

LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

Criminal Revision No. 1090 of 2012

Tahir Mahmood Gujjar, D.S.P.

versus

The State etc.

J U D G M E N T

Date of hearing	<u>16.03.2020</u>
Petitioner by	Mr. Sarfraz Gondal, Advocate.
State by	Rana Muhammad Arif Kamal Noon, Prosecutor General, Punjab along with Ms. Nuzhat Bashir, Deputy Prosecutor General, Mr. Usman Iqbal, Deputy Prosecutor General and Mr. Safdar Hayat Boasl, Assistant Advocate General, Punjab.
Respondent No.2 by	Mr. Asghar Ali Hashmi, Advocate.

FAROOQ HAIDER, J.:- Through instant revision petition, Tahir Mahmood Gujjar (D.S.P., C.I.A. Headquarter, Gujranwala/petitioner) has challenged the *vires* of order dated: 06.11.2012 passed by learned Sessions Judge, Gujranwala, whereby he has been directed to pay compensation amount of Rs.10,000/- to each detenu namely Nabeel, Muhammad Tariq Javed, Musa Tariq and Allah Ditta, for their illegal detention.

2. Brief facts of the case are that Riaz Begum (present respondent No.2) filed application under Section 491 Cr.P.C. (appended with instant petition as Annexure-A) before learned Sessions Judge, Gujranwala while alleging therein that Station House Officer of Police Station: Kotwali, District Gujranwala (now respondent No.3) and Arshad Gadhi, S.I. Police Station: Kotwali, District Gujranwala (now respondent No.4) have taken Nabeel (son-in-law of her son), Muhammad Tariq Javed (her son-in-law), Moosa Tariq (her grand-son) and Raza Ullah (her son-in-law), kept them in premises of C.I.A. Staff, Gujranwala in illegal

detention and prayed for their recovery; learned Sessions Judge, Gujranwala *vide* order dated: 09.10.2012 appointed Mr. Abdul Sattar (English Clerk) and Mr. Muhammad Iqbal (Stenographer) as Bailiffs with authority to recover aforementioned detenus from custody of C.I.A. Staff, Gujranwala and Police Station: Kotwali, District Gujranwala, respectively; Muhammad Iqbal (Bailiff mentioned above) conducted raid in the premises of Police Station: Kotwali, District Gujranwala and could only find Raza Ullah (detenu mentioned above) sitting in the room of one Muhammad Arshad A.S.I., who told him that he has come to the police station of his own and was neither arrested nor in illegal detention; Muhammad Iqbal (Bailiff mentioned above) submitted his report dated: 09.10.2012 (appended with instant petition as Annexure-C) in the Court; Abdul Sattar (Stenographer/Bailiff mentioned above) conducted raid in the premises of C.I.A. Staff, Gujranwala and found Nabeel, Muhammad Tariq Javed and Moosa Tariq (detenus mentioned above) sitting in Barrack No. 1 of Constables and two police constables namely Tanvir Hussain 1804/C and Imran 3031/C were supervising/guarding them; furthermore, two other persons namely Yasir and Allah Ditta (belonging to the family of Riaz Begum/respondent No.2) were also found there by the Bailiff although their names were not mentioned in the afore stated application filed under Section 491 Cr.P.C.; on checking the register of C.I.A. Staff, Gujranwala, Bailiff found that entry regarding their arrest was not mentioned therein; meanwhile, Arshad Gadhi S.I. of Police Station: Kotwali, District Gujranwala (now respondent No.4) came there and told to the Bailiff that against Moosa Tariq, case stands registered in the Police Station: Jinah Road, Gujranwala whereas against Nabeel, case stands registered in Police Station: Badami Bagh, Lahore, however, when Bailiff asked him that what is his relation with these persons when he is posted in Police Station: Kotwali, District Gujranwala, then he could not reply any satisfactory answer; Abdul Sattar (Bailiff) alongwith aforementioned detenus came to the Court, submitted his report dated: 09.10.2012 (appended with instant petition as Annexure-D) and also produced said detenus; Station House Officer, Police Station: Kotwali, District

