabad has filed a counter-affidavit to the effect that the present petition is an abuse of process of the Court. He also details out the cases against Rahim Khan. When a search of Rahim Khan's residence was made on October 12, 1993 a lady of 40 to 45 years of age alone was present in the house. No other person was present at the residence. That lady informed the search party that Rahim Khan was away in Calcutta. She was evasive about his whereabouts and return. It is categorically stated that the children of Abdul Rahim Khan were not present at the residence when the search was conducted.

4. Mr Kalyan Rudra, Director General of Police, Haryana has filed a separate affidavit pursuant to the order of this Court dated November 2, 1993 which is as follows :

"Upon motion, the matter is taken on board.

Ms Indu Malhotra, learned counsel states that the Home Secretary will not be able to execute the commission since he is on leave. The order dated November 1, 1993 is, therefore, modified. We direct that the Director General of Police will make the

investigation and file report by November 5, 1993. To be listed on November 5, 1993 at 2.00

5. He states that he made personal enquiry from a number of persons/officials concerned both openly and through secret channels. The enquiries revealed that two cases have been filed against Rahim Khan for theft of properties belonging to the Railways.

6. His enquiries further established that Inspector Ishaq Ahmad of GRP (CIA), Ambala Cantt. had proceeded to Rohtak and Faridabad. From Faridabad, the team headed by Mohd. Ishaq, Inspector CIA Ambala Cantt. had picked up ASI Randhir Singh, SHO, GRPS Faridabad on October 12, 1993 and had proceeded to Agra. At Agra, they enlisted the assistance of two constables of Police Post of Sarai Khawaja, Agra and visited the residence of Rahim Khan, who was not located at his residence. His secret enquiries revealed that while returning from Agra, the Inspector CIA had picked up two youngsters of the same age group as the petitioners, probably Afzal, son of Rahim Khan and Habib, son of Ahmad Khan, from the residence of Abdul Rahim at Agra and brought them along to Faridabad on October 12, 1993 and later to Ambala on October 13, 1993 afternoon. Secret enquiries also showed that these two boys, were first kept in GRP, CIA Ambala Cantt. Unit between October 13, 1993 to October 17, 1993 and later were removed to GRPS Kalka on October 17, 1993 after the visit of an advocate to Ambala. Again, on October 30, 1993 they were brought from GRPS Kalka to CIA, GRP Ambala Cantt. and on the night of October 31, 1993, a police party dispatched them to their residence in Agra.

7. It is further stated by him that Inspector Mohd. Ishaq, the then Inspector CIA, GRP Haryana, was primarily responsible for the illegal abduction and confinement of the two petitioners, Afzal and Habib. The other police officials including ASI Randhir Singh did not have any personal stake and acted only at the behest and under the orders of Inspector Mohd. Ishaq.

8. Since it had come to his notice that Inspector Mohd. Ishaq had indulged in an illegal act he is ordering an enquiry against the Inspector in accordance with the service rules and the said Inspector is under suspension.

9. M.S. Ahlawat, Superintendent of Police filed another counter-affidavit dated November 5, 1993 to the effect that whatever was stated in the earlier counter-affidavit dated October 30, 1993 was factually wrong. He came to know of this case only on November 2, 1993. On November 15, 1993 he would go one step further and state that the earlier affidavit filed purported to be dated October 30, 1993 had not been signed or sworn by him. A preliminary fact finding enquiry into the matter has been ordered through the Deputy Superintendent of Police GRP, Hissar. He had submitted a report on November 7, 1993 to the effect that his signature had been forged by one Head Constable Krishan Kumar who had been put under suspension and transferred to GRP Lines, Ambala City.

10. In this affidavit he comes out with the version that he was not a member of the police party which visited the house of petitioners on October 11, 1993. He would also give the details of the cases pending against Rahim Khan. He takes the stand that he received a telegram dated October 17, 1993 on October 19, 1993. Thereupon he directed the Welfare Inspector to investigate into the complaint

and submit a report. The Welfare Inspector found that Mohd. Ishaq, Inspector CIA, Ambala Cantonment and ASI Randhir Singh, Faridabad had gone to the house of petitioners at Agra on October 12, 1993. They picked up two boys while coming back from Agra. Two petitioners remained under the supervision of CIA staff of GRP, Ambala Cantonment from October 12, 1993 to November 1, 1993. The Welfare Inspector could not find out the identity of the two boys. On November 6, 1993 a preliminary fact-finding enquiry into the matter was ordered by him through Shri Sukha Lal, Deputy Superintendent of Police, Hissar. No telegram alleged to have been sent to the authorities was ever forwarded to him. Nowhere is it alleged that this deponent has any role or knowledge of illegal confinement. Even the affidavit of Ismail Khan, advocate does not attribute any role to him.

11. Having regard to the above, we are clearly of the view that it is highly desirable to conduct an enquiry into the veracity of these allegations and counter-allegations. Only on a factual determination, the truth of the petitioners' case and the role played by each of the respondents could be ascertained. For this purpose, we direct the learned District Judge of Faridabad to conduct a detailed enquiry and submit the report within six weeks from the date of the receipt of the order. The case will stand over, awaiting the report and the same will be posted before the Court immediately on receipt of such report.