

In Re: Kunjan Nadar

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Court : Kerala

Decided On : Sep-20-1954

Reported in : 1955CriLJ740

Judge : Koshi, C.J. and; T.K. Joseph, J.

Appellant : In Re: Kunjan Nadar

Judgement :

Koshi, C.J.

1. This is a petition 'for the issue of a writ of 'habeas corpus' or such other direction as is necessary in the interest of justice', filed by Sry. Rassammal Kunjan on behalf of her husband Sri. A. Kunjan Nadar, an Advocate of this Court and a member of the Travancore-Cochin Legislative Assembly. Sri. Kunjan Nadar, who will here-in-after be referred to as the prisoner, was arrested by the police at half-past one during the night between 11-8-1954 and 12-8-1954. The arrest was from his residence at Nagercoil. According to the petitioner, the arrest was without any legal justification and like-wise was the detention which followed it.

The petition was filed in the High Court, Erna-kulam on 23-8-1954 and after a preliminary hearing on 25th August a Division Bench (Koshi, C. J. and Kumara Pillai, J.) issued a 'writ nisi' directing the respondents to the petition to show cause why the petition should not be granted and the prisoner released from custody and also to cause his production before the Trivandrum Bench on 31-8-1954, the date

to which the petition was posted for hearing. Along with this were filed twelve like petitions (O. P. Nos. 90 and 94. to 104) on behalf of twelve other persons in police custody and 'writs nisi' in similar terms were issued in respect of those petitions also, posting all of them for hearing at Trivandrum on 31-8-1954. The persons on whose behalf these petitions are filed would seem to be prominent Travancore Tamil Nad Congress leaders.

2. The respondents to all the thirteen petitions are the same and they are : (i) The Inspector General of Police, Travancore-Ccchin State (ii) The District Magistrate, Trivandrum, and (iii). The State of Travancore-Cochln, represented by the Chief Secretary to Government, Trivandrum. The Division Bench which issued 'writs nisi' directed respondent 2, the District Magistrate of Trivandrum to cause the production in court by 11 a.m, on Monday, 30-8-1954 the relevant papers connected with the arrest and detention of the thirteen persons on whose behalf the writ applications were filed.

This order was duly complied with and through counter-affidavits filed by Police Officers who effected the arrest of the prisoners and the Magistrates, pursuant to whose orders they have been detained in custody, the respondents caused it to be certified to the Court what according to them was the true cause of the detention. The petitions came up before us for hearing on the date fixed and the arguments lasted three full days, 31st August and 2nd and 3rd September 1954. At the conclusion of the hearing we reserved orders and posted the thirteen petitions to this date for disposal.

Sri T. N. Subramonia Iyer, represented the petitioners in all the cases and Sri. Mathew Muricken, the Advocate General for the State, represented the respondents. The grounds for release urged before us on behalf of the thirteen prisoners were substantially the same and as this was treated as the main case we propose to deliver the leading order in this petition. A copy of this order will be appended to the order in each case.

3. The petitioner's affidavit in support of the petition broadly states that the prisoner was arrested without any warrant, that he had not committed any offence, that otherwise also there was no cause for the arrest, that after the arrest he was not

produced before any Magistrate and that the arrest and detention were illegal. Indeed the affidavit is remarkable for its omissions than what it contains.

The counter-affidavits filed on behalf of the respondents on the other hand show that the arrest was in connection with the prisoner's alleged participation in two occurrences, involving commission of several cognisable and non-bailable offences, forming part of a series of acts of lawlessness committed on 11-8-1954, called the 'Travancore Tamil Nad Deliverance Day', that the two occurrences mentioned were registered as crime Nos. 99 of 1954 and 100 of 1954 of the Vilavancode Police Station, that those 'crimes' have since been registered as P. E. No. 9 of 1954 and P. E. No. 10 of 1954 of the Kuzhithura Stationary First Class Magistrate's Court, that the prisoner was the dictator of the Travancore Tamil Nad Congress Committee and that he is accused No. 1 in both the cases.