Gujranwala (now respondent No.3) submitted his written reply on 09.10.2012 (appended with instant petition as Annexure-E) before learned Sessions Judge, Gujranwala wherein he clearly mentioned that neither Nabeel, Muhammad Tariq Javed and Moosa Tariq (detenus mentioned above) have been arrested by the police of Police Station: Kotwali, District Gujranwala nor required to them in any case registered in said police station; further mentioned in the said report that Raza Ullah (detenu mentioned above) had himself come there to the police station due to his own work; on 03.11.2012, Nabeel (one of the detenus) stated before learned Sessions Judge, Gujranwala that he was taken into custody from his house by Salah-ud Din Inspector CIA, Headquarter, Gujranwala and kept in the premises of CIA Headquarter, Gujranwala by him; Salah Uddin Inspector, C.I.A. Headquarter, Gujranwala submitted his written reply dated: 10.10.2012 (appended with instant petition as Annexure-F) before learned Sessions Judge, Gujranwala while mentioning therein that against Muhammad Nabeel (detenu mentioned above), case stands registered *vide* F.I.R. No. 656/12 dated: 08.10.2012 under Section 212 PPC at Police Station: Badami Bagh, Lahore, against Tariq Javed and Moosa Tariq (detenus mentioned above), case stands registered *vide* F.I.R. No. 407/12 dated: 07.10.2012 under Section 212 PPC at Police Station: Jinah Road, Gujranwala, against Allah Ditta (detenu mentioned above) case stands registered *vide* F.I.R. No. 707/12 dated: 07.10.2012 under Section 212 PPC at Police Station: Garjakh, Gujranwala and against Yasir (detenu mentioned above) case stands registered *vide* F.I.R. No. 655/12 dated: 07.10.2012 under Section 212 PPC at Police Station: Peoples Colony, Gujranwala; said detenus had come to C.I.A. Headquarter, Peoples Colony, Gujranwala for getting recorded their statements in case arising out of F.I.R. No. 300/2012 dated: 08.08.2012 registered under Section 302 PPC at Police Station: Kotwali, District Gujranwala and they were neither arrested by C.I.A. Staff nor kept in illegal detention; then, Tahir Mehmood Gujjar, D.S.P./Investigation C.I.A. Headquarter, Gujranwala (present petitioner) submitted his written report dated: 23.10.2012 (appended with instant petition as Annexure-G) before learned Sessions Judge, Gujranwala

mentioning therein that against aforementioned all the detenus, cases were registered in different police stations; they were brought in the premises of C.I.A. Headquarter, Gujranwala for the purpose of interrogation and concerned Investigating Officers of said police stations/cases were accompanying said detenus; copy of order dated: 06.11.2012 passed by learned Sessions Judge, Gujranwala (appended with this petition as Annexure-H/impugned herein) reveals that on 06.11.2012, Muhammad Yasir (detenu mentioned above) appeared before the Court and stated that he was not arrested rather he, on his own, visited Police Station: Peoples Colony in connection with case arising out of F.I.R. No. 655/12; however, Investigating Officers of all the aforementioned cases stated that they did not arrest any of the aforementioned detenus in the aforementioned cases but contrary to that, stance of Tahir Mehmood Gujjar, D.S.P./Investigation C.I.A. Headquarter, Gujranwala (present petitioner) was that respective Investigating Officers had arrested the accused persons, who were nominated in respective F.I.R.s and they were brought to C.I.A. Headquarter, Gujranwala for interrogation in murder case arising out of F.I.R. No.300/2012 (mentioned above); on perusal of record produced by Investigating Officers of said cases, learned Sessions Judge, Gujranwala observed that none of the detenus was arrested as accused in connection with cases arising out of said F.I.Rs registered against them and “report & stance” of Tahir Mehmood Gujjar, D.S.P. (present petitioner) did not tally with the same. Since aforementioned detenus were found detained illegally in the premises of C.I.A. Headquarter, Gujranwala without record of their arrest in any case, in any police station and they were recovered by the Bailiff on 09.10.2012 from there; hence, Tahir Mehmood Gujjar, D.S.P. C.I.A. Headquarter, Gujranwala (present petitioner) was held responsible for said illegal detention; accordingly, he was directed to compensate Nabeel, Muhammad Tariq Javed, Moosa Tariq and Allah Ditta (detenus mentioned above) for their illegal detention with a sum of Rs.10,000/- each and case was adjourned to 13.11.2012 for compliance report and then after suspension of said

order by this Court, case has been adjourned *sine die vide* order dated: 23.02.2015 passed by learned Sessions Judge, Gujranwala.

