

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 99 of 2022**

1. Shabdsharan Sahu S/o Pritam Lal Sahu Aged About 35 Years R/o Village Behar, Police Station Arang, District- Raipur, Chhattisgarh, District : Raipur, Chhattisgarh
2. Premi Sahu S/o Pritam Lal Sahu Aged About 37 Years R/o Village Behar, Police Station-Arang, District- Raipur, Chhattisgarh, District : Raipur, Chhattisgarh

---- Petitioners**Versus**

1. State of Chhattisgarh Through Principal Secretary, Home Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nava Raipur, District- Raipur, Chhattisgarh, District : Raipur, Chhattisgarh
2. Superintendent of Police, Raipur, District- Raipur, Chhattisgarh, District : Raipur, Chhattisgarh
3. Shri Narendra Banjara, Tahsildar/ Executive Magistrate, Tahsil Office Arang, District- Raipur, Presently Posted As Deputy Collector, District Baloda Bazar, Chhattisgarh, District : Balodabazar-Bhathapara, Chhattisgarh
4. Shri Lekhdhar Diwan, Station House Officer, P.S.- Arang, District- Raipur, Chhattisgarh, District : Raipur, Chhattisgarh
5. Shri Trilok Pradhan Sub Inspector Police, P.S. Arang, District- Raipur, Chhattisgarh, District : Raipur, Chhattisgarh
6. Deepak Soni S/o Late Shri Dhannu Lal Soni Aged About 51 Years R/o Suman Colony Baihar, Tahsil - Arang, District - Raipur, Chhattisgarh.

---- Respondents

(Cause-title taken from Case Information System)

For Petitioners	: Mr. T.K. Jha Advocate
For State/Respondents	: Mr. Ranbir Singh Marhas, Additional Advocate General.
For Respondent No.6	: Mr. Sudeep Johri, Advocate.

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Smt. Rajani Dubey, Judge

Order on Board

Per Ramesh Sinha, Chief Justice

30.04.2024

1. Heard Mr. T.K. Jha, learned counsel for the petitioners. Also heard Mr. Ranbir Singh Marhas, learned Additional Advocate General, appearing for the State/respondents and Mr. Sudeep Johri, learned counsel, appearing for the respondent No.6.
2. The present writ petition has been filed by the petitioners with the following prayers:

“10.1 That, this Hon’ble Court may kindly be pleased to call for the entire records relating to this case.

10.2 That, this Hon’ble Court may kindly be pleased to allow the petition and set aside the order dated 28.06.2021 (Annexure P/4) and grant compensation of Rs. 10 lakh to each of the petitioners for illegal detention.

10.3 That, this Hon’ble Court may kindly be pleased to allow the petition and direct the necessary suitable actions against Narendra Banjare the then Tahsildar / Executive Magistrate Arang (Respondent No. 3) and police officer Lekhdhar Diwan (respondent No.4).

10.4 That any other relief, which the Hon'ble Court may deem fit and proper together with cost of the petition."

3. The facts of the present case as per the petitioners are that there was some property dispute between the petitioners and respondent No. 6, the petitioners have made a complaint to the Collector, Raipur on 28.05.2020 alleging that respondent No. 6 has violated the conditions of lockdown order. After passing of one year, Tahsildar – Narendra Banjara (respondent No.3) came on 28.06.2021 for spot inspection and falsely got registered a criminal case under Section 151 of the Cr.P.C. against the petitioners. The Station House Officer (Respondent No.4) arrested the petitioners but did not produce them before the Executive Magistrate (Respondent No.3), however, the respondent No. 3 wrote a false order sheet that the petitioners had refused to sign the order sheet. The respondent No. 4 sent the petitioners for medical examination at about 9:25 P.M. and directed them to send to Central Jail, Raipur, where they were lodged at about 10:30 P.M.. After complaint by the father of the petitioners, the respondent No. 4 released the petitioners on 07.07.2021.
4. The information supplied by the police under the RTI Act shows that the time of arrest of petitioner No. 1 at 06:05 P.m. whereas the information supplied by Tahsil Office shows the time of arrest at

7:25 p.m. likewise, the information supplied by the police under RTI act show that petitioner No. 2 was arrest at 06:00 p.m. whereas the information supplied by Tahsil Office shows that the time of arrest was at 07:20 p.m. The respondent No. 3 and 5 malafidely arrested the petitioners, they were not produced before the Executive Magistrate and they also manipulated the official record. The illegal detention is violative of the Constitutional right of the petitioners.

5. It is further submitted by the petitioners that they are entitled to get compensation for their wrongful detention as the Supreme Court has awarded appropriate compensation to the persons compelled to face humiliation for wrongful detention in violation of Article 21 of The Constitution of India. Hence, this petition.
6. Learned counsel for the petitioner submits that the Police had never produced the petitioners before Tahsildar / Executive Magistrate Narendra Banjara, who wrote false order sheet dated 28.06.2021. He submits that from perusal of the medical documents, it is clear that the petitioners were examined in the government hospital at 09:20 and 09:30 p.m., therefore, there was no question of producing them before the Executive Magistrate in the night. He further submits that the entry of petitioners in the jail shows at 10:35 p.m. on 28.06.2021, which is also needs to be enquired as to why the innocent persons were lodged in jail in the night. He also submits that the timing of arrest of the petitioners is

different from the information supplied by the Police Station, Arang and Tahsil Office, Arang, therefore, it is gross violation of fundamental right of petitioners. As such, the writ petition deserves to be allowed and the respondents authorities may be directed to pay a sum of Rs.10,00,000/- as compensation to each the petitioners for mental harassment and illegal detention from 28.06.2021 to 07.07.2021. He places reliance upon the judgment passed by the Supreme Court in the case of **State of Uttar Pradesh vs. R.S. Gupta**, reported in **LAWS (ALL) 2002 8 63**.

