
(2001) 03 MP CK 0054
In the Madhya Pradesh High Court
Case No : Writ Petition No.559/97

Durgalal Vijay

APPELLANT

Vs

Govt. of M.P. and others

RESPONDENT

Date of Decision : 31-03-2001

Acts Referred:

Constitution of India, 1950 — Article 21, 22, 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 111, 116(3), 151, 167, 57
Penal Code, 1860 (IPC) — Section 186, 294, 323, 332, 333

Citation : (2001) 2 JLJ 114 : (2001) 3 MPHT 105 : (2001) 2 MPLJ 291

Hon'ble Judges : Mr. S.S. Jha, J

Bench : Single Bench

Advocate : Shri J.P. Gupta and Mr. Tapan Trivedi, for the Appellant; Shri K.N. Gupta, Government Advocate, Shri R.A. Roman, Shri N.K. Mody and D.K. Katare, for the Respondent

Final Decision : Allowed

Judgement

S.S. Jha, J.

Petitioner has filed this petition challenging his unlawful detention and for quashing the criminal proceedings initiated against him by respondent No. 2. Petitioner has also claimed damages to the tune of Rs. one lac.

Petitioner has submitted that he alongwith his wife and two sons had purchased separate pieces of land which were adjacent to each other in Gandhi Chowk, Sheopur Kalan, through registered deed of sale. Thereafter, construction was made on the aforesaid plots in the year 1984-85, On 27-1-1997 respondent No. 3 Shri M.K. Agrawal was posted as Additional Collector at Sheopur Kalan, which was at that time part of District Morena. Respondent No. 2 S.K. Sharma was holding the post of Sub-Divisional Magistrate and respondent No. 4 was Town Inspector of Sheopur Kalan. According to the petitioner, respondent No. 3 had come to the spot and manhandled him which caused injuries to the petitioner. Thereafter, the petitioner was taken to the Police Station, Sheopur Kalan by

respondents 2 to 4 and was detained in illegal custody. According to the petitioner, a report was lodged by Shri M.K. Agrawal at the Police Station, Sheopur Kalan that he was manhandled and beaten by the petitioner. On the report, a case for the offences under Sections 333, 353, 506B and 294, IPC was registered against the petitioner. Through there was no charge that Shri M.K. Agrawal has received grievous injuries, yet offences under Sections 333 and 506-B were registered against the petitioner with an intention to detain him in custody. Petitioner was arrested on 27-1-1997 in the evening at about 6.00 O'clock. His application for bail was allowed by Additional Chief Judicial Magistrate on 28-1-1997 vide order Annexure P-1. Petitioner furnished the bail. Petitioner submitted that instead of releasing him on bail after furnishing the bail, he was not released till 30-1-1997 and was detained in illegal custody and for detaining him in illegal custody, his arrest was shown u/s 151, Cr.P.C.

Counsel for the petitioner submitted that once the petitioner was arrested for substantive offence on 27-1-1997 vide Sanha No. 1325 at the Police Station, then he could not be arrested for the offence u/s 151, Cr.P.C. at 6.40 p.m. Once the petitioner was arrested for the substantive offence, there was no occasion to detain him u/s 151, Cr.P.C. Petitioner then moved an application for bail before the Sub-Divisional Magistrate, respondent No. 2. Respondent No. 2 has written "rejected" on the application itself and he also wrote an order-sheet in detail rejecting the bail application. The order-sheet was signed by Shri R.R. Singh and Shri Sakil Qureshi, Advocates who had moved the bail application on behalf of the petitioner. After rejection of the application, the petitioner was sent to judicial lock-up. Certified copy of the order passed by the Sub-Divisional Magistrate was not supplied to the petitioner in spite of the application. Petitioner then filed a revision on 28-1-1997 itself against the said order of rejection before the Additional Sessions Judge, Sheopur Kalan, alleging therein that certified copy of the order is not being supplied. However, when the records reached the Court of Additional Sessions Judge, it was noticed by the petitioner that order-sheet rejecting the bail application has been substituted by another order-sheet wherein it is mentioned that the petitioner was directed to furnish security in the sum of Rs. 20,000/- but since the security was not furnished by the petitioner he was sent to jail. Petitioner submitted that he being a leading lawyer of the town and possessing lot of Immovable properties, there was no reason why he should refuse to furnish bail. The learned Additional Sessions Judge in the revision directed release of the petitioner on furnishing bail of Rs. 1000/- only. In compliance of the bail order passed by the Additional Sessions Judge, the Sub-Divisional Magistrate did not send the release order on 29-1-1997 and instead sent the Parwana to jail after 9.00 p.m. This was done intentionally so that the petitioner may not be released on 29-1-1997 and could continue to remain under detention till 30-1-1997.

