The State of Mysore Vs. Krishnaswamy

The State of Mysore Vs. Krishnaswamy

SooperKanoon Citation : sooperkanoon.com/377372

Court : Karnataka

Decided On : Nov-15-1971

Reported in : 1972CriLJ854

Judge : S.R. Range Gowda, J.

Appellant : The State of Mysore

Respondent : Krishnaswamy

Advocate for Def. : Sri. Motaiah

Judgement :
ORDER

S.R. Range Gowda, J.

1. The common question which arises for decision in these two cases is whether an accused person can be remanded to custody for a period beyond 15 days of his arrest without a charge-sheet under Section 173 of the Code of Criminal Procedure (hereinafter referred to as the Code) being filed, and it has arisen in the following circumstances:

2. On 31-8-1971 at about 6-30 p. m. the Station House Officer of the Rajajinagar Police Station. Bangalore, received a telephone message from one M. Kemparamaiah, Deputy Vigilance and Security Officer. B. E.. M. L., Bangalore to

the effect that his daughter Kamalamma who was married to the respondent herein, was found murdered in his (respondent's) house on the same evening. A written complaint also immediately followed the said message. and it was received at about 8 p. m. on the same day in the said Police Station. On receipt of the same, the Station House Officer registered a case under Section 302 of the Indian Penal Code noting 'unknown' in the column meant for writing the name of the culprit. He then recorded the statement of Beeraiah alias Beeraiah. a boy servant in the respondent's house. and submitted the first information report to the Judicial Magistrate. First Class. Third Court. Bangalore. within whose jurisdiction the offence was committed. On 9-9-1971. the investigating officer apprehended the respondent suspecting him to be the culprit concerned in the said crime. On 10-9-1971 the investigating officer produced him before the Magistrate with a remand application praying for police custody. The Magistrate remanded him to police custody till 13-9-1971 on which day. the investigating officer again produced him before the Magistrate with another remand application requesting him to remand the respondent to judicial custody. The Magistrate accordingly remanded him to judicial custody till 20-9-1971. On 20-9-1971 again the investigating officer filed an application praying for further remand on the ground that the investigation was not vet complete. Accordingly, the respondent was remanded to judicial custody till 23 9-1971.

3. On 23-9-1971. the investigating officer filed an application purporting to be under Section 344 of the Code with a prayer that the respondent may be remanded to judicial custody for a further period of 15 days i.e., till 6-10-1971, to facilitate the investigation. It was stated in that application that the Serologist's report and the sketch of the scene of offence had not yet been received from the concerned and that two important witnesses who had seen the respondent at the Check Post on 31-8-1971 had gone to Bombay and Delhi and he (the investigating officer) was making efforts to contact them and complete the investigation.

4. It appears, the counsel appearing for the respondent, opposed that application, and. inter alia, contended that unless a charge sheet is filed, the Criminal Court has no power to remand an accused to custody after 15 days of his arrest on the expiry of which, if no charge sheet is filed, the accused should necessarily be

released.

5. The learned Magistrate accepted that contention reviving on the following observations in Artatran Mahasuara v. State of Orissa : AIR1956 Ori129

'From this scheme of the Act, in my opinion.. it is clear that Section 344 applies only to cases of which the Magistrate has taken cognizance and issued processes or, warrant for the attendance of the accused if he is not produced before him Consequently the explanation to Section 344 contemplates a stage where after the Magistrate takes cognizance of the offence and issued processes for the production of the accused, the accused may be remanded Jo custody if it appears likely that further evidence may be obtained. This obtaining of further evidence cannot in the very nature of things be at the stage of investigation.

The explanation contemplates the obtaining of further evidence only after the police report is filed. If there is a chance of setting such evidence. that would be a reasonable cause for remand, if there were in existence already sufficient evidence that the accused may have committed the offence. The marginal note to Section 344 is 'power to postpone or adjourn the proceedings' and the power to postpone or adjourn the proceedings cannot arise unless the Magistrate has seisin of the matter.

