

Mansur and ors. Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Sep-10-1985

Reported in : 1986CriLJ57

Judge : V.D. Gyani, J.

Appellant : Mansur and ors.

Respondent : State of M.P.

Judgement :

ORDER

V.D. Gyani, J.

1. The petitioners in this Miscellaneous case made a grievance that in spite of an order of being released on bail for offences under Sections 307, 147, 148 and 149, IPC, they were still detained in jail at Kannod, in pursuance to an order passed by the Executive Magistrate, Hatpipliya, in Criminal Case No. 148 of 1985, under Sections 151 and 107, Cr. P. C. In fact the present petitioners had moved the Court of Sessions at Dewas, bringing all facts to the notice of the learned Sessions Judge, in Criminal Revision No. 5 of 1985. As the petitioners were not released the learned Sessions Judge was requested to send for the record, which in fact was sent for and the requisition was received by the Executive Magistrate, Hatpipliya on 18-8-1985. The criminal revision before the Sessions Judge was listed for hearing on 20-8-1985. On this date of hearing the petitioners again made a

grievance about their being detained in jail under Sections 107, 116(3) and 151, Cr. P. C. and complained that their detention was illegal. It is to be noted with regret that the Executive Magistrate at Hatpipliya for no reason whatsoever, either disclosed here, before this Court or mentioned in the record of the said case No. 148 of 1985, did not send the record to the Court of Session and the learned Sessions Judge, feeling helpless in the matter, dismissed the said revision. It is in such circumstances that the present petition is moved under Section 482, Cr. P. C., for being released on bail, which in fact, had already been granted to them.

2. By order D/- 3-9-1985 the Jailor at Sub-Jail, Kannod, was directed to produce the applicants in person before this Court on 9-9-1985 and the record of the Court of the Executive Magistrate, Hatpipliya, was also sent for along with a direction to the said Magistrate to remain present in person. Accordingly the record was obtained and the Executive Magistrate also remained present.

3. Going through the record of the case, it is difficult to believe that it is a record of a judicial proceeding. The first step required to be taken in such proceedings under Section 107, Cr. P. C. is the making of an order under Section 111, Cr. P. C. which the Executive Magistrate made on 2-8-85. It is nothing but a carbon impression of such order of Court of Sub-Divisional Magistrate, Bagli as can be seen from the title of the order passed in some other case. All that the Executive Magistrate has done is to make few required insertions with an alteration in the amount of bail. The Executive Magistrate, who is present today, admits having obtained the same for the purpose of this case. It is a travesty of justice as well as liberty of citizens that such orders are being passed in a routine mechanical material manner, without any application of mind. As is revealed in this very case, from the other orders and it is inconceivable on record that an Executive Magistrate at Hatpipliya would give the title to Sub-Divisional Magistrate, Bagli to an order passed by him. Even copying it is said needs a certain degree of application of mind but that too is missing.

4. An application for bail (at page 13 of the record which is again referred to as 29) was preferred on behalf of the non-applicants i. e. the present petitioners on 2-8-1985 itself which admittedly bears an endorsement by the Executive Magistrate to

this effect, but is omitted from the order sheet D/- 2-8-85. Even the alteration in page is significant in the sense that is replaced at page 13 is the recorded statement of the Station Officer, Hatpipliya Police Station. As admitted the record had to be re-arranged for being produced in this Court. It appears that a slipshod attempt was made for inserting this statement; otherwise this bail application, should have found its place at page 13, as originally given thereon. Although the order DA 2-8-1985, which is nothing but a carbon impression of an order already passed in some other case by the Sub-Divisional Magistrate, Bagli, contains a recital to the effect that the order passed under Section 111, Cr. P. G, was readover to the non-applicants and the gist thereof explained to them but it is uninspiring of any confidence. At page 11 of the record there is a notice to the non-applicants if that be so, the order or notice, whatever it is, is so blurred that it is hardly legible. There is yet another significant feature of this order. Surprisingly enough there is no date mentioned in any part of the order, either underneath the signatures of the Magistrate or even while making the endorsement suggesting its service. This notice under Section 111 is so cryptic and blurred in its carbon impression that it serves no purpose at all, and above all the notice contemplated by Section 111, Cr. P. C. is nothing different from the order itself. It is not possible to make out as to when this notice was in fact issued, put in despatch for being served on the non-applicants and to whom was it addressed for service and who in fact effected the service. At this stage it would be worthwhile to record that the non-applicants were already in custody, as they were arrested for an alleged offence under Section 307, I. P. C.

