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A.Ochu Vs. State

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Court : Chennai

Decided On : Jan-10-2012

Judge : P.R.Shivakumar, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 436, 397, 482; Indian Penal Code (IPC) - Sections 363, 302

Appeal No. : Crl.R.C.(MD)No.951 of 2011 &Crl.R.C.(MD)No.952 of 2011

Appellant : A.Ochu

Respondent : State

Advocate for Def. : Mr.P.Kandasamy, Adv.

Advocate for Pet/Ap. : Mr.J.Selvam, Adv.

Judgement :

Heard the submissions made by Mr.J.Selvam, learned counsel for the revision petitioner and by Mr.P.Kandasamy, learned Government Advocate (Criminal Side) representing the respondent police. This court also perused the grounds of revisions, certified copies of the impugned orders and copies of the other connected papers filed in a typed set of papers.

2.The present Criminal Revision Cases came to be filed by A.Ochu, who has been arrayed as Accused No.1 in crime No.56 of 2011 on the file of the Kurangani

Police station, Bodinaickanur, Theni District, against the orders of the learned Judicial Magistrate, Bodinaickanur, remanding him to police custody in the said case and dismissing the petition of the revision petitioner to release him on bail.

3.The learned counsel for the revision petitioner submits that when a person accused of a bailable offence is arrested or brought before the court or appears before the Judicial Magistrate, he cannot be remanded to either judicial custody or to police custody if he expresses his readiness to give bail. Drawing the attention of the court to the provision found in section 436 Cr.P.C., the learned counsel for the revision petitioner submits that the only offence that was alleged to have been committed by the revision petitioner when the impugned orders were passed was one punishable under section 363 IPC, a bailable offence; that the revision petitioner, who chose to surrender on his own accord not only expressed his readiness to give bail but also filed a petition under section 436 for his release on bail; that under such circumstances, the learned Judicial Magistrate has committed a blender by remanding the revision petitioner to police custody on the request of the police, relying on a judgment of a learned single Judge of the Andhra Pradesh High Court, without even considering the fact that the ratio laid down therein, is not applicable to the facts of the case in which the revision petitioner figured as accused; that the said order could not be termed as interlocutory order as it decided the right of the revision petitioner/accused finally not to be remanded either to the judicial custody or to the police custody, when he was prepared to give bail and that hence, the orders of the learned Judicial Magistrate have got to be interfered with and set aside using the revisional powers of the court under section 397 Cr.P.C. It is the further contention of the learned counsel for the revision petitioner that, even otherwise, the inherent powers of the High Court under section 482 can be invoked to counter the patent abuse of the process of court and thus justice can be rendered in its true sense.

4.Per contra, learned Government Advocate (Criminal Side) representing the respondent would contend that the revision petitioner himself chose to surrender before the learned Judicial Magistrate No.2, Usilampatti on 03.01.2011 in a murder case, crime number of which was not known to him; that on such surrender he was remanded to judicial custody in such unknown crime number for five days and

was subsequently directed to be produced before the learned Judicial Magistrate, Bodinaickanur on 7.10.2011 as he figured as an accused in crime No.56 of 2011 of Kurangani Police Station; that when the revision petitioner was thus produced before the learned Judicial Magistrate, Bodinaickanur for being remanded in crime No.56 of 2011, police wanted custody of the revision petitioner to be given to them for custodial interrogation in crime No.56 of 2011 on the file of the Kurangani Police Station; that though the said case had been registered for an offence under section 363 IPC alone, the police wanted to make custodial interrogation since the revision petitioner had chosen to surrender before the learned Judicial Magistrate No.2, Usilampatti, in an unknown crime number for an offence under section 302 IPC and that in the light of the said circumstances, no defect or infirmity could be found in the order of the judicial Magistrate, Bodinaickanur, remanding the revision petitioner to police custody.

5.Section 167 of Cr.P.C. deals with the powers of the police, to detain the arrested person and the obligation of the police to produce such person before the Judicial Magistrate for further custody if the investigation in a cognizable case cannot be completed within 24 hours from the time of arrest. It also provides for the remand of such person to custody, including police custody, with restrictions regarding the maximum period for which the Magistrate can authorize detention in police custody. Of course, the said section does not refer to an accused who appears on his own volition or in other words surrendered before the court, as the person in respect of whom the order of remand can be made. But by necessary implication, courts have repeatedly held that such power of remand is exercisable by the Magistrate even in a case wherein the accused voluntarily surrenders. But such power of the court to remand to the custody of the police or otherwise than in the custody of the police, shall be red in conjunctions with other provisions dealing with the release of the accused persons on bail.

6.Section 436 says when any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a court, and is prepared at any time while in the custody of such officer or at any stage of proceedings before such court to give bail, such person shall be released on bail. The word used is 'shall'

denoting that there is no discretion vested with the court. The first proviso to sub-section 1 of section 436 Cr.P.C also provides for dispensing with with the necessity to furnish surety when the court is of the opinion that the person is indigent and is unable to furnish surety. In such an event, instead of taking bail, such a person is to be released on his own bond for his appearance. The explanation to sub-clause 1 also provides that if a person arrested for a bailable offence is unable to give bail within a week from the date of his arrest, the same shall be a sufficient ground to hold that he is an indigent person for the purpose of the exemption contained in the proviso. Such is the benevolent provision aimed at protecting the rights of persons, who are accused of bailable offences alone. The said clause can be interpreted to contain a direction to the Magistrate to inform the accused of his right to go on bail, if he is prepared to give bail to the satisfaction of the Magistrate. Otherwise, the right given under the said section shall be meaningless.

