
(1997) 11 AHC CK 0044
In the Allahabad High Court
Case No : Writ Petition No. 651 H/C of 1997

Awadesh Kumar

APPELLANT

Vs

Supdt.Distt.Jail & Ors.

RESPONDENT

Date of Decision : 26-11-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 309, 50

Citation : (1997) 11 AHC CK 0044

Hon'ble Judges : Palok Basu, J and R.K.Mahajan, J

Final Decision : Dismissed

Judgement

1. The petitioner Dr. Awadhesh Kumar has Prayed:

"Wherefore, It is most respectfully prayed that the Hon"ble Court may kindly be pleased to issue a writ, order or direction in the nature of habeas corpus and the petitioner detenu may please be directed to be set at liberty forthwith with adequate and suitable compensation for the illegal detention."

2. There were three annexures in the writ petition. First, the summon dated 28/11/1997 issued to a witness that is the petitioner by the Investigation Officer of the C.B.I., Annexure 2 is the memo of arrest indicating the arrest of the petitioner and Annexure 3 is the application moved by the petitioner before the Court of Special Judge, AntiCorruption, Central U.P., Lucknow where the petitioner was produced after arrest. By supplementary affidavit the petitioner has filed a copy of the order dated 7/11/1997 where under the application for bail on behalf of the applicant was rejected.

3. Shri Nandit Srivastava, learned Counsel for the petitioner has been heard at length in support of this writ petition. In opposition Shri Vireshwar Nath, learned Government Advocate has been heard for the respondents.

4. It is admitted that order of taking cognizance has already been passed by the Special judge. It may be mentioned here that the petitioner is being tried for an alleged offences under various sections of the Indian Penal Code and also of the

Prevention of Corruption Act. It may further be mentioned that the cases challaned under the Prevention of Corruption Act are heard and decided by the special Judge under the relevant Act. The provisions indicate further that cognizance is permissible even if the accused is not under arrest.

5. It was vehemently argued by Shri Srivastava that the order by which the petitioner was summoned as witness should fore close the arrest of the petitioner as an accused. The argument misconceived. Any person who is summoned as a witness and when materials exist prima facie indicating involvement as an accused, the arrest cannot be said to be without authority of law.

6. Second argument advanced was that the memo of arrest does not include the ground on which the petitioner was being detained. The Arresting officer has clearly mentioned as per the Annexure2 that:

".....has been arrested today on 29/11/1997 at 1.00 p.m. at CBI office, 7, Naval Kishore Road, Lucknow where he had come for interrogation. The grounds of his arrest that he is deeply involved in the above said case through which Govt. of I.I.P. was defrauded to the tune of (sic) prima facie case is made out against said Shn (Dr.) Awadhesh Kumar under aforesaid offences and that the evidence collected so far, warrants, has arrest....."

The names of the witnesses are mentioned in the memo in as much as it is written there under as to who the Investigating officer is and an information was also sent to the friends and relatives of the petitioner. The second argument is, therefore, also of no consequence. The last argument advanced was that since the chargesheet papers were not furnished the remand order was bad. The application for bail which was decided by the learned Trial Judge has already been disposed of by him by a detailed speaking order. Supplementary affidavit filed by the petitioner contains the copy of that order. Merits of the matter need not be gone into.

7. It was sought to be contended placing reliance on the three decisions of the Hon'ble Supreme Court in A.K. Kulkarni, in K. Veeraswamy and in Daud Ibrahim that cognizance order will be based on full and complete chargesheet, 309, Cr. P.C. will not be attracted when the matter is under investigation and that the accused can be proceeded with by a valid remand only, otherwise the detention may be illegal. None of the three points can be challenged as they are narrating propositions of law Laid down by Hon'ble Supreme Court. The question however, is whether any of these questions arises in this case or not.

8. There was a chargesheet filed against the petitioner which is an admitted fact. It is said that some more papers were filed. This is not prohibited under the law in as much as investigation was continued and in this matter larger conspiracy etc. were being investigated.

9. The arrest was duly made in accordance with law and the remand order was consequently passed by the Special Judge authorizing further detention. It is

admitted to Shri Srivastava, as is the case on facts, that on this day there is a chargesheet against the petitioner and he is in custody on a valid remand order.

10. No case for interference under Article 226 of the Constitution of India is made out. Petition dismissed.