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HUMAN RIGHTS CASE NO.5091 OF 2006:

(Complaint by Fazal Hussain): In the matter of

H.R.C. No.5091 of 2006, decided on 20th October, 2006.

Bonded Labour System (Abolition) Act (III of 1992)---

---Ss. 5, 9 & Preamble---Constitution of Pakistan (1973), Art.184 (3)---Direct complaint to Supreme Court---Detenu, recovery of---Complainant filed direct complaint to Supreme Court for recovery of his relatives who were alleged to be detained by brick kiln owners, as bonded labour---On the direction of Supreme Court detenues were recovered by police and were produced before Supreme Court---Effect---Bonded Labour System (Abolition) Act, 1992, was promulgated on account of a judgment passed by the Supreme Court for the purpose of taking care of such class of labour who were detained some times along with their families for forcible labour, particularly at brick kilns---Culprits made an attempt to save their skin from criminal liability on different pretexts including the one that labourers were working voluntarily at brick kiln---Supreme Court had made breakthrough to effect the recovery of such class of labourers, who were detained by brick kiln owners on the pretext that they had entered into an agreement to work at brick kiln---Although Bonded Labour System (Abolition) Act, 1992, had been promulgated, yet in its terms it was not sufficient to cater the requirement---Supreme Court observed that to ensure application of fundamental rights of such class of labourers guaranteed by the Constitution, law must be more stringent, otherwise it would become difficult for law enforcing agencies as well as courts to effect recovery of detained persons and to punish delinquents adequately---Supreme Court recommended that law givers should review the provisions of law by incorporating provisions to cater for such requirements and directed the Provincial Governments to lodge campaign through agencies mentioned in S.9 of Bonded Labour System (Abolition) Act, 1992, keeping in view the observations noted by Supreme Court for ensuring implementation of law on the subject in letter and spirit to control the bonded labour in their respective Provinces---Detenues were set at liberty.

Darshan Masih alias Rehmatay and others v. The State PLD 1990 SC 513 ref.

ORDER

IFTIKHAR MUHAMMAD CHAUDHRY, C J.---Instant complaint was received through post wherein applicant has submitted details of the forcible detention of his family by Brick kiln owner in the area of Rajanpur.

2. A perusal of the complaint indicates that petitioner thrice approached to the High Court for recovery of whole of his family which has allegedly been detained by the Brick kiln

owner, but he could not succeed in getting the relief firstly despite filing two Writ Petitions, which were disposed of in view of the report of the bailiff that the detenues are not confined in the Brick kiln and secondly I.C.A. filed by him was also dismissed. Thereafter, petition for leave to appeal was also filed by him but it was not entertained as he could not produce his N.T.C. to identify himself.

3. On receipt of complaint D.P.O. Muazffargarh was directed to effect the recovery from the owner of Brick kiln. In pursuance whereof efforts were made by the police and it came to know that the detenues are confined in the area of Rajanpur. Accordingly a Police Raid was arranged and ultimately 11 persons were recovered from the Brick kiln of Rahim Bakhsh son of Khan Muhammad whereas 7 persons were found confined on the Brick kiln of Mehmood Khan son of Ghulam Muhammad. In this manner 18 persons have been recovered. Details of which has been mentioned in the report submitted by the D.P.O. Muzaffargarh. Contents whereof arc reproduced herein below:--

"-----It is submitted in compliance with the order dated 16-10-2006, passed by Hon'ble Supreme Court of Pakistan, Islamabad, directions were issued to DSP/SDPO Alipur as well as SHO, P.S. Sadar Alipur for the recovery of the abductees from the owners of Brick kiln, who reported that on the pointation of the writ petitioner namely Fazal Hussain local Police conducted the raids at Brick kiln owned by Rahim Bakhsh son of Khan Muhammad caste Burara R/o Kotla Gamoon. The following abductees were recovered:-

1. Allah Bakhsh s/o Qadir Bakhsh	35 years
2. Rab Nawaz s/o Shahro	32 years
3. Kalcemullah s/o Allah Bakhsh	13 years
4. Hafeezullah s/o Allah Bakhsh	3/4 years
5. Saeedullah s/o Allah Bakhsh	5/6 years
6. Mst. Saima d/o Allah Bakhsh	5/6 years
7. Mst. Naziran w/o Rab Nawaz	27 years
8. Mst.Rukhsana d/o Rab Nawaz	10/11 years
9. Mst. Farhana d/o Rab Nawaz	2 years
10. Mst. Shaheena w/o Allah Bakhsh	21 years
11. Muhammad Ashraf s/o Karam	12 years

The Local Police also conducted the raids on the pointation of writ petitioner namely Fazal Hussain at the brick kiln of Mehmood Khan son of Ghulam Muhammad caste rind R/o Hafizabad P.S. Kot Mahan and the following abductees were recovered:-

1. Abdul Majeed s/o Qadir Bakhsh	50 years
2. Ashiq s/o Abdul Majeed	30 years

3. Nazim Hussian s/o Abdul Majeed	29 years
4. Mst. Shamshad w/o Ashiq Hussain	17 years
5. Mst. Nareen w/o Nazim Hussain	19 years
6. Mst. Nehal Mai d/o Nazim Hussain	1-1/2 years
7. Mst. Sassi w/o Abdul Majeed	42 years

In view of the above submissions, abductees have been recovered, who will be produced before the Hon'ble Supreme Court of Pakistan, Islamabad, on 20-10-2006."

