DELHI HIGH COURT

Ajit Singh

Vs.

State (Delhi)

Criminal Misc. (M) No. 179 of 1969
(H. R. Khanna, C.J., Hardayal Hardy and V. D. Misra, J.)

3.2.1970

JUDGEMENT

H.R. Khanna, C.J.

1. The short question which arises for determination in this case is whether an accused person can be remanded to custody for a period beyond 15 days of his arrest in the absence of a police report commonly known as charge-sheet under Section 173 of the Code of Criminal Procedure (hereinafter referred to as the Code). According to the petitioners' counsel unless a charge-sheet is submitted a criminal court has no power to remand an accused to custody after 15 days of his arrest and he in such an event must be released on bail. As against that the submission made on behalf of the State is that an accused be remanded to custody by the Court having jurisdiction in the matter under Section 344 of the Code and it is not obligatory to release the accused on bail after 15 days of his arrest even though the charge-sheet has not been put in the Court. The question has arisen in the following circumstances:-

The dead body of Sarjeevan Prakash alias Kaka was found in the fields in the jurisdiction of Timarpur police post on the morning of September 5, 1969. Ajit Singh and Shankar petitioners were arrested by the police on September 17, 1969 under Section 302, read with S. (34-Ed.) of the Indian Penal Code in connection with the murder of Sarjeevan Prakash. The two petitioners were produced before the Magistrate on September 18, 1969 when they were remanded to police custody till September 25, 1969. Further orders remanding the accused to judicial custody were made from time to time till November 15, 1969, when another order for remand was made.

An application for releasing the two petitioners on bail was rejected by the learned

Magistrate on October 14, 1969. An application for the release of the petitioners was then made to the learned Sessions Judge who rejected the application by his order dated November 1, 1969. The petitioners then approached this Court. One of the contentions advanced on behalf of the petitioners was that after the expiry of the period of remand, for which the limit prescribed by Section 167 of the Code is 15 days in the whole, no further order for remand could be passed unless a charge-sheet under Section 173 of the Code was forwarded to the Magistrate empowered to take cognizance of the offence. One of us (Hardy, J.) then found that there was a serious conflict among the different High Courts on the above aspect of the matter. He, accordingly, expressed the view that the matter should be decided by a larger Bench. The case was then placed before a Division Bench consisting of Hardy and Misra, JJ., who, in view of the sharp divergence of opinion, expressed the view that it should be decided by a Full Bench.

2. Before dealing further with the matter it would be convenient to reproduce Section 167, relevant part of Section 173 and Section 344 of the Code:

> "167. (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 61, and there are grounds for believing that the accusation or information is well founded, the officer-in-charge of the police station or the police officer making the investigation if he is not below the rank of sub-inspector shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.
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> (2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:
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> Provided that no Magistrate of the third class, and no Magistrate of the second class not specially empowered in this behalf by the State Government shall authorize detention in the custody of the police.
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> (3) A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

(4) If such order is given by a Magistrate other than the District Magistrate or sub-divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate."

"173. (1) Every investigation under this Chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer-in-charge of the police station shall -

(a) forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused (if arrested) has been forwarded in custody, or has been released on his bond, and, if so, whether with or without sureties, and

(b) Communicate, in such manner as may be prescribed by the State Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given.

(2) Where a superior officer of police has been appointed under Section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer-in-charge of the police station to make further investigation.

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"344. (1) In every inquiry or trial, the proceedings shall be held as expeditiously as possible and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

(1A) If, from the absence of a witness, or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, the Court may, if it thinks fit, by order in writing, stating the reasons therefore, 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 no 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 cause for a remand."

3. According to Section 61 of the Code no police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not in the absence of a special order of a Magistrate under Section 167, exceed twenty four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate, Court. It would therefore follow that the maximum period for which an arrested person can be detained by the police in the absence of a special order of a Magistrate is twenty-four hours excluding the time requisite for the journey from the place of arrest to the Magistrate's Court. If the investigation of the offence, for which the accused is arrested, cannot be completed within twenty-four hours by the police fixed by Section 61 and there are grounds for believing that the accusation or information against the accused is well founded the police are bound under Section 167 of the Code to forward the accused along with copies of the entries in the diary to the nearest Magistrate.

Such a Magistrate can authorize the detention of the accused in the police custody from time to time for a term not exceeding 15 days in the whole. An order for this purpose cannot be made by a Magistrate of third class or by a Magistrate of second class not specially empowered in this behalf by the State Government. It is, however, not essential that the Magistrate passing the order should have jurisdiction to try the case. While authorizing detention in the custody of police under Section 167 the Magistrate has to record his reasons for so doing and this fact would show that the remand is to be granted not as a matter of course but for reasons which have to be put in writing. It may be noticed that the word "remand" as such is not used in Section 167 and what is authorized by the Magistrate for making an order under that section is the detention of the accused in police custody.