The counter-affidavits also show that within twenty-four hours of his arrest the prisoner was produced before the Kuzhithura Stationary First Class Magistrate, that he was remanded to police custody first, for ten days, then for five days and that on the expiration of the period of the second remand the police laid their charge-sheets in the two cases and that thereafter he has been kept in custody as an under-trial prisoner as per the orders of the Magistrate mentioned above, who on the filing of the police charge-sheets took cognisance of the two cases. The papers produced bear out these facts.

Mr. T. N. Subramonia Iyer took a number of objections to the legality of the arrest and the validity of the detention, both before and after the police charge-sheets were filed. In the view we take, that the governing consideration to be kept before us in disposing of this petition is the legality or otherwise of the detention at the time when the respondents certified to this Court that the detention was pursuant to the magisterial order remanding the prisoner to custody as an under-trial prisoner we consider it absolutely irrelevant to consider whether the arrest or the detention up to the point of the said order was valid or not. If the arrest or the detention till the Magistrate remanded the prisoner to custody as an under-trial is irregular or illegal, the petitioner may have his remedies against the persons responsible for those acts. We are concerned here with the validity of the

detention at the time of the return.

4. Before referring to the law on the point it is convenient to refer to certain aspects of the case which the learned Advocate General brought to our notice. The prisoner was before us in court for three full days. Though the petitioner's affidavit shows that the prisoner was never produced before the Magistrate after his arrest and that he was reported to have been man-handled, the prisoner did not seek to file an affidavit of his own supporting his wife's affidavit.

On the other hand, we find from the records that on 13-8-1954 the prisoner had moved for bail through two legal advisers. The bail application signed by the prisoner contained no averment that the arrest was illegal or that the prisoner was not produced before a Magistrate after his arrest or that he was subjected to any physical violence. While protesting his innocence, the application went on to say that at the trial he was confident of establishing his innocence and that pending trial he may be released on bail by the court on such terms as the court may deem proper. This bail application was rejected by the Magistrate on 20-8-1954. No attempt was made to take the matter before a higher tribunal.

The learned Advocate General's point was that, had the facts about the bail application and its rejection been brought to the notice of the Court when the present petition was moved, in all probability, no 'writ nisi' would have been issued at all. Further, it was urged that because of suppression of material facts in the affidavit supporting the motion the court should discharge the 'writ nisi' on that sole ground without going into the merits of the case.

We cannot for a moment accept the explanation of the petitioner's learned Counsel that the prisoner's wife moved the court for the writ on such information as was available to her. The records show that with the court's permission free interviews with the prisoner have been allowed for his relations and friends. To say that the wife did not know the proceedings in court since her husband's arrest or of the several interviews is to say the least, something which we cannot accept.

The Advocate General invited our attention to the case in - 'Rex v. Kensington Income-tax Commissioner; Ex parte De Polignac' (1917) 1 KB 486 (A), and the

long line of Indian case-law following it that the suppression of material facts from Court would disentitle a party to be heard on the merits of a writ application. We do not, however, seek to apply the rule underlying those decisions to the present case. The considerations which this Court has to keep in view for the application for the issue of a writ in the nature of 'habeas corpus' or other directions or orders are entirely different from those which a committing Magistrate or a Sessions Judge has to consider in a bail application by a person accused of the commission of non-bailable offences.

With the example of the Supreme Court decision in - 'Ram Narayan Singh v. State of Delhi' : 1953 CriLJ113 , this Court charged With the responsibility of safeguarding the liberty of the citizens of the State will be failing in its duty if it were to decline to examine the validity of a detention on the ground that the person concerned can seek relief by means of a bail application. The two reliefs are entirely different and even though bail was moved for a person, it may on scrutiny turn out that the detention is illegal. Writ cannot be refused on the ground that bail petition or its rejection would serve as estoppel.

In this context we consider it apposite to refer to certain passages from Halsbury's Laws of England (Hailsham Edition) Vol. IX, as to the law applicable to a petition of the present kind by or on behalf of a person in custody under process for criminal or supposed criminal causes. In para 1201 (page 702) the learned author states :

Where the detention of an individual is under process for criminal or supposed criminal causes the jurisdiction of the court and the regularity of the commitment may be inquired into.

