

O.P. Mishra Vs. State

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Court : Delhi

Decided On : Oct-23-2002

Reported in : 2003CriLJ4017; 100(2002)DLT636; 2003(66)DRJ273

Judge : Dalveer Bhandari and; R.S. Sodhi, JJ.

Acts : [Constitution of India](#) - Article 226; [Code of Criminal Procedure \(CrPC\)](#) , [1973](#) - Sections 267 and 270

Appeal No. : Criminal Writ Petition No. 475 of 2002

Appellant : O.P. Mishra

Respondent : State

Advocate for Def. : Mukta Gupta, Adv.

Advocate for Pet/Ap. : Meena Choudhary Sharma, Adv

Disposition : Petition allowed

Judgement :

Dalveer Bhandari, J.

1. The Superintendent, Central Jail-3, Tihar, New Delhi has preferred this writ petition with the prayer to quash the orders dated 16.3.2002 and 15.4.2002 passed by the Chief Metropolitan Magistrate, Delhi.

2. Brief facts which are necessary to dispose of this petition are recapitulated as under:
3. It is incorporated in the petition that along with the several administrative duties of looking after the law and order of the under trials and convicts lodged in Tihar Jail, the petitioner has also been entrusted with the duty of producing the undertrials in the various Courts. It is submitted that the petitioner has been performing his duties with diligence and care for the last several years.
4. In the petition it is also mentioned that one Ajit Singh @ Babloo s/o Om Singh was an under-trial lodged in Tihar Jail. It may be pertinent to mention that the directions have been issued by the High Court of Punjab and Haryana in Criminal Misc. Petition No. 27680-M/2000 titled as 'Charanjit Singh and Balbir Singh' directing the Superintendent, Tihar Jail to send the under-trials in custody to the various Courts in Punjab and Haryana in pursuance to the production warrants received from their respective Courts. In view of the production warrants the petitioner had no option but to produce the under-trials in the concerned Courts. The under-trial Ajit Singh was directed to be produced in the Court of Additional Sessions Judge, Jhajar in a case emanating from FIR No. 165/2001 P.S. Sadar, Bahadurgarh, Haryana. After production of the under-trial prisoner the Court of the Additional Sessions Judge had directed that the under-trial Ajit Singh be detained in the Sonapat Jail and as such was handed over to Haryana Police by the Niyat Court of Mr. B.M. Rawat, learned Additional Sessions Judge, Jhajar, Haryana. Presently the under-trial Ajit Singh is lodged in Sonapat Jail of Haryana.
5. The under-trial Ajit Singh was not sent back to Tihar Jail despite repeated requests made on behalf of the petitioner to the learned Additional Sessions Judge, Jhajar and to the learned C.J.M. Sonapat.
6. The learned Chief Metropolitan Magistrate, Delhi issued a show-cause notice to the petitioner on 7.9.2001 directing the petitioner to explain why the under-trial Ajit Singh was not produced despite production warrants. In compliance of the said show-cause notice the petitioner filed replies with the request to give appropriate directions to the concerned Court which had detained the under-trial prisoner. The petitioner submitted complete Explanation and justification for non-production of

the under-trial Ajit Singh. The Court was not satisfied with the Explanationn and again issued fresh notices against the petitioner directing him to appear in person for explaining why the under-trial Ajit Singh was not produced before the learned C.M.M. on 8.3.2002. On 15.4.2002 the Court directed that despite execution of bailable warrants the petitioner was absent and the Court issued warrant of attachment in the sum of Rs.5,000/-against him to be executed by S.H.O.P.S.D.B.G. Road. At 2.22 p.m. the Court passed the order that the office has placed before him a fax message sent by D.G. (Prisons). The Court observed that it can't take note of any fax message.

7. The petitioner is aggrieved by the orders dated 16.3.2002 and 15.4.2002. This petition has been filed on the ground that the orders are vocative of the statutory provisions of various sections, namely Sections 267, 268, 269, 279 and 270, Cr.P.C. The said orders are also vocative of Articles 19 and 21 of the Constitution, it is also mentioned that the petitioner cannot overrule or sidetrack the judicial orders passed by the Court of competent jurisdiction. He has to abide by them. The petitioner can only make the request to the concerned Court for returning the under-trial for being produced in Delhi Court.

