

Sandip Kumar Dey

Vs

The Officer-In-Charge, Sakchi P. S., Jamshedpur and Others

Writ Petition No. 844 of 1973

(Y. V. Chandrachud, M. H. Beg JJ)

12.03.1974

JUDGMENT

CHANDRACHUD, J. -

1. This is a petition under Article 32 of the Constitution asking for the writ of habeas corpus. The petitioner, Sandip Kumar Dey, challenges by this petition the legality of various orders under which he was remanded to jail custody from time to time.

2. It appears from the First Information Report lodged by the Inspector, Golmuri Circle, Jamshedpur, that on the afternoon of June 5, 1971, a large police party raided a house from which ammunition, firearms and other weapons were recovered. The petitioner and another person called Narain Das were arrested on the spot and were produced on the very next before the Sub-Divisional Magistrate, Jamshedpur, who remanded them to jail from time to time. The petitioner was transferred to Gaya jail on August 5, 1971, but the orders of remand continued to be passed by the Sub-Divisional Magistrate, Jamshedpur without the production of the petitioner before him. It is urged that these remand orders are illegal as they are passed behind the back of the petitioner and in spite of the fact that he was willing and available for being produced before the Magistrate.

3. Mr. Garg who appears on behalf of the petitioner has raised several interesting questions arising out of the provisions of the Code of Criminal Procedure relating to the jurisdiction of a Court to remand an accused person to custody but all of these points ultimately converge on the issue whether an order of remand can be passed without the physical production of the accused before the Court. This issue is no longer res integra. In *Raj Narain v. Supdt. Central Jail, New Delhi* ((1971) 2 SCR 147 : (1970)2 SCC 750 : 1970 SCC (Cri) 543), this Court held by a majority of five to two that even it be desirable for the Magistrates to have the prisoner to 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 Shanker Jha v. The State Of Bihar & Ors.* ((1972) 3 SCR 129 : (1972) 1 SCC 564 : 1972 SCC (Cri) 328) and in *M. Sambasiva Rao v. The Union of India & Ors.* AIR 1973 SCC (Cri) 328.

4. The counter-affidavit filed on behalf of the respondents is not clear on the question whether the petitioner was produced before the Magistrate when the various orders of remand were passed and therefore we asked the respondent's Counsel to furnish to us a copy of the proceedings of the Magistrate's Court at Jamshedpur. Those proceedings also do not indicate clearly whether the petitioner was produced before the Magistrate when the remand orders were passed. This is a highly unsatisfactory state of affairs and must be deprecated. Orders of remand ought not to be passed

mechanically and even though this Court has ruled that the non-production of the accused will not vitiate an order of remand, the Magistrate passing an order of remand ought, as far as possible, to see that the accused is produced in the Court when the order of remand is passed. It appears from the proceedings that the accused was transferred to Gaya jail partly for reasons of security and that is why he could not be produced in the Jamshedpur Court which passed the various orders of remand.

5. It was urged by Mr. Garg that on occasions orders of remand were passed even by the Magistrate at Gaya who clearly had no jurisdiction to try the offences attributed to the petitioner. This, if true, would have been a serious matter but the proceedings show that the orders of remand were passed all through by the Sub-Divisional Magistrate, Jamshedpur and not by the Magistrate at Gaya.

6. Though we cannot direct the release of the petitioner by issuing a writ of habeas corpus we are of the opinion that the Court before which the case may now be pending must consider whether the petitioner could not be released on bail forthwith. It appears from the copy of the proceedings supplied to us that Narain Das who was arrested along with the petitioner was released on bail in or about September, 1973. The petitioner's case stands on the same footing as that of Narain Das and in view of the fact that the investigation took more than two years to complete this may be a fit case in which the Magistrate could release the petitioner on a proper bail.

7. With these observations we dismiss the petition.

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