In para 1214 (page 713) it is stated :

In modern practice the purposes to which the writ ('habeas corpus') is most frequently applied for (1) the testing of the regularity of commitments, and... and (2)....

Again, para 1215 (page 714) stated :

A person who is in custody under a warrant or order of commitment may test the validity of the warrant or order under which he is detained by means of the writ of 'habeas corpus', as for instance....Upon the return to a writ of 'habeas corpus' in a case of alleged irregularity in the commitment the court exercises its jurisdiction as follows : If it appears clearly that the act for which the party is committed is no crime, or that it is a crime, but he is committed for it by a person who has no jurisdiction, the court discharges him. If it is doubtful whether the act is a crime or not or whether the party be committed by a competent jurisdiction, or if it appears to be a crime, but a bailable one, the Court bails him. If the offence is not a bailable one and the prisoner is committed by a competent jurisdiction, the Court remands or commits him.

The allegations in the petitioner's affidavit being what they are we have necessarily to examine the question of the validity of the detention.

5. A further point taken by the Advocate General was that the common law privilege of a third party moving for a 'habeas corpus' writ to release a person in custody can under the rules framed by this Court be exercised by a third party only when the person in detention is unable owing to the restraint to make the application himself and that in this case or its companion cases there was no such restraint at all.

The fact that on 13-8-1954 the prisoner was able to make his application for bail shows as a matter of fact that there was no impediment in the prisoner, if so advised, making this motion himself. The rule referred to has further enjoined that when a third party makes the motion the affidavit shall state the reason why the person restrained is unable to make the affidavit himself. The affidavits filed in the present case and its companion cases no doubt contain an averment that the restraint of the police prevented the prisoners from making the motion themselves. The facts of the case belie the said averment and the affidavits on the face of them show the averment was made as an after-thought. The point is really substantial. We do not, however, seek to dispose of the petition on this narrow ground.

6. We shall now examine as to which date is the crucial one for the purpose of a 'habeas corpus' application. In para 1204 of Vol. IX of Halsbury (page 705) it is

seen stated that the writ is inapplicable if the illegal detention has ceased before the application for the writ is made. The Supreme Court had to pronounce upon the question in more than one reported decision and in expressing their opinion their Lordships followed the view of a full court of the Federal Court of India reported in - 'Basanta Chandra v. Emperor' AIR 1945 FC 18 (C). Sir Patrick Spens C. J. who pronounced the judgment of the court in that case said :

The analogy of civil proceedings in which the rights of parties have ordinarily to be ascertained as on the date of the institution of the proceedings cannot be invoked here. If at any time before the Court directs the release of the detenu, a valid order directing his detention is produced, the Court cannot direct his release merely on the ground that at some prior stage there was no valid cause for detention. The question is not whether the later order validates the earlier detention but whether in the face of the later valid order the court can direct the release of the petitioner.

In 'Naranjan Singh v. State of Punjab (I) AIR 1952 SC 108 (D), a Constitution Bench of the Supreme Court followed this expression of opinion by the Federal Court. At page 108 of the report Patanjali Sastri, C. J. said :

If at any time before the Court directs the release of the detenu, a valid order directing his detention is produced, the Court cannot) direct his release merely on the ground that at some prior stage there was no valid cause for detention. The question is not whether the later order validates the earlier detention but whether in the face of the later valid order the Court can direct the release of the petitioner. The learned Judges point out that the analogy of civil proceedings in which the rights of parties have ordinarily to be described as on the date of the institution of the proceedings has no application to proceedings in the nature of 'habeas corpus' where the court is concerned solely with the question whether the applicant is being lawfully detained or not.

Again in the next paragraph of the Judgment the learned Chief Justice observed :

Once it is conceded that in 'habeas corpus' proceedings the Court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the date of the institution of the proceeding, it is difficult to hold,

in the absence of proof of bad faith, that the detaining authority cannot supersede an earlier order of detention challenged as illegal and make a fresh order wherever possible which is free from defects and duly complies with the requirements of the law in that behalf.

