

State Vs. Mehar Chand

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Court : Delhi

Decided On : Jun-14-1967

Reported in : 5(1969)DLT179

Judge : Hardayal Hardy, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 167

Appeal No. : Criminal Reference Appeal No. 9 of 1967

Appellant : State

Respondent : Mehar Chand

Advocate for Pet/Ap. : K.C. Pandit and; H.S. Thakur, Advs

Judgement :

Hardayal Hardy, J.

(1) This reference by The Sessions Judge, Mahasu Sessions Division raises an interesting question of law and arises in the following circumstances :- Respondent Mehar Chand was arrested by the Delhi police for an offence under section 364 Indian Penal Code on the allegation that he had kidnapped or abducted one Hima Ram in order that he may be murdered, and is presently confined in judicial lock-up at Solan under the orders of the Magistrate 1st Class, Kasumpti after the statutory period of remand had run out under section 167 Criminal Procedure

Code The order of detention was passed under the provisions of section 344 Criminal Procedure Code It appears that during the course of investigation the police came to the conclusion that besides the offence under section 364 Indian Penal Code the accused-respondent was also involved in the offence punishable under section 302 Indian Penal Code read with section 201, Indian Penal Code for having caused the death of Hima Ram and for concealment or destruction of the evidence disclosing the commission of the offence of murder by him. The police therefore felt that the association of the accused-respondent with the police for further investigation had become necessary with a view to discover the concealment of the dead body which is 'corpus delicti' in the case. The police therefore with the object of making further investigation into the additional offence of which the accused-respondent was suspected to be guilty, moved the learned Magistrate for an order of his remand to police custody. The request was however turned down by the learned Magistrate by his order dated 28th January, 1967.

(2) An application was thereupon moved by the State through the Public Prosecutor for revision of the learned Magistrate's order with a prayer that the respondent be ordered to be remanded to police custody in the interest of justice. The prayer of the State had found favor with the learned Sessions Judge who has recommended that the order of the Magistrate dated 28th January, 1967 be set aside. The learned Sessions Judge has also directed by the same order that the Magistrate should order the accused-respondent to be brought to his Court and then to allow the police officer to formally arrest him. After the respondent is thus arrested he should be handed over to the police custody for a maximum period of 15 days as provided in section 167(2) Criminal Procedure Code The present reference is the result of the aforesaid recommendation and direction made by the learned Sessions Judge.

(3) An examination of the order of the learned Sessions Judge shows that the police had first applied to the learned Magistrate on 7th January, 1967 for an order that the respondent be called from Judicial lock-up and remanded to the police custody for 15 days. This was followed by another application on 27th January, 1967 wherein it was stated that the accused-respondent had previously been arrested in the course of investigation of an offence under section 364 Indian

Penal Code and had on the expiry of the period of remand been sent to the judicial lock-up. Thereafter a case under sections 302/201/34 Indian Penal Code had been made out against the accused-respondent and therefore it was prayed that the police be permitted to make a formal arrest of the accused in the Court room and thereafter he may be remanded to police custody for 15 days.

(4) Learned Magistrate's order on the first application made by the police was that the facts placed before him were not sufficient to enable him to accede to their request. As regards the second request made by the police, the learned Magistrate ordered that since the accused was already in judicial custody, the police could show the formal arrest while he was still in judicial custody in a symbolic manner without actually arresting him or taking him into custody. It is this order of the learned Magistrate which the learned Sessions Judge has recommended to be set aside with the additional direction mentioned above.

(5) Mr. K.C. Pandit learned Counsel for the State appearing in support of the reference has relied upon a Division Bench Judgment of Rajasthan High Court in State v. Sukh Singh, wherein it has been laid down that where an accused is kept in jail by orders of adjournment or remand under section 344 he can be handed over to the police in some other case for purposes of investigation.

(6) Learned counsel for the respondent has argued that this ruling has no application to the present case as according to that decision the accused could be handed over to the police only when he was required 'in some other case' and not 'in the same case'. He argued that the present proceedings against the accused do not relate to any other case; it is the same case which was originally registered by the police in respect of an offence under section 364 Indian Penal Code and is now under investigation in respect of an offence under sections 302/201/34 Indian Penal Code. There is therefore no new case. All that has happened is that there are different charges in the same case.