Petitioner contended that he has been kept in illegal custody with an intention to demolish his building in his absence. Property of the petitioner was totally demolished without any notice and justification causing severe loss of lacs of

rupees to the petitioner. Petitioner, has, therefore, prayed that the records of the Court of Sub-Divisional Magistrate be summoned. Petitioner has submitted that Shri S.K. Sharma, the then Sub-Divisional Magistrate, Sheopur Kalan had acted contrary to law and beyond the jurisdiction vested in him and arrest of the petitioner u/s 151, Cr.P.C. was not warranted. Respondent No. 4 Shri M.L. Todi, Town Inspector also acted illegally in detaining the petitioner u/s 151, Cr.P.C. Shri S.K. Sharma and Shri M.L. Todi had acted contrary to law by hatching a conspiracy. The Sub-Divisional Magistrate was bound to release the petitioner on bail, instead he rejected the bail application and order of release was substituted after the revision was filed by the petitioner. It was further submitted that respondent No. 2 Shri S.K. Sharma has committed grave irregularity and illegality by destroying the order-sheet written by him. By destroying the order-sheet itself, amounts to committing contempt of his Court. Respondents 2 to 4 are liable to be punished for not acting in accordance with law and for playing with the freedom of a citizen of the country.

Counsel for the petitioner frankly submitted that no case is made out against respondent No. 3 Shri M.K. Agrawal.

Respondent No. 2 has submitted his return and prayed that the petition is meritless and misconceived and deserves to be dismissed with costs. He submitted that since the petitioner has failed to furnish bail, he was sent to the custody. He denied that he was visited the house of the petitioner or took any part as alleged by the petitioner. He submitted that all acts done by him were according to law and he has protection under the Judicial Officers Protection Act. The act done by him was in good faith. He has acted in bona fide manner which is apparent from the records submitted by him. He has admitted that the word ^vLohdkj* was written by him, but later on realising the mistake, he passed fresh orders for releasing the petitioner on bail.

Respondent No. 4 has filed his return wherein he has mentioned the facts and has stated that he has acted on the orders of the Court and he has not committed any illegal act.

Counsel for the petitioner has placed reliance on the judgment in the case of Matabar Parida, Bisnu Charan Parida, Batakrushna Parida and Babaji Parida Vs. The State of Orissa,). While considering the position under the old and new Code of Criminal Procedure, it is held that under the old Code, the Magistrate was given the power u/s 344 to remand an accused to jail custody as the section was also applicable to cases in which process of investigation and collection of evidence was going on. In other words, the power of remand by the Magistrate during She process of investigation and collection of evidence was an integral part of the process. The power was meant to be exercised, whenever necessary, to aid the investigation and collection of further evidence. However, under the new Code, no police officer can detain a person in custody, arrested without a warrant for a period longer than 24 hours as mentioned in Section 57 of the new Code corresponding to Section 61 of the old Code. Section 167 occurring in

Chapter XII bearing the heading "Information to the Police and their powers to investigate" the same has been in Chapter XIV of the old Code and has made some drastic departure. The Court will have no inherent power of remand of an accused to any custody, unless the power is conferred by law. Counsel for the petitioner submitted that the Executive Magistrate is not empowered to remand an accused to the jail custody as no investigation was pending. The Judicial Magistrate alone has power to remand the accused to jail custody and the Executive Magistrate has no jurisdiction.

Counsel for the petitioner invited attention to the judgment in the case of *Shravan Kumar Gupta Vs. Superintendent, District Jail, Mathura and others* (AIR 1957 Allahabad 189) and submitted that actual timing of arrest is material in order to judge whether the police authorities did or did not comply with the requirements of Article 22 of the Constitution of India. He further submitted that Section 151, Cr.P.C. merely authorised arrest by police without warrant from a Magistrate and is not a provision of law under which a person can be detained by the jail authorities in their custody.

In the case of *Rudul Sah Vs. State of Bihar and Another*,) the questions of illegal detention and quantum of damages have been considered. Counsel for the petitioner submitted that in the light of the principles enunciated in the aforesaid case, petitioner is entitled for damages.

In the case of *Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others*,) it is held that when the arrest was with mischievous and malicious intent, the victim should be compensated by awarding suitable monetary compensation in appropriate cases.

In the case of *Afzal and Another Vs. State of Haryana and Others*, it is held that compensation cannot be awarded in case of abuse of process of the Court by the petitioning party. Petition filed by an advocate on the ground of illegal detention and wrongful confinement by a police inspector of two children belonging to the family of accused on the condition that they would be released only on surrender of the accused in the enquiry the facts were disowned by the advocate and on receiving the report from the D.G.P. and District Judge, it was not a ground for awarding compensation.

Only question which requires to be examined is whether the petitioner was detained in illegal custody by the orders of respondent No. 2 at the instance of respondent No. 4.