4. In some cases, specially those relating to murder, dacoity or conspiracy, it happens that the investigation is not completed within 15 days. Question arises whether the accused in such a case can be kept in custody beyond that period. Section 344 of the Code provides an answer to that. The section deals with postponement and adjournment of proceedings as well as with remand. According to sub-section (1A) of that section, if, from the absence of a witness, or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of, or adjourn any inquiry or trial, the Court may, if it thinks fit, by order in writing, stating the reasons there for 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. The words "postpone the commencement of any inquiry or trial" indicate that an order under the above provision can be made at a stage preceding the commencement of inquiry or trial. The order under the above provision can be made by a Court which, according to Section 6 of the Code, includes Courts of Session and Magistrates.

In case, however, an order for remand to custody is made by the Magistrate the proviso to sub-section (1A) makes it clear that the term of the remand shall not exceed 15 days at a time. Reasons have also to be recorded in writing for making an order of remand. The order has also to be signed by the Magistrate. It is further imperative that the Magistrate making the order under Section 344 should have jurisdiction to take cognizance of the offence for which the accused has been arrested.

5. The Explanation to Section 344 is of importance and, according to it, it would constitute reasonable cause for a remand 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. In order to bring the case within the ambit of the above Explanation it would have to be shown that there is sufficient material already procured to create a suspicion that the accused has committed offence and that there is a likelihood of further evidence being obtained as a result of the remand.

6. According to Section 173 every investigation of an offence shall be completed without unnecessary delay. The provision in this respect underlines the importance of promptitude and diligence in the investigation of cases. It hardly needs to be emphasized that slackness on the part of investigating agency can result in the disappearance of material evidence which might otherwise be available and thus prevent the effective detection of the crime. A duty is therefore cast upon the police by

Section 173 of the Code to complete investigation without unnecessary delay. In order to provide a safeguard against any slackness on the part of the police, it has been provided that the accused cannot remain in custody beyond a specified period without the order of the Magistrate. The police have therefore to give reasons and make out a case for the remand of the accused to custody. A Magistrate granting a remand under Section 344 has to bear this in mind and has to be satisfied that there exist good grounds for making an order of remand of the accused to custody. The Magistrate has to keep a balance and should not be oblivious of the fact that an order of remand to custody affects the liberty of an individual who has yet to be found guilty. At the same time the Magistrate has to see that the investigating agency is not deprived of a reasonable opportunity of procuring further evidence which is likely to be obtained as a result of the remand.

In a number of cases it would indeed be essential to make an order of remand because of inability of the police to complete the investigation within a period of 15 days for a variety of causes. Not to do so, would have the effect of hampering the investigation and preventing the conviction of persons guilty of serious crimes like dacoity and murder for lack of full evidence. It may also be mentioned that the accused has to be remanded under Section 344 not to police custody but to judicial lock-up.

7. There is nothing, in our opinion, in Section 344 which makes it imperative that an order for remand can only be made after a charge-sheet under Section 173 of the Code has been forwarded to the Magistrate. In the absence of any words in the section and in the absence of anything in the context, it would, in our view, be not permissible to read in the section a limitation on or condition attached to the power of Magistrate to grant remand only in case a charge-sheet under Section 173 has been put in Court. As observed on page 33 of Maxwell on Interpretation of Statutes, Twelfth Edition :-

> "It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the legislature intended something which it omitted to express. Lord Mersey said: 'It is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do.' *(Thompson v. Goold and Co.*[1] 'We are not entitled,' said Lord Loreburn, L. C., 'to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself.' *(Vickers, Sons and Maxim, Ltd. v. Evans,* [2] A case not provided for in a statute is not to be dealt with merely because there seems no good reason why it should have been omitted, and the

omission appears in consequence to have been unintentional. *(Lloyds Bank v. Elliot,)*[3] ."

8. We are fortified in the view which we have taken by the preponderance of authority. In Supdt. and Remembrancer of Legal Affairs, Govt. of *West Bengal v. Bidhindra Kumar Roy,* [4] Roxburgh and Blank, JJ., observed:

> "Section 167 which limits the period of detention to 15 days is applicable both to a Magistrate having jurisdiction to try the case and also to other Magistrate and limits the total period of detention to 15 days. In the case of a Magistrate who has no jurisdiction to try the case he must within the period forward the accused to a Magistrate having jurisdiction. The section then applicable for further detention is Section 344 of the Code and the Explanation to that section indicates, in our opinion, that further remand may be granted before submission of the charge-sheet. Under Section 173 of the Code, the charge-sheet is to be submitted when the investigation is complete. The Explanation to Section 344 of the Code clearly contemplates a stage prior to submission of the charge-sheet and that time is wanted for further investigation; under it the Court having jurisdiction may grant remands in custody 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."

