

Rajinder Prasad Aggarwal

Vs

Chief Metropolitan Magistrate and Others

Writ petition (Criminal) No. 3219 of 1981

(R. S. Pathak, A. N. Sen JJ)

30.09.1985

JUDGMENT

BHAGWATI, C.J. -

1. This is a petition for a writ of habeas corpus for production and release of one Anand Kumar Aggarwal. He was arrested along with one Vishwanath from the residence of his father in Benachitty at 8 p.m. on June 9, 1981. The arrest was made by Sub-Inspector Chauhan of Gujarat Police with the assistance of the police from Durgapur Police Station. Anand Kumar Aggarwal, though arrested at Benachitty and taken to the Durgapur Police Station, was not produced before the Sub-Divisional Judicial Magistrate, Durgapur, who, according to the Petitioner, was the nearest Magistrate having jurisdiction to take cognizance of the offence charged against Anand Kumar Aggarwal. Anand Kumar Aggarwal was taken by Sub-Inspector Chauhan from Benachitty to Calcutta in the morning of June 10, 1981 and he was thereafter produced before the Chief Metropolitan Magistrate who, on the application of the police, remanded Anand Kumar Aggarwal to police custody for a period of 14 days. The petitioner who is the cousin of Anand Kumar Aggarwal thereupon filed the present writ petition in this Court for production and release of Anand Kumar Aggarwal on the ground that Anand Kumar Aggarwal was not produced before the nearest Magistrate within a period of 24 hours of his arrest as required by Clause 2 of Article 22 of the Constitution and his detention in police custody was therefore unconstitutional. It is no doubt true that Anand Kumar Aggarwal was produced before the Chief Metropolitan Magistrate within a period of 24 hours from his arrest but, contended the petitioner, this was not sufficient compliance with the requirement of Clause 2 of Article 22, since what that article enjoins is the production of the arrested person before the Magistrate nearest to the place of arrest and not the nearest Magistrate at the place where the arrested person might be when the police choose to produce him before the Magistrate before the expiration of the period of 24 hours. But before the writ petition could come up for hearing, Anand Kumar Aggarwal was released by the Court and the writ petition for production and release of Anand Kumar Aggarwal accordingly became infructuous.

2. The petitioner however, despite the fact that the writ petition had become infructuous, submitted that the Court should decide the question as to what is the true meaning of the expression "nearest Magistrate" in Clause 2 of Article 22. Does it refer to the Magistrate nearest to the place of arrest or does it refer to the Magistrate who may be nearest at the time, albeit within a period of 24 hours, when the arrested person is sought to be produced by the police. The respondents submitted that it was totally unnecessary for us to decide this question, since Anand Kumar Aggarwal had already been released and the decision of this question would be purely academic. The respondents were clearly right in the submission made by them that it would be an academic exercise for this Court to consider this question, but even so we decided to hear arguments on this question. But after hearing

the arguments, we find that this question raised by the petitioner is not at all free from difficulty and we would not like to decide it one way or the other without examining it in some depth. We do not think that this is a proper case in which we should decide this question, because Anand Kumar Aggarwal has already been released and the decision of this question has become academic so far as the present writ petition is concerned. We do not therefore propose to decide this question in the present writ petition.

3. There will accordingly be no order on the writ petition.

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