

Manohari Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Dec-21-1982

Reported in : 1983CriLJ1231

Judge : N.M. Kasliwal and; S.N. Bhargava, JJ.

Appellant : Manohari

Respondent : State of Rajasthan

Judgement :

Kasliwal, J.

1. The petitioner. Manohari, was arrested in a case. F.I.R. No. 48/82. lodged under Sections 395. 396 and 397, I.P.C. He was arrested by the police on April 30, 1982, and at present he is lodged in sub-jail, Bandikui. The petitioner submitted a bail application on June 29, 1982. which came up for consideration before G. M. Lodha, J. Lodha. J. considered that important questions were canvassed before him which had wide repercussions in various cases and as such he considered it necessary that there must be authoritative pronouncement on those questions and thus referred the case to Hon'ble the Chief Justice for constituting a larger Bench. By order- of the Chief Justice the matter has now been placed before the Division Bench. Learned Single Judge in his order, dated Sept. 17, 1982, has mentioned the following four questions to be considered as important questions of law argued before him:

1. Whether the remand granted in the absence of the accused can be valid?
2. Whether in the absence of a valid order for remand of the accused to jail. only an order for production of the accused on the next date can be treated as valid remand?
3. Whether any previous illegality in granting remand can make the present detention of the accused illegal even though thereafter a valid remand has been granted,
4. Whether on account of some illegality in graph of the earlier remand, the accused is entitled to be released on bail, even though at the time of giving the decision, a valid order of remand exists.

2. Before dealing with the legal aspect of the matter, we would like to mention the facts of the case and the controversy raised by the petitioner on that basis. According to the petitioner he was required to be produced in the court of Additional Munsiff and Judicial Magistrate, Bandikui for remand on June 18, 1982. The accused-petitioner was neither produced on June 12, 1982, nor on June 18, 1982 and no remand order had been given to sub-jail. Bandikui for his detention after June 18. 1982, ' Order-sheet, dt. June 18, 1982. of the Addl. Munsiff and Judicial Magistrate. Bandikui has been brought to our notice in which it is mentioned that none of the accused persons were present on that date. A report had come from the jail that the accused persons had been sent to the court, of Additional District & Sessions Judge Dausa for hearing of the bail application and the case was ordered to be listed on June 29, 1982. Learned Public Prosecutor has placed before us two documents in order to show that proper order of remand has been passed against, the petitioner to keep him in custody in sub-jail. Bandikui, One document is an order of remand to jail. dt. May 14. 1982. It is addressed to the jailor, sub-jail. Bandikui and contains the following recital:

(Matter in Hindi omitted.Ed.)

(for convenience sake we have marked this document as 'X'). The above document clearly shows that the accused was taken in custody in F.I.R. No. 48/82

under Sections 395. 396 and 397. I.P.C. Finally the remand was given from May 14. 1982 to May 2L 1982. The same document then, contains endorsement for extending the period of remand from time to time. It was first extended from May 21, 1982 to May 29, 1982. It. appears that the accused was also required in some case by the S.H.O.. police station. Bharatpur and as such he had requested for granting police custody remand of the accused. There is an endorsement on the back of this document, dated May 24, 1982, that on the request of S.H.O., police, station, Bharatpur the accused was given in the custody of the S.H.O., police station, Bharatpur till May 29. 1982. On May 29, 1982. it. appears that the accused still remained in the custody of the S.H.O.. Bharatpur and as such May 31, 1982 was given for producing the accused, it was again adjourned to June 10. 1982. on the same ground. Similarly the matter was adjourned to June 18, 1982, for producing the accused and then on the back of this document there is an endorsement, dated June 29, 1982, that the accused be produced on July 12, 1982. This document does not contain any order dt. June 18, 1982 and after June 10, 1982, there is an endorsement of June 29. 1982. However, there is another document which for convenience sake is marked as 'Y' Document 'Y' is an application, dt. June 18, 1982 in which the jailor. sub-jail, Bandikui had sent judicial custody warrants of four accused persons including that of the petitioner, Manohari, for further' directions. On this warrant, on June 17. 1982, it has been mentioned that Manohari had been sent to the Court of Additional District & Sessions Judge, Dausa for hearing. In view of the fact that all the four warrants had been sent to the Court of Additional District & Sessions Judge, Dausa it was prayed that future date may be given for producing the accused persons after receipt of warrants. There is a clear endorsement, dt. June 18, 1982, on the back of this document 'Y' that the accused persons be produced on June 29. 1982. after the receipt, of the warrants. As already mentioned above in document marked 'X' the time was extended from June 29, 1982 to July 12, 1982. Then on the back of the document marked 'X' the period has been extended from July 12. 1982 to July 27. 1982. Then from July 27, 1982 to August 5, 1982 and from August 5. 1982 to August 16, 1982, and from August 16. 1982 to August 28. 1982. We have called the file of bail application filed by the accused under Section 439, Cr. P.C. before the learned Additional District & Sessions Judge. Dausa. The record of file No.

