

KERALA HIGH COURT

State of Kerala

Vs

Madhavan Kuttan

(P Govinda Menon, C.J.)

21.02.1963

ORDER

P. Govinda Menon, J.

1. This is a reference made by the learned Sessions Judge of Trivandrum recommending that the order of the Sub-Magistrate, Kattakada releasing from custody the respondent who was the second accused in a murder case be quashed. The grounds stated by the learned Magistrate for the action that he took was that the accused before him had been in detention for more than fifteen days without the charge sheet being submitted and that this cannot be done under Section 167 Cr. P. C. The learned Magistrate was of the view that before the submission of the report by the police under Section 173 Cr. P. C., he had no jurisdiction to remand the accused to judicial custody under Section 344 Cr. P. C.

2. The view of the learned Magistrate does not appear to be correct. There are two sections in the Criminal Procedure Code which empower the Magistrate to grant time to the police in connection with the investigation of a case. Under Section 61 of the Criminal Procedure 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. If the investigation cannot be completed within that period the police must forward the accused to the nearest Magistrate under Section 167 (i) Cr. P. C. The Magistrate can then authorise his detention in such custody as he thinks fit for a term not exceeding fifteen days.

3. The legislature expects that ordinarily the investigation would be completed within fifteen days, but in grave crimes investigation may go beyond the fifteen days and the legislature could not have contemplated that the accused person must be released from custody after the fifteen days regardless of the nature of the accusation. Section 344-- Cr. P. C., refers to detention after fifteen days. The explanation to Section 344 says that if sufficient evidence has been obtained to raise a suspicion that the accused might have committed an offence and it appears likely that further evidence may be obtained by a remand, the Magistrate can pass an order of remand. The explanation makes it clear that it relates to a stage where the offence is still under investigation

lay 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.

4. This question was considered by a Division Bench of the Allahabad High Court in *Dukhi v. State*, AIR 1955 All 521. The matter has been elaborately discussed and it was 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 mentioned in Section 167 (2) if the police are 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. An earlier decision in *Kali Charan v. State*, AIR 1955, All 462, which had taken a different view was not followed.

5. In an earlier decision in *Emperor v. Sooba*, AIR 1931 All 617, Kendall J. observed that if an investigation is not complete within fifteen days, the accused must be forwarded to the Magistrate having jurisdiction for being remanded under Section 344 if there are sufficient reasons and that it is not the law that a police investigation can in no case involve detention of the accused persons in custody for more than fifteen days.

6. The Magistrate has relied on the decision in *Bhola Nath Das v. Emperor*, AIR 1924 Cal 614 where *Greeves and Panton JJ.*, laid down:

"At the expiration of the maximum period of 15 days' detention of an accused person

.... an accused must either be released by the police under Section 169

or the Magistrate, empowered in that behalf, must either take cognizance if he has before him a police report (which ordinarily would be a report in the form laid down in Section 173)

or he must release him."

The correctness of the decision was doubted by the same High Court in *Supdt. and Remembrancer of Legal Affairs Bengal v. Bidhindra Kumar Roy*, AIR 1949 Cal 143. In that case it was observed by the learned Judges that the explanation to Section 344 already contemplates a stage prior to submission of the charge sheet and that time is wanted for further investigation.

7. In a recent decision of the Madhya Pradesh High Court in *Shrilal Nandram v. Agrawal*, S. D. M. First Class, Gwalior, AIR 1960 Madh Pra 135, this question came up for consideration. Their Lordships stated:

"There are two sections namely, Section 167 and Section 344 in the Criminal Procedure Code which empower the Magistrate to grant time to the police in connection with the investigation of a case. In the first stage, under Section 167 Cr. P. C. that which is usually called remand to police is really authorised detention. The second stage arises when investigation is not completed within 15 days and more time is needed for collecting further evidence. It is at the second stage that

remand is granted and the word 'remand' is actually used in Section 344 Cr. P. C. 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 in this view of the matter, the contention that the provision of Section 173 is a condition precedent to a remand under Section 344 (1A) is wholly without merit. Further, one who is under authorised detention by an order of the court under Section 167 or who has been granted a remand under Section 344 (IA), cannot be said to be illegally or improperly detained. Hence, an application under Section 491 Cr. P. C. is untenable". I am in respectful agreement with the views expressed in these cases and I hold that the order of the learned Magistrate is wrong. It is, therefore, set aside. The reference is accepted.