Vikram Vs. the State

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Court : Allahabad

Decided On : Jan-20-1995

Reported in : 1996CriLJ1536

Judge : Brijesh Kumar, ;D.K. Trivedi and ;K.C. Bhargava, JJ.

Acts : Constitution of India - Article 22(1); Code of Criminal Procedure (CrPC) , 1974 - Sections 50(1); Indian Penal Code (IPC) - Sections 302, 307 and 324; High Court Rules, 1952 - Rule 1(2)

Appeal No. : Criminal Misc. Case No. 2755 (B)/1933

Appellant : Vikram

Respondent : The State

Judgement :

Brijesh Kumar, J.

1. This reference to the Full Bench arises out of a bail application which came for consideration before a learned Single Judge. The ground for release of the applicant on bail, as pressed on his behalf was that at the time of arrest.the applicant was not disclosed the full particulars and the grounds of his arrest, hence the arrest was illegal being in violation of Section 50 of the Cr. P.C. and Article 22(1) of the Constitution of India. The applicant has filed his affidavit in support of

his case that particulars of the offence were not disclosed to him, nor the grounds of arrest.

2. As against the above, on behalf of the prosecution, the arresting officer has filed his affidavit stating about the arrest of the applicant in Crime Case No. 262/93 under Section 307/324/302 I. P. C. and that the accused was told the grounds of his arrest. According to the prosecution, after his arrest the applicant had confessed having committed the crime and furnished information leading to recovery of a knife said to be used in commission of the offence. A recovery memo was also prepared and a copy of the same was given to him. A copy of the G.D. entry was also filed along with counter-affidavit.

3. The learned Single Judge found that in number of cases, affidavits given by arresting officers stating that he had informed the grounds of arrest as well as full particulars of the offence to the accused, have not been accepted by the Courts, more so where the G. D. Entry, if available, would not indicate as to what particulars or grounds were informed to the accused. A few single Judge Judgments as well as Division Bench decisions have been cited by the learned single Judge. On the other hand, in some decisions of the Division Bench it has been found that an affidavit filed by arresting officer giving out that he had informed all the particulars of the offence and the grounds of arrest, would be sufficient to show that the requirement was fulfiled. The decisions supporting the former view, as considered by the learned single Judge are Ashok Kumar Singh v. State of U. P., 1987 LLJ 2731, Subhash Bhandari v. State of U. P., 1986 LLJ 271, Ram Chandra alias Munai v. Superintendent, Central Jail, Naini, 1982 LLJ 160, Hazari Lal v. State of U. P., 1991 LLJ 230, Shanna alias Lulla v. State of U. P., 1986 LLJ 209, and the case of Vimal Kishore v. State of U. P., : AIR1956 All56 . The State, on the other hand, placed reliance in support of the latter view, upon the decision in the case of Ram Chandra Srivastava v. Senior Superintendent of Police, Lucknow, 1992 L Cri R 39. It is a Division Bench decision, accepting the entries made in the G. D. and the affidavit of the arresting officer to hold that the requirement of law was complied with. The next case relied upon was Rama Kant v. State of LJ. P., 1988 LLJ 118, on the same point.

4. Since according to the learned single Judge, there were conflicting views of the Division Benches of this Court, he referred the following questions for answer by the Full Bench :

'(i) Whether the statement of arresting officer contained in the counter-affidavit to the effect that compliance of provisions of Article 22(1) of the Constitution of India and Section 50(1) of the Code of Criminal Procedure was made giving details of offence somewhat similar to the charge framed by the Court for trial of case, can be relied upon without a corresponding entry in General Diary/Recovery Memo giving details of the grounds told to the accused at the time of arrest?

(ii) Whether it is the statutory duty of prosecution to prove compliance of provisions of Article 22(1) of the Constitution of India and Section 50(1) of the Code of Criminal Procedure or it is necessary for the arrested person to file an affidavit that full grounds of arrest were not told to him at the time of arrest?

