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**(1971) 08 SC CK 0046**

**In the Supreme Court Of India**

**Case No :** Writ Petition No. 601 Of 1970 And Transfer Petition No. 12 Of 1971

Col. Dr. B. Ramachandra Rao

APPELLANT

Vs

The State of Orissa and Others

RESPONDENT

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**Date of Decision :** 11-08-1971

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 419, 420, 466

**Citation :** AIR 1971 SC 2197 : (1971) 37 CLT 1064 : (1972) 3 SCC 256 : (1972) SCC(Cri) 481 : (1971) 3 UJ 767

**Hon'ble Judges :** S. C. Roy, J; J. M. Shelat, J; I. D. Dua, J

**Bench :** Full Bench

**Final Decision :** Allowed

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**Judgement**

I.D. Dua, J.—These two petitions (W.P. No. 601 of 1970 and T.P. No. 12 of 1971) forwarded to this Court by post through jail authorities by the same petitioner have been placed before us for hearing together because in the concluding prayer in the Transfer Petition which is dated April 12, 1971, after pointing out that the petitioner had already filed habeas corpus petition (W.P. No. 601 of 1970) it was stated that the Transfer Petition was being filed to save time so that in case the petitioner failed to secure satisfactory relief in the habeas corpus petition the prayer for the transfer of the cases mentioned in the Transfer Petition may be appropriately pressed. The Transfer Petition is before us at the stage of preliminary hearing whereas the petition for habeas corpus has reached the stage of regular hearing after notice.

2. The petitioner describing himself as Col. Dr.B. Ramachandra Rao of I.N.A. (National Army) who is confined in sub-jail at Bhubaneshwar in Orissa State has averred in the habeas corpus petition that he was brought from the District Jail, Secunderabad in Andhra Pradesh State to Bhubaneshwar in Orissa State on October 11, 1969, without any legal authority and was not produced before any magistrate till January 3, 1970 when he had already moved the Supreme Court for a writ of habeas corpus on November 25, 1969. The said petition was

registered in this Court as W.P. 16 of 1970. In that case, according to the petitioner, the State had represented to this Court that the petitioner, had been produced before a magistrate on October 4, 1969. This, according to the petitioner, was not correct. As the petitioner was unrepresented in this Court various misrepresentations made on behalf of the State of Orissa induced this Court to dismiss that petition. The petitioner has also made some reckless allegations against the magistrates and the Jail Superintendent concerned and added that on the petitioner's search all the documents in his possession were taken away from him, by the jailor and handed over to Shri D. Kanungo, Magistrate, I Class. He has attached with his petition & large number of annexures in his attempt to show what he considers to be a deep conspiracy against him engineered by various officers of the State of Orissa. In the annexures we find reference to various public men and Government officers to which we consider it unnecessary to advert in detail for the purpose of these cases. Suffice it to say that in the writ petition the relevant grievances appear to be that the petitioner was not produced before any magistrate on October 4, 1969 and that the warrant bearing that date and other documents in support of his alleged production are all fabricated documents and that Shri D. Kanungo, Magistrate, I Class had on October 7, 1969 directed the Superintendent, Sub-Jail, Bhubaneshwar not to allow facilities to the petitioner to approach any Court and that manifestly till that date no warrant committing the petitioner to jail custody had been issued by the said Magistrate. Indeed the petitioner's confinement in the sub-jail was directed by the Magistrate to be kept as highly confidential.

3. As the prayer for his personal production in this Court was refused and he did not engage a Counsel Shri N.S. Das Behl, an advocate of this Court, very kindly agreed to assist the Court as *amicus curiae*. The counter-affidavits filed on behalf of the State were duly sent so the petitioner for reply and he forwarded to this Court by post lengthy further affidavits in reply to the counter-affidavits making serious and reckless allegations of some conspiracy to harm him, against various officers, including the then Union Home Minister It may be pointed out that as rule nisi was issued in this case after giving a show cause notice to the respondents we have before us more than one affidavit sworn by both sides.

4. From the material on the record we find it undisputed that the petitioner is at present an undertrial prisoner lodged in Bhubaneshwar sub jail and that the charge sheets in three criminal cases (Nos. G.Rs. 485, 791 and 896 of 1967) u/s 419 and 420, I.P.C. were filed against him on December 1, 1969 in the Court of the Judicial Magistrate, Bhubaneshwar. The petitioner, according to the State, was also convicted by the Third Additional Sessions Judge, Secunderabad on Oct. 18, 1965 under various Sections of I.P.C. including Sections 419, 420 and 466 to different terms of imprisonment. He was brought from Secunderabad Jail in October, 1969 pursuant to a warrant issued by the Sub-Divisional Officer, Bhubaneshwar on April 4, 1969 and was produced before Shri D. Kanungo, Magistrate, I Class on the day of his arrival. The SDO concerned was absent on

that day. The petitioner's remand to judicial custody, according to the respondent, was duly continued from time to time by orders duly made by competent Courts and indeed it is also stated in the counter affidavit that the petitioner had filed a writ petition (original Criminal Miscellaneous case No. 5 of 1970) in the High Court of Orissa which was dismissed. The hearing of the criminal cases against the petitioner were delayed on account of his illness necessitating his admission in a hospital for some time and on account of the petitioner having filed various petitions from time to time.

