A. Lakshmanarao

Vs

Judicial Magistrate, First Class, Parvatipuram and Others

Writ Petition No. 513 of 1970

(S. M. Sikri, I. D. Dua, V. Bhargava JJ)

24.11.1970

JUDGMENT

DUA, J. -

1. The petitioner, A. Lakshmanarao, an Advocate practicing at Narasipatnam in the district of Visakhapatnam, in the State of Andhra Pradesh has applied under Article 32 of the Constitution for a writ of Habeas Corpus on the following averments :

The petitioner, while going home from the Court, was arrested on 17th July, 1970, at about 12-30 in the afternoon. He was not shown any Magistrate, First Class, on 18th July and remanded to judicial custody under Section 167(2), Cr. P.C. for 15 days. At the time of remand he was informed by the Magistrate that he was accused of offences under Sections 120-B, 121-A, 122, read with Sections 302 and 3495, I.P.C. in Crime No. 3 of 1970 (known as Parvatipuram Naxalite Conspiracy Case). This crime had been registered in January, 1970. In which more than 148 persons were sought to be proceeded against. The names of only 148 accused persons were specifically mentioned. The petitioner and one Dr. C. Ramadass were not specifically named. They were apparently included in the expression "others". On 30th March, 1970, a report was filed by the Investigating Officer describing it as a preliminary charge sheet in which it was stated that the investigation in the case had not been completed and several accused persons had yet to be traced. This report, according to the averments, does not fall under Section 173(1), Cr. P.C. Even in this preliminary charge-sheet the names of the petitioner and Dr. Ramadass were not included. On 1st August, when the period of the petitioner's first remand expired, again no charge-sheet was separately filed against him and Dr. C. Ramadass. The prosecution, however, sought extension of their period of remand. When the petitioner objected to further remand a second preliminary charge-sheet was presented to the Court on that very day specifically including the petitioner's name. His remand was thereupon extended up to 6th August and thereafter up to 20th August. On 20th August he was not produced in the Court because of want of escort and the order of remand was made in his absence. He has expressed ignorance about the period of this remand.

2. The present petition, dated 22nd August, 1970, was forwarded to this court through the Superintendent, Central Jail, Rajahmundry (Andhra Pradesh). The petitioner challenges the remand orders from the 1st August onwards and claims that his detention is illegal and that he is entitled to be set at liberty. The remand order, dated 20th August, 1970, which was made in his absence because he could not be produced before the Court on the ground of lack of escort is challenged on the further ground that the law does not permit remand orders without the actual production of the accused before the Court.

3. According to the petitioner who himself argued his case, Section 344(1-A), Cr. P.C., does not contain any guidelines for the Court in the matter of remand orders and he added that this section is otherwise too inapplicable to the investigation stage of criminal cases. When his attention was drawn to the explanation to Section 344, according to which the likelihood of further evidence being obtained by the remand in cases of suspicion against an accused person raised by the evidence already obtained, he contended that the explanation could not as a matter of law serve to extend the scope of the substantive provision contained in Sub-section(1-A). On this promise the petitioner questioned the vires of Section 344(1-A) and (2) and the explanation.

4. In the counter-affidavit sworn by the Judicial Magistrate in whose Court the case against the petitioner is pending, while referring to the proceedings held on 1st August, 1970, it is affirmed that the petitioner and Dr. C. Ramadass were produced in Court and it was submitted buy them that since their names had not been shown in the preliminary charge-sheet the Court had no power to extend the period of remand. On that very day the prosecution filed a second preliminary charge-sheet in which the petitioner and Dr. C. Ramadass were shown as accused Nos. 149 and 150 suspected of having committed offences under Section 120-B, 121-A, 122, read with Section 302 and 395, I.P.C. The Court thereupon passed an order of remand in respect of both of them. A bail application filed on behalf of the petitioner and Dr. C. Ramadass was thereafter argued by the petitioner and the matter was adjourned to 5th August, 1970, for orders when that application was disposed of.