Bhola Nath Das v. Emperor, [5] was cited before the learned Judges but they expressed the view that it had not been correctly decided.

9. In *Dukhi v. State,* [6] a Division Bench of the Court (Desai and Beg, JJ.) held that where a person is arrested by the police without a warrant, it is not required that he must be released from custody on the expiry of 15 days if the police is still investigating the matter. A Magistrate, having jurisdiction to take cognizance of the offence, can avail himself of the provisions of Section 344 without taking cognizance of the offence or while the matter is still under investigation by the police. The learned Judges also overruled the view expressed in an earlier Single Bench case *Kali Charan v. State,* [7]

10. In *Shrilal Nandram v. R. R. Agrawal,* [8] , a Division Bench, consisting of A. H. Khan and Shiv Dayal, JJ., observed:

> "The only limit on the exercise of the power of the remand under Section 344 is that the Court cannot give a remand for a term exceeding 15 days at a time. This limit for 15 days is for the purpose of enabling the Court to see as to what

progress has been made in obtaining further evidence. Each order of remand must be intelligently made and the Magistrate must give reasons for a further postponement of the enquiry or trial. In this view of the matter, I fail to see how the provision of Section 173 of the Criminal Procedure Code is a condition precedent to a remand under Section 344 (1A) of the Criminal Procedure Code."

The above-mentioned three cases were relied upon and similar view was expressed by P. Govinda Menon, J., in *State or Kerala v. Madhvan Kuttan,* [9] The learned Judge further observed:

"The explanation makes it clear that it relates to a stage where the offence is still under investigation by the police. No investigation can be held after the Magistrate has taken cognizance of the offence and the explanation must, therefore, necessarily refer to the circumstances existing before the taking of cognizance of the offence by the Magistrate. There is nothing to be done by the Magistrate after cognizance is taken on a police report and before the commencement of an enquiry or trial. So postponing commencement of an enquiry or trial may include postponing of taking cognizance of the offence."

The Judicial Commissioner of Tripura also took the same view in *Rab Noaz v. State,*

11. On behalf of the petitioners reference has been made to AIR 1955 Allahabad 462. As stated above, the view expressed in this case by the learned Single Judge was overruled in the latter Division Bench case of Dukhi AIR 1955 Allahabad 521. Perusal of the facts of this case goes to show that Kali Charan applicant was remanded to custody by City Magistrate, Farrukhabad. According to the police report, Kali Charan was also involved in cases under Section 420 and other sections of the Indian Penal Code in Uttar Pradesh, Madhya Pradesh, Bombay, Madras and other States. It was held that the City Magistrate, Farrukhabad, who had no jurisdiction to try cases relating to the offences committed in Madras and other places, had no power to remand the accused to custody for a period exceeding 15 days in the whole. Although there were some general observations in that case, the above facts would go to show that they were in the context of the peculiar facts of that case. Be that as it may, a latter Division Bench expressed its disagreement with the view taken in the above case.

12. Another case referred to on behalf of the petitioners is *Artatran Mahasuara v. State of Orissa,* decided by Mohapatra and P. V. B. Rao, JJ. The learned Judges in this case held that Section 344 applied only to cases of which the Magistrate had taken

cognizance. The learned Judges dissented from the view expressed in Bidhindra Kumar Roy's case, AIR 1949 Calcutta 143 and Dukhi's case, AIR 1955 Allahabad 521.

13. We are unable to subscribe to the proposition laid down by the learned Judges in the above case as we do not find anything in Section 344 which makes it obligatory on the part of the Magistrate to take cognizance of an offence before remanding the accused to custody. A Magistrate takes cognizance of an offence under sub-section (1) of Section 190 of the Code (a) upon receiving a complaint of facts which constitute such offence, (b) upon a report in writing of such facts made by a police officer and (c) upon information received from any person other than a police officer or upon his own knowledge or suspicion, that such offence has been committed. The expression "taking cognizance" has not been defined in the Code. It can, however, be said that before any Magistrate takes cognizance of an offence under Section 190 he must have applied his mind for the purpose of proceeding in a particular way as indicated in the subsequent provisions. When a Magistrate applies his mind not for the purpose of proceeding under the subsequent sections but for taking action of some other kind, for example, ordering investigation under Section 156 (3), or issuing such a warrant for the purpose of such investigation, he cannot be said to have taken cognizance of the offence. See in this connection *R. R. Chari v. State of Uttar Pradesh,*[12] . Kania, C. J., who spoke for the Court in the above case, also referred to clause (b) of sub- section (1) of Section 190 and observed that the police report, referred to in that clause, was evidently one in a cognizable case when the police have completed their investigation. It would, therefore, follow that the cognizance of an offence in a cognizable case under clause (b) of sub-section (1) of Section 190 can be taken by the Magistrate after the police have completed the investigation.