351/82, Manohari v. State, under Section 439, Cr. P.C. has been produced. In this file on June 18, 1982, it has been mentioned that nobody was present. Warrant of the accused was produced from sub-jail. Bandikui which was directed to be returned and it was ordered by the Additional Sessions Judge that the accused may now be produced before the Sessions Judge on June 28. 1982. The case was then adjourned on June 28. 1982 to June 30. 1982. On 'that date also the in charge, sub-jail, Bandikui had brought the warrants. On June 30. 1982. arguments were heard on the bail application. Learned Sessions Judge examined the jail warrants and observed that there was no illegality in the warrants and as such dismissed the application filed by the accused and returned the jail warrants. Thus a perusal of documents marked 'X' and 'Y' cumulatively goes to show that there was no break in the orders of remand and right from May 14. 1982. orders were passed extending the period up to August 28, 1982.

3. A perusal of the record of the Court of Addl. Munsiff and Judicial Magistrate, Bandikui shows that on May 21, 1982, learned Magistrate had remanded the accused up to May 29. 1982, for judicial custody. In between that on May 24. 1982, an application was moved by the S.H.O.. Bharatpur to give the custody of the accused-petitioner as he was wanted in F.I.R. No. 189/81, police station, Sewar under Sections 395 and 397. I.P.C. for investigation purposes. The accused was thus handed over to the S.H.O., Bharatpur for investigation of the above case. From there on May 29, 1982, the accused was produced in the Court- of the Magistrate at Bharatpur and from there the S.H.O., Roopbas took over the accused for investigation in case F.I.R. No. 187/81 under Ss, 395 and 397, I.P.C. registered at P. S. Roopbas. The S. H. O., Roopbas had in these circumstances, obtained remand orders from the Court of Addl. Munsiff and Judicial Magistrate, Bayana up to June 12. 1982, and the Judicial Magistrate, Bavana ordered vide his order, dt. June 12, 1982. that the accused be sent to sub-jail. Bandikui from where he was taken by the police. In accordance with the said order the accused was sent to Bandikui sub-jail on June 12, 1982. As already mentioned above, the learned Addl, Munsiff and Judicial Magistrate. Bandikui had already extended period of remand from June 10, 1982 to June 18, 1982, vide document 'X'. On June 18. 1982. the warrants had been sent to the Court of the Additional District & Sessions Judge, Dausa as his bail application was listed in that Court for hearing.

On June 18. 1982, the case was adjourned to June 29, 1982 on which date the presence of accused Manohari is recorded in the order sheet, Dt. June 29, 1982 and the case was, adjourned to July 12, 1982. for filing of the challan. Thereafter on all the dates July 12. 1982. July 27. 1982. August 5, 1982, August 16. 1982, August 28. 1982 and Sept. 6, 1982, the accused Manohari was present in the Court of the Additional Munsiff and Judicial Magistrate. Bandikui. On Sept. 6, 1982. the case file was ordered to be sent to the Court of the Additional Sessions Judge, Dausa as the case had been committed to that Court and the accused persons were directed to be presented in the Court of the Additional Sessions Judge, Dausa on Sept. 17, 1982. A perusal of the entire record clearly shows that remand orders were passed from time to time.