These cases arose out of preventive detention orders. The question from the second case makes it clear the rule observed in 'habeas corpus' petitions was being imported or extended to preventive detention cases as well.

The next case we desire to cite in this connection has already been referred to in this judgment AIR 1953 SC 277 (B). In that case, an application for a writ of 'habeas corpus' was made to the Supreme Court by one Ram Narayan Singh on behalf of Dr. Shyama Prasad Mukerjee, Shri N. C. Chatterjee, Pandit Nandlal Sharma and Pandit Guru Butt who were being prosecuted for an alleged defiance of an order prohibiting meetings and processions in a notified area, an offence punishable Under Section 188, I. P. C. and were In detention pursuant to a magisterial order Under Section 344, Criminal P. C. In granting the writ, Fatanjali Sastri C. J. said :

It has been held by this Court that in 'habeas corpus' proceedings the Court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the institution of the proceedings. The material date on the facts of this case is 10th March, when the affidavit on behalf of the Government was filed justifying the detention as a lawful one. But the position, as we have stated, is that on that date there was no order remanding the four persons to custody. this Court has often reiterated before that those who feel called upon to deprive other persons of their personal liberty in the discharge of what they conceive to be their duty, must strictly and scrupulously observe the forms and rules of the law. That has not been done in this case. The petitioners now before us are, therefore, entitled to be released, and they are set at liberty forthwith.

It is on the authority of these decisions that we said earlier that it was unnecessary for the purpose of this case to examine whether the detention prior to the order under which he was in custody on 31-8-1954 or the arrest which led to it, was valid

or not. We also said that, the allegations in the petitioner's affidavit being what they are, we have to examine whether the order alleged to be in force on 31-8-1954 detaining the-prisoner in custody is valid.

7. Ere we enter into the facts of this application, reference may be made to a decision of the Allahabad High Court reported in the current part of the All India Reporter as - 'Harihara-uand v. Jailor in charge, District Jail, Banares' : AIR1954 All601 . That case arose out of a prosecution of 26 persons for the alleged violation of the U. P. Removal of Social Disabilities Act, 14 of 1947. Though the Magistrate was prepared to release the accused persons on bail, they declining to other bail moved the High Court for a writ of 'habeas corpus'. The arrest and the initial remand to custody were found to be invalid and the petitioners were released.

The Division Bench, however, pointed out that, though the trial had commenced, no post-trial order of detention was mentioned in the return or produced in court. The court was invited by the counsel for the State to presume that the-detention after the commencement of the trial was by virtue of an order of the trying Magistrate for such detention. This was not acceded to. The court said that it was incumbent on the opposite party to disclose the authority on which the persons concerned were detained in custody in the return to a 'writ nisi' by the court. The judgment is clear that the petition would not have-succeeded, had the subsequent detention order been relied upon in the return and the court-found it to be valid. This case gives emphasis to the view point we repeatedly invited counsel on. either side to concentrate upon in this batch of cases.

8. The prisoner's arrest, it is common ground, was during the small hours of the morning of 12-8-1954. The first remand report was made on, the evening of 13th and the Stationary First Class Magistrate of Kuzhithura remanded the-prisoner to police custody for ten days commencing from the date of his arrest i.e., till 21-8-1954. On that date further remand for police custody was asked for and granted till 26-8-1954. On the latter date the police filed their chargesheet in Crime Nos. 99 and 100 and in both, the prisoner is challenged as accused No. 1.

The court registered a case P. E. No. 9 against the 161 accused persons mentioned in the charge-sheet for alleged commission of offences punishable Under Sections 120B, 148, 149, 332, 426, 427, 451, 380, 447, 435, 307, 395, 431, 114, I.P.C., and Sections 31 (1) (a) and 5, Public Safety Measures Act (Act 5-of 1950) read with Section 2 Clause XVII (c) of that; Act and Under Section 25, Indian Telegraph Act (Act 13 of 1885). Undoubtedly some of the offences levelled against the accused persons are non-bailable and the court issued detention order against the persons who were already in custody including, of course, the prisoner-accused 1 is the case. Arrest warrants were directed to be-issued to the accused persons who were not apprehended till then.