5. The way, orders are passed, the mode in which their service is effected, should be a matter of serious concern for any Magistrate passing such orders. But regrettably, instead of showing any such concern, the Executive Magistrate has treated the whole matter in a most mechanical manner, without any application of mind in passing the preliminary order, in getting the notice under Section 111, Cr. P. C. properly served. To say the least the record reveals a very sorry state of affairs.

6. On 2-8-1985 itself the bail-bonds were furnished on behalf of the two ladies, but the date has been altered to '24', which again palpably appears to be crude patch

in the whole record. Reading the bail-bond as it is and if it is to be believed that it was submitted on 24-8-1985, as is sought to be suggested by the interpolation in the date, it is inconceivable that after having submitted the bail bond on 24-8-1985 the surety would undertake to keep the non-applicant present on 14-8-1985. There could be no question of keeping the non-applicants present on 14-8-1985. There is a similar interpolation in yet another bail-bond submitted on behalf of Kashibai. Similar such documents are on record, being personal bonds of these applicants without any endorsement by the Executive Magistrate. If everything was being done in a routine manner, as is expected, there ought to have an endorsement even on these personal bonds. The conclusion is inescapable that on 2-8-1985, when admittedly bail application was moved on behalf of the non-applicants, a fact not recorded in the order-sheet, but which ought to have been recorded was very conveniently omitted for reasons which can be anybody's guess. A pro forma carbon impression of an order (from S. D. M.'s Court, Bagli) was made use of without any application of mind much less judicious consideration of all relevant related facts. It is expected, as rules enjoin that bail applications should be promptly disposed and given precedence, but instead of doing so, the Executive Magistrate even does not make a mention of it in the order-sheet. On 14-8-85 a memo of appearance was filed on behalf of the non-applicants by their Advocate. Even this fact is omitted to be mentioned in the order-sheet. But the filing of the memo of appearance on 6-9-1985 does find mention in the order-sheet D/- 6-9-1985. The subsequent order sheets D/- 14-8-85 and 24-8-85 point to the fact that notice under Section 111, Cr. P. C. was to be issued as against the non-applicants 4, 5, 6, 7, and 10 vide order-sheet D/- 24-8-85. But, there is nothing on record to show that in fact any such notice was even attempted to be issued. Same is the case with the order-sheet D/- 14-8-85 in respect of non-applicants 4 to 7.

7. This interpolation in dates is not merely confined to proceedings prior to 6-9-1985. Even with regard to the bail-bonds, furnished on 6-5-85 there is an apparent interpolation in the date of executing these bail-bonds, although they have been accepted on 6-9-1985. All these interpolations cast a serious reflection on the proceedings as well on the documents.

8. As stated above, the record was requisitioned by the Court of Session at Dewas and there was time enough for sending the record to the Court, but it was not sent till 28-8-1985, when a letter is addressed by the Executing Magistrate to the Sessions Court without disclosing any reason whatsoever as to why the record could not be sent to the Sessions Court on the earlier date. The requisition itself clearly mentioned the date of hearing before the Court of Session as 20-8-1985 and the endorsement of the Executive Magistrate with regard to the receipt of this requisition is made on 18-8-1985. Kannod to Dewas is not such a distance, which could not have been covered within two days. Even if record was sent by ordinary post one would expect that it would have reached the Court of Session at Dewas by 20th.

9. It was stated at the Bar by the learned Government Advocate that now that the non-applicants have been released on bail, a lenient view of the matter should be taken. Although in such matters and in face of such record, any leniency as such would be misplaced.

10. Executive Magistrates should not forget that they are also expected to act in accordance with law with fairness and in a judicious manner. Their orders and record should bear an express live concern for fairness. Unfortunately, the record of the present case belies all that is expected. They should also see to it that whenever the record is requisitioned by the superior Court of Session to whom Executive Magistrates are undoubtedly subordinate, they must promptly despatch the record, rather than withholding the same on fanciful grounds and notions.

11. No doubt as the learned Government Advocate states that the applicants have now been released but at what cost two ladies were detained in face of application for bail and the personal bonds as found on record but no orders thereon passed till the matter was brought to the notice of this Court. The conduct of the Executive Magistrate concerned deserves to be deprecated in no uncertain terms.

12. As the basis of the whole proceeding before the Executive Magistrate is carbon impression of an order passed in some other case by the S. D. M. Bagli without any application of mind, the proceedings as a whole are liable to be quashed and they are accordingly quashed.

13. In view of the sincere regrets expressed by the Executive Magistrate, no further order as such is necessary. This Court, however, hopes that the repetition of such orders would be avoided in future.

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