

State Vs. Sukhsingh and ors.

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Court : Rajasthan

Decided On : Dec-04-1953

Reported in : AIR1954Raj290; 1955CriLJ79

Judge : Wanchoo, C.J. and; Dave, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 167, 167(2) and 344

Appeal No. : Criminal Reference No. 34 of 1953

Appellant : State

Respondent : Sukhsingh and ors.

Advocate for Pet/Ap. : L.N. Chhangani, Govt. Adv.

Judgement :

Wanchoo, C.J.

1. This is a reference by the Sessions Judge of Balotra, and has arisen in the following circumstances:

2. Sukhsingh and Shera accused were in Judicial custody under orders of a Magistrate of Banner, under Section 344, Criminal P. C. An application was made to the District Magistrate of Barmer on 30-10-1952, but the Sub-Inspector of Police Station Tharad, District Banas Kantha, Bombay State, praying that these two accused-be remanded to police custody for a period of 15 days presumably under

Section 167, Criminal P. C. The District Magistrate originally allowed this prayer, but later, on the objection of these two accused, set aside his order relying on -- 'Dhaman Hiranand v. Emperor', AIR 1937 Sind 251 (A). He took the view based on certain observations in that case that the accused could not be in magisterial and police custody at the same time, and therefore as Sukhsingh and Shera were already in magisterial custody, they could not be handed over to the police for purposes of investigation in another case.

This order was taken in revision to the Sessions Judge, and he has made this reference to us recommending that the order should be set aside, and the two accused be handed over to the Sub-Inspector of Police at Tharad for 15 days for purposes of investigation. We may point out that one of the two accused, namely Sukhsingh, has been released on bail, and the present case therefore relates only to Shera who is still in judicial custody.

3. There are two provisions in the Code of Criminal Procedure which deal with this matter, namely Section 167 and Section 344. Section 167 gives power to a Magistrate, in cases where investigation cannot be completed within 24 hours, to authorise the detention of the accused in such custody as such Magistrate thinks fit for a term not exceeding 15 days in all. It is under this provision of the law that Magistrates are empowered to remand the accused, whose cases are under investigation, into police custody, though it may be noted that if the Magistrate so desires he may from the very beginning remand an accused to judicial custody or send him to jail.

Section 344 applies to cases where a challan has been presented to the Court of the Magistrate, or where, though the challan has not been presented, the period of 15 days provided in Section 167(2) is over, and the investigation is not yet complete, and the police desires that there should be a remand. In one case it is an adjournment as the case is already pending in the Magistrate's Court, while in the other case it is remand on the ground that sufficient evidence has been obtained to raise a suspicion that the accused might have committed the offence, and it appears likely that further evidence may be obtained by a remand.

The question, that arises in this case, is whether 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. In view of the powers of the Magistrate under Section 167(2), we see no prohibition in the Criminal Procedure Code against such a course.

4. We have read -- 'Dhaman Hiranand's case (Ar with all the care that it demands, and have not been able to understand why it was necessary to discuss the provisions of Sections 167(2) and 344 of the Criminal P. C., there. The only question that really arose for decision was whether taking the facts which were proved in that case a certain confession could be relied upon as voluntary and true, even though it had been retracted. There is certainly an observation in this case that an accused cannot be in magisterial custody in one case and police custody in another case. But we have not been able to understand why this is inherently impossible.

Supposing a person is accused of one offence, and investigation of that case is complete and the challan has been submitted to Court, he will, in these circumstances, be sent to jail or to Judicial custody to await his trial. Supposing later evidence is discovered of his complicity in another case, and the police in order to complete the investigation of that case requires to question the accused, or the handing over of the accused to police custody would aid the investigation in some way; in such a case we fail to understand why it may not be open to a 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. Of course, before the Magistrate does so, he will have to satisfy himself that a good case is made out for detaining the accused in police custody in connection with the investigation of the other case.

5. We, therefore, accept the reference set aside the order of the District Magistrate refusing to hand over Shera accused to the police of Thana Tharad for 15 days for investigation and the District Magistrate is directed, if the police of Thana Tharad still require the accused, to hand him over to them after satisfying himself that it is really necessary to do so for purposes of investigation of the case relating to

Thana Tharad. So' far as Sukhsingh is concerned, he is no longer in judicial custody, and we pass no order with respect to him.

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