The charge-sheet in the other crime-Crime No. 100 was registered as P. E. No. 10 and the offences concerned are Under Sections 148, 149, 447, 426, 454, 332, 461, 380, 435, 307, 395, 114, 431, 109, IPC and Sections 31 (1) (a) and 5, Public Safety Measures Act (Act 5 of 1950) read with Section 2 Clause XVII (c) of the said Act. Here also a like order as in P. E. 9 was passed detaining the prisoners before court to custody and directing arrest warrants for the accused persons still not apprehended. Both the cases were adjourned to 4-9-1954. Pursuant to the order for detention passed in the two cases, the court issued what is called 'trial-warrant' entrusting the accused persons in custody to the charge of the Sub-Inspector of Police, Vila-vancode Police Station for safe custody and production before the court on the date of hearing, viz., 4-9-1954. It is the legality of the detention against the prisoner in P. E. Nos. 9 and 10 and the validity of the warrant committing him to the custody of the Inspector of Police, Vilavan-code, that we have to be satisfied about in disposing of this petition.

9. Mr. T. N. Subramonia Iyer sought to impugn the detention orders above referred to and the warrant of committal on various grounds. They are: (i) there was nothing to show that before the detention orders were made and the warrant of committal issued the Magistrate had taken cognisance of the case against the prisoner; (ii) the charge-sheets purport to be only interim ones and not final reports as contemplated by Section 173, Criminal P. C; (iii) that the Stationary First Class Magistrate of Kuzhithura, not being a Sub-Divisional Magistrate, had to forward a copy of his detention order to the District Magistrate and for its absence the

remand was both irregular and illegal; (iv) the order for remand was bad as no reasons for the remand were set out therein and (v) the committal on 26-8-1954 had been, like the previous committals, to police custody and was bad as after the charge-sheet, committal ought to be to judicial custody. We have examined these points carefully and feel constrained to observe that there is no substance in them.

10. As for point (1) no formal action or set formula is needed for a criminal court to take cognisance of commission of offences which that court is empowered to take cognisance of. For our present purpose we need only to note that Clause (b) of Section 190(1), Criminal P. C, authorises Magistrates mentioned in Clause (1) to take cognisance of any offence upon a report in writing of such facts made by any Police Officer. The charge-sheets in Crime Nos. 99 and 100 are such reports made by competent Police Officers before the First Class Magistrate, Kuzhithura, within whose jurisdiction the offences mentioned in them were alleged to have been committed.

It was not disputed before us that the Stationary First Class Magistrate of Kuzhithura was not competent to take cognisance of the offences set forth in the two charge-sheets. In the face of the provisions of Section 36 read with Sen. XII, Criminal P. C, such a contention, if raised, would not bear argument for a moment. The only point sought to be made out was that he had not taken cognisance of the offences. In his-own hand he has stated under what sections he registered the two cases and ordered arrest warrants to the accused persons who were not before the court. Besides, he passed orders to detain those who were in custody and adjourned the-case for hearing to 4-9-1954. We are unable to-appreciate in what respects the learned Magistrate-failed to comply with the requirements of Section 173-or Section 190, Criminal P. C. The petitioner's argument on this point was based on these two sections.

11. The second point that the charge-sheets filed are only interim charge-sheets and not final reports is entitled to no weight in the light of the decision of the Supreme Court In - 'Tara Singh v. The State' AIR 1951 SO 441 (P).

12. The third point that in respect of the orders for detention passed on the two charge-sheets the Stationary First Class Magistrate of Kuzhithura should have

forwarded copies of his orders to the District Magistrate is not supported by the provisions in Section 344 under which the said orders were made. During the investigation stage and before a final report is filed, Section 167(4) requires that when a detention is made under Clause (2) or Clause (3) by a Magistrate other than the District Magistrate or Sub-Divisional Magistrate he shall forward a copy of his order, with his reasons for asking it to the Magistrate to whom he is immediately subordinate.