4. A perusal of above report indicates that the Brick kiln owners allegedly had illegally confined 18 persons of different ages including the minors.

5. Petitioner stated that there are few more persons who are still in custody of Brick kiln owner, whereas the reversion of the D.P.O. is that some of them have already escaped from the custody of Brick kiln owner, however, further efforts shall be made to recover them, if they are detained.

6. Learned counsel appearing on behalf of Rahim Bakhsh Brick kiln owner, stated that the detenues were not forcibly detained on Brick kiln and fact is that they were working voluntarily in pursuance of agreement, therefore, the allegation has no substance. According to him, even prior to instant proceedings the bailiff of the High Court recovered all the persons and handed over them to the petitioner, as such, it is sufficient to prove that they were not detained forcibly.

7. Prima facie, the statement, made by the learned counsel does not seem to be correct because admittedly these detenues were never produced by the bailiff before the Court and petitioner's version throughout had been that they were confined on Brick kiln of Rahim Bakhsh. As a result whereof two Writ Petitions were filed for their recovery, which were dismissed thereafter ICA was filed which was also dismissed on technical ground.

8. Despite notice Rahim Bakhsh is not present and being represented by a counsel who had also no power of attorney but on acceptance of his representation he was allowed to argue the case. However, prima facie, we are of the opinion that detenues were never produced before the Court. Similarly in view of the provisions of section 5 of the Bonded Labour System (Abolition) Act, 1992 [herein after referred to as "the Act, 1992"] the stand of the learned counsel appearing on his behalf is not acceptable.

9. Be that as it may, it seems that detenues were, prima facie, kept in illegal custody denying their fundamental rights as held by this Court in the case of Darshan Masih alias Rehmatay and others v. The State (PLD 1990 SC 513).

10. It may be noted that on account of this very judgment, the Act of 1992 was promulgated for the purpose of taking care of such class of labourers who are detained some time along with their families for forcible labour particularly at Brick kilns. We have noticed while hearing the case that culprits make an attempt to save their skin from

criminal liability on different pretexts including the one that labourers were working voluntarily at Brick kiln. But in instant case it seems to be its own nature for the reasons that a breakthrough has been made to effect the recovery of such class of labourers, who were detained by the Brick kiln owners on the pretext that they had entered into an agreement to work at Brick kiln.

11. It may be noted that notice was issued on 16th October 2006 and was received to DPO on 17th October and recovery was effected on the same night and they have been produced in Court. Such efficiency by the Police Officer under the leadership of Muhammad Tapir Ray, D.P.O. Muzaffargarh deserves to be appreciated as they within a shortest period had effected the recovery of 18 persons. We hope that in future they would also be working with same zeal and efforts.

12. As recovery of 18 persons has been effected and statedly they have been allowed to live with the petitioner and Police protection has also been provided to them, therefore, they are ordered to be set free to live according to their wishes and DPO Muzaffargarh is directed to proceed against the delinquent strictly in accordance with law and submit report to the Registrar for our perusal in Chambers.

13. Previously we have held that although the Act of 1992 has been promulgated but in its terms it is not sufficient to cater the requirement because to ensure the application of fundamental rights of such class of labourers guaranteed by the Constitution, the law must be more stringent, otherwise it would become very difficult for the law enforcing agencies as well as the Courts to effect the recovery of the 'detained persons and to punish the delinquents adequately. Thus it is recommended that law givers may review the said provisions of law by incorporating the provisions to cater requirements, as the prevailing presently.

14. It is to be noted that we had been receiving complaints from different quarters alleging illegal detention of labour by Brick Kiln owners but whenever probe is started breakthrough is not made for one or the other reason. Therefore, we consider it appropriate to send copy of this order to the Chief Secretaries of all the Provincial Governments for the purpose of adopting mechanism through Labour Department in pursuance whereof the Brick kilns in their respective Provinces are registered along with particulars of the proprietors with direction that they should keep the regular record of the labours engaged by them and shall furnish a list of the same to the concerned labour officer and when ever there is a change in the labour and the labour officer shall be visiting the Brick kiln as per their registered numbers from time to time and shall be submitting report to the department and if any matter of violation is reported by them of bonded labour it shall be brought into the notice of DPO, DCO and Nazim of the District for the purpose of necessary action against the violator and ensure a full implication of the Act 1992.

15. In this behalf if need be the Provincial Governments can seek assistance from the Free Aid Legal Committees functioning in all the Provinces under the control of Provincial Bar Councils and if need be a member of such Committee shall provide legal

aid to the labours who have been subjected to bonded labour.

16. We are conscious of the fact that as far as Police is concerned it has to perform multifarious duties but they are also not observing their duties from this angle as well, therefore, respective DPOs shall be issuing standing instructions to the respective SHOs to have an eye on Brick kilns in their areas and if any case is noticed of bonded labour they may proceed against the Brick kiln owner for the purpose of ensuring fundamental rights which have been guaranteed to the citizens under the Constitution of the Islamic Republic of Pakistan. Similarly the Provincial Governments henceforth shall adhere strictly to the provisions of section 5 of the Act 1992.

17. On receipt of copy of this order the Provincial Chief Secretaries shall lodge a campaign throughout the Province through agencies mentioned in section 9 of the Act, 1992 keeping in view of the observations noted herein above, and shall ensure the implementation of law on the subject in letter and spirit to control the bonded labour in their respective Provinces.

Petition stands disposed of in view of above observations.

M.H./C-26/S

Order accordingly.