The Magistrate can have seisin of the matter only after he takes cognizance on police report and this explanation to Section 344 dealing with adjournment of an enquiry or trial cannot by any stretch of imagination be applied to a case where the investigation is still proceeding and a charge sheet has not been filed and no cognizance has been taken of the offence. The Criminal Procedure Code never contemplates a third stage of investigation. This is the view taken by the Calcutta High Court in the case of : AIR1924 Cal614 .

In that view, he rejected the application filed by the investigating officer, and released the respondent on 23-9-1971. Feeling aggrieved by that order, the State has preferred Cri. R. P. No. 460 of 1971, and the Sessions Judge. Bangalore has also, suo motu, made a reference under Section 438 of the Code for setting aside that order and that reference is Cri. R. P. No. 27 of 1971.

6. The learned Sessions Judge in his Order of reference has stated that under Section 344 of the Code, the Criminal Court has power to extend the period of remand even after the expiry of 15 days from the date of the arrest of an accused, during investigation although the charge-sheet, as required by Section 173 of the Code is not filed and that the view taken by the learned Magistrate to the contrary, is not sustainable.

7. The learned State Public, Prosecutor while impugning the legality of the order of the learned Magistrate and supporting the order of reference made by the learned Sessions Judge. contended that the language of Section 344 of the Code and the explanation to that section do not permit a construction which would impose a limitation on the power of a Magistrate to grant remand only in cases where charge-sheet is filed under Section 173 and not during investigation of a crime, Elaborating his contention, he submitted that the provisions of Section 173 of the Code do not prescribe any time limit within which the investigation should be completed and charge-sheet should be filed.that all that the Section requires is that the investigation should be completed without unnecessary delay. that the Legislature in its wisdom while enacting that section did not prescribe any time limit for completion of investigation because there may be cases of a very serious nature such as murder. dacoity. conspiracy. etc. in which the investigation may not be completed within 15 days and some more time may be required. that if in every case the accused person is to be released forthwith on the expiry of 15 days of his arrest it might produce grave results. and that the provisions of the Code do not contemplate such a thing to happen or occur. The learned State Public Prosecutor argued that there is nothing in Section 344 of the Code which would prevent or prohibit a Magistrate from making an order for remand without a charge-sheet under Section 173 being filed, and that the words 'postpone the commencement of any inquiry or trial' occurring in Sub-section (1-A) of Section 344 of the Code clearly indicate that such an order can be made even at a stage preceding the commencement of an inquiry or trial i. e., at the stage of investigation. Section 344 of the Code which the argument of the learned State Public Prosecutor is based reads:

344 (1) Power to postpone or adjourn Proceedings:

In every inquiry or trial, the proceeding shall be held as expeditiously as possible and in particular. when the examination of witnesses has once again the same shall be continued from day today until all the witnesses in attendance have been examined, unless the court finds the adjournment of the same beyond the following day to be necessary for reason to be recorded.

(1-A) If from the absence of a witness or any other reasonable cause it becomes necessary or advisable to postpone the commencement of or adjourn any inquiry or trial the court may if it thinks fit, by order in writing stating the reasons therefor from time to time, postpone or adjourn the same on such terms as it thinks fit for such time as it considers reasonable and may by a warrant remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time: Provided further that when witnesses are in attendance no adjournment or postponement shall be granted, without examining them. except for special reasons to be recorded in writing.

2. Every order made under this Section by a court other than a High Court shall be in writing signed by the presiding Judge or Magistrate.

Explanation: If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand this is a reasonable cause for a remand.

8. Whether or not a Magistrate can make an order for remand even though no charge-sheet as required by Section 173 of the code is filed, it is clear, there is conflict of views among the various High Courts.

9. In Bhola Nath Das v. Emperor : AIR1924 Cal614 a Division Bench consisting of Greaves and Panton, JJ. of Calcutta High Court took the view that on the expiry of the period of 15 days allowed under Sections 61 and 167 of the Code. the accused person must be released if no cognizance of the offence is taken by a Magistrate on a police report filed under Section 173 of the Code. The same view was taken by Raghubar Daval J. of Allahabad Court in Kali Charan v. State :

AIR1955 All462 . and by a Division Bench consisting of Mohapatra and P.V.B. Rao, JJ. of Orissa High Court in : AIR1956 Ori129 .