5. This Court would of course have better appreciated the assistance by the respondent State if it had produced before us (i) copies of the relevant orders remanding the petitioner to judicial custody from time to time, (ii) a copy of the order of the Orissa High Court dismissing the petitioner's writ petition and (iii) a copy of the order of the Additional Sessions Judge, Secunderabad convicting the petitioner as alleged. But as it is the common case of both sides that at present the petitioner is undergoing trial in three criminal cases pending in the Court of a Magistrate at Bhubaneshwar and, from the affidavit dated April 15, 1971 sworn by Shri S.K. Mukherjee, Under Secretary, Home Department, Government of Orissa, it is clear that the three cases pending against him had to be adjourned from April 15, 1970 onwards, because of the pendency of the present transfer petition in this Court and that the petitioner was for this reason duly remanded to jail custody from time to time, we are satisfied, even without those orders, that his present confinement in the sub-jail at Bhubaneshwar has not been shown to be illegal so as to justify interference by this Court in the present habeas corpus proceedings. From the further affidavits forwarded to this Court by the petitioner it does not appear to be his case that at present there is no order of the Court, in which the three criminal cases, against him are pending, remanding him to jail custody. It does not even appear to be his case that at the time of the respondent's return or even earlier at the time of the institution of the present writ proceedings there was no order of a competent Court remanding him to jail custody. His affidavits mainly contain reckless allegations against various political leaders and government officers, including some Magistrates and jail authorities, which have no relevance to the grounds on which this Court can appropriately be required to release a person on a writ of habeas corpus. Most of those grievances merely suggest that the cases against him are not true and they have been engineered by some high placed individuals for mala fide reasons. This Court does not, as a general rule, go into such controversies in proceedings for a writ of habeas corpus. Such a writ is not granted where a person is committed to jail custody by a competent Court by an order which prima facie does not appear to be without jurisdiction or wholly illegal and we are not satisfied that the present is not such a case.

6. As admitted by both sides the petitioner was sentenced to imprisonment on conviction by the Third Additional Sessions Judge, Secunderabad in October, 1965. Unfortunately, neither side has been able to inform us as to whether that sentence has expired or is still running. The jail authorities at Bhubaneshwar, we

have little doubt, must have information whether or not the petitioner, when brought there, was undergoing a sentence of imprisonment and the petitioner also, in our opinion, must be presumed to be aware of the sentence imposed on him. We need only add that in case the petitioner is undergoing the sentence of imprisonment imposed on him by competent Court then too writ of habeas corpus cannot be granted. This position is well settled.

7. Assuming that the sentence imposed by the Secunderabad Court on the petitioner has been served out by him, then the only point which the petitioner has raised in his petition relates to the alleged illegality of his custody in the jail when he was brought to Bhubaneshwar from Secunderabad. Such an infirmity, assuming the petitioner's allegation to be correct, cannot invalidate the present confinement of the petitioner in the Bhubaneshwar sub-jail. As observed by this Court in *Naranjan Singh Nathawan Vs. The State of Punjab*, and reaffirmed in *Ram Narayan Singh Vs. The State of Delhi and Others*, in habeas corpus proceedings the Court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the institution of the proceedings. A fortiori the Court would not be concerned with a date prior to the initiation of the proceedings for a writ of habeas corpus. We accordingly dismiss writ petition No 601 of 1970.

8. Coming to the Transfer Petition (T.P. No. 12 of 1971) we are not persuaded to hold that any ground of expediency for the ends of justice is made out as contemplated by Section 527, Cr.P.C. for transfer of the three cases (G.Rs. Nos. 485, 791 and 896 of 1957) from the Magistrate's Court at Bhubaneshwar to the State of Maharashtra or to any other State in the Indian Union. The Transfer Petition must, therefore, be dismissed in limine.

9. As a last resort Shri N.S. Das Behl pressed the petitioner's prayer for release on bail during the pendency of the three aforesaid criminal cases against the petitioner. Here again, there are several difficulties in the petitioner's way. It is not known if the sentence of imprisonment imposed on the petitioner by the Secunderabad Court has expired. Besides, it is the petitioner's case that his bail applications have more than once been refused by the Court in Orissa State. We are not aware of the grounds on which his prayer for bail was refused on previous occasions. The petitioner could have assailed those orders in the High Court and then if he felt aggrieved he could have come to this Court against those orders. We are accordingly not in a position in the present proceedings to deal on the merits with the question of the petitioner's release on bail. Shri N.S. Das Behl, it may be said in fairness to him, has suggested that we should direct the petitioner's release on bail only if he has served out the sentence of imprisonment awarded to him by the Secunderabad Court. So far as the apprehension felt by Shri Das Behl, that the trial would be unduly delayed, is concerned, it is enough to say that the state Counsel has no objection if we direct the trial Court to proceed with the cases against the petitioner from day to day and indeed according to Shri Chatterjee the learned Counsel for the

respondents, but for the pendency of the transfer petition before us and for the earlier petition for the transfer of cases filed by the petitioner u/s 526, Cr.P.C. these cases would have proceeded from day to day, We feel that it is just and fair to direct the trial Court to proceed with these cases which are of 1957 from day to day and we hereby so direct. We expect and have no reason to doubt that the prosecution and the petitioner both would also assist the Court in this connection and would produce their evidence without seeking unnecessary and avoidable adjournment. If the disposal of the cases is unduly delayed without just cause, it would be open to the petitioner to apply for bail in accordance with law and we have no doubt that the matter would be duly considered with the usual judicial objectivity expected of our Courts.

10. In the final result both the petitions fail and are dismissed. We must before closing thank Shri N.S. Das Behl for his valuable assistance as amicus curiae.