

Mukesh Kumar Vs. State

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Court : Delhi

Decided On : Oct-27-1989

Reported in : 1990CriLJ1923; 1990RLR41

Judge : Santosh Duggal, J.

Acts : Indian Railway Act - Sections 120 and 122; [Constitution of India](#) - Article 227; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 54 and 482

Appeal No. : Criminal Misc. (M) 310 of 1989

Appellant : Mukesh Kumar

Respondent : State

Judgement :

ORDER

1. The petitioner Mukesh Kumar, in this petition filed under Section 482 Cr.P.C. read with Article 227 of the [Constitution of India](#), feels aggrieved by the order passed by the Railway Special Magistrate, Delhi on 3rd February, 1989 whereby his application for medical examination which he had submitted to the court, when he was produced in police custody, was dismissed. He alleges that he is an employee, of M/s. R. V. Travels, that had been exposing some of the mal-practices, and alleged deeds of corruption of the police officials of G.R.S., New Railway, and that on 2nd February 1989 while he was present at the shop, some police officials of police station New Delhi Railway Station came and took him

away in spite of his protestations that he was merely an employee at the shop. He was placed under arrest in a case registered under Section 120/122 of the Indian Railway Act vide FIR No. 109/89 at police station New Delhi Railway Station. He further alleges that he was medically examined at LRJPN Hospital on the same day at about 7 p.m. and there was no external injury on his body but subsequently when he was kept in police custody during the night, at the aforesaid police station, he was tortured and beaten by some police officials including SHO and that when he was produced in court of the Railway Special Magistrate on 3rd February 1989 in the afternoon, he moved an application for his medical examination for the reason that he had sustained injuries as a result of alleged torture or beating by the police officials. This application was dismissed by the learned Magistrate with the following order.

'All the three accused in custody. Shri Sharma counsel for the accused. Application for medical examination moved under Section 54 Cr.P.C. for Mukesh Kumar and Sandeep Kumar. Heard. Perused. Bodies of the accused seen. It is stated that the injuries alleged necessitated examination as during the course of argument the accuse have been seen in normal posture and rather process would defeat the ends of justice. Hence both the applications are dismissed.

The accused are ordered to be released on each of them furnishing bail bond of Rs. 1000/- (each). Copies be given for appearance and further proceedings fixed on 10-2-89.'

2. After his release from custody the same evening, the petitioner went to Safdarjung Hospital and got himself medically examined. The result of the medical examination was noted on the out patient ticket.

3. The petitioner alleges that dismissal of his application moved under Section 54 Cr.P.C was wrong on the part of the Railway Special Magistrate, and seeks an order of this Court to that effect.

4. On this petition being taken up, Mr. R. K. Sharma appeared for the petitioner. He made it clear that although the matter has become infructuous and does not survive because the necessity of medical examination arose and existed on that

very day, but he pressed this point on principle and submitted that he wanted a finding from this Court that the procedure adopted by the learned Magistrate in himself bodily examining the accused and then declining his request for medical examination made by means of written application filed under Section 54 Cr.P.C. was wrong, and in utter disregard of the statutory provisions. He further added that the question was of general importance, and a direction was required from this Court for the guidance of the Metropolitan Magistrates.

5. Finding the question, though academic insofar as the present petition is concerned, but vital otherwise, notice to show cause was issued to the State. Mrs. Usha Kumar has been appearing for the State on the previous dates of hearings. Today however at the time of bearing since she was not available and Mr. I. U. Khan represented the State. Mr. Sharma argued that besides the provisions of Section 54 Cr.P.C. being very clear; there have been directions given by the Supreme Court that even in cases where accused does not make any such prayer, it was the duty of the court where such an accused is produced, particularly when he is unassisted by a counsel to inform him of his right to have medical examination and then proceed to direct medical examination in case any accused makes such a request. He cited judgment in the case of Sheela Barse v. State of Maharashtra : 1983 CriLJ642 , where their Lordships taking notice of number of matters of procedure, concerning treatment of undertrial prisoners, had incorporated a clear cut direction in the judgment to this effect.

6. Mr. Khan did not offer any comments in face of the mandate contained in the Supreme Court judgment. He however confirmed that it was in fact a practice with number of Metropolitan Magistrates where such requests when made are being declined and that it is a fit matter where some directions, for general guidance of all the Metropolitan Magistrates are issued.

7. A reading of Section 54 of the Code of Criminal Procedure makes it abundantly clear that whenever a person after being arrested is produced before a Magistrate and alleges at any time during the period of his detention during custody that the examination of his body will afford evidence which will disprove the commission by him of any offence or which will establish the commission by any other person of

any offence against his body, the Magistrate shall, if requested by the arrested person so to do direct the examination of the body of such person by a registered medical practitioner Magistrate considers that the request is made for the purpose of vexation or delay or for defeating the ends of justice.

8. Although the application of the petitioner in this case did not disclose with what object he was seeking his medical examination, or whether it fell within the purview of either of two situations contemplated by Section 54 Cr.P.C. but the fact remains that the procedure adopted by the learned Magistrate in examining the body of accused person himself and then dismissing the application on his observation that they were seen in normal postures was wholly unwarranted and erroneous. He does not spell out as to how medical examination would have defeated the ends of justice. The order under consideration is thus glaringly in violation of the spirit and essence of the provisions of Section 54 Cr.P.C. Hence interference by this Court in exercise of the powers under Section 482 Cr.P.C. is certainly called for.

9. I accordingly allow the petition and hold the order dated 3rd February 1989 as not sustainable. Further, in view of the general importance of the matter, and the likelihood of such error being committed by other courts, which apprehension as confirmed by the learned State counsel, I direct that a copy of this order be circulated for the guidance of all Metropolitan Magistrates. I also consider it essential that directions of the Supreme Court in the case of Sheela Barse : 1983 CriLJ642 (supra) in this regard are reproduced in this order, for general guidance of all concerned. These are accordingly extracted as under :

'(vii) We would direct that the magistrate before whom an arrested person is produced shall enquire from the arrested person whether he has any complaint of torture or maltreatment in Police custody and inform him that he has right under Section 54 of the Code of Criminal Procedure 1973 to be medically examined. We are aware that Section 54 of the Code of Criminal Procedure 1973 undoubtedly provides for examination of an arrested person by medical practitioner at the request of the arrested person and it is a right conferred on the arrested person. But, very often the arrested person is not aware of this right and on account of his

ignorance, he is unable to exercise this right even though he may have been tortured or maltreated by the police in police lock up. It is for this reason that we are giving a specific direction requiring the magistrate to inform the arrested person about the right of medical examination in case he has any complaint of torture or maltreatment in police custody.'

10. Petition allowed.

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