7.In the case on hand, the learned Judicial Magistrate, Bodinaickanur not only failed to inform the revision petitioner that he was accused of a bailable offence alone and he could seek his release on bail if he was prepared to furnish surety to the satisfaction of the court, but also turned down the request made by the revision petitioner for his release on bail. Such a request was made by way of a petition, expressing his readiness to furnish bail. The said procedure adopted by the learned Judicial Magistrate resulted in totally an illegal order which may even be termed as abuse of the process of the court. Personal liberty guaranteed under Article 21 of the Constitution has been thus denied by the learned Judicial Magistrate in the purported exercise of his powers in a haphazard manner without following due process of law.

8.The learned counsel for the revision petitioner is right in contending that the order refusing to release him on bail in a bailable offence when he had expressed his readiness to go on bail and on the other hand, remanding him to police custody would amount to an order finally determining the right of the revision petitioner to be released on bail and not to be remanded to police custody in such a case and that hence, the validity of the order can be tested by the High Court using its revisional powers under section 397 Cr.P.C. The learned counsel for the revision

petitioner is also right in contending that this is a fit case in which the inherent powers of the High Court under section 482 Cr.P.C. can be exercised in order to prevent miscarriage of justice and abuse of process of court.

9.An attempt was made by the learned Government Advocate (Criminal Side) representing the respondent to justify the orders of the learned Judicial Magistrate, pointing out the fact that the revision petitioner himself chose to surrender before the learned Judicial Magistrate No.2, Usilampatti, in an unknown crime number for an offence of murder punishable under section 302. According to the submissions made by the learned Government Advocate (Criminal Side), since the revision petitioner himself surrendered before a Judicial Magistrate and was remanded to judicial custody by the said Magistrate, there was nothing wrong in the order granting police custody, passed by the other Magistrate before whom he was produced for remand in another case, on the premise that the facts regarding 302 IPC case with unknown crime number where to be unearthed by the custodial interrogation of the revision petitioner. This court is not in a position to accept the above said contention of the learned Government Advocate (Criminal Side). If at all such an order was passed by the Judicial Magistrate before whom the revision petitioner surrendered stating that he was surrendering in a murder case, crime number of which was not known, such an order may be sustained. Otherwise, if on such surrender, it came to light that such a murder case was registered on the file of any other police station within the jurisdiction of another Magistrate and on being produced before such Magistrate, an order for police custody was made by such Magistrate, such an order also can be justified.

10.In the case on hand, though the learned Judicial Magistrate No.2, Usilampatti, chose to remand the revision petitioner on his surrender to the judicial custody for 5 days, subsequently on a request made by the police, directed his production before Judicial Magistrate, Bodinaickanur in crime No.56 of 2011, a case registered for an offence under section 363 IPC on the file of Kurangani Police Station. Till such production before the learned Judicial Magistrate, Bodinaickanur, it was no other case was found to have been registered against him for any non-bailable offence. The only case that was pending investigation, when the revision petitioner was produced before the learned Judicial Magistrate, Bodinaickanar was

crime No.56 of 2011 on the file of Kurangani Police Station. Admittedly, the offence alleged therein is a bailable offence viz., an offence punishable under section 363 IPC. If at all police were of the view that the accused viz., the revision petitioner herein, was suspected to have committed any other non-bailable offence, then along with a request of police custody, they should have altered the case and submitted the alternation report before the Judicial Magistrate. Had it been done and had the Magistrate taking note of such alternation decided the grant police custody rejecting the plea for release on bail, then the Magistrate would have been fully justified. Unfortunately, no such thing was done in this case. The learned Judicial Magistrate, Bodinaickanur himself has made it abundantly clear by observing that the only case pending against the revision petitioner was crime No.56 of 2011 on the file of Kurangani Police Station and the said case was also one regarding a bailable offence namely, offence punishable under section 363 IPC. Still disregarding the mandatory provision and in derogation of the right of the personal liberty guaranteed by the Constitution, the learned Judicial Magistrate has chosen to pass the impugned orders, which cannot withstand the scrutiny of this court. The said orders are liable to be set aside, branding them to be illegal.

11.Though the period of police custody granted by the learned Judicial Magistrate, Bodinaickanur, has already come to an end, still, interest of justice requires holding the orders to be illegal for apprising the consequences that flow from the custody granted to the police. Hence, this court deems it fit to set aside the orders of the learned Judicial Magistrate, dated 07.10.2011 passed in Crl.M.P.Nos.4439 and 4440 of 2011 and direct the release of the revision petitioner on bail in respect of crime No.56 of 2011 on the file of Kurangani Police Station, on executing a bond for a sum of Rs.5,000/- along with two sureties each for a like sum to the satisfaction of the Judicial Magistrate, Bodinaickanur, subject to a further condition that the revision petitioner, after such release shall make himself available for interrogation by the investigating officer in Crime No.56 of 2011 of Kurangani Police Station as and when reasonably required by the latter. It is made clear that such a direction shall not be an impediment for the police to seek his arrest and custody, if such a case has already been altered into a case for a non-bailable offence or in case it is altered in future into such a non-bailable case.

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