5. On behalf of the other respondents a lengthy affidavit has been sworn by S. Veeranarayana Reddi, Deputy Superintendent of Police, Crime Branch, C.I.D., Government of Andhra Pradesh, Hyderabad. It is affirmed in this affidavit that the petitioner is an active Naxalite and along with others is accused of charges under Section 120-B, read with Sections 302, 395, 397, 399, 364, 365, 368 and 386, I.P.C., in P.R.C. No. 3/70, pending in the Court of the Judicial Magistrate First Class, Parvatipuram Taluk. A separate complaint under Sections 121-A and 120-B, read with Sections 121, 122, 123 and 124-A, I.P.C., is also stated to have been filed against the aforesaid persons including the petitioner in the same Court in P.R.C. 8 of 1970. These two cases are known as Parvatipuram Naxalite Conspiracy Cases and relate to 46 murders, 82 dacoities, 99 attacks on police and 15 abductions committed by the accused persons in Andhra Pradesh. The accused persons are also alleged to have committed several offences of the types just mentioned in the Agency Tracts of Orissa bordering Andhra Pradesh. The Government of Andhra Pradesh had on account of the gravity of the situation declared certain areas affected by the Naxalite menace in Srikakulam and Narangal districts as disturbed areas under Section 3 of the Andhra Pradesh Suppression of Disturbances Act, 1948. In the affidavit certain incidents have been traced from 1964 and it is affirmed that as a result of various political developments certain volunteers were recruited from various parts of Andhra Pradesh and the petitioner helped them in creating revolutionary bases in the agency tracts of Visakhapatnam District. There is also references to one of the accused persons having become an approver and another having made a confessional statement. After stating various fats discovered during investigation it is affirmed that the investigation of this case is limited not only to the State of Andhra Pradesh but it extends of several States where Naxalite movement has spread, including West Bengal and Orissa, and as many as 900 witness have already been examined during the course of investigation, which has taken nearly nine months. Sanction of the State Government for the prosecution of the petitioner and the other accused persons under Section 196, Cr. P.C. On 12th October, 1970, the investigation was completed and a final charge-sheet filed in the court of the Judicial magistrate in P.R.C. No. 3 of 1970. A separate complaint against the petitioner and other accused persons mentioned earlier was also filed in the Court of the Judicial Magistrate under Section 121-A, 120-B, read with Section 121, 123 and 124-A, I.P.C., on the same day. It is admitted that the preliminary charge-sheet is not covered by Section 173(1), Cr. P.C. But it is

averred that it is only a report pending further investigation seeking extension of remand under Section 344, Cr. P.C. The long period of investigation had been ascribed to the fact that there was an organised attempt on the par of the accused and their followers to thwart the efforts of the authorities in bringing the accused to book. It is admitted that the petition is lodged in Central Jail, Rajahmundry and that on 20th August, 1970, he could not be produced before the Court for lack of escort. The remand is also admitted to have been extended by the Magistrate, respondent No. 1, from time to time on 3rd and 17th September and 1st October, 1970. The Court it is pleaded, is empowered to pass an order of remand even in the absence of the accused under Section 344, Cr. P.C., unlike the remand order under Section 167, Cr. P.C. Incidentally in this counter-affidavit there is a reference to the prejudicial activities in which the petitioner has been indulging in connection with Naxalite movement. The initial non-inclusion of his name in the array of accused persons has been explained on the ground that sufficient corroboration of the approver's testimony incriminating the petitioner was not forthcoming at that stage.

6. In so far as the question of legality of the remand order, dated 20th August, 1970, without producing the petitioner before a Magistrate is concerned, the point is concluded by a recent judgment of this Court in the case of Raj Narain V. superintendent, Central jail, New Delhi. ((1970(2) SCC 750) In that case this Court by majority expressed the view that as a matter of law personal presence of an accused person before a Magistrate is not a necessary requirement for the purpose of his remand under Section 344, Cr. P.C., at the instance of the police, though as a rule of caution it is highly desirable that the accused should be personally produced before the magistrate so that he may, if he so chooses, make a representation against this remand and for his releases on bail. The court on a review of the decided cases observed :

> "There is nothing in the law which required his personal presence before the Magistrate because that is a rule of caution for Magistrates before granting remands at the instance of the police. However, even if it be desirable for the Magistrates to have the prisoner produced before them, when they recommit him to further custody, a Magistrate can act only as the circumstance permit."

7. The order of remand, dated 20th August, 1970, was in the circumstances not contrary to law so as to tender the petitioner's custody illegal justifying his release by this court on Habeas Corpus. It is unnecessary to point out that it was and still is open to the petitioner to apply for his release on bail to the appropriate Court in accordance with law, there being no illegal obstacles in his way in this respect.

8. The challenge to the constitutional validity of Section 344(1-A), Cr. P.C., is also in our opinion misconceived. Section 344, reads :

> "(1) In every inquiry or trial, the proceedings shall be held as expeditiously as possible and in particular, when the examination of witness has once began, the same shall be continued from day to day until all the witnesses in attendance gave been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.
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> (1-A) If, from the absence of a witness, or any the reasonable cause, it becomes necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, the Court may, if it thinks it, 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 :

Provided that on Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time :

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing.

(2) 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.

