

MADHYA PRADESH HIGH COURT

Shrilal Nandram a

Vs.

R.R. Agrawal, S.D.M., First Class, Gwalior

Criminal Misc. Case (Habeas Corpus), No. 122 of 1959

(T.C. Shrivastava, J.)

29.08.1959

JUDGMENT

Khan J.

1. This is an application under section 491 of the Criminal Procedure Code for the issue of a direction in the nature of habeas corpus.

2. The facts in short as stated by the counsel of the parties are that the petitioners were arrested by the Dabra Police on 7th June 1957 in connection with a murder. On 8th June the Police obtained a remand till the 14th June. The police again obtained a remand till the 19th June 1959 on the ground that the investigation was not complete and that some recoveries were still to be made. On the 19th June, the Police requested the Court to take the applicants in judicial custody and grant time for submitting the Challan. The Court took the applicants in its custody and it is contended by Mr. A. B. Mishra (though the order of the Court is not produced before us) that this custody is illegal custody and that the accused must be released.

3. It is submitted by the learned counsel for the applicants that before the submission of a report by the Police under section 173, the learned Magistrate had no jurisdiction to remand the applicant to judicial custody under section 344 Criminal Procedure Code. After giving the matter my careful consideration, I am of the opinion, that there is some confusion in the approach to the question canvassed before us. I fail to understand the relevancy of Section 173 Criminal Procedure Code at the time of the granting of the remand. 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.

4. Section 167 of the Criminal Procedure Code provides that when the Police, after the arrest of an accused, cannot complete the investigation within 24 hours of arrest, the Police shall transmit the papers of the case along with the accused to a Magistrate and the Magistrate can authorize the detention of the accused in the custody of the Police for a term not exceeding 15 days on the whole. This I should like to be regarded as first stage in detention. Although rather loosely this extension of time to the Police is referred to as "giving or granting the remand," but it is significant that Section 167 Criminal Procedure Code, has described it as "authorized detention" and not remand.

5. The second stage of detention begins when the police cannot complete the investigation within 15 days. It is, then that under section 344(1A) of Criminal Procedure Code, the Police applies to the Court to postpone the commencement of the proceedings, giving its reasons for such prayer, and, the Court after examining those reasons, and, stating its own reasons can adjourn the proceedings till such time as the investigation is completed. It is at this second stage, as provided by Section 344(1A) read with the Explanation that the Court may by warrant remand the accused, if in custody. From this, it would be clear that in the first stage, under section 167 of the Criminal Procedure Code, that which is usually called remand to Police is really authorized 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 Criminal Procedure Code. 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.

6. It is obvious that any one who is under authorized detention by an order of the Court under section 167 or who has been granted a remand under section 344 referred to above, cannot be said to be illegally or improperly detained. In the circumstances, an application under section 491 Criminal Procedure Code is untenable and must fail, and, this petition is in consequence dismissed.

Shiv Dayal J.

1. I agree that this petition must be dismissed as it is entirely misconceived. The petitioner was arrested on June 7, 1959 and this petition was filed on June 19, 1959, that is, within 15 days of the arrest.

Petition dismissed.