

(2011) 01 CHH CK 0058

In the Chhattisgarh High Court

Case No : Writ Petition (Habeas Corpus) No. 5596 of 2010

Afroz

APPELLANT

Vs

State of Chhattisgarh and others

RESPONDENT

Date of Decision : 06-01-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Criminal Procedure Code, 1973 (CrPC) — Section 267, 269

Citation : (2011) 4 RCR(Criminal) 166

Hon'ble Judges : R.N. Chandrakar, J;Dhirendra Mishra, J

Bench : Full Bench

Judgement

1. The petitioner was kept in judicial custody in connection with Crime No. 74/2010 at Central Jail, Raipur. He was granted bail by the learned Judicial Magistrate 1st Class, Raipur and release order was issued on 23-9-2010 (Annexure-P/1). However, when the petitioner was not released from jail, the petitioner has filed this petition and prayed for a direction to the respondents for immediate release of the petitioner from illegal confinement of respondent No. 4. The petitioner has also prayed for adequate compensation for his illegal confinement.

2. The respondents in their counter affidavit have averred that the petitioner was confined in the judicial custody as per the order of the Judicial Magistrate 1st Class dated 23-7-2010 (Annexure-R/1). The Court of Metropolitan Magistrate, 32nd Court, Bandra, Mumbai issued warrant for production of the petitioner in its Court on 28-8-2010 (Annexure R/2). Thereafter another warrant dated 18-9-2010 for production of the petitioner in the Court of Additional Chief Metropolitan Magistrate, 24th Court, Borivali, Mumbai was issued and the same was received by respondent No. 4 on 20th September, 2010 (Annexure-R/3). Since the case of the petitioner was pending in the local Court, information of production warrant was sent to the Court of Judicial Magistrate 1st Class, Raipur. The petitioner was released from jail in compliance of the release order dated 23-9-20,10. However, since the petitioner was to be produced before the Court

at Mumbai on 1st October, 2010, the petitioner was detained in the Central Jail, Raipur and a memo was sent to the Reserve Inspector, District Reserve Police Line, Raipur on 23-9-2010 itself for arranging police force for compliance of the production warrant issued by the Court at Mumbai (Annexure-R/6).

An application was also tiled in the Court of Judicial Magistrate 1st Class, Raipur on 27-9-2010 for issuance of transit remand to produce the petitioner before the Court at Mumbai in compliance of the production warrant (Annexure- R/7). Thereafter the petitioner was sent to the Court at Mumbai on 27-9-2010 along with the Reserve Inspector, Raipur in compliance of the production warrant (Annexure-R/8). The petitioner and the other accused were produced before the Court of Addl. C. M. M. at Mumbai on 29-9-2010 (Annexure-R/9).

3. Shri Manish Sharma, learned counsel for the petitioner submitted that production warrant of Annexure-R/3 u/s 267 Cr. P. C. was issued to the In-charge of the Central Jail, Raipur on 18-9-2010 for his production before the Court on 1st October, 2010. As per the provisions of Section 269(c) of the Cr. P. C., respondent No. 4 ought to have abstained from carrying out the Court's order and sent a statement of reasons for so abstaining, as the period for which the petitioner was detained had expired on 23-9-2010 before 1st October, 2010 when he was to be produced at Mumbai Court, however, the jail authorities illegally detained the petitioner beyond 23rd September 2010, the date on which the petitioner was directed to be released by the Judicial Magistrate 1st Class, Raipur. It is a clear case of illegal detention of the petitioner by the jail authorities and forwarding him to the Mumbai Court on 27-9-2010 in the police custody.

Reliance is placed in the matter of Dharampal and another v. State of U. P. and another, 1982 All L.J. 130.

Further relying upon a decision of the Supreme Court in the matter of Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, , it was argued that the petitioner is entitled for monetary compensation for contravention of his fundamental rights guaranteed by the Constitution as the petitioner was illegally detained by the jail authorities.

