

ishwar Singh Vs. Panney Singh and ors.

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Court : Rajasthan

Decided On : Sep-01-1983

Reported in : 1983WLN(UC)297

Judge : K.D. Sharma, C.J.

Appeal No. : S.B. Criminal Misc. Application No. 223 of 1982

Appellant : ishwar Singh

Respondent : Panney Singh and ors.

Advocate for Pet/Ap. : Mr. M.M. Singhvi

Disposition : Application dismissed

Judgement :

K.D. Sharma, C.J.

1. This is an application Under Section 482, Cr. P.C by Ishwar Singh petitioner for setting aside the order of the learned Sessions Judge, Bikaner, dated September 4, 1982, and for issuing a direction for proper investigation of a case which has been instituted on the complaint of the petitioner.

2. The relevant facts giving rise to this petition may be briefly stated as follows: Panney Singh and Suraj Singh non-petitioners Nos. 1 and 2 accompanied by their nephew Pabusingh went to Calcutta and met the petitioner on March 20, 1982 and

requested the letter to permit them to stay at his residence as they had come on tour to Calcutta, The petitioner readily agreed to allow them to stay at his residence, because they were coming from his village and were known to him. On March 22,1982, the petitioner got up in the morning after sleep and found that both the non-petitioners Nos. 1 and 2 as well as their nephew Pabu Singh had gone away from his house. The petitioner suspected some foul play on account of their sudden disappearance from his house without even giving him any intimation. He, therefore, searched his house-hold articles and found two leather suit cases missing therefrom. The petitioner raised a hue and cry which attracted Shyam Rathi, and Prabhat who were staying with the petitioner. The neighbours also assembled there and Shri Deepak Das, his next-door neighbour, informed the petitioner that he had seen non-petitioners Nos. 1 and 2 going with two leather suitcases at 4.30 a.m. The petitioner, thereupon, immediately rushed to Hawrah railway station in pursuit of the non-petitioners, but he could not trace them out. According to the petitioner the stolen suit case contained gold-ornaments, namely, bracelets weighing about 30 grams, ear-ring weighing about 10 grams, one ladies wrist watch, HMT Supriya, wearing appraisals and woollen garments and cash amounting to Rs 1100/-. The petitioner then made a report to Entally Police Station and on the next day filed a complaint in the court of the learned Additional Chief Judicial Magistrate, Sealdah. The learned Additional Chief Judicial Magistrate forwarded the complaint to police station, Entally Under Section 156, Cr.P.C. for investigation. The Station House Officer accordingly, registered a criminal case Under Section 380, IPC. and deputed Shri S.K. Ghosh, Sub Inspector to go to Rajasthan and arrest the non petitioners Nos. 1 and 2. Shri S.K. Ghosh visited Rajasthan, arrested the non-petitioners on September 1,1982 and produced them before the learned Chief Judicial Magistrate, Bikaner, on September 2, 1982 for detaining them in judicial custody till September 2, 1982, so that necessary arrangements be made for their journey to Calcutta under escort.

3. The non-petitioners nos. 1 and 2 filed an application Under Section 439, Cr. PC. in the court of the Chief Judicial magistrate, Bikaner, for their release on bail. The learned Chief Judicial Magistrate, Bikaner, by his order dated 2-9-82 refused to admit the two non-petitioners Nos. 1 and 2 to bail and remanded them to judicial custody on September 16, 1982 and gave a further direction that on the arrival of

escort from Calcutta, they be handed over to the escort to be taken to Calcutta. Thereafter, the non-petitioners Nos. 1 and 2 filed an application in the court of the learned Sessions Judge, Bikaner, Under Section 439, Cr. P C read with Section 397, Cr. P.C. The learned Sessions Judge directed the release of the non petitioners even without taking bail bonds. As against this order of the Sessions Judge, Bikaner, the petitioner has invoked inherent jurisdiction of this Court by way of a petition Under Section 482, Cr. P.C.

4. I have carefully perused the record and heard Mr. M.M. Singhvi, learned Counsel for the petitioner, Mr. L.D. Gaur for the non-petitioner No. 1 and Mr. L.S. Udawat, Public Prosecutor. It has been contended before me by the learned Counsel for the petitioner that the Sessions Judge, Bikaner, committed a grave error in releasing the non-petitioners Nos 1 and 2 even without taking bail bonds from them. According to Mr. M.M. Singhvi, learned counsel for the petitioner, the Sessions Judge had no jurisdiction or power under the law to pass such order which adversely affected the case of the petitioner, because as a result of the release order passed by the Sessions Judge, stolen property could not be recovered by the investigating-agency in the course of investigation and further chances of recovery of such property have become bleak. In short, the contention of Mr. M.M. Singhvi before me is that the order of the learned Sessions Judge is neither legal, nor proper but an abuse of the process of the court which is liable to be set aside to secure the ends of justice. In support of his contention Mr. M M Singhvi relied upon *Dhola v. State* 1974 W.N 399.

