

Ram Dass Ram

Vs

State of Bihar and Another

Writ Petition (Criminal) No. 519 of 1985

(M. M. Dutt, A. P. Sen JJ)

27.01.1987

ORDER

1. In this petition under Article 32 of the Constitution for grant of a writ of habeas corpus, the only question is whether the detention of the petitioner at the Central Jail, Buxur is without any lawful authority. It appears from the counter-affidavit of the Superintendent, District Jail, Arrah that the Sub-Divisional Magistrate, Buxur had remanded the petitioner to the Central Jail, Buxur in the year 1978 in connection with case registered under GR 476/78 pertaining to commission of offences punishable under Sections 147, 148, 323 and 324 of the Indian Penal Code, 1860. Thereafter, the petitioner on the strength of a production warrant was transferred to the District Jail, Arrah to stand his trial in Sessions Case No. 75/79 in the Court of the Fourth Additional Sessions Judge, Arrah. The petitioner was convicted by the learned Additional Sessions Judge by his judgment dated August 21, 1980 for having committed an offence punishable under Section 302 of the Indian Penal Code and sentenced him to imprisonment for life. On appeal being preferred, the High Court by its judgment in Criminal Appeal No. 371/80 allowed the appeal and set aside the judgment and conviction recorded by the learned Additional Sessions Judge and acquitted the petitioner. Despite the release warrant issued by the High Court, the petitioner was continued to be detained at the District Jail, Arrah since he had to stand his trial before the Second Additional Sessions Judge, Arrah in Sessions Case No. 86/82 for having committed alleged offences under Sections 307 and 327 both read with Section 34 of the Indian Penal Code. The learned Sessions Judge by his judgment dated August 14, 1986 recorded an order of acquittal and directed the release of the petitioner unless he was wanted in some other case. After the disposal of these cases, the petitioner instead of being released was transferred from the District Jail, Arrah to the Central Jail, Buxur on November 30, 1986 i.e. after his Court had on November 10, 1986 issued notice to the government, on the strength of a production warrant issued by the Judicial Magistrate, Buxur to face his trial under Sections 147, 148, 323 and 324 of the Indian Penal Code.

2. In the facts and circumstances of the case, there can be no doubt that the petitioner is being wrongfully detained at the Central Jail, Buxur without any lawful justification. As already stated, he had been acquitted of the charge under Section 302 of the Indian Penal Code by the High Court in one case and thereafter by the Second Additional Sessions Judge, Arrah of the charge under Sections 307 and 324, both read with Section 34 in another case. Thereafter there was no warrant for detaining him in jail. It is unfortunate that the learned Judicial Magistrate, Buxur without applying his mind to the facts of the case, should have for the mere asking issued a production warrant. The petitioner has been in jail for more than eight years and even if he were to be convicted for having committed the alleged offences punishable under Sections 147, 148, 323 and 324 of the Indian Penal Code, he would have in the meanwhile served out the sentence.

3. The writ petition is accordingly allowed and it is directed that the petitioner be released forthwith. The proceedings before the Judicial Magistrate, Buxur are quashed.

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