Explanation. - If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable causes for a remand."

Sub-section (1-A) was originally numbered as sub-section (1). The present sub-section (1) of Section 344 was added by the Amending Act 26 of 1955, when the original sub-section (1) ware-numbered as sub-section (1-A). The impugned sub-section vests in the Court seized of a criminal case power to postpone the commencement of or adjourn any inquiry or trial before him by order in writing stating the reasons therefor from time to time on such terms as the Court thinks fit and for such time as it considers reasonable. When he case is so postponed or adjourned he Court may also by a warrant remand he accused if in custody. This judicial power to postpone or adjourn proceedings is to be exercised only if from he absence of witnesses or any other reasonable cause the Court considers it necessary or advisable to do so. Reasonable cause for remand according to explanation to this section covers a case where sufficient evidence is obtained to raise a suspicion about the complicity of an accused person in the offence and it appears likely that more evidence may be obtained by remand. The Court has in he exercise of is judicial discretion in granting or declining postponement or adjournment of the case and in ordering remand of the accused to keep in view all the relevant facts and circumstances of the case. The petitioner strongly contended that this section clothes the Court with an unfettered, arbitrary and unguided power. A plain reading of the section shows the untenability of the submission. Apart from the fact that it is only when either from the absence of a witness or some other reasonable cause the court consider it either to be necessary or advisable to postpone the commencement of the inquiry or trial or adjourn the hearing of the case that the order can be made, the Court is also required to record the order in writing giving the reasons why it thinks fit that the case should be postponed or adjourned. It is further open to the Court impose terms and to fix the period which cannot exceed 15 days at one time. This discretion being vested in a Court of law has to be exercised judicially on well-recognised principles and is in our view immune from challenge on the ground of arbitrariness or want of guidelines. In our opinion, therefore, not only are the guidelines clearly contained in the statue but the discretion being judicial is required to be exercised on general principles guided by rules or reason and justice on the facts of each case and not in any arbitrary or fanciful manner. It may also be remembered that if the discretion is exercised in an arbitrary or unjudicial manner remedy by way of resort to the higher Courts is always open to he aggrieved party.

9. The second limb of the challenge is based on the contention that Section 344 falls in Chapter 24, Cr. P.C. which contains general provisions as to inquiries and trials. According to this submission this section cannot apply to a case which is at the stage of investigation and collection of evidence

only. This argument appears to us to be negatived by the express language both of sub-section (1-A) includes the likelihood of obtaining further evidence during investigation by securing a remand. The language of Section 344 is unambiguous and clear and the fact that this section occurs in Chapter 24 which contains general provisions as to inquiries and trials does not justify a strained construction. Indeed, postponement of an inquiry also seems to be within the contemplation of the general provisions as to inquiries and trials. So this challenge also fails.

10. The suggestion that the explanation could not extend the substantive provisions of sub-section (1-A) has merely to be stated to be rejected because the explanation merely serves to explain the scope of the expression "reasonable cause".

11. The last submission that there is in any event no guideline for making a remand order and, therefore, the power to remand an accused person under Section 344 is ultra vires being arbitrary and unambiguous is wholly unacceptable. When a case is postponed or adjourned and the accused is in custody the Court has to exercise its judicial discretion whether or not to continue him in custody by making a remand order. The Court is neither bound to make an order of remand nor is it bound to release the accused person. The period of remand is in no case to exceed 15 days at a time. The discretion to make a suitable order is to be exercised judicially keeping in view all the facts and circumstances of the case including the nature of the charge, the gravity of the alleged offence, the area of investigation, the antecedents of the accused and all other relevant factors which may appropriately help the court in determining whether to keep the accused in custody or to release him on bail. The court has to ensure the presence of the accused and a just, fair and smooth inquiry and trail of the offence charged. The order of remand is thus subject to judicial discretion and the order is also subject to review by the superior to judicial discretion and the order is also subject to review by the superior Courts in accordance with law. The power conferred being judicial the absence of an express, precise standard for determination of the question would not render the section unconstitutional. Detention pursuant to an order of remand which appropriately falls within the terms of Section 344 is accordingly not open to challenge in Habeas Corpus.

12. After we had reserved orders the petitioner forwarded to this Court through jail supplementary affidavit containing written arguments. We have gone through the affidavit but we do not find any new point requiring discussion. It only disclose a further attempt to re-open the majority decision of this Court in Raj Narain's case (supra), by relying on the minority judgment and by submitting that Section 344 (1-A), Cr. P.C. offends Article 19(1)(d) of the Constitution. All that we need say at this stage is that the majority view is binding on us.

13. This petition accordingly fails and is dismissed.

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