Copies of the remand orders passed by the Stationary First Class Magistrate, Kuzhithura, during the investigation stages of these two cases have as a matter of fact been forwarded to the District Magistrate, Trivandrum. The latter has as per our direction produced all such copies in; court. A provision similar to Section 167(4) does not find a place in Section 344. Clause 2 of the latter section enacts

Every order made under this section by a court other than a High Court shall be in writing, signed by the presiding Judge or Magistrate.

There is no warrant for the argument that when a Magistrate other than the District Magistrate or Sub-Divisional Magistrate remands an accused person in custody by a warrant issued under Si 344, the provisions in Section 167(4) should be complied with. There is, therefore, no substance in this point also.

13. The next point is also based on a mis-conception. Section 344(1) is in these terms;

If, from the absence of a witness, or any other' reasonable cause, it becomes necessary or advisable to postpone the commencement of or adjourn any inquiry or trial, the court may, if it thinks fit, by order in writing, stating the reasons therefor, from time to time, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in. custody.

There is a proviso added to the above, but that is irrelevant for our present purpose. The reasons to be stated as per the above provision are the reasons for the adjournment of the case and not the reasons for the remand, When a

person charged with the commission of a non-bailable offence is produced before the court unless he is admitted to bail the court remands him to custody. This is done as a matter of course and is the only way to make him available for trial. The orders passed on 26-8-1954 on the two charge-sheets contained on the face of them the reasons for the adjournment of the cases, viz., that a large number of accused persons were yet to be apprehended.

14. During the final stages of the argument Mr. Subramonia Iyer laid all the emphasis he could command on the fifth and the last of the points catalogued above. The point was that the Magistrate sent the accused persons (including the prisoner) back to the custody of the police and not to his own or other judicial custody. This we are afraid is a distortion of the true facts of the case. Unlike the remand reports made from time to time before charge-sheets were filed, the charge-sheets did not ask the Magistrate to authorise the detention of the accused persons brought before the court to the custody of the police.

Once what purported to be final reports under Section 173 were filed, there was no purpose in, or any warrant for, keeping the accused persons arrested before that in police custody. In Section 344 'remand' means remand to custody in a Magisterial lock-up or Jail during a postponement or adjournment of an inquiry or trial. The accused persons in custody were produced in court when the two charge-sheets were presented to the court and the Magistrate, among other things, ordered in the one case 'detention order issued' (P. E. 9) and in the other (P. E. 10) 'detention order to the accused produced.'

The several remand orders were quite unlike these two orders as they specifically mentioned that the accused persons were committed to the custody of the police for specified periods. The detention orders are followed by warrants which show that the Sub-Inspector concerned is asked to take charge of named accused persons on behalf of the court and to produce them on the date of the hearing (4-9-1954). This is in terms of Section 344(1) and the proviso thereto. The proviso can be quoted here:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days.

The fact that the Sub-Inspector had to keep the persons in the police lock-up does not change the character of the remand or the nature of the detention. Remand since 26-8-1954 has been to judicial custody.

The fact that some Districts or Taluk centres in Travancore area have no separate sub-jails and under-trial prisoners in such places are kept in police stations has given a handle to the petitioner's counsel for contending that even after the charge-sheets were filed the prisoner continued to be in the police custody.

15. Section 418, Criminal P. C, Act 5 of 1067 (Travancore) a provision which corresponds to Section 453, Criminal P. C, Act 8 of 1117 (Travancore), and Section 541 of the present Code (Act 5 of 1898) enacted:

Unless when otherwise provided by any law then the time being in force, our Government may direct in what place any prisoner liable to be imprisoned or committed to custody under this Code shall be confined.

Rule 1 (a) of the rules promulgated by the Government of Travancore on 20th Kumbham 1113/ 7th March 1935 Under Section 59 of the Prison's Act (Act I of 1071) provides :

Rule 1. (a) 'Subsidiary Jails shall be the ordinary place of confinement of persons committed to custody pending trial or preliminary investigation before a Magistrate.'