5. Mr. L.D. Gaur, learned Counsel for non-petitioner No. 1, on the other hand, contended that the order passed by the learned Sessions Judge was legal proper and reasonable in the circumstances of the case. According to his submission, Mr. S.K. Ghosh S.I. who arrested the non-petitioners, was duty bound to forward the non petitioners after 24 hours of their arrest to the nearest Judicial Magistrate along with a copy of the entries in the diary relating to the case Under Sub-section (1) of Section 167, Cr. P.C. but Shri S.K. Ghosh failed to transmit to the learned Chief Judicial Magistrate a copy of the entries in the diary relating to the case and so the learned Sessions Judge committed no error in holding that the detention of the non-petitioners was illegal and the remand order was unsustainable in the eye

of law. To substantiate his contention, Mr. Gaur relied upon R.K Nabchandra Singh v. Manipur Administration AIR 1964 Manipur 39.

6. I have considered the rival contentions mentioned above. At the; outset I may observe that upon bare perusal of the provisions contained in Sections 57 and 167 Cr. PC it is obvious that it is contemplated by the Legislature that the investigation of a Criminal Case should be completed in the first instance within 24 hours exclusive of the time for the journey from the place of arrest of the accused to the Court of the Magistrate. If the investigation can not be completed within 24 hours' period, specified in Section 57, Cr. PC and the investigating agency has grounds for believing that the accusation or information against the accused is well-founded, it is bound to forward the accused along with the copies of the entries in the diary to the nearest Judicial Maigstrate. If the copies of the enties in the diary are not shown or made available to the Magistrate before whom an arrested person is produced, the Magistrate will have no opportunity to decide whether further detention of the accused is necessary. The words 'shall forth with transmit to the nearest Judicial Magistrate a copy of the entries in the diary here in after perscribed relating to the case used in Section 67 Cr PC indicate that it is obligatory upon the police to transmit to the nearest Judicial Magistrate copy of the entries in the diary relating to the case Section 172(1), Cr. PC prescribes what the case diary should contain. It requires that every Police Officer conducting an investigation under chapter XII shall day to day enter his proceedings in the investigation setting forth the time of having received the information, the time at which he commenced and closed the investigation, the place or places visited by him and a statement of circumstances ascertained by him through his investigation, what is done by the Investigating officer in the course of investigation must be clearly indicated in the case diary. Hence, it can be safely held that if the investigating agency does not transmit copies of the entries in the police diary while forwarding the accused to the nearest Judicial Magistrate, it would be difficult for the Magistrate to decide whether there is any justification or necessity for further detention of the accused.

7. Reading Sections 57 and 167, Cr. P C together I am of the view that in the instant case the Sessions Judge, Bikaner, was justified in releasing the accused

because copies of the entries in the diary relating to the case were not transmitted by the Police to the Chief Judicial Magistrate while forwarding the accused to him and the Chief Judicial Magistrate ordered further detention of the accused without looking into a justification for the remand. It will not be out of place to mention that the Chief Judicial Magistrate clearly admitted in his order dated September 2, 1982 that case diary relating to the present case was not produced before him along with the accused, and it appears that he decided that further detention of the accused was necessary merely on perusal of the first information report. The Sessions Judge, Bikaner, was right in holding that it would be a mockery of justice ordering detention of the accused in the absence of copies of entries in the diary relating to the case and that the remand order is not to be passed by the Magistrate as a matter of routine ignoring the provisions of Section 167(1), Cr. P.C. The Magistrate is duty bound to scrutinise the copies of the entries in the diary received by him and see whether the arrest was legal and proper and whether all the formalities of the law were duly complied with. If the Magistrate, before whom the accused persons are produced for further detention does not bring an independent judgment to bear upon question of remand, the Sessions Judge is justified in holding that the Magistrate has not taken his duty seriously and has not complied with the provisions of Section 167(1) Cr. P.C. and further detention of the accused person is not necessary. This is what exactly has been done by the Sessions Judge in this case. Hence I find no fault with the order of Sessions Judge, Bikaner.

8. Consequently, I do not find any force in this application Under Section 482, Cr. P.C. It is hereby dismissed as having no substance.