10. But in the Supdt. and Remembrancer of Legal Affairs Govt. of West Bengal v. Bidhindra Kumar Roy AIR 1949 Cal 143 a Division Bench consisting of Roxburgh and Blank JJ. dissenting from the view taken by that High Court in : AIR1924 Cal614 observed thus:

Section 167 which limits the period of detention to 15 days is applicable both to a Magistrate having jurisdiction to try the case and also to other Magistrate and limits the total period of detention to 15 days. In the case of a Magistrate who has no jurisdiction to try the case he must within the period forward the accused to a Magistrate having jurisdiction. The Section then applicable for further detention is Section 344 of the Code and the Explanation to that Section indicates. in our opinion, that further remand may be granted before submission of the charge-sheet. Under Section 173 of the Code the charge-sheet is to be submitted when the investigation is complete. The explanation to Section 344 of the Code clearly contemplates a stage prior to submission of the charge-sheet and that time is-wanted for further investigation: under it the court having jurisdiction may grant remands in custody if sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence and it appears likely that further evidence may be obtained by a remand.

11. In Dukhi v. State : AIR1955 All521 , a Division Bench of Allahabad High Court consisting of Desai and Beg JJ. overruling the view taken by that court in : AIR1955 All462 . said thus:

Where a person is arrested by the police without a warrant, it is not required that he must be released from custody on the expiry of 15 days if the police is still investigating the matter. A Magistrate having jurisdiction to take cognizance of the offence. can avail himself of the provisions of Section 344 without taking cognizance of the offence or while the matter is still under investigation by the police.

12. In Shrilal Nandram v. R.R. Agrawal AIR 1960 Madh Pra. 133 a Division Bench of Madhya Pradesh High Court consisting of A.H. Khan and Shiv Daval JJ. also took the same view and observed thus:

Section 167 of the Cr. P. Code provides that when the Police.after the arrest of an accused. cannot complete the investigation within 24 hours of the arrest the Police shall transmit the papers of the case along with the accused to a Magistrate and the Magistrate can authorise the detention of the accused in the custody of the Police for a term not exceeding 15 days on the whole. This I should like to be regarded as first stage in detention. Although rather loosely this extention of time to the police is referred to as 'giving or granting the remand.' but it is significant that Section 167 Cr. P. Code has described it as 'authorized detention' and not remand.

The second stage of detention begins when the police cannot complete the investigation within 15 days. It is then that under Section 344 (1A) of Criminal P.C the Police applies to the court to postpone the commencement of the proceedings, giving its reasons for such prayer and the court after examining those reasons and stating its reasons for such prayer and the Court after examining those reasons and stating its own reasons can adjourn the proceedings till such time as the investigation as completed. It is at this second stage as provided by Section 344 (1A) read with the Explanation that the Court may by warrant remand the accused if in custody. From this it would be clear that in the first stage under Section 167 of the Cr. P. Code that which is usually called remand to police is really authorized detention. The second stage arises when investigation is not completed within 15 days and more time is needed for collecting further evidence. It is at the second stage that remand is granted and the word remand is actually used in Section 344 Cr. P. Code. The only limit on the exercise of the power of the remand under Section 344 is that the Court cannot give remand for a term exceeding 15 days at a time. This limit for 15 days is for the purpose of enabling the Court to see as to what progress has been made in obtaining further evidence. Each order of remand must be intelligently made and the Magistrate must give reasons for a further postponement of the enquiry or trial. In this view of the matter, I fail to see how the provisions of Section 173 of the Cr. P.C. is a condition precedent to a remand

under Section 344 (lA) of the Criminal Procedure Code.

The same view was taken by P. Govinda Menon, J. of Kerala High Court in State of Kerala v. Madhavan Kuttan : AIR1964 Ker232 .

13. In Rab Noaz v. State. AIR 1965 Tripura 6 the Judicial Commissioner of Tripura. taking the same view said thus at para 26:

From the above discussions, it is clear that a Magistrate having jurisdiction to take cognizance of the offence can avail himself of the provisions of Section 344 without taking cognizance of the offence or while the matter is still under investigation by the Police I, therefore, find that the orders of the learned Magistrate remanding the petitioners to the Jail lockup under Section 344. Criminal P.C. was not illegal.

