

**HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR**

WP(C) PIL No. 17/2020 (O&M)
(Through Video Conferencing)

Reserved on: 16.12.2020

Pronounced on: .12.2020

Sandeep Mawa ...Petitioner(s)

Through:- Mr. Salih Pirzada, Advocate

v/s

Union of India and othersRespondent(s)

Through:- Mr. T. M. Shamshi, ASGI for
the respondent Nos. 1 to 3.

**Coram: HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE**

JUDGMENT

1. The present petition has been filed for claiming the following reliefs:

“a) By a writ of Certiorari

The investigation initiated by J&K Police related to the Shopian Fake Encounter of 18.07.2020 involving the victims namely Ibrar Ahmad (16), Mohammed Ibrar (21) and Imtiaz Ahmad (26) residents of District Rajori, J&K, may be quashed as being illegal and in contravention to the law laid down in *Extra Judicial Execution Victims Families Association v. Union of India* (2017) 3 SCC (Cri) 622.

By a writ of Mandamus

a) The appropriate investigating agency may be directed to register FIR to investigate the matter in terms of law and as per the guidelines formulated under Article 141 in *People's Union for Civil Liberties v. State of Maharashtra* (2014) 10 SCC 635.

b) The investigation of the case may be entrusted to a Special Investigating Team (SIT) constituting members other than from J&K Police, monitored by this Hon'ble Court, in furtherance to *the dictum of law Extra Judicial Execution Victims Families Association v. Union of India* (2017) 8 SCC 417 and *People's Union for Civil Liberties v. State of Maharashtra* (2014)10 SCC 635.

c) Respondent No. 6 may be directed to preserve the graves of the victim from any tampering pending investigation of the case.

d) Respondent no.1 may be directed to constitute a High Powered Committee to analyze the aspect of criminalizing Custodial Killings and Fake Encounters by way of a special legislation.

e) Respondent no. 1 may be directed to constitute the State Human Rights Commission and Human Rights Courts in terms of Section 21 and 31 respectively in the territory of J&K.

d) Respondent no. 1 may be directed to pay a compensation of Rs. 1 crore each to the family of the victims.”

2. The learned counsel for the petitioner submitted that in the case in hand, the petitioner, a public spirited person, is the Chairman of J&K Reconciliation Front and a Kashmiri Pandit. He submitted that there was

blatant violation of the human rights in the fake encounter where three labourers, namely, Ibrar Ahmad, Mohammed Ibrar and Imtiaz Ahmad aged about 16, 21 and 26 years, respectively were killed on 18.07.2020 at Shopian. FIR No. 42 of 2020 was registered at Police Station, Hirpora, Shopian. It was termed as an encounter with the terrorists. However, was found to be fake. This was even admitted by the subsequent press release given by the Armed Forces.

3. Referring to the judgments of Hon'ble the Supreme Court in *People's Union for Civil Liberties v. State of Maharashtra* (2014) 10 SCC 635, *Extra Judicial Execution Victims Families Association v. Union of India* (2017) 3 SCC (Cri) 622 and *People's Union for Civil Liberties v. State of Maharashtra* (2014) 10 SCC 635, the learned counsel for the petitioner submitted that the guidelines laid down therein by Hon'ble the Supreme Court in exercise of powers under Section 142 of the Constitution of India are not being followed. The entire evidence will be destroyed, in case immediate action is not taken in the matter.

4. Further argument made is that after the promulgation of the Jammu and Kashmir Reorganization Act, 2019 (for short 'the Reorganization Act'), the Jammu and Kashmir State Human Rights Commission ceased to exist and presently, there is no Human Rights Commission in the Union Territory of J&K, though Section 21 of the Protection of Human Rights Act, 1993 (for short 'the 1993 Act') provides for constitution of Human Rights Commissions in every State and the Union Territory. In the absence of a Forum, the aggrieved parties are not able to get

redressal of their grievances. He further submitted that in terms of Section 30 of the 1993 Act, Human Rights Courts are to be constituted at all places. Needful has not been done.

5. On the other hand, Mr. T. M. Shamshi learned ASGI appearing for respondent Nos. 1 to 3 submitted that the petitioner has filed the present petition raising a personal dispute with reference to three persons who were allegedly killed in an encounter with forces. He has no authorization to raise the dispute. He further submitted that the parents of the deceased have already filed writ petition being WP (CrI) No. 33 of 2020 before the Jammu Bench of this Court wherein different reliefs have been claimed. They are already pursuing the remedies available to them with reference to the aforesaid cause of action. Hence, the petition filed in public interest should not be entertained. In fact, the petitioner neither has any locus nor any cause of action to raise the dispute. The same is not in larger public interest as the petitioner has referred to only one particular case.