5. In our view the question No. (i), as formulated, relates essentially to appreciation of evidence. There is no scope of any doubt that provisions of Article 22(1) of the Constitution and Section 50(1) of the Code of Criminal Procedure have to be complied with. Article 22(1) of the Constitution reads as follows :-

'22(1). No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and be defended by a legal practitioner of his choice.'

Section 50(1) of the Code of Criminal Procedure reads as follows:-

'50(1). Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.'

6. The total effect of the two provisions quoted above is that the arrested person must be made known of the full particulars and grounds upon which his arrest is based at the earliest.

7. In support of the above conclusion, a reference may be made to the observations made in one of the decisions of the Hon'ble Supreme Court, reported in (1994) 1 Crimes 892 : (1994 Cri LJ 2269). Directorate of Enforcement v. Deepak Mahajan, observing that the arresting officers must inform the arrestee of the grounds of such arrest as conetmplated under Article 22(1) of the Constitution and Section 50 Cr. P. C. They are also supposed to make proper records of what they do in connection with the arrest and investigation of a person. In Joginder Kumar v. State of U. P., : 1994 CriLJ1981 , certain guide-lines have been laid down indicating as to what is required to be done by the Investigating Officer/Arresting Officer on arrest of a person. Apart from specific directions, it is also observed that the departmental instructions be also issued, that the police officers making an arrest should also record in the Case Diary the reasons for making the arrest. It is thus clear that the arresting officer is supposed to maintain a proper record of what he does while arresting a person. He is supposed to record in the police papers the particulars and grounds of arrest of a person and he is also supposed to mention what he has informed to the arrested person. The information which is required to be given to the arrested person should be such that he must know the reason and the facts leading to his arrest.

8. We may consider the cases which, according to the reference order, take conflicting views. In the case of Ashok Kumar Singh, (1987 LLJ 273) (supra), the affidavit filed by the Investigating Officer averred having informed the accused of the grounds and particulars of the offence and it was sworn on the basis of the record. The G. D. entry only mentioned, 'Karan Giraftari Bataya Gaya'. It was not acceptable to the Court for the simple reason that the record did not disclose as to what was told except that cause of arrest was informed. Similarly, in the Division Bench case of Subhash Bhandari, (1986 LLJ 271) (supra), the affidavit of the police officer was not accepted for the reason that the recovery memo did not contain any particulars, nor the G. D. disclosed as to what information or particulars were furnished to the arrestee.

9. The other Division Bench cases, which, according to the order of reference, take conflicting view are, Ramchandra Srivastava v. Senior Superintendent of Police Lucknow, (1992 L Cri R 39) (supra), in which the Court had accepted the

affidavit filed on behalf of the prosecution for the reason that no affidavit was filed on behalf of the arrestee while an affidavit was filed by the arresting officer with the averments that he had informed the grounds and full particulars of the offence to the person arrested. An entry in the G. D. was made but the nature of the entry was not examined. The other case, is Ramakant v. State of U. P., (1988 LLJ 118), (supra). In this case, G. D. entry and recovery memo were also filed along with the counter-affidavit of the arresting officer. The G. D. entry was, 'Nakal Fard Mulzim Ko Di Gaee', that is to say, copy of the recovery memo was furnished to the accused which according to prosecution contained all the facts. The recovery memo was prepared at the spot. The Court took the view that since the recovery memo was prepared at the spot, containing all the details, a copy of which was furnished to the accused, it means that he was informed of the particulars and the grounds of arrest.