14. In Ajit Singh v. State : AIR1970 Delhi154 a Full Bench of the Delhi High Court consisting of H. R. Khanna, C, J., Hardayal Hardy and V.D. Misra, JJ. had to deal with a similar question viz., whether a Magistrate could make an order for remand under Section 344 of the Code in the absence of a police report under Section 173 of the Code. H. R. Khanna, C.J. who spoke for the Bench said thus at para 7:

There is nothing. in our opinion, in Section 344 which makes it imperative that an order for remand can only be made after a charge-sheet under Section 173 of the Code has been forwarded to the Magistrate. In the absence of any words in the section and in the absence of anything in the context. it would, in our view. be not permissible to read in the section a limitation on or condition attached to the power of Magistrate to grant remand only in case a charge-sheet under Section 173 has been put in court.

15. It is thus clear that the preponderance of judicial opinion is that under Section 344 of the Code, a Magistrate can make an order for remand even at the stage of investigation and even in the absence of a charge-sheet contemplated by Section 173 of the Code, and. I am in respectful agreement with the view taken by the various High Courts in that regard. There is nothing in Section 344 which makes it obligatory that an order for remand cannot be made unless a charge-sheet under

Section 173 is filed before a Magistrate who can take cognizance of the offence and as observed by Khanna. C.J. in : AIR1970 Delhi154 in the absence of anything in the context. it would not be permissible to read in the section a limitation on the power of a Magistrate to grant remand only in a case where the charge-sheet under Section 173 has been filed. The words 'postpone the commencement of any inquiry or trial' occurring in Sub-section (1-A) of Section 344 of the Code. are significant and clearly indicate that such an order can be made even at the stage of investigation. Indeed in a Lakshman Rao v. Judicial Magistrate, Parvatipuram : 1971 CriLJ253) a similar question, as has arisen in the said cases, came up for consideration. In that case the petitioner was an Advocate practising at Narasipatnam in the District of Visakhapatnam. Andhra Pradesh; he was arrested on 17-7-1970 at 12-30 in the afternoon on the ground that he was involved in Crime No. 3 of 1970, known as Parvatipuram Naxalite, Conspiracy Case, for offences under Sections 120-B. 121-A. 122 read with 302 and 395 of the I. P.C. on 18-7-1970 he was produced before the Judicial Magistrate. First Class and was remanded to judicial custody under Section 167 (2) of the Code for 15 days; on 1-8-1970 he was again produced before the Magistrate and was remanded unto 6-8-1970 and thereafter upto 20-8-1970; on 20-8-1970 he has not produced in the court and an order for remand was made in his absence; then on 22-8-1970 he filed a petition, through the Superintendent of Central Jail, Rajamundry. Andhra Pradesh. under Article 32 of the Constitution for a writ of habeas corpus: one of the grounds on which the order for remand was challenged was that the Magistrate had no power under Section 344 of the Code to make such an order at the stage of investigation: repelling that contention. the Supreme Court said thus at para 10:

The second limb of the challenge is based on the contention that Section 344 falls in Chapter 24. Criminal P.C. which contains general provisions as to enquiries and trials. According to this submission this section cannot apply to a case which is at the stage of investigation and collection of evidence only. This argument appears to us to be negatived by the express language both of Sub-section (1-A) and the explanation. Under Sub-section (1-A) the commencement of the inquiry or trial can also be postponed. This clearly seems to refer to the stage prior to the commencement of the inquiry. The explanation makes it clear beyond doubt that

reasonable cause as mentioned in Sub-section (1-A) includes the likelihood of obtaining further evidence during investigation by securing a remand. The language of Section 344 is unambiguous and clear and the fact that this section occurs in Chapter 24 which contains general provisions as to inquiries and trials does not justify a strained construction. Indeed postponement of an inquiry also seems to be within the contemplation of the general provisions as to inquiries and trials. So this challenge also fails.

16. It is therefore, abundantly clear that under Section 344 of the Code. Magistrate can make an order for remand even at the stage of investigation and. it is not necessary for him, to make such an order that a charge-sheet as required under Section 173 of the Code should have been filed. The view taken by the learned Magistrate to the contrary is clearly erroneous and consequently. the impugned order shall have to be set aside.