4. Now we shall deal with the legal; objections raised by the learned Counsel) for the applicant. First point raised is that the remand was granted in the absence of the accused and as such orders of remand passed in the absence: of the accused were invalid. The point! is concluded by the Supreme Court, in Sandip Kumar Dey v. Officer-in-charge Sakchi P.S. Jamshedpur : 1974 CriLJ740 in which it has been observed as under (Para 3):

This issue is no longer res integra. In ttaj Narain v. Supdt. Central Jail. New Delhi : 1971 CriLJ244 this court held by a majority of five to two that, even if it be desirable for the Magistrates to have the prisoner produced before them when the prisoners are remitted to further custody an order of remand made without producing the accused in court is not invalid as it may on occasions be necessary to order remand in the absence of an accused. This decision was followed in Gouri Shankar v. State of Bihar. : 1972 CriLJ505 and in M. Samba-siva Rao v. Union of India AIR 1973 SC 850 : 1973 Cri LJ 663.' In the case before us the accused was taken in the custody by the S. H. O.. Bharatpur for investigation in case F.I.R. No. 189/81 and subsequently by the S. H, O., Roopbas for investigation in case F, I. R. No. 187/81. In these circumstances the production of the accused personally before the learned Addl. Munsiff and Judicial Magistrate, Bandikui was not possible and the remand orders passed in the absence of the accused were quite proper and justified. As regards June 18. 1982. as the warrants were called by the Additional Sessions Judge, Dausa as such the remand orders were passed behind

the back of the accused on June 18. 1982, and subsequently from June 29. 1982 the accused was physically present, on all the dates. This answers the first question referred by the learned single Judge.

5. Next question is whether in the absence of a valid order for production of the accused on the next date can be treated as valid remand? The document 'X' is an order of remand to jail passed by the Addl. Munsiff and Judicial Magistrate, Bandikui addressed to the Jailor. Subsequent orders are also on the same document in which, of course, it has been mentioned to produce the accused on the next date. These orders are not the orders of the court, file. A perusal of the Court, file shows that reasons have been recorded and the orders of remand have been passed from time to time. In these circumstances if the endorsement on documents 'X' and 'Y' if read alone with the order-sheets, it would be clear that there is no illegality if on the jail warrants, only dates are given for producing the accused, It cannot be denied that the remand orders cannot be passed mechanically and the Magistrate passing an order of remand ought, as far as possible, to see that the prisoner is produced before the Court when the remand order is passed. It would however, depend upon the facts} and circumstances of each individual; case whether physical presence of the] accused was necessary and further order of remand should be given or not. However, it cannot be said that merely an order for production of the accused on the next date would be invalid even if the request for further remand by the prosecutor is not opposed by the accused or no bail application is filed on his behalf. This answers question No. 2, referred by the learned single Judge.

6. Next question is whether any previous illegality in granting remand can make the present detention of the accused illegal even though thereafter a valid remand has been granted? Learned Public Prosecutor in this regard has placed reliance on certain cases of habeas corpus. The consideration in those cases stands on a different footing. In cases of habeas corpus it has to be seen on the day of passing of the order by the Court whether the detention was illegal or not. Thus in such cases if the detention could be shown, under a lawful authority even on the day when the matter comes up for consideration before the Court, the detention can be held to be valid. In cases of grant of bail, the validity of the earlier orders of

remand can certainly be taken into consideration. In such cases if there was illegality in the earlier orders of remand, it cannot be validated, by a subsequent valid order of remand, Kudal J. in Rati Ram v. State of Rajasthan 1982 Rajasthan LR 443 has held 'once an order of remand expires and a fresh order of remand is not passed then the detention becomes illegal. The liberty of an individual is guaranteed under the provisions of the Constitution. By a subsequent order of remand for a subsequent period, the previous order of detention which was patently illegal cannot be cured. The detention of the accused persons cannot be justified under any provision of law. Thus, they are entitled to be enlarged on bail', K.D. Sharma, Chief Justice in Narayan v. State of Rajasthan, 1982 Rajasthan LR 688 : 1982 Cri LJ 2319 has also taken the view that once period of 90 days expired before taking cognizance of offences by Court, accused obtained absolute right to be released on bail and their detention after such period, held clearly illegal and it cannot be validated by a subsequent order of remand under Section 309(2), Cr. p. C. We also subscribe the view already taken by two learned single Judges of this Court, and this answers question No. 3 referred by the learned single Judge.

7. Question No. 4 referred by learned single Judge is covered by Question No. 3 and needs no separate answer.

8. In the result, we find that there was no illegality in the orders of remand passed in this case and as such the bail application filed by the accused-petitioner is dismissed.