(7) I do not think it is permissible to draw the distinction that the learned counsel for the respondent seeks to do. The scheme embodied in the Code of Criminal Procedure with regard to the custody and detention of persons accused of cognizable offences appears to be this ; the first stage is detention of the accused

for a period of 24 hours ; during this period the police have absolute discretion to detain the person anywhere they like during investigation. If the investigation cannot be completed within 24 hours, the accused must be forwarded to the nearest Magistrate (See section 167(1)).

(8) The second stage consists of detention for a total period of 15 days ; the Magistrate to whom the accused has been forwarded by the police is authorized to order his detention in such custody as he thinks fit for a term not exceeding 15 days in all ; (See section 167(2)). The Code expects investigation to be completed within the period of 15 days, but sometime investigation must go on for more than 15 days for variety of reasons. There is therefore a third stage of investigation e.g. the state after 15 days. Merely because investigation cannot be completed within the period of 15 days, and it is frequently so in investigation of serious crimes like dacoity and murder, it does not follow that the arrested person must be released from custody after the expiry of 15 days regardless of the nature of the accusation or information against him and regardless of the quantity of evidence so far available against him. A provision has therefore been made for continuing the arrested person's detention after 15 days in suitable cases. This provision is to be found in section 344.

(9) It follows that section 344 is meant to be applied only in those cases where the investigation cannot be completed within 15 days and there is reasonable ground to believe that the accusation or information is true. The accused in such a case has to be remanded by the Magistrate for such time as he considers reasonable provided that no accused can be remanded to custody under this section for a term exceeding 15 days at a time.

(10) While the accused is in custody as a result of an order made by the Magistrate under section 344, he may be found to be implicated in another case or as a result of the investigation already carried on by the police and the evidence collected by them he may be found to be implicated in a more serious offence than the one for which he was originally arrested. The investigation in both the cases is an investigation into crime which the police alone are authorised to carry out. The Magistrate's function is only to enquire into and try the offence after the police

have completed their investigation and submitted a charge sheet against the accused. He cannot however hamper the police investigation by refusing to allow the police to perform their duties. The only object of restricting the power of the police to detain the accused in their custody to a total period of 15 days is to prevent the use of third degree methods by them. But when there is no such allegation there is no apparent reason why the police should not be able to obtain the custody of the accused in order that they may question him or obtain his assistance in investigation in some other lawful manner. I fail to understand why if an accused who is in magisterial custody in one case can be allowed to be remanded to police custody in another case then the same rule should not apply to the accused who is in magisterial custody and is sought to be turned over to police custody at a subsequent stage of investigation in the same case when the information discloses his complicity in more serious offences. On principle, I can see no difference at all between the two types of cases.

(11) Learned counsel for the respondent next argued that the Magistrate's power to remind an accused person to police custody is regulated by the provisions of section 167 Criminal Procedure Code only. That section requires that before the Magistrate can pass an order of remand the accused person must have been arrested by the police for the offence which is under investigation and forwarded to such Magistrate. In the present case the accused-respondent was forwarded to the Magistrate after he had been arrested by the police for an offence under section 364 Indian Penal Code. If he is therefore to be remanded to police custody once again he must be arrested for the offence under sections 302/201/34 LP.C. and this is not possible so long as the accused is already under detention in magisterial custody.

(12) I see no insuperable difficulty in the way of the police arresting the accused for the second time for the offence for which he is now wanted by them. The accused being already in magisterial custody it is open to the learned magistrate under section 167(2) to take the accused out of Jail or Judicial custody and hand him over to the police for the maximum period of 15 days provided in that section. All that he is required to do is to satisfy himself that a good case is made out for detaining the accused in police custody in connection with investigation of the

case. It may be that the offences for which the accused is now wanted by the police relate to the same case but these are altogether different offences and in a way therefore it is quite legitimate to say that it is a different case in which the complicity of the accused has been discovered and the police in order to complete their investigation of that case require that the accused should be associated with that investigation in some way.

(13) I therefore accept the reference and direct that the learned Magistrate should order the accused to be brought to the Court and to allow the police to formally arrest him. The accused may then be handed over to the police custody for the maximum period of 15 days as provided in section 167(2) Criminal Procedure Code.

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