17. However. Sri Motaiah learned Counsel for the respondent submitted that the respondent, was released on bail by the learned Sessions Judge while making the order of reference, and that this Court may also make a similar order until at least the charge-sheet is filed under Section 173 of the Code. Sri Motaiah pointed out that in : AIR1970 Delhi154 the High Court of Delhi passed a similar order in a situation almost like the one in the present case and that there are no compelling reasons for this court for not making a similar order. Sri Motaiah argued that the offence is alleged to have been taken place on 31-8-1971 and that no charge-sheet. as vet, is filed and it is not known when it will be filed, and that in these circumstances it is just and proper to continue the respondent on bail at least till the charge-sheet is filed.

18. I think it is difficult to accede to the request of Sri Motaiah. It is no doubt true that the petitioners in : AIR1970 Delhi154 who were prosecuted for the murder of one Sarieevan Prakash alias Kaka were ordered to be on bail during the pendency of the case. but the Court made that order in the following circumstances; The petitioners in that case filed an application for bail before the Magistrate; when that application was rejected they filed a similar application before the Sessions Judge: when that application was also rejected they filed a similar application before the

High Court; one of the contentions advanced on behalf of the petitioners was that after the expiry of the period of remand for which the limit prescribed by Section 167 of the Code is 15 days in whole. no further order for remand could be passed unless a charge-sheet under Section 173 of the Code was forwarded to the Magistrate empowered to take cognizance of the offence: when that application came up before the High Court. the High Court expressed the view that it should be decided by a larger Bench; the case was then placed before a Division Bench and the Division Bench expressed the view that the matter should be decided by a Full Bench and while so doing it released the petitioners on interim bail; the Full Bench while disposing of that bail application after considering the question whether a Magistrate can make an order for remand, directed the petitioners to continue on bail during the pendency of the case. The facts and circumstances of that case probably justified their Lordships to make such an order.

19. But. in the present proceeding I do not think it is proper to make such an order. The question whether the respondent should be released on bail or not, did not come up for consideration before the learned Magistrate who passed the impugned order. However, the learned Sessions Judge while making the order of reference directed the respondent to remain on bail till the disposal of the reference by this court. Whether it was proper or necessary for the learned Sessions Judge to pass such an order in a proceeding for reference having come to the conclusion that the order of the learned Magistrate was clearly illegal, it is not necessary to consider. But, what is clear is that the learned Sessions Judge passed that order without any reference to the principles governing the grant or refusal of bail. He appears to have passed that order in a casual manner without exercising proper discretion and that is obvious from what he himself has stated in the course of his order thus:

Even though it is competent for this court to suspend the order of the lower court and commit him (the respondent) to judicial custody I exercise the discretion liberally and order that the present status quo be maintained until the High Court passes a final order on this report.

The argument of Sri Motaiah therefore that this court may also continue the respondent to be on bail does not appeal to me at all and his request is accordingly rejected. Sri Motaiah complained that the observations of the learned Sessions Judge viz.

the accused is the husband of the deceased. The father of the deceased is a Superintendent of Police and the father of accused is a retired Deputy Superintendent of Police. One of the important witnesses viz. Beeraiah is stated to be a relative of the father of the deceased. Having regard to the peculiar circumstances of the case the prosecution necessarily had to proceed cautiously and deliberately taking each step in the course of the investigation with due care.

were irrelevant and uncalled for in such a proceeding and that the learned Sessions Judge was not justified in making those observations.

20. I think it was not necessary for the learned Sessions Judge to mention all about it when he was only making a reference on a pure question of law.

21. In the result and for the reasons stated above, the revision petition filed by the State is allowed. the reference made by the learned Sessions Judge is accepted and the order of the learned Magistrate is set aside. The respondent accused shall appear before the Magistrate tomorrow the 16th of November 1971 at 11 a.m. If the Investigation Officer requires that the respondent should be remanded to judicial custody., he may make an application before the Magistrate who will dispose of the same on hearing the parties and in accordance with law.

22. Let the records of this case and a copy of this order be dispatched to the learned Magistrate expeditiously.