

HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

WP(CrL.) No.444/2019

Muzaffar Ahmad Shah & ors. ... Petitioner

Through: Mr. Mohammad Shafi Mir, Advocate

Versus

State of J&K & ors. ... Respondents

Through: Mr. B. A. Dar, Sr. AAG

Coram:

Hon'ble Mr. Justice Ali Mohammad Magrey, Judge

Whether approved for reporting: Yes

Order

05.11.2019

1. This petition, captioned to be under Article 32 read with Article 226 of the Constitution of India, has been filed on behalf of three persons, namely, Muzafar Ahmad Shah son of Late Ghulam Mohammad Shah; Begum Khalida Shah widow of Late Ghulam Mohammad Shah; and Dr. Mustaffa Kamal son of Late Sheikh Mohammad Abdullah, residents of 10 Moulana Azad Road, Srinagar, with the prayer to direct the respondents to lift all kinds of restraints and curbs and remove security forces from the residential houses of the petitioners, and set them free from house arrest/detention.

2. It is alleged in the petition that the petitioners have been unlawfully detained and kept under house arrest at their own residential house since 05.08.2019.

3. On 23.10.2019 the learned State counsel produced photocopy of a communication no. DMS/Jud/APPIL/2019 dated 23.10.2019, written by the Additional Deputy Commissioner, Srinagar, to Mr. B. A. Dar, learned Sr. AAG enclosing thereunder a copy of the

communication bearing no.Lgl/OWP-Misc/19/8400-8402 dated 21.10.2019, written by Senior Superintendent of Police, Srinagar, to the Inspector General of Police, Kashmir, Zone, Srinagar. Therein, it was stated that the petitioners named in the petition have neither been put under house arrest at 10 Moulana Azad Road on 05.08.2019, nor their liberty has been curbed / jeopardised.

4. In the backdrop of the above communications, the learned State counsel sought dismissal of the writ petition.

5. On perusal of the communication of the Senior Superintendent of Police, taking a clear stand that the petitioners have neither been put under house arrest, nor their liberty has been curbed / jeopardised, and on hearing the learned State counsel, this Court was convinced that this petition was unnecessary. However, the learned counsel for the petitioners wanted to file a response to the communication in question.

5. While responding to the aforesaid communication, the learned counsel for the petitioners, apart from filing his own affidavit, has filed duly sworn in affidavits of the three petitioners named in the writ petition. In his response, the learned counsel has stated that legally he is entitled to prove his case and needs to be granted permission to produce evidence / witnesses in support of his case. The learned counsel has also placed on record alongwith his response some paper cuttings in support of his contention that the petitioners were, in fact, under continued house arrest.

6. In their affidavits, the three alleged detainees have stated that having been informed by their counsel of the stand taken by the respondents that they were not under house arrest, on 24.10.2019 they wanted to move out of their house, but were stopped by a huge contingent of Police, SHO Kothi Bagh and few other officers at the gate. This, they state, was witnessed by two sitting MPs, namely,

Mr. Justice (Retd.) Hasnain Masoodi and Mr. Mohammad Akbar Lone, who, according to them, had come to meet them.

7. As mentioned at the outset, this is a petition under Article 226 of the Constitution of India, though it has wrongly been styled to be also under Article 32. In its extra ordinary writ jurisdiction under Article 226 of the Constitution of India, a Writ Court is neither to hold an enquiry into the allegations made in a petition, nor take oral evidence. In writ proceedings, a fact is to be supported and proved by authentic documentary evidence. Press cuttings cannot be relied upon as authentic documentary evidence. Further, a Writ Court cannot hold enquiry into disputed facts. Once facts are disputed, the writ petition is rendered not maintainable. In such circumstances, the only option available to a Writ Court is to dismiss the writ petition, leaving the party concerned free to take recourse to appropriate remedy.

8. In the instant case, the respondents have clearly disputed the statement made in the writ petition about the house arrest of the alleged detainees. The petitioner asserts that he can prove the arrest by evidence. This Court will not debar him from doing so, but that can be done only before the proper forum and in appropriate proceedings.

9. In light of the above, this petition is dismissed, as being not maintainable and unnecessary, leaving the petitioner free to take appropriate remedy available to him under law before an appropriate forum.

(Ali Mohammad Magrey)
Judge

Srinagar,
05.11.2019
Syed Ayaz, Secretary.