

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Bench

Mr. Justice Javed Iqbal
Mr. Justice Raja Fayyaz Ahmed
Mr. Justice Muhammad Sair Ali

Civil Misc. Application No.4588 of 2009

S. M. IN case
Constitutional Petition No.6 of 2007

Regarding Dr. Imran Muneer

For the applicant: Ch. M. Ikram, Sr. ASC
with applicant in person

On Court notice: Mr. Shah Khawar,
Acting Attorney General

Date of hearing 16.11.2009

ORDER

The matter was called in the morning but none entered appearance including Dr. Imran Muneer and learned Deputy Attorney General. It was directed that Dr. Imran Muneer shall be kept in Adiyala Jail to ensure his security. Dr. Imran Muneer, in the meanwhile, appeared alongwith Mrs. Amna Masood Janjua and Ch. Muhammad Ikram, learned Sr. ASC who clarified that Dr. Imran Muneer was under protective custody at the direction given by the Hon'ble Chief Justice of Pakistan. In view of the peculiar circumstances and chequered history of the case and besides that he was apprehending danger to his life and possibility of unlawful detention and keeping in view the fact that Dr. Imran Muneer has already been released by the Military Court as confirmed by Mr. Shah Khawar, learned Deputy Attorney General duly supported by record, the protective custody of Dr. Imran Muneer shall remain intact. He shall remain in PIMS Hospital till further orders and his custody shall not be handed over to any authority and he shall not be arrested in any other case without having prior approval of this

Court. Learned Attorney General, at this stage, pointed out that concrete efforts are being made to find out the missing persons and a comprehensive report will be furnished shortly. The Ministry of Interior is directed to take all necessary steps and serious efforts be made to find out the missing persons. It is a known factor that various Pakistani national are incarcerated abroad and custody of a few Pakistani national was reportedly handed over to a few foreign countries, details whereof shall be furnished to this Court alongwith the comprehensive report which has been prepared on the subject as stated by learned Attorney General for Pakistan. Mrs. Amna Masood has been told that case of Mr. Masood Janjua, who is included in the list of missing persons, is not fixed today and so far as his request qua hearing of the case on day to day basis is concerned, the matter shall be placed before his lordship the Hon'ble Chief Justice as it falls exclusively with his lordship's jurisdiction and administrative domain. Matter adjourned. To come up on 23.11.2009 and be fixed at Sr. No.1.

Judge

Judge

Judge

Islamabad:
16.11.2009
Iqbal Naseer

NP
18/11

IN THE SUPREME COURT OF PAKISTAN
(Constitutional Jurisdiction)

PRESENT:

Mr. Justice Iftikhar Muhammad Chaudhry, HCJ.
Mr. Justice Faqir Muhammad Khokhar
Mr. Justice Nasir-ul-Mulk
Mr. Justice Raja Fayyaz Ahmed

Constitution Petition No.5 of 2007

Human Rights Commission of Pakistan thr. Its Secy General

...Petitioner

Versus

Federation of Pakistan thr. Secy. M/o Interior & others

...Respondents

For the petitioner:

Mr. Abdul Mujeeb Pirzada, Sr. ASC
Ms. Asma Jehangir, ASC
Mr. M.S. Khattak, AOR

For the respondents:

Malik Muhammad Qayyum,
Attorney General for Pakistan
Ms. Naheeda Mehboob Elahi, DAG

Date of hearing:

20.8.2007

ORDER

Learned Attorney General for Pakistan stated that to the extent of the case of Imran Munir son of Muhammad Munir, he may be allowed to address the Court tomorrow i.e. 21st August, 2007 because he has to procure record from the concerned quarter and if need be, same would also be produced before the Court for perusal.

Request is allowed to that extent.

Chief Justice

Judge

Judge

Judge

Islamabad, the
20th August, 2007
Nisar/*

IN THE SUPREME COURT OF PAKISTAN
(ORIGINAL JURISDICTION)

PRESENT:

Mr. Justice Iftikhar Muhammad Chaudhry, CJ.
Mr. Justice Muhammad Nawaz Abbasi
Mr. Justice Mian Shakirullah Jan

Constitution Petition NO.5 of 2007

Human Rights Commission of Pakistan thr. Its Secretary General

...Petitioner

Versus

Federation of Pakistan thr. Secretary M/o Interior & others

...Respondents

For the petitioner:

Mr. Fakhar ud Din G. Ibrahim, Sr. ASC
Miss Asma Jehangir, ASC

Respondents:

N.R.

Date of hearing:

8.3.2007

ORDER

Notice to Attorney General for Pakistan for 26.3.2007.