7. On the other hand, Mr. Ranbir Singh Marhas, learned Additional Advocate General, appearing for the respondents/State submits that the the allegation levelled by the petitioners are entirely false and preposterous and are contrary to the record. The preventive action was taken against the petitioners under Section 151 and Section 107, 116(3) of the Cr.P.C. In view of the acts and conduct of the petitioners, the action was taken on the complaint received from the Tehsildar, Arang and due procedure was followed by the authorities. There has been no malafide or illegal act on the part of the said authorities. The petitioners were sent behind the bar under the judicial order passed by the learned Magistrate. The custody of the petitioners were judicial custody and cannot be named or termed as illegal detention. He further submits that the judicial order cannot violate the fundamental right of the petitioners and against the judicial order, a writ petition in nature of criminal under Article

226 of the Constitution of India is not maintainable and liable to be dismissed.

8. Mr. Sudeep Johri, learned counsel, appearing for respondent No. 6 endorses the submission of learned State counsel.
9. We have heard learned counsel for the parties and perused the records of the case.
10. In ***R.S. Gupta*** (supra), the Supreme Court has held as follows:

*“ 13.Nemo judex in causa sua, that is, no man shall be a judge in his own cause, is a principle firmly established in law. Justice should not only be done but should manifestly be seen to be done. It is on this principle that the proceedings in Court of law are open to the public except in those cases where for special reason the law requires or authorizes a hearing in camera. Justice can never be seen to be done if a man acts as a judge in his own cause or is himself interested in its outcome. The principle applied not only to judicial proceedings but also to quasi-judicial and administrative proceedings.....In Ashok Kumar Yadav and Ors v. State of Haryana and Ors, (1985) 4 SCC 417, a 5 judges Bench of the Apex Court held as follows :
.....It is one of the fundamental*

principles of our jurisprudence that no man can be a judge in his own cause and that if there is reasonable likelihood of bias it is “in accordance with natural justice and common sense that the justice likely to be so biased should be incapacitated from sitting”. The question is not whether there is a real likelihood of bias. What is objectionable in such a case is not that the decision is actually tainted with bias but that the circumstances are such as to create a reasonable apprehension in the mind of the others that there is likelihood of bias affecting the decision. The basis principle underlying this Rule is that justice must not only be done but must also appear to be done and this Rule has received wide recognition in several decisions of this Court. It is also important to note that this Rule is not confined to cases where judicial power stricto sensu is exercised.”

11. The petitioners have sought compensation for wrongful detention and the Hon'ble Supreme Court in violation of Article 21 of the Constitution of India has awarded appropriate compensation to the persons compelled to face humiliation for wrongful detention. The word 'harassment' has been dealt by the Hon'ble Supreme Court in the matter of **Mehmood Nayyar Azam V. State of Chhattisgarh**, reported in **2012(8) SCC 1** in para 22 as under :

“22. At this juncture, it becomes absolutely necessary to appreciate what is meant by the term “harassment”. In P. Ramanatha Aiyar’s Law Lexicon, Second Edition, the term “harass” has been defined, thus: -

12. “Harass. “injure” and “injury” are words having numerous and comprehensive popular meanings, as well as having a legal import. A line may be drawn between these words and the word “harass” excluding the latter from being comprehended within the word “injure” or “injury”. The synonyms of “harass” are: to weary, tire, perplex, distress tease, vex, molest, trouble, disturb. They all have relation to mental annoyance, and a troubling of the spirit.”

The term “harassment” in its connotative expanse includes torment and vexation. The term “torture” also engulfs the concept of torment. The word “torture” in its denotative concept includes mental and psychological harassment. The accused in custody can be put under tremendous psychological pressure by cruel, inhuman and degrading treatment. ”

13. From above discussion, in the light of the judgment passed by the Hon’ble Supreme Court in the matter of **R.S. Gupta (supra)** and the provision of law, it is quite vivid that no man can be a judge of his own cause as the Tehsildar himself has lodged a complaint to the Police Station against the petitioners and himself send them into judicial custody and the petitioners were arrested by the Police at night and sent them to judicial custody, without producing them before the Court of Executive Magistrate. The above facts clearly reveal that the right of life and liberty of the petitioners enshrined

under Article 21 of the Constitution of India has been violated, therefore, the petitioners are entitled to get appropriate compensation. As such, we deem it appropriate to award compensation of Rs.25,000/- to each of the petitioners, and same shall be payable by the State Government to the petitioners within a period of 30 days from today. Ordered accordingly.

14. With the aforesaid directions and observations, this writ petition stands **disposed of**.

Sd/-
(Rajani Dubey)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice