

State Vs. Santokh Singh

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Court : Madhya Pradesh

Decided On : Apr-30-1955

Reported in : 1956CriLJ619

Judge : Chaturvedi, J.

Appellant : State

Respondent : Santokh Singh

Judgement :

ORDER

Chaturvedi, J.

1. Santokh Singh had been convicted under the Anns Act and sentenced to 3 years' rigorous imprisonment in Rajasthan. He is undergoing his sentence in Jail and has now been transferred to the Central Jaid, Lashkar, The Police now desire that he be transferred to their custody for investigation of an offence of murder that took place on the night of 25-2-1953 in Madhya Bliarat.

The learned Magistrate before whom an application was made to this effect rejected it. The State then went in revision to the Sessions Judge, Gwalior, who has made this reference recommending that the order of the Magistrate dated 7-2-1955 be set aside and orders be passed for handing over Santokh Singh non-applicant to the Police for investigation for the said murder case.

2. The learned Government Advocate sup. ports the reference on the ground that the police have a statutory right to investigate an offence, and according to the learned Government Advocate, the detention of the accused in the police custody is essential for investigation, He placed reliance on the provisions embodied in Sections 60, 61 and 167 Criminal P.C. In my opinion the argument is based on an erroneous view of the operation of these sections.

Section 60 states that a person arrested without warrant should be taken before a Magistrate without unnecessary delay and Section 61 provides that the person arrested should not be detained in police custody for more than twenty-four hours. Sections 60 and 61 cannot, therefore, come into operation until a Police officer makes an arrest of the accused person without warrant. The first two sub-sections of Section 167, then material for this case, run as follows:

(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 61 and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police-station or the Police officer making the investigation if he is not below the rank of Sub-Inspector shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case from time to time authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole. If he has no jurisdiction to try the case or commit it for trial and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

Provided that no Magistrate of the third class, and no Magistrate of the second class not specially empowered in this behalf by the Provincial Government shall authorise detention in the custody of the police.

3. It will be obvious that this section also cannot be made applicable unless the accused is forwarded to the Magistrate after his arrest by the Police. It will thus be manifest that if an accused person is not arrested by police and if he is already a convict in Jail. Sections 60, 61 and 167 will have no application to the case. In other words, a Magistrate can authorise the detention of an accused in police custody only when the police arrests him and takes him before him.

4. Mr. Mungre then places reliance on certain observations made in - 'State v. Sukh Singh', but in that case the facts were somewhat different. The accused was arrested in one case and was sent to Judicial lock-up. It was held that such an accused can be handed over to the police in other criminal cases against him for purposes of investigation. The facts of the present case are entirely different, as the non-applicant Santokh Singh is not an under-trial prisoner, but as a convicted prisoner, he is already undergoing sentence in the jail. The observations in the Rajasthan case have no bearing on the question before me.

5. The question here is, has any Magistrate power to release Santokh Singh from jail and hand him over to the police? For, till he is released from Jail, the non-applicant cannot be handed over to the police, nor his detention for fifteen days in police custody can be authorised by any Magistrate. Mr. Mungre thinks that there is no difference between a 'Prison' and a 'Police lock-up'. In my opinion, he is again mistaken. Section 3(1)(a), Indian Prisons Act, 1894 (Act No. 9 of 1894), which has been made applicable to Madhya Bharat State by virtue of the provisions of Act No. 23 of 1950, clearly lays down that a 'prison' does not include any place for confinement of prisoners who are exclusively in the custody of the police.

6. Mr. Mungre further assumes in his arguments that the 'right' to investigate includes the 'right' to have the accused in the police custody, and as the police have a statutory right to investigate the circumstances of an alleged cognizable crime - 'Emperor v. Nazir Ahmad' AIR 1945 PC 18 (B), the learned Counsel urges that the Police have a right to have the accused in their custody for purposes of investigation irrespective of the fact that the accused is a convict in jail.

In my opinion this contention is untenable as it is not warranted by the provisions and the scheme of the Code of Criminal Procedure. A perusal of Sections 61 and 167 makes it abundantly clear that the Legislature did not think detention of accused in police custody necessary in every case for purposes of investigation.

The intention of the Legislature is that an accused person must be brought before a Magistrate with the least delay, and, that in no case is a police officer justified in detaining a person for a single hour except upon some reasonable ground justified by all the circumstances of the case. Even if a person be rightly arrested, it does not rest with the discretion of the police officer to keep the person in custody there and as long as he pleases. It is the order of a Magistrate that is required even for detention of the person arrested in the Police custody for fifteen days in the whole.