Records of the Sub-Divisional Magistrate, Sheopur Kalan have been requisitioned. The first order-sheet is dated 28-1-1997. It is mentioned that the petitioner was produced before the Court of Sub-Divisional Magistrate alleging therein that the petitioner has assaulted senior administrative officer and obstructed in execution of Government work. The Court was satisfied that the accused is likely to commit breach of peace if the Police has not arrested him immediately and it was directed that notice u/s 111, Cr.P.C. be issued to the petitioner why security

amount of Rs. 20,000/-and one surety in the like amount be not received from him. It is further mentioned that the notice was read over to him, but no reply was filed by the petitioner. Statement of Town Inspector was recorded and orders were passed u/s 116(3), Cr.P.C. that the petitioner should furnish security of Rs. 20,000/- for maintaining peace for six months and should also furnish surety for the similar amount. Since no bail was furnished, jail warrant was issued by the Sub-Divisional Magistrate and the case was fixed for evidence of the police.

Thus, from the proceedings, it appears that the proceedings u/s 151, Cr.P.C. were not initiated, on the contrary on the top of the order-sheet it is mentioned that the Case No. 8/97/107/116 (3), 151, Cr.P.C. The proceedings do not bear signatures of the accused. Normally, when the order-sheets are written, signatures of the person produced from the custody or thumb impressions are obtained by the Court. From the order-sheet it appears that the notice u/s 111, Cr.P.C. was read over to the non-applicant, but it was not supplied to him. In the next sentence, it is mentioned that no reply is filed, therefore, the statement of Town Inspector was recorded.

The procedure of reading over the notice is not understood. If show-cause notice was issued for maintaining peace for six months, it was the duty of the Magistrate to release the accused on bail and serve him the notice u/s 111 so that he can file his reply.

After bail in the revisional order, it is mentioned on 29-1-1997 that the accused should execute bail bond and surely. The petitioner furnished bail and sureties which were accepted and the case was fixed for presence of the accused and evidence of the police for 30-1-1997. Thereafter, the case was adjourned from time to time. Petitioner then moved an application that an amount of Rs. 2850/- seized from the petitioner should be returned to him and the notice was issued to the Town Inspector, to return the amount, but no reply was filed by the Town Inspector. Proceedings continued from 14-1-1999 to 2-2-2000. On 2-2-2000, it is mentioned that notice be issued to the petitioner to receive the amount seized from him on 5-2-2000 by appearing in Court. On 3-2-2000 the amount was paid to the petitioner and the proceedings were dropped.

On perusal of the notice u/s 111, Cr.P.C. which is at page 19 of the record, it transpires that the case was registered u/s 151, Cr.P.C. and the case number is mentioned as 97/151. The petitioner was directed to submit his reply by 28-1-1997. The notice was signed and issued on 28-1-1997, which shows that the respondent No. 2 Sub-Divisional Magistrate was not inclined to afford opportunity to the petitioner. In the record, copy of the FIR is also filed, wherein report and other facts have been mentioned. Original application, copy thereof has been filed as Annexure P-2 alongwith this petition, is also on the record of the Sub-Divisional Magistrate at Page No. 25. Word ^vLohdkj* is mentioned which has been struck out and later on it is mentioned that the application shall be considered on 30-1-1997. Thereafter, revision was filed and bail was ordered in the revision on 29-1-1997. The bail order was produced before the Sub-

Divisional Magistrate on 29-1-1997.

Copy of the Rojnamcha dated 27-1-1997 is filed in the record. From the Rojnamcha it appears that the petitioner was produced before the Sub-Divisional Magistrate u/s 151, Cr.P.C. When the bail order was produced before the Sub-Divisional Magistrate, he has mentioned that the order be produced before him at 10.30 a.m. On 30-1-1997, and he has put the timings as 6.45 p.m. Later on, he has accepted the bail application at 7.30 p.m. There is no explanation by the Sub-Divisional Magistrate as to how and in what manner he was sitting in the Court after the Court-hours. Thus, there appears to be some manipulation in mentioning the timings. Even on the bail papers, he has mentioned that the bail papers be placed on 30-1-1997 at 10.30 a.m. On the affidavit of the bail papers the date is mentioned as 29-1-1997. Then later on it is written that the bail is accepted which was accepted at 7.30 p.m. The timings themselves demonstrate suspicious act on the part of respondent No. 2-Sub-Divisional Magistrate. There is no explanation on record why he was sitting in the office and continued his Court beyond Court-hours. The possibility of producing the bail order during the Court-hours cannot be ruled out, but since the petitioner was sent to custody, therefore, timings have been written later on.

Even otherwise, the record itself is not in conformity with the documents on record. On the first order-sheet at page No. 1 case number is written as 8/97 for the offences under Sections 107, 116(3) and 151, Cr.P.C. whereas in the notice u/s 111, Cr.P.C. the only offence is mentioned as 97/151, Cr.P.C.

