

Hidayat Begam Vs. State

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Court : Madhya Pradesh

Decided On : Oct-24-1949

Reported in : 1951CriLJ233

Judge : Sanghi, J.

Appellant : Hidayat Begam

Respondent : State

Judgement :

ORDER

Sanghi, J.

1. On 14-7-1949, one Kanakmal an itinerant tradesman made a report at 10-30 A. M. at the Sadar Bazar Police Station, Indore City that his wife Laxmibai had disappeared from the house carrying away with her cash amounting to Rs. 1700 and ornaments valued at Rs. 1900. He also stated in the report that he had learnt that Hidayat Begam (applicant) who lived in the neighbourhood used to visit his wife and Bhura her brother used to visit her sister and that Bhura was not to be found at his house. He therefore, suspected the applicant and her brother Bhura to be concerned in the theft committed by his wife.

2. Seven weeks after this, on 8-9-1949, the applicant was arrested by the Officer-in. charge of the Sadar Bazar Police Station at 11-30 in the night. Under Section

167, Criminal P, C. the applicant was produced before the additional City Magistrate, Indore City, at 12-10 A. M. on 9-9-1949 and an application was made for her further detention in police custody. The charge shown against her in the application for remand was under Section 380 read with Section 109, Indore Penal Code. It may be observed here that her detention in the police custody had exceeded the maximum prescribed limit of twenty-four hours by twelve hours. During the seven weeks preceding her arrest and during the thirty-six hours that she was in police custody, applicant was not questioned once in respect of the alleged offence. This is a very significant fact.

3. The learned Magistrate made an order authorising the woman's detention in police custody till 16th September, and her application for release on bail was rejected. She moved the High Court for being released on bail. The application was sent to the Sessions Judge for disposal. At the hearing of the application before the Sessions Judge, applicant's brother Radhakishan made an affidavit. The reference to it and the observations made thereon by the Sessions Judge appear in the following words in his order dated 23-9-1949:

The application for release on bail was dismissed and it is against this order that the present-petition is directed.

4. The learned Counsel for the applicant relied on the case reported in *Balkrishna v. Emperor*, A I.R. (18) 1931 Lah. 99 : 33 Cr. L.J. 180, in which is discussed at length the question of remand to an accused person to police custody under Section 167, Criminal P.C. The learned Counsel urged that the applicant's detention by the Police after the expiry of twenty-four hours after her arrest was illegal and the Magistrate hasd therefore, no jurisdiction to-act under Section 167, Criminal P.C. I am unable to accede to this contention. The continued Custody of the applicant after the expiry of twenty-four hours was illegal but all that the applicant was then entitled to was a direction by the High Court under Section 491, Criminal P.C., that she be brought up before the Court to be dealt with according to law. The Police itself took the applicant to a Court to be dealt with according to Section 167, Criminal P.C. The illegal detention by the police cannot affect the power of the Magistrate to act under Section 167, Criminal P.C.

5. The only question to be decided is whether the order made by the Magistrate authorising applicant's detention in the custody of the police is, under the circumstances of this case, so bad that the Court should interfere with and an order should be made that she be released on bail. Sub-section (3) of Section 167, Criminal P.C. requires the Magistrate to record his reasons for authorising detention of an accused person in the custody of the Police. The reason given by the learned Magistrate is that it appears desirable to make the order. This is merely a routine order without a reason. When an accused person is brought up before a Magistrate he is required to make up his mind in two respects: Should the accused be released on bail under Section 497. Criminal P.C., or should he be detained in custody and if so, in whose custody. Under Section 497 (9), Criminal P.C. if it appears to the Court that there are no reasonable grounds for believing that the accused has committed a non-bailable offence but there are sufficient grounds for further enquiry into his guilt the accused pending such enquiry be released on bail, In this case there is no ground much less a reasonable ground, for believing that the applicant has committed a non-bailable offence. Merely because she used to visit the wife of the complainant who is absconding, taking away his property with her, and possibly her brother may be concerned in it, is no ground for believing that she is concerned in any manner in the theft. The applicant was entitled as a matter of right to be released on bail. There is no case against her. There never was any ground for her arrest under Section 54, Criminal P.C. Under Section 167 (1), Criminal P.C., a person arrested and detained in custody is to be forwarded to a Magistrate only when there are grounds for believing that the accusation or information is well founded. There is no information laid against the woman. The complainant merely suspected that she or her brother or both may be concerned in the theft because the applicant used to visit his wife, the absconding thief. This is a remote suspicion and not a well-founded accusation. The learned Magistrate did not apply his mind to the accusation against the applicant and whether it could reasonably be believed that she was concerned in it.

6. That the investigating officer did not care to question the applicant once since the report was made and even while she was in his custody for thirty-six hours tells heavily against him, That the applicant was arrested at about midnight would

show the urgency of the arrest and yet she was not questioned. I am of the opinion that the arrest was made not to advance the investigation of the case but to cause annoyance to the lady. This is a clear case of abuse of the process of law.

7. Under S: 498, Criminal P.C. I direct that the applicant be admitted to bail. The directions under Section 499, Criminal P.C., shall be given by the Additional Magistrate, Indore City. The applicant was released on bail for appearance in this Court. She is directed to surrender herself to the Additional Magistrate, Indore City, on 7-10-1949, to be dealt with as directed above. The order of remand made by the learned Magistrate is set aside.

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