(b)....

(c)....

(d)....

(e)....

And Rule 2(e) states :

In stations where there is no subsidiary jails, prisoners of the classes mentioned in clauses (a) to (e) of Rule (1) shall be confined in the Police lock-up.' (Acts and

Proclamations of Travancore - Vol. X - Appendix page 221).

Admittedly there is no subsidiary jail in Kuzhi-thura or any other place within the jurisdiction of the Stationary First Class Magistrate of that place. Nor is there one in any place within the jurisdiction of the Sub-Divisional Magistrate of Padmanabhapuram, who remanded to custody some of the prisoners in the companion cases.

We have not been referred to, nor are we ourselves aware of, any law in force in Travancor providing places for detention of under-trial prisoners within the territorial limits of the jurisdiction of the two Magistrates referred to now, than these contained in these rules. Rules issued under Criminal Procedure Code (Act 5 of 1067) under date 12-11-1925 published in Volume VI of Acts and Proclamations of Travancore-Appendix pages 1311 and 1312 and the notification amending the said rules published in page 835 of Part II of Volume XIII of the Acts and Proclamations of Travancore may be usefully referred to here.

Rule 1 of the former set of rules reads:

The local Magistrate shall be primarily responsible for the well-being of remanded and short-term convicted prisoners confined in Police stations.

Rule 1 of the amended rule is as follows:

The local stipendiary Magistrate of the lowest class shall be primarily responsible for the well-being of remanded and short-term convicted prisoners confined in Police stations: Provided however that in respect of under-trial prisoners who are involved in cases before the Sessions Court, the Sessions Judge concerned shall be so responsible.

It is indisputable that in many places in Travancore area there are no separate places for the detention of under-trial prisoners and that they are all as a matter of fact kept in judicial custody in police stations. The position is no doubt unsatisfactory and we hope Government will soon make the necessary provision for suitable places for the detention of under-trial prisoners. The Code of Criminal Procedure gives Government the right to direct in what place under-trial prisoners

shall be confined and the provisions we have referred to above would appear to be the only 'directions' now in force. In the circumstances the argument under this head has also to be negatived.

16. The position, we reach is that there is no reason whatever to hold that the detention of the prisoner since 26-8-1954 has been in any sense illegal or irregular. The Magistrate had jurisdiction to direct his detention at the police station committed to the charge of, the Sub-Inspector. The order in that behalf has been made in due compliance with the provisions of law in force.

17. The only remedy open to the prisoner is, therefore, to move for bail before the appropriate Court. Para 7 of the Judgment of Wanchoo, J. now Chief Justice of Rajasthan) in - 'Mool Chand v. Emperor' AIR 1948 All 281 (G), may usefully be quoted here:

The applicants before me may be divided into three groups. The first group consists of Mool Chand, Data Ram and Ram Chand who are being prosecuted for certain offences under the penal law. They were on remand after their arrest and a charge-sheet has been submitted against them. So far, therefore, as these three persons are concerned, their remedy is to apply for bail to the appropriate Court. Their application Under Section 491 Criminal P. C, must, therefore, be dismissed on this ground alone.

Substantially to the same effect is the decision in - 'Kashi Ram v. Emperor' AIR 1929 Lah 522 (H). That after the primary Court refused to admit the prisoner to bail nothing further was done with reference to bail cannot make the rule of that decision inapplicable to the present case. We wonder why the prisoner's wife took this ill-advised step of moving for writ in the nature of 'habeas corpus'.

18. The petition and the affidavit supporting it have been couched in such terms as to make it incumbent upon us to examine the question of the validity of the detention. Allegations made in the affidavit have no foundation on facts; they are all figments of some imaginative or inventive brain. So is the case in all the companion petitions.

19. The 'writ nisi' is discharged and the petition is dismissed. The prisoner will be sent back to the custody of the Kuzhithura Stationary First Class Magistrate. Order accordingly.

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