3. Learned counsel for the petitioner has not denied the illegal detention of the detenus in the premises of CIA Headquarter, Gujranwala but emphasized that while dealing with petition under Section 491 or 491 (1A) Cr.P.C., only question of illegal detention of the detenus is to be decided and compensation cannot be awarded; further adds that direction to the petitioner for paying compensation to the detenus, by learned Sessions Judge, Gujranwala *vide* impugned order dated: 06.11.2012, is liable to be set-aside as same is not warranted by law.

4. Learned Prosecutor General assisted by learned Deputy Prosecutor General(s) while supporting the “impugned order” submits that since tendency of keeping citizens in illegal detention is increasing day-by-day; therefore, directing delinquent police official to pay monetary compensation to the detenus, is quite necessary to discourage such practice; learned Assistant Advocate General submits that police officials must act in accordance with law and if any police official keeps any citizen in illegal detention, then he should be awarded punishment.

5. Learned counsel for respondent No.2 fully adopted the arguments as advanced by learned Prosecutor General assisted by learned Deputy Prosecutor General(s) and learned Assistant Advocate General, Punjab.

6. Arguments heard, record appended with instant petition as well as received from the Court of learned Sessions Judge, Gujranwala, perused.

7. As far as issuance of direction of habeas corpus is concerned, same is issued by the High Court under Section 491 Cr.P.C. and in this regard, its sub-clauses (a) and (b) are relevant for facts of the case under discussion, so same are being reproduced: -

- “491 (a) that a person within the limits of its appellate criminal jurisdiction be brought up before the Court to be dealt with according to law;
- (b) that a person illegally or improperly detained in public or private custody within such limits be set at liberty.”

It goes without saying that said powers of the High Court are also being exercised by Sessions Judges and Additional Sessions Judges in the

province of Punjab under Section 491 (1A) Cr.P.C. since 2002; for ready reference, Section 491 (1A) is hereby reproduced: -

“491 (1A) The High Court may, by general or special order published in the official Gazette, may direct that all or any of its powers specified in clauses (a) and (b) of sub-section (1) shall, subject to such conditions, if any, as may be specified in the order, be exercisable also by—
(a) A Sessions Judge; or
(b) An Additional Sessions Judge,
within the territorial limits of a Sessions Division.”

It is admitted fact and even not denied by any side that aforementioned detenus were recovered from illegal detention by the Bailiff from the premises of CIA Headquarter, Gujranwala and produced before learned Sessions Judge, Gujranwala, who released them and thereafter they obtained ad-interim pre-arrest bail from the Court of competent jurisdiction; as far as order to present petitioner for paying compensation to aforementioned detenus is concerned, it goes without saying that concept of awarding compensation and cost in the matter of habeas corpus is not a very novel or new rather same is quite permissible while dealing with application for habeas corpus under Section 491 & 491 (1A) Cr.P.C.; earlier it was practice that while dealing with the matter of habeas corpus, if person was found in illegal detention of the police and recovered so, then he was set at liberty and this practice continued for some time but when practice of keeping persons in illegal and unlawful detention by the police enhanced/increased rapidly, then Courts after finding persons in illegal custody of the police officials, ordered for their release and also directed for departmental action against delinquent police officials, however, when even this mode could not be found sufficient for checking this illegal practice by the police officials, then Courts also started issuing direction to police officials to pay compensations/costs to the detenus. Following orders were usually passed while dealing with the matter of habeas corpus, which were recognized as valid: -