10. From the facts and what has been held in the cases noted above, it is clear that it is basically a matter of appreciation of facts. As has been pointed out in the referring order, in one case, a recovery memo, merely evidencing recovery of a knife was held to be not informing the arrestee of the grounds and particulars of arrest since possession of any knife may not be illegal, whereas in another case of Ramakant, (1988 LLJ 118) (supra), the recovery memo prepared at the spot giving all the details including the fact that it was recovery of an illicit arm, was found to be sufficient to come to the conclusion that necessary facts and grounds were made known to the arrestee. In the other cases, merely the fact that in the G. D. it was mentioned that the grounds of arrest were informed, was found to be not sufficient. As observed earlier, it is necessarily a question relating to appreciation of evidence and it may not be possible to lay down any strait-jacket formula in such matters. Applying the principle of 'prudence', the facts and circumstances of each and every case may have to be examined. Ordinarily merely saying in the G. D. that the accused has been informed of the particulars of the offence and the grounds of arrest may not suffice. It would always be better if entry indicates as to what has been communicated to the accused. Normally, without the backing of the record, it may not be possible for a police officer to remember as to what particulars and grounds were informed to the arrestee at the time of his arrest or soon after unless there is some special reason to remember it which may inspire

confidence to believe the averments of the arresting officer. In one set of circumstances, supply of a copy of the recovery memo may not suffice, but in another set of circumstances, it would. The contents of the G. D. entry or the recovery memo would be material. Our conclusion, therefore, is that it is necessary that the grounds of arrest and full particulars of offence must be informed to the arrestee. Once this duty is cast upon the arresting officer, he must make proper record of what he does in pursuance of the requirement of the law. There is no form prescribed for mentioning the fact in General Diary, Case Diary or any other police papers. Arresting officer may record the information given to the arrestee in his own way. It cannot be said that unless it is given in a particular way or form, it cannot be relied upon. The Courts need be convinced that the arrestee has been informed of the grounds and full particulars of the offence by the arresting officer. This may be by making and filing the entry along with other evidence cumulatively to come to the conclusion that it has been done. While appreciating the evidence in this connection, the general principle of prudence has to be applied and in case on the facts and circumstances, the evidence as given inspires confidence, the Court is not completely precluded from accepting it only for the reason that this fact is not mentioned in the police papers in a particular manner. In some cases, a recovery memo prepared at the spot giving full particulars and supply of the same to the arrestee may fulfil the requirement of law. If it is well proved that copy of such recovery memo was furnished to the accused, in such circumstances a bald entry in the Case Diary or General Diary that the arrestee has been informed of the grounds and full particulars of offence, may hold good; in other cases, it may not. In this connection, we may beneficially quote the observations made by Viscount Simon in Christie v. Leachinsky, (1947) 1 Ail ER 567, referred to by Hon'ble Supreme Court in the case of Madhu Limaye, AIR 1969 SC 1014 : (1969 Cri LJ 1440), in para 11 of the judgment, as follows

'...In the words of Viscount Simon if a policeman who entertained a reasonable suspicion that X had committed a felony were at liberty to arrest him and march him off to a police station without giving any explanation of why he was doing this, the prima facie right of personal liberty would be gravely infringed. Viscount Simon laid down several propositions which were not meant to be exhaustive. For our purposes, we may refer to the first and the third:

'1. If a policeman arrests without warrant upon reasonable suspicion of felony, or of other crime of a sort which does not require a warrant, he must in ordinary circumstances inform the person arrested of the true ground of arrest. He is not entitled to keep the reason to himself or to give a reason which is not the true reason. In other words, a citizen is entitled to know on what charge or on suspicion of what crime he is seized.

2....

3. The requirement that the person arrested should be informed of the reason why he is seized naturally does not exist if the circumstances are such that he must know the general nature of the alleged offence for which he is detained.'

Lords Simonds gave an illustration of the circumstances where the accused must know why his being arrested:

'There is no need to explain the reasons of arrest if the arrested man is caught red-handed and the crime is patent to high Heaven.'

11. In some of the cases are referred to in the order of the learned Single Judge, it is to be noted that the observations are that the information furnished should be in the nature somewhat similar to the charges framed in a criminal trial (Referred to : AIR1956 All56 , Vimal Kishore v. State). It, however, cannot be said that there can be any technicality in the matter of form in which the information is to be given. A charge, apart from other facts, contains the essential particulars relating to the date, time and place of the offence. These are the facts which must in any case be informed. Broadly speaking, as observed in the case of Vimal Kishore (supra), the information should be such that the arrested person must be able to understand the reason for his arrest. We feel that he must be informed of the bare necessary facts leading to his arrest. It is difficult to prescribe any form in which the information must be given. An arrested person must, however, know the grounds and reasons and the facts that in respect of whom and by whom the offence is said to be committed as well as the date, time and place of the offence etc.