4. On the other hand, learned counsel for the State/respondents would argue that the petitioner was bona fide detained with an intention to comply with the order and was produced before the Court of ACMM, Borivali, Mumbai. Thus the purpose of detention was to implement the production warrant issued by the competent Court at Mumbai. The petitioner is involved in inter-state vehicle theft gang, which is engaged in inter-state theft of vehicles. It was further argued that the lapses, if any, committed by respondent No. 4 are unintentional and bona fide and the same deserve to be condoned.

5. Heard learned counsel for the parties.

6. Indisputably, the production warrant issued by the Court of ACMM at Mumbai

for production of the petitioner on 1-10-2010 was received in the Central Jail, Raipur on 20-9-2010 whereas the petitioner was released by the learned Judicial Magistrate 1st Class, Raipur vide release order dated 23-9-2010, however, instead of releasing the petitioner, he was detained in the jail and he was sent with one Inspector of Reserve Police on 27-9-2010 for being produced before the Court at Mumbai and accordingly, he was produced before the Mumbai Court on 29-9-2010.

7. Chapter XXII of the Cr. P. C. deals with attendance of persons confined or detained in prisons. Section 267 empowers the criminal Court to issue warrant for production requiring officer in charge of the prison to produce such person before the Court whereas Section 269 reads as under :-

269. Officer in charge of prison to abstain from carrying out order in certain contingencies. -Where the person in respect of whom an order is made u/s 267, -

(a) to (b) xxx

(c) is in custody for a period which would expire before the expiration of the time required for complying with the order and for taking him back to the prison in which he is confined or detained; or

(d) xxx

the officer in charge of the prison shall abstain from carrying out the Court's order and shall send to the Court a statement of reasons for so abstaining.

8. In the matter of Dharampal and another, (1982 All LJ 130) (supra), the Division Bench of the Allahabad High Court held that the accused, who are committed to the jail custody by criminal Court and subsequently obtaining bail from the Court, cannot be refused to be released on bail by the jail authorities on the ground that they received requisition issued by other criminal Court to produce the accused particularly, when the date in requisition for producing the accused has already expired.

9. From bare reading of Section 269(c) of the Cr. P. C., it is manifestly clear that where period of custody expires before expiration of the time required for complying with the order and for taking him back to the prison in which he is confined or detained, the officer in charge of the prison shall abstain from carrying out the Court's order and shall send to the Court a statement of reasons for so abstaining.

10. Thus in the instant case also, the petitioner was to be produced on 1st October, 2010, however, his period of custody expired on 23-9-2010 and in these circumstances, the jail authorities, instead of detaining the petitioner beyond 23rd September, 2010 for compliance of the production warrant issued by the Mumbai Court, ought to have sent a statement of reasons for not being able to comply with the warrant so issued by the Court of ACMM Mumbai.

11. For the aforesaid reasons detention of the petitioner in prison beyond 23rd

September, 2010 is admittedly illegal detention and without any authority of law (sic).

12. In the matter of Smt. Nilabati Behera, AIR 1993 SC 1360) (supra), the petitioner's son Suman Behera was taken into police custody on 1-12-1987 at 8 a.m. and he was found dead next day on the railway track near police outpost Jaraikela, without being released from the custody and his death was unnatural. The Supreme Court, treating the letter of the petitioner as a Writ Petition under Article 32 of the Constitution for determining claim of compensation for the death of the petitioner's son allowed the compensation after due enquiry through District Judge, Sundergarh in Orissa and held thus :-

A claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is distinct from, and in addition to, the remedy in private law for damages for the tort resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Arts. 32 and 226 of the Constitution.

13. However, considering the peculiar facts and circumstances of this case, we are of the opinion that actual compensation for which the petitioner is entitled cannot be determined in this writ petition, as the same would require recording of evidence and the petitioner can claim the same by filing appropriate proceedings before the competent forum.

14. The petitioner has already been entrusted in the custody of Malad Police on 29-9-2010 by the Court of ACMM, Mumbai (Annexure-R/9), in these circumstances, the other reliefs claimed by the petitioner to release him from illegal confinement of respondent No. 4 has become infructuous.

15. In the result, we dispose of this writ petition by imposing cost of Rs. 5,000/- on the respondents payable to the petitioner within a period of 4 weeks from today.