The question of taking cognizance under the above clause when further investigation has still to be carried out would, therefore, not normally arise. We have already held above that it would not be permissible to read in Section 344 a limitation on the power of Magistrate to grant remand only in case a charge-sheet under Section 173 has been put in Court. Likewise, we cannot subscribe to the proposition that the taking of cognizance of an offence is a condition precedent to the passing of an order of remand of the accused to custody under Section 344 of the Code.

14. Reference has been made on behalf of the petitioners to Section 170 of the Code and it is submitted that a report in the nature of an incomplete charge- sheet should be forwarded under that section by the police before an order of remand under Section

344 is made. There is nothing in the language of Section 170 which warrants such a conclusion. Indeed, the said section contains no reference to the submission of a report in the nature of an incomplete charge-sheet. Apart from that, we find that according to the dictum laid down in the case of Artatran Mahasuara, on which case reliance has been placed by the petitioners, Sections 170 and 173 are to be read together and contemplate a simultaneous action.

15. Another case to which reference has been made on behalf of the petitioners is *Tara Singh v. State,* [13] What was held in that case, apart from other matters with which we are not concerned, was that where the First Report made by the police to a Magistrate, though called incomplete challan, contains all the particulars required by Section 173 (1) (a) and a second report with a supplementary challan is filed subsequently, giving the names of some formal witnesses, the first report is in fact a complete report as required by Section 173 (1) (a) of the Code and it is not necessarily vitiated by the mere fact that a supplementary challan is subsequently filed. The dictum laid down in the above case dealt with a matter which was essentially different and in our opinion the petitioners cannot derive any assistance from that.

16. Argument has then been advanced on behalf of the petitioners that Section 344 finds its place in Chapter 24 of the Code, the heading of which is "General Provisions as to Inquiries and Trials". It is urged that as Chapter 24 relates to inquiries and trials, an order for remand under that Section can only be made during the pendency of an inquiry and trial and not at a stage prior to that. This contention, in our opinion, is not well founded. The headings prefixed to sections or sets of sections in some modern statutes are regarded as preambles to those sections. They cannot control the plain words of the statute, but they may explain ambiguous words. (See in this connection Maxwell on Interpretation of Statutes, Twelfth Edition p. 11). There is no ambiguity in Section 344 on account of which it may become necessary to refer to the heading of Chapter 24 of the Code for the construction of the above section. On the contrary there are indications that all the sections under Section 344 (Chapter 24 Ed?) do not necessarily relate to a stage after the commencement of inquiry or trial. Reference in this connection may be made to Section 337 which is also a part of Chapter 24. According to this Section a pardon may be tendered by the authority concerned to a person at any stage of the investigation or inquiry into, or the trial of the offence, with a view to obtaining the evidence of such person. The grant of pardon to a person at the stage of investigation would normally be before the commencement of inquiry and trial. It would, therefore, follow that all the matters that are dealt with in the Sections

under Chapter 24 of the Code are not those at the stage of inquiry and trial but can also be at the stage of investigation.

17. Reference has also been made on behalf of the petitioners to Rules and Orders of the Punjab High Court, Volume III, Chapter II-B, Paragraph 10, according to which if a remand is granted under Section 344, Criminal Procedure Code, the case is brought on to the Magistrate's file and the accused, if detention is necessary, will remain in magisterial custody. The above provision can be of no assistance to the petitioners because it does not follow from it that a charge-sheet must be submitted or the cognizance of an offence must be taken by a Magistrate before he can remand an accused to custody under Section 344 of the Code. The fact that the case is brought on to the Magistrate's file only indicates that the papers, on which the order for the remand of the accused is made, would become a part of the Court file so that they can be put up for hearing on the next date. Our attention has also been invited to Paragraph 25.56 of the Punjab Police Rules, Volume III, Reprint Edition, according to which an incomplete charge-sheet can be put in Court. The above paragraph contains instructions for the police and would not affect the procedure to be followed by a Criminal Court for which purpose we have necessarily to look to the Code of Criminal Procedure.

18. The two accused were, on consideration of the facts of the present case, released on interim bail by the Division Bench before the reference of this case to the Full Bench. Keeping in view all the facts we confirm the interim order and direct that the petitioners may remain on bail during the pendency of the case against them.

Order accordingly.

Cases Referred.

1. (1910) AC 409, at p. 420).

2. (1910) AC 444, at p. 445.)

3. 1947) 1 All England Reporter 79

4. AIR 1949 Calcutta 143

5. AIR 1924 Calcutta 614

6. AIR 1955 Allahabad 521,

7. AIR 1955 Allahabad 462.

8. AIR 1960 Madhya Pradesh 135

9. AIR 1964 Kerala 232.

10. AIR 1965 Tripura 6.

11. AIR 1956 Orissa 129,

12. AIR 1951 Supreme Court 207

13. AIR 1951 Supreme Court 441.