

Mukesh and Others Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Jun-03-1998

Reported in : 1998(3)AWC1960

Judge : J.C. Gupta, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 267 and 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 395 and 397

Appeal No. : Crl. Misc. W.P. No. 2647 of 1998

Appellant : Mukesh and Others

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Sunil Kumar, Adv.

Judgement :

J.C. Gupta, J.

1. Heard applicants' counsel and learned A.G.A.

2. This is an application under Section 482. Cr. P.C. for quashing the warrants issued by Chief Judicial Magistrate, Allahabad, to the Superintendent of Jail, Aligarh. directing him to produce the applicants before him in Case Crime No. 497

of 1997 under Section 395/397. I.P.C.. police station Sarai Inayat. district Allahabad.

3. It has been contended by the learned counsel for the applicants that such warrants could not be issued under the provisions of Section 267. Cr. P.C., during the investigation, as the provisions are confined to the production of an accused in the course of an inquiry, trial or other proceeding under the Code of Criminal Procedure. Learned counsel also invited the attention of the Court to Form No. 36 of Schedule II of the Cr. P.C.

4. Warrants for the production of a person, who is confined/detained in prison issued under Section 267, Cr. P.C, are commonly known as 'B' warrants.

5. The provisions of Section 267. Cr. P.C. read with Form No. 36 leaves no room of doubt that the expression 'other proceeding under this Code' would mean only such proceeding as may be pending in a Court. The object of issuing such a warrant is to ensure the attendance of a person in Court to answer to the charge of an offence or for the purpose of any proceeding against him or for giving evidence as a witness. That power can be exercised in the course of an inquiry or trial or other proceeding pending before a Court. That power cannot be utilised during the course of investigation of the case. The stage of inquiry or trial comes only after completion of investigation. The applicants' case is that neither any inquiry or trial nor any proceeding is pending against them in any Court at Allahabad. If it is so. warrant 'B' could not be issued by the learned Chief Judicial Magistrate, Reliance was placed on the case of Smt. Bharti Sachdeva v. State and others, 1996 Cr LJ 2102. In the aforesaid decision, a Division Bench of Rajasthan High Court followed the view taken by Delhi High Court in the case of Harshad Mehta v, C.B.I., (1992) 3 CCR 2793. and it has been held that the Court can exercise the powers under Section 267. Cr. P.C. only for the purpose of asking an accused detained in a case in another Jail to answer to the charge in inquiry or trial or in the proceedings pending before him or for giving evidence as witness in Court but cannot require his attendance to answer the charge in investigation. The term 'other proceeding' has been examined at length in order to hold that this does not include investigation by the police. It was also observed that investigation of the offence by

the police and interrogation cannot fall under the purposes which are included in Section 267 of the Code.

6. Since it is not very much clear from the material placed on the record whether any inquiry, trial or other proceeding is pending against the applicants in any Court at Allahabad or not, in the circumstances this application is disposed of finally with the observations that the applicants may approach the Court of C.J.M.. Allahabad, and move an application for the recall of the warrants issued by the Court on the ground as has been urged before this Court and if such an application is moved, the learned Magistrate shall decide the same in accordance with law and in the light of observations made above.

7. Learned counsel for the applicants also made a statement that at present he is not pressing other points raised in this application and so also the reliefs claimed in clauses (b), (c) and (d).

8. With these observations, this application is disposed of finally.

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