Chief Justice

Judge

Judge

Islamabad, the
8th March, 2007
Nisar/*

IN THE SUPREME COURT OF PAKISTAN
(Original Constitutional Jurisdiction)

CONSTITUTION PETITION NO. _____ 2007

HUMAN RIGHTS COMMISSION OF PAKISTAN.,
a Society, duly registered under the
Societies Registration Act 1860,
Having its registered office at
Aiwan-i-Jamhoo, 107, Tipu Block,
New Garden Town, Lahore.
Through its Secretary General Mr. Iqbal Haider.....**PETITIONER**

Versus

1. Federation of Pakistan through Secretary Ministry of Interior
Pakistan Secretariat, at Islamabad.
2. Ministry of Defense, through its Secretary, Islamabad.
3. Province of Sindh, through its Chief Secretary
Sindh Secretariat, Karachi.
4. Province of Punjab, through its Chief Secretary
Provincial Secretariat, Lahore
5. Province of N.W.F P, through its Chief Secretary
Provincial Secretariat, Peshawar
6. Province of Balochistan, through its Chief Secretary
Provincial Secretariat, Quetta.....**RESPONDENTS**
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**CONSTITUTION PETITION UNDER ARTICLE 184(3) OF THE
CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973**

May it please your Lordships:-

POINTS OF LAW

The Points of Law of general public interest and importance with reference to the enforcement of the Fundamental Rights of the citizens, for determination by this Hon'ble Court, are listed below:-

1. Whether individuals or citizens of the country can be apprehended by law enforcement, security and/or intelligence agencies without disclosing the arrest, reasons or charges of apprehension or without following due process of the law?
2. Whether the officials of secret intelligence agencies have any authority to arrest any person? If so under what law, manner and subject to what conditions ?
3. Whether the government is obliged to disclose the detention places and reasons of arrest/abduction of the persons apprehended?
4. Whether it is not the obligation of the State to get those who have disappeared recovered and to carry out an independent investigation against state functionaries who have abducted people or kept them in illegal confinement?
5. Whether it is the right of the citizens to know the number of people arrested by the State and the right of family members to be informed of their whereabouts as well as the charge under which they are arrested ?
6. Whether illegal confinement and coercive interrogation amounts to torture and whether that is prohibited under the law?
7. Whether those that have undergone torture or illegal detention are entitled to adequate compensation by the State?
8. Whether the courts are bound to keep all habeas corpus petitions pending until the disappeared detenu is recovered through the State agencies?

HUMBLY SHEWETH: -

FACTS

1. The Human Rights Commission of Pakistan (HRCP), the Petitioner is a Society registered under the Societies Registration Act 1860. Since its inception in 1986 it has been consistently struggling for, inter alia, upholding the rule of law, the advancement of human rights, promotion of awareness and protection of human rights of the citizens, to mobilize public opinion to support and respect human rights and to persuade authorities to take effective legislative and administrative measures to prevent violations of human rights and dignity of citizens.
2. HRCP has been alarmed and concerned by the increasing numbers of citizens being disappeared/abducted reportedly by security/secret Services and the law enforcement agencies in the country. HRCP has been monitoring these cases of disappearances reported in the press or reported by the families of the victim directly in the offices of HRCP in the four provinces. Some of such abducted persons were subsequently released, mostly after being physically and mentally tortured, intimidated or threatened.
3. A large number of abducted citizens belong to either Nationalist parties, their student wings, post graduate bona fide students studying in various Universities particularly in Sindh and Baluchistan, members of various religious groups/parties (both Sunnis and Shias), working journalists of print and electronic media, scientists and even some of the members of the Armed Forces of Pakistan. Most alarmingly women family members

along with minors also disappeared and a number of them subsequently released after terrifying investigation.

4. The pattern of those who have disappeared shows that this illegal practice is systematic and being patronized by the Federal and Provincial Governments. The occurrence of disappearances of citizens has taken place in all provinces of the country. Hence, the Federal and Provincial Governments are a necessary party and have been impleaded as the Respondents.
5. Those who disappeared but were subsequently released by the state agents have given testimonies in HRCP Offices, which prima facie disclose that the victims were illegally picked up, subjected to prolonged isolation, held incommunicado and physically and mentally tortured by the law enforcement agencies and in particular by the security/secret services with the object of extracting confessions and evidence against their own self or against their friends and relations. In some cases they were coerced into spying for the intelligence agencies. They also confirm that no legal authority, charge or allegation or the whereabouts of their place of detention were ever disclosed. The forms of torture included deprivation of sleep, stripping the victim naked, severe beatings, use of electric shocks, hanging upside down on the walls and by the ceiling as well as inflicting injuries on vital body parts through various instruments and methods of torture and burning.
6. The testimonies received by HRCP also revealed that the security/secret services and the law enforcement agencies illegally maintain private prisons/safe houses equipped with all

sorts of electronic and manual equipments of torture instruments and that these detention private prisons are neither notified nor disclosed nor admitted by any authority.