12. It is true that non-compliance with the said provisions amounts to an illegality, but we would like to observe that so far as its effect on the merit of the question of grant of bail is concerned, in our view, it is limited. There are several and different considerations which weigh for the purposes of grant of bail. The fact that ground of arrest has not been proved to have been communicated, by itself would not be a sole consideration for releasing an accused on bail; it may no doubt be one of the considerations while considering the question of bail. In certain cases, this lapse on the part of the prosecution may add weight to any ground which may have been taken by an accused or may support his contention, but may not always be so. Therefore, non-compliance with the said provisions by itself cannot be a sole ground for releasing an accused on bail, though as observed earlier, it may be taken into account with other relevant factors.

13. The next question, which is referred, is as to whether it is the duty of the prosecution to prove compliance with the provisions of Article 22(1) of the Constitution and Section 50(1) of the Cr. P. C. The other limb of the question is as to whether it will be necessary for the arrested person to file an affidavit that grounds of arrest and full particulars of offence have been communicated to him. We feel that this question should not detain us long. It has been held above that it is the legal requirement that grounds of arrest and full particulars of offence have to be communicated to the arrestee by the arresting officer. In the normal course of things, it would be taken that whatever is required under law while arresting a person has been done accordingly, but such an inference is not at all conclusive. As soon as it is indicated by the arrestee or on his behalf that the provisions under Article 22(1) of the Constitution and Section 50(1) of the Cr. P. C. have not been complied with, the entire responsibility falls upon the prosecution to establish that the said provisions of 'law have been lawfully complied with. In case the prosecution fails to prove and establish that necessary informal ion as required under law has been conveyed, the mere allegation of the accused or the arrestee will have to be accepted. As a general rule, an accused is not supposed to make a statement on oath, or to file an affidavit about the facts which he himself avers except when he examines himself as a defence witness. It is not understandable why a person in custody should be required to file an affidavit, complaining about the non-compliance with the provisions of the Constitution and the Code of

Criminal Procedure. An arrestee must be communicated the grounds of his arrest, is a constitutional safeguard, provided under Part-III of the Constitution. He will be well within his rights to point out that the said provisions have not been complied with as soon as produced before a Magistrate within twenty-four hours of his arrest. No sooner it is so stated or pointed out, it is the burden of the prosecution to establish that the provisions of Article 22(1) of the Constitution and Section 50(1) of the Cr. P. C. have been complied with. If the said fact is not under challenge, then of course it would not be necessary for the prosecution to adduce evidence itself to establish the compliance with the said provisions.

14. Our answer to question No. (i), therefore, is ha! no strait-jacket formula can be laid so as to come to a conclusion whether the grounds and full particulars of offence have been communicated or not to the accused person; all the available evidence including the counter-affidavit, G. D. entry, recovery memo, if any, or any other documents, may have to be considered and appreciating such evidence, a legal view as permissible, applying the principle of prudence in the matter of appraisal of facts, a conclusion may have to be drawn on facts. As a matter of fact, there are no precedents on facts. The question raised basically relates to appreciation on facts and evidence.

15. Our answer to question No. (ii) is that as soon as it is pointed out on behalf of the accused that the provisions of Article 22(1) of the Constitution and Section 50(1) of the Cr. P. C. have not been complied with, the prosecution is burdened with responsibility of establishing the fact of compliance of legal requirement. Denial on the part of the accused need not be on affidavit.

16. Both the questions, as referred to the Full Bench, have been answered as above.

The judgment is pronounced under Chapter VII Rule 1(2) of the High Court Rules, 1952.