
(1991) 02 P&H CK 0073

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 2215 of 1990

Chander Bhan

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 19-02-1991

Acts Referred:

Citation : (1991) 1 AICLR 454 : (1991) 2 RCR(Criminal) 88

Hon'ble Judges : S.D.Bajaj, J

Advocate : L.P. Sood, S.C. Mohunta, Ajay Lamba, H.L. Sibal, Advocates for appearing Parties

Judgement

S.D. Bajaj, J.

1. Petitioner Chander Bhan is one of the accused in case First Information Report No. 139 dated 14th August, 1990 of Police Station, Hansi district Hissar registered under section 302, 307, 323, 326, 324, 147, 148 and 149 of the Indian Penal Code and under section 25/27 of the Arms Act. On the basis of different remand orders passed by the learned SubDivisional Judicial Magistrate, Hansi. District/Sessions Division Hissar, accused petitioner was being detained in judicial custody inside Central Jail, Hissar.

2. During the period 27th September, 1990 to 19th November, 1990 the jail authorities neither produced the accused before the learned Judicial Magistrate on 27th September, 1990, 12th October, 1990, 24th October, 1990 and 6th November, 1990 in deference to the production warrants nor got his remand to judicial custody extended during the period aforesaid. Asserting that this lapse on the part of the prosecuting agency rendered his detention in jail custody for the period aforesaid illegal accused petitioner Chander Bhan has on 22nd October, 1990 filed Criminal Writ Petition No. 2215 of 1990 in this Court for the issuance of a writ of habeas corpus to get himself released from illegal custody and for being admitted to bail in the Sessions case aforesaid.

3. Initially written statement was filed by the Superintendent, Central Jail, Hissar,

on 7th January, 1991. Today viz on 19th February, 1991, while the matter was still being argued, learned Advocate General, Haryana, brought on record another written statement purporting to be from Shri K.P. Singh IPS Superintendent of Police, Hissar. The factual position in regard to the demand order, remanding the accused to judicial custody, having not been obtained from 27th September, 1990 to 18th November, 1990 is not deputed in either of the two written statements aforesaid. It is only asserted that the accused could not be produced in court during that period in response to the court process repeatedly received by the jail authorities for his production, on account of nonavailability of the police escort on all the four intervening dates aforesaid. Hence the inability to obtain the remand order for the relevant period. A preliminary objection was also raised saying. " That the petitioner is confined in Jail as per Judicial order. Jail Authority is bound to detain him until he is not ordered to be released by the Competent Judicial Court. Hence this petition has no merit and it deserves to be dismissed."

4. I have heard Shri H.L. Sibal, Sr. Advocate, with Shri Ajay Lamba, Advocate, for the petitioner, Shri S.C. Mohunta, Advocate General, Haryana, with Mr. L.P. Sood, Distt. Attorney for the respondent, and have carefully gone through the material on record.

5. In the course of their respective arguments learned counsel for both the parties have referred me to the observations made in A.K. Gopal v. State of Madras, AIR 1950 SC 27, Ram Narain Singh v. The State of Delhi and others, AIR 1953 SC 277, Rustom Cavasjee Cooper v. Union of India, AIR 1970 SC 564, A. Lakshmanrao v. Judicial Magistrate, First Class, Parvatipuram and others. AIR 1971 SC 186, Col. Dr. B. Ramachandra Rao v. The State of Orissa and others, AIR 1971 SC 2197. Gauri Shankar Jha v. State of Bihar and others, AIR 1972 SC 711, Kanu Sanyal v. District Magistrate, Darjeeling and others, AIR 1974 SC 510, Sunil Batra v. Delhi Administration, AIR 1980 SC 1579, Khatri and others v. State of Bihar and others, AIR 1981 SC 928, and Mahesh Chand and etc. v. State of Rajasthan and etc., 1985 Criminal Law Journal 301 in support of their arguments. A cumulative reading of the observations made in all the authorities aforesaid leads to the irresistible conclusion that detention of a person in custody after the expiry of remand order, without any fresh order of remand committing him to further custody while adjourning the case under section 344 (old) 309 (new) of the Code of Criminal Procedure is illegal. The controversy regarding period of time, with reference whereto the legality or otherwise of the detention is to be looked into, has also been set at rest with the observation that the court would look into it with reference to the date of initiation of proceedings. The proceedings in this case were initiated on 22nd October, 1990 when the petitioner was still being detained inside Central Jail, Hissar, without any valid order of remand which had not been extended by the criminal court of competent jurisdiction beyond 27th September, 1990.

6. In line with the ratio of the authorities aforesaid it has been held by this court

in *Madhu Limaye v. The State*, AIR 1959 Punjab 506 and *Surjit Singh v. The State of Punjab* and another, 1988(1) Chandigarh Law Reporter 94 that it is well settled that no person can be detained in jail except in accordance with an order of detention passed against him by the competent court. In the absence of any such order the Jail Superintendent must of necessity be directed to release the petitioner forthwith. Mere direction that the case may come up on 27th September, 1990, 12th October, 1990, 24th October, 1990 and 6th November, 1990 is not proper compliance of section 344 (old) 309 (new) of the Code of Criminal Procedure and if there is, as is apparent, no legal order remanding the accused to jail custody the detention obviously is rendered illegal.

7. Learned Advocate General appearing for the State of Haryana has no real answer to the absence of a valid remand order for the relevant period but asserted that on the date of the return viz. 28th January, 1991 and 19th February, 1991 the detenu was in proper legal custody and, therefore, could not challenge his detention in habeas corpus jurisdiction. The submission is wholly untenable. In point of time the question has to be settled whether during the period 27th September, 1990 to 19th November, 1990 the detention of the petitioner by the jail authorities was legal or not. This Court, as already observed, has consistently held that no person can be detained in jail except in terms of the order of detention passed against him by a criminal court of competent jurisdiction. The desired order in the case of the petitioner having admittedly not been obtained from the criminal court of competent jurisdiction at Hansi for the period 27th September, 1990 to 18th November, 1990 detention of the petitioner in Central Jail, Hissar, is obviously rendered illegal and the Jail Superintendent has of necessity to be directed to release the petitioner forthwith. JUDGMENTed accordingly.

8. It is, however, made clear that the order aforesaid would not affect or prejudice the rights of the prosecuting agency to get the petitioner rearrested through court process for facing the trial of criminal case admittedly pending against him. Petitioner would also in that event be entitled to seek the concession of his release on bail. The petitioner may also, if he is so advised, seek the remedies available to him in respect of his illegal detention aforesaid from civil and criminal forums of appropriate jurisdiction.

9. For the quantum of damages payable to the petitioner for his illegal detention from 27th September, 1990 to 18th November, 1990, learned counsel for the petitioner referred to be observations made in *Sebastian M. Hongray v. Union of India*, AIR 1984 SC 1026 and *Bhim Singh, MLA v. State of J&K and others*, 1986(1) R.C.R.(Criminal) 348 : AIR 1986 SC 494 . Both these authorities are on distinguishable facts of the killing of two persons in custody and keeping an MLA in custody mischievously and malaciously so that he may not be able to take part in the House discussion of Jammu & Kashmir Assembly respectively and have no bearing on the assessment of compensation payable to (if at all) the petitioner. Hence the direction aforesaid.