7. On 29/30 September 2006 the HRCP along with Amnesty International held a seminar on "Enforced Disappearances". A number of victims (subsequently released) and family members of those who remain disappeared gave first hand account of their experiences and of the information at their disposal. During this conference Mr. Abid Raza Zaidi, who was abducted on 26.04.2006 from Karachi and later released on 18.08.2006 narrated his experiences during the period of disappearances. On his return from Islamabad, he was visiting relatives in Lahore and was once again picked up on 08.10.2006 and kept for two days before being handed over to relatives after receiving assurances of silence. He was kept at the Lal Qila, Warris Road Lahore by agents of the intelligence services.
8. According to the research conducted and data collected by HRCP in respect of such illegal and inhuman incidents, a large number of people have been illegally arrested, detained and abducted by the security/secret services and the law enforcement agencies, without disclosing any warrant, order of detention, allegations or charges or the place of their detention and without producing them in any court of law. The pattern of disappearances and the tactics of intimidation are such that only families of some who continue to remain disappeared come forward. Others prefer silence and suffering and very few amongst those who reappear dare to speak up. The HRCP continues to document these cases and maintains

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confidentiality where requested. Apart from those who have reappeared there still remain a disturbing number of people who are not heard of and where there is credible information that they were picked up by agents of the State. This list is attached as Annexure "A".

9. In addition to public events organised by the HRCP, the office bearers have interviewed and been contacted by family members and those who subsequently reappeared. The HRCP has also make inquiries on its own on some key incidents where families preferred to remain silent.
10. The HRCP would make some facts public in the interest of a larger issue at hand. Arifa and Saba Baloch were picked up in Swat by military personnel in June 2005 and their whereabouts were not disclosed. The family filed a petition in the Honourable Lahore High Court, Rawalpindi Bench and the government denied all knowledge of their whereabouts. The news item of their allegedly being suicide bombers appeared in national dailies yet the government refused to own up any responsibility. After over one year the abductees were handed over to relatives on the condition that they remain absolutely silent. The victims were even hesitant to inform anyone of their having surfaced.
11. Abida Mubashir daughter of Haji Quresh Muhammad was picked up on 07.01.2004 by police and military in Bhawalpur. She was then taken by army personnel to Rawalpindi women's police station and kept there till her release on 11.02.2005. During this time her family did not know her whereabouts, neither was she able to see anyone or produced in any court. She was periodically taken to another destination where she

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was interrogated about male family members. During the interrogation she was ruthlessly humiliated by security forces.

12. Mst. Anwar Fatima was picked up by a large contingent of police and military personnel from her house in Rawalpindi on 3 January 2004. She was kept in Rawalpindi Women's Police Station till 20.10.2006. During this period her whereabouts were not disclosed to anyone nor was she produced in any court. She was interrogated in an undisclosed place, where she was taken after being blind-folded. She was allegedly beaten and punished by a man in uniform who interrogated her. According to the information received by HRCP some fifteen other women, who remained disappeared during this period were lodged in the Women's Police Station, Rawalpindi.
13. A large number of members of the Baloch Students Organisation were picket up. Their whereabouts not disclosed for months and later they reappeared after being tortured. Dr. Hanif Sharif a writer was picked up before several eyewitnesses from a restaurant in Turbat on 20.04.2006. Knowledge of his whereabouts were denied by the government but he was released by paramilitary forces on 19 July, 2006. The captors can be identified.
14. One of the victim Mohammad Saleem Baloch, Senior Vice President of Jamhuri Watan Party who was illegally arrested, abducted/disappeared by the security/secret services and the law enforcement agencies on 10th March 2006 from Liyari, Karachi, disclosed in a press conference that he was blind folded and shifted from one place to another, subjected to severe mental and physical torture. Some of the undisclosed

places where he was detained he had the opportunity of meeting at least sixteen other illegally arrested, detained and disappeared persons.

15. Those who have returned are very reluctant to take any action because of fear and discouragement. They have been warned that they will be picked up again in case of any protest made by them. Such victims include journalists and a couple of them have made public statement confirming the identity of those who picked them up as well as disclosing the threats made to them.
16. The HRCP has further information of several people who disappeared and were later released on assurances of remaining silent. The organization is not in a position at this period of time to disclose the identity of those who have disappeared but at an appropriate moment will do so.
17. The families of several disappeared victims and those who were subsequently released have assured the HRCP that they would depose before the honourable Supreme Court on assurances of confidentiality and subsequent physical protection.
18. It is a matter of grave concern that innumerable protests and condemnation from all sections of the society have fallen on deaf ears of the authorities. Innumerable articles against this inhuman act of abduction have appeared in the national and the vernacular press. Large number of protests, demonstrations and rallies has been organized not only by the families of the victims but also by human rights organizations including HRCP. It is most unfortunate that the security/secret services and the law enforcement agencies undeterred of any law or

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consequences are continuing to pursue their illegal and inhuman activities with immunity.