- “(i) To issue rule nisi for production of the detenu before the Court;
- (ii) to set the detenu free;
- (iii) to convert the proceedings into bail application and to grant bail to the detenu;

- (iv) to order registration of case against Police Officer/private person who was found violating fundamental rights of the detenu;
- (v) to direct Police Authorities for conducting departmental proceedings against the Police Officer found responsible for illegal detention;
- (vi) where the Court is satisfied that the respondent police officers have acted in violation of the Court directions or failed to obey the same, to order institution of Contempt of Court proceedings against such person;
- (vii) to award cost against the Police Officer and in favour of petitioner for the expenses incurred in getting the detenu released;
- (viii) to award monetary compensation to the detenu who was deprived of his freedom; and lastly,
- (ix) to dismiss the petition where the detention is found to be lawful and bona fide.”

It is important to mention here that monetary compensation always awarded in favour of the detenus, which is based upon tentative assessment and cannot be treated as final amount of damages, for which the detenu can file a suit for damages for the loss caused to his person and property, mental agony, shock and in cases of torture for the injuries suffered by such detenu; all these aspects are subject matter of regular suit where the concerned police officers will also be entitled to claim set off for the amount paid as compensation in proceeding under Section 491 Cr.P.C. Nutshell is that there is no bar or prohibition in the relevant law to pass any order to the police official to pay monetary compensation to the detenu, who was deprived of his freedom; in this regard, case of **“Ali Ahmed versus Muhammad Yaqoob Almani, Deputy Superintendent of Police, Qasimabad, Hyderabad and 5 others”** (PLD 1999 Karachi 134), **“Muhammad Ibrahim versus S.H.O., Police Station, Sheikhpura”**, (1990 P Cr. L J 1717), **“Ilyas Masih versus Raja Zafar Iqbal, S.H.O., Police Station Satrah, District Sialkot”** PLD 1992 Lahore 220), **“Faqir Muhammad versus S.H.O, Police Station Chak Jhumra and others”** (1992 P Cr. L J 1387), **“Abdul Qayyum versus S.H.O. Police Station Shalimar, Lahore”** (1993 P Cr. L J 91), **“Mureed Hussain versus S.H.O., P.S., Civil Lines, D.G. Khan”** (1993 MLD 1167), **“Abdul Majid versus S.H.O., Police Station Rohilanwali District Muzaffargarh”** (1995 P Cr. L J 1209), **“Muhammad Aslam versus S.H.O., Police Station,**

Nankana Sahib (1997 P Cr. L J 508), **“Mehboob Alam versus Station House Officer and 2 others”** (1997 P Cr. L J 1561), **“Shahid Hussain versus The State and others”**(1997 P Cr. L J 1582), **“Ahmad Bakhsh versus Saeed Ahmad, Inspector/S.H.O. Police Station Uch Sharif”** (1997 MLD 45), **“Lal Din versus S.H.O., P.S. Dehli Gate, Multan”** (1997 MLD 246), **“Muhammad Manzoor versus S.H.O., Police Station Layya, District Multan and another”** (1997 MLD 1331), **“Muhammad Akram versus The State”** (1998 P Cr.LJ 1558), **“Haji Noor Hassan versus Khalid Masood, Inspector/S.H.O., Police Station “B” Division, RahimYar Khan”** (1998 P Cr.LJ 1451) and **“Naseer Ahmad versus S.H.O., Police Station Tirandah Muhammad Panah, District Rahim Yar Khan”** (1998 P Cr.LJ 196), can be safely referred. Furthermore, august Supreme Court of Pakistan in the case of **“Rana Muhammad Aslam versus Azmat Bashir and others”** (2011 SCMR 1420) upheld the order passed by the Hon’ble High Court, whereby delinquent police officials were ordered to pay special cost to compensate the detenu, however, reduced the amount of said cost; relevant portions are being reproduced: -

“2. Rana Muhammad Aslam (petitioner in Criminal Petition No.387-L of 2008) and Badar Munir (petitioner in Criminal Petition No. 403-L of 2008, seek, leave to appeal against order dated 3-9-2008, whereby the learned Lahore High Court at Lahore, while setting the detenu (Mazhar Bashir) at liberty, imposed special costs of Rs.50,000/-upon Badar Munir, S.I. and Rs.25,000/- upon Rana Muhammad Aslam, Inspector.