In fact, the Magistrate has been given full discretion in the matter, and he can, under certain circumstances, send the accused to judicial lock-up in the very beginning. The provisions laid down in various sections of the Code of Criminal Procedure seem to be designed to secure that within _ 24 hours of the arrest some Magistrate shall have seisin of what is going on and some knowledge of the nature of the charges made against the accused; and, equipped with that knowledge he will be in a position to decide whether it will be proper to authorise the Police to have and detain the accused in their custody.

In fact, there is no provision in the Code which lays down that for purposes of investigation the detention of the accused in Police custody is essential. The assumption, therefore, that a right to investigate includes the right to have the accused in Police custody is unwarranted. There is no doubt that the Police have a right as well as a duty to investigate the circumstances of an alleged cognizable crime; but 'investigation' means only ascertainment of truth and, according to Section 4(1)(b) of the Code, it includes all the proceedings under the Code for the collection of material to be used as evidence - 'A. F. G. Price v. Emperor' AIR 1937 Lah 160 (C).

The presence of the accused in the police station may afford some help in the ascertainment of truth and in collection of material to be used as evidence, but the same object can also be achieved by approaching the jail authorities for giving

facilities to the Police for interrogating the accused in jail.

7. In fact, when once a person is convicted and sent to jail for undergoing sentence, he is to be governed only by the provisions of the two Statutes which deal with the Prisons and with the Prisoners. Section 3 of the Prisons Act (Act 9 of 1894; attempts to classify prisoners into three categories, (1) Criminal Prisoners, (2) Convicted Criminal prisoners and (3) Civil prisoners.

A convicted criminal prisoner, means any criminal prisoner under sentence of a Court or Court-martial, and includes a person detained in prison under the provisions of Chap. VIII, Criminal P.C. 1882, or under the Prisoners Act.

Section 27 then lays down that 'Civil prisoners' shall be kept apart from Criminal prisoners and un-convicted criminal prisoners from convicted criminal prisoners. Section 29 deals with prisoners who are given solitary confinement, and Section 30 with those under sentence of death. Section 57 states that prisoners under sentence of transportation will be confined in fetters for the first three months.

Obviously the three classes of prisoners, i.e., (1) sentenced to death, (2) to transportation and (3) those given solitary confinement can in no case be handed over to the police custody. Then, under this Act, no criminal Court possesses any power to release any convicted criminal prisoner from jail.

8. The Prisoners Act (Act No. 3 of 1900) relates to the prisoners confined by order of a Court. The Madhya Bharat State has adopted most of the provisions of this Act in their Prisoners Act (Act No. 56 of 1950). Section 29 of this Act (which corresponds to Section 37 of the Central Act) is the only section in it that empowers criminal Courts to require attendance of prisoners in those Courts. But it sets down two limitations.

A criminal Court may direct the officer-in-charge of the prison to produce a prisoner under safe and sure conduct before that Court: (1) if the evidence of the prisoner is material in any matter pending before it, or, (2) if a charge of an offence against such person is made or pending in that Court. In no other case, can a Criminal Court send for a convicted Criminal prisoner to attend it. It will, therefore,

be apparent that a criminal Court has no power under this Act to release a convicted Criminal Prisoner or to remove him from Jail. How can then, it order him to be handed over to Police?

9. Section 33, M. B. Prisoners Act (which corresponds to Section 41 of the Central Act), then lays down that upon delivery of any order to the officer-in-charge of the prison, that officer shall cause him to be taken to the Court in which his attendance is required, and shall cause him to be detained in custody in or near the Court until the presiding officer of that Court: authorises him to be taken back to the prison in which he was confined. An officer-in-charge of a prison has also been authorized by Section 35 (Central Act Section 43) to abstain from carrying out orders of the Courts in this respect, under certain circumstances.

Section 55, Indian Prisons Act (9 of 1894), then provides that a prisoner, when being taken to or from any prison in which he may be lawfully confined shall be deemed to be in prison and shall be subject to all the same incidents as if he were actually in prison, The effect of all these provisions is that once a prisoner is inside jail he. will continue to remain in the custody of jail official till the expiry of his sentence. A Magistrate has no power to change the nature of his custody.

10. I, therefore, come to the conclusion that the provisions embodied in Sections 60, 61 and 167, Criminal P.C. are inapplicable to the case of a convicted criminal prisoner; and that the provisions of the Prisons Act, which deal with the law relating to the internal management of the Prisons, and, those of the Prisoners Act, which deal with law relating to prisoner's custody, do not empower a Magistrate to transfer a convicted criminal prisoner from the custody of the prison to that of the police.

It follows that the order passed by the Magistrate in the present case is sound and must be upheld. I, therefore, reject the recommendation of the learned Sessions Judge, Gwalior, and confirm the order passed by the Magistrate. K.S.B.