8. It is submitted that the learned C.M.M. wrongly and unjustifiably repeatedly asserted that the onus of getting the under-trial is solely on the Superintendent, Tihar Jail.

9. The learned Counsel for the petitioner submitted that the petitioner is bound to produce the tinder-trial lodged in Tihar Jail on receiving the judicial order passed by the Court. In the instant case the under-trial Ajit Singh is detained in the jail of Sonapat, Haryana, because of a judicial order he was directed to be detained in the Sonapat Jail. The petitioner had already made a number of requests in writing but despite that the concerned Court in Haryana has not sent the under-trial Ajit Singh to Tihar Jail. In these circumstances, the petitioner is totally helpless and cannot be held responsible for non-production of the under-trial Ajit Singh in the Court of C.M.M., Delhi.

10. Section 267 of the Code of Criminal Procedure deals with power to require attendance of prisoners. Section 267 reads as under:

'267. Power to require attendance of prisoners.-

(1) Wherever, in the course of an inquiry, trial or other proceeding under this Code, it appears to a Criminal Court,

(a) that a person confined or detained in a prison should be brought before the Court for answering to a charge of an offence, or for the purpose of any proceedings against him, or

(b) that it is necessary for the ends of justice to examine such person as witness.

The Court may make an order requiring the officer in charge of the prison, to produce such person before the Court for answering to the charge or for the purpose of such proceedings or as the case may be, or giving evidence.

(2) Where an order under Sub-section (1) is made by a Magistrate of the second class, it shall not be forwarded to, or acted upon by the officer in charge of the prison unless it is countersigned by the Chief Judicial Magistrate to whom such Magistrate is subordinate.

(3) Every order submitted for countersigning under Sub-section (2) shall be accompanied by a statement of the facts which, in the opinion of the Magistrate, render the order necessary, and the Chief Judicial Magistrate to whom it is submitted may, after considering such statement, decline to countersign the order.

11. Section 270 deals with prisoners to be produced in Court. The section reads as such:

'270. Prisoner to be brought to Court in custody.--Subject to the provisions of Section 269, the officer in charge of the prison shall, upon delivery of an order made under Sub-section (1) of Section 267 and duly countersigned, where necessary, under Sub-section (2) thereof, cause the person named in the order to be taken to the Court in which his attendance is required, so as to be present there at the time mentioned in the order, and shall cause him to be kept in custody in or near the Court until he has been examined or until the Court authorises him to be taken back to the prison in which he was confined or detained.'

12. According to both the aforesaid sections undoubtedly the Court has the power to pass an order requiring the Officer in charge of Prisons to produce such person before the Court for answering the charge for the purpose of such proceedings as the case may be for giving evidence and the Prison in charge is duty-bound to produce that person detained in Delhi. In the instant case the under-trial Ajit Singh because of the judicial order of the concerned Court in Haryana has been detained in Haryana Jail. Unless the under-trial Ajit Singh is sent back to Tihar Jail, the petitioner cannot produce him before the Delhi Court. This is not a case where there is dereliction of duty on the part of the petitioner or where the petitioner has been found guilty of non-compliance of the order of the Court deliberately. The petitioner is entirely helpless in the matter. The under-trial Ajit Singh was produced in the judicial proceeding in a competent Court in Haryana and the Court detained the under-trial Ajit Singh. Despite number of written requests from the petitioner, the Court did not send the under-trial Ajit Singh to Tihar Jail. The Court must properly appreciate and comprehend the circumstances because of which the petitioner is unable to comply with the Court's directions.

13. On consideration of the totality of facts and circumstances of this case, we have no hesitation in coming to the definite conclusion that the petitioner is not guilty of non-compliance of the orders passed by the learned C.M.M. No dereliction of duty can be attributed to the petitioner. The petitioner cannot produce the under-trial Ajit Singh until by the orders of the concerned Court in Haryana he is sent back to Tihar Jail. Consequently, the order dated 16.3.2002 passed by C.M.M., Delhi whereby the arrest warrants have been issued against the petitioner for non-production of under-trial Ajit Singh in case titled as 'State v. Ajit Singh' is set aside.

14. On the basis of same reasoning the order passed by the learned C.M.M., Delhi dated 15.4.2002 in the case titled as 'State v. Ajit Singh' is also set aside.

15. The writ petition is consequently allowed and disposed of.