6. As far as the Constitution of the Human Rights Commission is concerned, submission of the learned counsel for the respondents is that Section 21 of the Act of 1993 does not provide for constitution of a Human Right Commission in Union Territory as the same talks about constitution of a Commission in the States. The persons aggrieved can always approach the National Human Rights Commission.

7. Heard learned counsel for the parties and perused the paper book.

8. As far as the prayers made by the petitioner in the present petition are concerned, the same have already been extracted in paragraph 1 of this judgment.

9. It would be out of place that if the prayers made in WP(Crl) No. 33 of 2020 filed by the parents of the deceased is not extracted hereunder, to have a glance at the same with reference to the prayers made by the petitioner in the writ petition:

“i) Writ of Habeas Corpus directing the respondents to produce sons of the petitioners namely Imtyaz Ahmad, Abrar Ahmad and Mohammad Ibrar in the Court.

ii) Writ in the nature of Mandamus commanding the respondents to share the whereabouts of their sons who are missing since 18.07.2020 when petitioners lost contact with their sons with a further Writ commanding the respondents to lodge F.I.R. in the matter and investigate, the truthfulness of encounter surfaced on the social media and if it is so.

iii) Writ in nature of Mandamus commanding the respondents to hold a judicial enquiry under the supervision of Hon’ble High Court so that, guilty be punished and family be compensated appropriately.”

10. A perusal of the aforesaid prayers shows that first prayer is for a writ of Habeas Corpus for producing the sons of the petitioner who were missing since 18.07.2020. Second was to lodge FIR and investigate the matter regarding truthfulness of the encounter as appeared in the social

media. Further prayer was made to hold judicial enquiry under the supervision of this Court so that the guilty can be punished.

11. If the prayers made by the petitioner in the present petition are considered viz-a-viz the prayers made in the writ petition filed by the parents of the deceased, it would be evident that most of the prayers are common. Hence, a separate petition filed by the petitioner claiming the same to be in public interest cannot be entertained.

12. Merely adding certain judgments of Hon'ble the Supreme Court laying guidelines with reference to the investigation of the persons killed in encounter will not make any difference as the matter raised by the parents of the deceased persons is already pending consideration in this Court and the provisions of law applicable or any judgment with reference to the subject matter can always be cited even if the same is not quoted in the pleadings. The claim made is with reference to a specific incident for which the petitioner has not been authorized by the aggrieved party to raise a dispute. Further, once the parents of the deceased can approach this Court by filing a writ petition prior in time, they can always raise whatever grievance they have. In such a situation, public interest petition filed by a third party cannot and should not be entertained as he has no locus or cause of action to raise that dispute. It cannot be said to be in larger public interest as the guidelines for investigation in such type of cases have already been laid down by Hon'ble the Supreme Court in the cases referred to by the petitioner himself.

13. As far as the Constitution of Human Rights Courts in the Union Territory of J&K is concerned, needless to add that vide notification dated 07.02.2019 issued by the Department of Law, Justice and Parliamentary Affairs, Government of J&K, the Court of the learned Principal Sessions Judge of each district has been designated as Human Rights Courts. Hence, the grievance of the petitioner to that extent does not survive.

14. As far as constitution of the State Human Rights Commission in Union Territory of J&K is concerned, a perusal of Section 21 of the 1993 Act provides for Constitution of a Human Rights Commission in the States. After enactment of the Reorganization Act, the Jammu and Kashmir ceases to be a State as now it is a Union Territory w.e.f. 31.10.2019.

15. Section 21(7) of the Act of 1993, which is now applicable in J&K, provides that the Central Government may, by order, confer upon the State Commission the functions relating to human rights being discharged by the Union Territories, other than the Union Territory of Delhi, for which, the powers remain with the National Human Rights Commission.

16. Prior to the enactment of the Reorganization Act, the Jammu & Kashmir Protection of Human Rights Act, 1997 was applicable in J&K. In exercise of powers conferred thereunder, the J&K State Human Rights Commission had also been constituted, which was wound up after the enactment of the Reorganization Act. The residents of J&K, if having any grievance regarding violation of their human rights, may have to approach the National Human Rights Commission.

17. The matter in that regard especially with reference to the provisions of Section 21(7) of the Act of 1993 needs to be examined by the Government so that proper remedies are available with the aggrieved persons, who are having any grievance regarding violation of their human rights.

18. The writ petition stands disposed of, accordingly.

(PUNEET GUPTA)
JUDGE

(RAJESH BINDAL)
CHIEF JUSTICE (ACTING)

Jammu
.12.2020
Paramjeet

Whether the order is speaking:
Whether the order is reportable:

Yes/No.
Yes/No.