- 19. Being deeply concerned and grieved by the increasing number of the disappeared citizens in various parts of the country and aggrieved and dissatisfied with the failure and/or refusal of the Respondents 1 to 5 i.e. Federal and Provincial Governments to restrain the security/secret services and the law enforcement agencies from acting in such an illegal, inhuman and degrading manner, it is imperative for the Petitioner to invoke the extraordinary original human rights jurisdiction of this Hon'ble Court through this Petition, on the following amongst, other grounds:-

GROUND

- A. Arrest, detention, abduction and/or disappearance of the citizens without disclosing any lawful warrant or lawful authority, reason, charges, place of their detention and without producing the victims in any court of law is in gross violation of the Human/Fundamental rights, dignity and in violation of all laws and provisions of the Constitution particularly, inter alia, its Article 4 and fundamental rights guaranteed by its Articles 8, 9, 10, 11, 13, 14 & 15.
- B. Under Customary International Law all Member States of the United Nations are obliged to make effective laws, administrative procedures, judicial system and devise other measures to terminate acts of enforced disappearances. The Declaration on the Protection of all Persons from Enforced Disappearance adopted by General Assembly resolution 47/133

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of 18 December 1992 lays down a number of principles to be followed by governments. These include:

- i. Prohibition on States to practice, permit or tolerate enforced disappearances.
 - ii. Make effective laws and mechanisms to prevent such practices.
 - iii. Grant no impunity or mitigation to offenders.
 - iv. Prescribe and implement criminal penalties in case of violation.
 - v. Governments are obliged to carry out extensive, independent and transparent investigations until the disappeared is located and then follow it up with remedy including compensation to victims. (Annexure "B").
- C. The United Nations has formed a working Group on Enforced or Involuntary Disappearances and their General Comments, which are soft International law lay stress upon appropriate penalties and has further defined the concept of enforced disappearance and obligation of governments to address it. (Annexure "C").
- D. On 20 December 2006, the United nations General Assembly passed by consensus the International Convention for the Protection of All Persons from Enforced Disappearances. The Convention binds States even further to address and vigorously remedy any such situation (Annexure "D").
- E. The aforesaid illegal and inhuman policy and actions of the Respondents and their respective agents are not only illegal, unconstitutional and against all norms of good governance or

decency and is the worst form of torture for the victims and their families.

- F. The Respondents and their agents are continuing to commit with impunity such abhorrent, illegal, unconstitutional and inhuman acts, which have caused a high degree of fear and sense of insecurity amongst the people. It has traumatized the victims and their families.
- G. Petitioner has not other efficacious and adequate alternate remedy in law, hence, it is imperative for the Petitioner to invoke the extra ordinary original jurisdiction of this Hon'ble Court.
- H. The Petitioner craves leave of this Honorable Court to urge and plead further facts and grounds at the time of hearing of this petition.

PRAYER

It is therefore respectfully prayed that this Hon'ble Court may be pleased to:-

- i. Invite through Public Notice families, friends and relations of all the disappeared persons to file in this Hon'ble Court detailed particulars of the victims.
- ii. Direct the Respondents to produce all persons that have disappeared and disclose on affidavit, their whereabouts as well as charges or allegations, if any, against them.
- iii. Permanently restrain the Respondents and their agents from indulging in such abhorrent, inhuman, unconstitutional, illegal and criminal activities.
- iv. Direct prosecution in Courts of competent jurisdiction of all the concerned Officers of the Federal Government, their agents and

their subordinates who are responsible for the illegal arrest, arbitrary detention, abduction and disappearances of the citizens and for subjecting them to mental and physical torture, disability and to ensure that the perpetrators are brought to justice.

- v. Direct the Respondents to pay compensation to the victims and/or families of the disappeared, abducted, illegally arrested, detained and tortured persons.
- vi. Pass an order of the setting up of an independent Commission on Disappearances comprising of senior lawyers, parliamentarians and former judges to take the testimony of persons who have suffered involuntary disappearances as well as of family members of those who are still untraced. It is prayed that this mechanism will grant access to legal forums for victims and those effected by such illegal practices and will support this honourable court in the delivery of justice.
- vii. Grant such other relief, as this Honorable Court may deem fit and proper in the interest of justice.

DRAWN BY

FILED BY:

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Supreme Court of Pakistan
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