3.

The learned High Court after hearing the petitioners and the detenu disposed of the petition, set the detenu at liberty, imposed special costs of Rs.50,000/- upon Badar Munir, Sub-Inspector and Rs.25,000/- upon Rana Muhammad Aslam, Inspector to compensate the detenu and additionally directed that a copy of the order shall be sent to the

Inspector General of Police, Punjab to proceed against them in accordance with the provisions of PEDDA, 2006, vide impugned order dated 3-9-2008, hence the present petitioner.

7. Under the circumstances, we feel that the impugned order is legal, justified and apt to the facts and circumstances of the case, is not open to any exception and the findings whereof do not call for any interference by this court. However, we feel that the amount of costs imposed on the petitioners was slightly on higher side and thus while taking a lenient view, we are inclined to reduce the amount of costs of Rs.50,000/- imposed upon Badar Munir to Rs.25,000/- and of Rs.25,000/- imposed upon Rana Muhammad Aslam, Inspector to Rs.10,000/- which will adequately meet the ends of justice.”

It goes without saying that Indian Supreme Court in the case of “**Bhim Singh versus State of J. & K. and others**” (AIR 1986 SUPREME COURT 494 = 1986 Cri. L. J. 192) has also recognized said principle and directed payment of compensation to the detenu by the police officials, who were held as responsible for detaining them in illegal detention; in this regard, case of “**Arvinder Singh Bagga versus State U.P and others**” (AIR 1995 SUPREME COURT 117) can also be referred advantageously.

8. In view of what has been discussed above, contention raised by learned counsel for the petitioner that compensation cannot be awarded by the Court while dealing with the application under Section 491 or 491 (1A) Cr.P.C., is misconceived; therefore, same is repelled.

9. However, close scrutiny of the record reveals that since Riaz Begum (respondent No.2) in her application for habeas corpus mentioned that detenus were taken and kept in the premises of C.I.A. Staff, Gujranwala by S.H.O. of Police Station: Kotwali, Gujranwala (respondent No.3) and Arshad Gadhi S.I. posted at Police Station: Kotwali, District Gujranwala (respondent No.4); as per Bailiff’s report (Annexure-D), detenus were found being guarded/supervised by two constables namely Tanvir Hussain 1804/C and Imran 3031/C in the premises of C.I.A. Staff, Gujranwala, however, according to certificate (Annexure-J), during those days, they both constables were posted at Police Station: Kotwali, District Gujranwala; Nabeel (one of the detenus mentioned above) while appearing before learned Sessions Judge, Gujranwala on 03.11.2012 stated that “**he was taken into custody from his house and kept in illegal detention in the premises of C.I.A. Staff,**

Headquarter, Gujranwala by Salah-ud Din Inspector, C.I.A. Headquarter, Gujranwala”, therefore, after finding detention of the detenus as “**illegal**”, it was appropriate for learned Sessions Judge, Gujranwala firstly to determine through summary inquiry that who was responsible for illegal detention of the detenus or get it determined from any Magistrate (through inquiry under Section 4 (k) Cr.P.C.) or from any police official of higher rank like Regional Police Officer, Gujranwala and then to pass order for awarding compensation. Therefore, impugned order dated: 06.11.2012 to the extent of directing present petitioner to pay Rs.10,000/- as compensation to each detenu (mentioned above), is set-aside and case is remanded back to the learned Sessions Judge, Gujranwala, who shall either himself determine through summary inquiry that who was responsible for illegal detention of the detenus or get it inquired from any Magistrate or police official of higher rank and then proceed further in accordance with law, within period of 1½ months after receipt of this judgment under intimation to the Deputy Registrar (Judicial) of this Court.

**(Farooq Haider)
Judge**

“Approved for reporting”

Kashif

**(Farooq Haider)
Judge**