On perusal of the return of respondent No. 4, it is apparent that application for bail was rejected by respondent No. 2. In the Annexure R-4 (4) which is a copy of Rojnamcha dated 28-1-1997, it is mentioned that the petitioner was produced before the Additional Chief Judicial Magistrate for the offences registered at Crime No, 27/97 under Sections 353, 323, 186, 332/506B and 333, IPC and it is mentioned that the bail was rejected by Additional Chief Judicial Magistrate, therefore, jail warrant was prepared. Later on, the Additional Sessions Judge has released the petitioner on bail subject to his furnishing surety in the amount of Rs. 10,000/-. After the order of releasing the petitioner on bail, he was produced before the Court of Sub-Divisional Magistrate-respondent No. 2, the respondent No. 2 has rejected the application for bail and prepared jail warrant and in compliance of the orders of the Executive Magistrate, petitioner was sent to jail.

Original Sanha Rojnamcha is also produced by the respondents. In the Rojnamcha it is mentioned that the bail application was rejected by the Sub-Divisional Magistrate, therefore, the petitioner was sent to jail. From perusal of the Rojnamcha and the order-sheets, it is apparent that the order-sheets have been changed by respondent No. 2. It is apparent that once the petitioner was released on bail for substantive offence by the Competent Court, there was no occasion for producing him before the Sub-Divisional Magistrate u/s 151, Cr.P.C. Even otherwise, when it was within the knowledge of the Executive Magistrate that the petitioner has been arrested for substantive offences, there was no

occasion for him to proceed u/s 151, Cr.P.C. or to issue notice u/s 111, Cr.P.C. From bare perusal of the documents/order-sheets and Rojnamcha, it is apparent that the order-sheets have been manipulated by respondent No. 2.

Respondent No. 4 Town Inspector has also acted beyond his jurisdiction after registering the case for substantive offence and for similar offence registering a case u/s 151, Cr.P.C. The act of respondent No. 2 the Sub-Divisional Magistrate in changing the order-sheets demonstrates his vicious mind and it appears that the respondent No. 2 is capable of manipulating the records of the Court. From bare perusal of the Rojnamcha it appears that the petitioner's bail application was rejected by Sub-Divisional Magistrate and the order-sheet directing him to be released on bail on furnishing bond in the sum of Rs. 20,000/- for maintaining peace appears to be manipulated. From the entries at Sr. No. 1374 dated 28-1-1997 to 29-1-1997 in the Rojnamcha, it discloses that the bail application was rejected. The Rojnamcha is maintained from 6.00 in the morning on 28-1-1997 to 29-1-1997 upto 6.00 in the morning. Thus the application for bail for releasing in a case registered u/s 151, Cr.P.C. was rejected and respondent No. 2 has substituted the order-sheet by removing the order-sheet rejecting the bail application, which is a serious matter.

Even otherwise, respondent No. 4 Town Inspector could not have registered a case u/s 151, Cr.P.C. for the similar offence when the accused was already arrested for substantive offence.

Thus, malafides of respondent No. 2 Sub-Divisional Magistrate is apparent on the face of record. Respondent No. 2 has not only acted beyond his jurisdiction, but he has acted with an intention of personal vengeance. He being an Executive Magistrate ought to have known his powers to issue jail warrant. Once it was brought to his notice that the petitioner has been released by the Competent Court for the substantive offence, there was no occasion for rejecting the bail application. From bare perusal of Sanha Rojnamcha, it is apparent that order-sheets have been changed by the respondent No. 2-Sub-Divisional Magistrate.

As such, respondent No. 2-Sub-Divisional Magistrate is guilty of manipulating the official documents.

So far as quantum of damages is concerned, it is alleged that some civil suit is filed for the damage caused to the house. Be that as it may, considering the facts of the case, for detaining the petitioner unlawfully by the act of respondent No. 2-Sub-Divisional Magistrate, it is a fit case, where the petitioner should be awarded damages. Respondent No. 1-State and the respondent No. 2-Sub-Divisional Magistrate are jointly and severally liable to pay the damages which is quantified at Rs. 25,000/- (Rs. Twenty five thousand). Respondent No. 1 is free to recover the amount of damages from the respondent No. 2-Sub-Divisional Magistrate.

Respondent No. 1-State is also directed to hold an enquiry against respondent No. 2-Sub-Divisional Magistrate for manipulating the records.

Respondent No. 1-State shall also issue necessary directions to be concerned officers to void repetition of such incident in future, which may cause monetary loss to the State.

In the result, the petition succeeds and is allowed with costs. Counsel's fee as per schedule. Costs shall be payable by respondent No. 2-Sub-Divisional Magistrate.

Copy of this order be sent to the Chief Secretary, State of Madhya Pradesh for appropriate action.

Writ Petition allowed.