Rudul Shah Summary

CONSTITUTION OF INDIA - Article 32--Habeas Corpus petition--Jurisdiction of Supreme Court--Illegal delivedon for long year--Compensation granted.

The Jailor's affidavit leaves much to be desired. It narrates with an air of candidness what is notorious, for example, that the petitioner was not released from the jail upon his acquittal and that he was reported to be insane. But it discloses no data on the basis of which he was adjudged insane, the specific measures taken to cure him of the affliction and, what is most important, whether it took 14 years to set right his mental imbalance. No medical opinion is produced in support of the diagnosis that he was insane nor indeed is any jail record produced to show what kind of medical treatment was prescribed for and administered to him and for how long. The letter (No. 1838) dated May 10, 1974 which, according to paragraph 3 of the affidavit, was sent to the Law Department by the Superintendent of the Central Jail, Muzaffarpur, is not produced. There is nothing to show that the petitioner was found insane on the very date of his acquittal. And if he was insane on the date of acquittal, he could not have been tried at all for the simple reason that an insane person cannot enter upon his defence. Under the Code of Criminal Procedure, insane persons have certain statutory rights in regard to the procedure governing their trial. According to paragraph 4 of the affidavit, the Civil Surgoan, Mazaffarpur, reported on February 18, 1977 that the petitioner was normal and that this information was communicated to the Law Department on February 21, 1977. Why was the petitioner not released for over five and a half years thereafter. It was on October 14, 1982 that the Law Department of the Government of Bihar directed that the petitioner should be released. Why was the Law Department so insensitive to justice. The story of the petitioner's insanity is an after though and is exaggerated out of proportion. If indeed he was insane, at least a skeletal medical record could have been produced to show that he was being treated for insanity. If at all the petitioner was found insane at any point of time, the insanity must have supervened as a consequence of his unlawful detention in jail. A sense of helplessness and frustration can create despondency and persistent despondency can lead to a kind of mental imbalance.

The concerned Department of the Government of Bihar could have afforded to show a little more courtesy to the Supreme Court and to display a greater awareness of its responsibilities by asking one of its senior officers to file an affidavit in order to explain the callousness which pervades this case. Instead, the Jailor has been made a scapegoat to own up vicariously the dereliction of duty on the part of the higher officers who ought to have known better. This is not an isolated case of its kind and that there is darkness all around in the prison administration of the State of Bihar. The Bhagalpur Windings should have opened the eyes of the prison administration of the State. But the bizarre episode has taught no lesson and has failed to evoke any response in the Augean stables. Perhaps, a Hercules has to be found who will clean them by diverting two rivers through them, not the holy Ganga though. It is hoped that the higher officials of the State will find time to devote their

personal attention to the breakdown of prison administration in the State and rectify the grave injustice which is being perpetrated on hopeless persons. The High Court of Putna should itself examine this matter and call for statistical data from the Home Department of the Government of Bihar on the question of unlawful detentions in the State jails. A tabular statement from each jail should be called for, disclosing how many convicts have been in jail for more than 10 years, 12 years, 14 years and for over 16 years. The High Court will then be in a position to release prisoners who are in unlawful detention in the jails and to ask the State Government to take steps for their rehabilitation by payment of adequate compensation wherever necessary.

It is true that Article 32 cannot be used as a substitute for the enforcement of rights and obligation which can be enforced efficaciously through the ordinary processes of courts, civil and criminal. A money claim has therefore to be agitated in and adjudicated upon in a suit is situated in a court of lowest grade competent to try it. But the important question for our consideration is whether in the exercise of its jurisdiction under Article 32, this Court can pass an order for the payment of money if such an order is in the nature of compensation consequential upon the deprivation of a fundamental right. The instant case is illustrative of such cases. The petitioner was detained illegally in the prison for over 14 years after his acquittal in a full-dressed trial. He filed a habeas corpus petition in this Court for his release from illegal detention. He obtained the relief, our finding being that his detention in the prison after his acquittal was wholly unjustified. He contends that he is entitled to be compensated for his illegal detention and that we ought to pass an appropriate order for the payment of compensation in this habeas corpus petition itself.

There is no effective answer to it save the stale and sterile objection that the petitioner may, if so advised, file a suit to recover damages from the State Government Happily, the State's counsel has not raised that objection. The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But there is no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damage would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt The right to compensation is some palliative for the unlawful acts of instrumentahties which act in the name of public interest and which present for

their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well-known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals in the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner s rights. It may have recoruse against those officers.

Taking into consideration the great harm done to petitioner by the Government of Bihar, as an interim measure, the State must pay to the petitioner a further sum of Rs. 30,000 (Rupees thirty thousand) in addition to the sum of Rs. 5000 (Rupees five thousand) already paid by it.