

Subhash Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : May-18-1988

Reported in : 1989CriLJ1553

Judge : V.D. Gyani, J.

Appellant : Subhash

Respondent : State of M.P.

Judgement :

ORDER

V.D. Gyani, J.

1. Shri Jaisingh, learned Counsel for the petitioner, Shri S. K. Pavnekar, Panel Lawyer for the State. Shri Pavnekar states that he has neither the case-diary nor any other paper, Shri Mukati, who appears for the intervenor-complainant, has filed certain affidavits alleging that the co-accused Raju had intimidated him. However, no report as such has been lodged.

2. By order dated 6-5-88, record of the Committal Court was sent for, which has been received. The case has been committed to Sessions, vide order dated 22-3-88. One of the co-accused, Rajendra has been admitted to bail. Shri Jaisingh, learned Counsel for the petitioner has filed certified copies of the order-sheet dated 25-2-1988 and Committal Court record is also available. It is shocking that

the accused was not produced before the Magistrate for months together and on date after date and what is more painful is that the Magistrate very conveniently had been granting and extending the period of judicial custody without insisting for production of the accused, accepting a rubber stamped endorsement to the effect that accused could not be produced for want of police-guard, without even questioning the jail authorities or the police about it. To say the least, it is a very sorry state of affairs.

3. The warrants on record go to show that right from 10-11-1987 to 7-3-1988, the petitioner was not produced before the Magistrate, yet he continued to remand him to judicial custody on mere production of warrant in utter disregard of law.

4. There is not the slightest indication in ' the order-sheets to show that the learned Magistrate ever insisted for production of the accused and there is also no indication that when he was produced from jail on 7-3-1988, he was furnished with copies of the charge-sheet before passing the committal order. Order-sheet dated 22-2-1988 does not indicate that the learned Magistrate ever bothered to see that copies of challan papers were supplied to the petitioner, who was all along in judicial custody for a period of more than four months, that two without being produced before the Magistrate. Needless to add, that the Magistrate was duty bound to see that the accused was furnished with copies of the challan papers. There is clear breach of the mandate of Section 207, Cr. P.C.

5. It was contended by the learned Counsel for the petitioner that the accused-petitioner was indisputably not furnished with copies of the charge-sheet filed on 20-1-88 in the absence of the accused, who was not produced before the Magistrate for almost two months thereafter. Such filing of challan would not arrest the operation of the proviso to Section 167(2), Cr. P.C. which would entitle the accused to bail. Without, entering into this controversy, whether the challan was filed within 90 days of arrest, the fact remains that till passing of the committal order the accused was not supplied with copies of the challan. He was not produced for months together before the Magistrate, who as noted above, had been extending the period of his judicial custody on mere production of warrant. Order-sheets indicate that every order committing the petitioner to judicial custody

was passed, the period of custody was extended by making an endorsement on the jail warrants and the endorsements read 'produced on...'. A warrant for further detention of an accused should be a warrant of commitment addressed to some Jailor or officer having authority to receive or keep the prisoner. Ordinarily a Magistrate is expected to write in the order-sheet that the accused is remanded to judicial custody for a certain period. It is not a mere form. An omission to mention the same in the order-sheet may not amount to illegal detention, when there is authorisation on the warrant itself, but a Full Bench of the Allahabad High Court has observed that a remand by merely filling the column on the reverse of the warrant form already signed on the front side on an earlier date, cannot be said to be substantial compliance with the requirements of remanding the accused by warrant under Sub-section (2) of Section 309, Cr. P.C. See- Urooj Abbas v. State of U.P. 1973 Cri LJ 1458 (All)(FB).

6. In the instant case, except for the initial warrant dated 27-10-87 of commitment to jail, rest of the endorsements are on loose papers, which bear a rubber-stamp seal impression indicating non-production of prisoner for want of police-guard and just below this endorsement the learned Magistrate at different dates and places has noted 'produced on...' to indicate the date, But the petitioner till actually committed order was passed was never produced for all these months, as can be gathered from the endorsement made on the warrants. Would such continued extension of detention without production of the petitioner when he was directed to be produced amount to illegal detention? A detention without valid order of remand has been held to be illegal by the Supreme Court in Ram Narayan Singh v. State of Delhi : 1953 CriLJ113 . It has been held by the Allahabad High Court in Raghavendra singh's case, 1976 Cri. LJ 1782 that under Section 309, Cr. P.C. custody of the accused in jail can be maintained and continued only by a warrant issued by a Magistrate and When there is no such valid warrant, his confinement is illegal.

7. As has been noted above only next date of production has been noted by the Magistrate on the so-called jail warrant, bearing the rubber seal Impression. Once an order of remand expires and a fresh order of remand is not passed merely noting the next date of production on the jail warrant without there being anything

in the order-sheet, committing or further continuing such custody, the detention becomes illegal which cannot be cured by a subsequent order of remand for subsequent period -(See Manohari's case 1983 Cri LJ 1231), wherein the Rajasthan High Court in similar circumstances held that the accused are entitled to be released on bail.

8. For the foregoing reasons the accused-petitioner is directed to be released on bail on his furnishing a personal bond in a sum of Rs. 10,000/- (Rupees ten thousand) with one surety in like amount to the satisfaction of the trial Court for his appearance before the Court on 29-6-88 and on such further dates as may be fixed in that behalf.

9. C.C. today.

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