

(1992) 08 KAR CK 0026
In the Karnataka High Court
Case No : Writ Petition No. 216 of 1992

Gulabjan

APPELLANT

Vs

The Sub-inspector of Police and others

RESPONDENT

Date of Decision : 11-08-1992

Acts Referred:

Constitution of India, 1950 — Article 134A, 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 144, 154, 167

Citation : (1993) CriLJ 738 : (1992) ILR (Kar) 3436

Hon'ble Judges : K.A. Swami, Acting C.J.; A.B. Murgod, J

Bench : Division Bench

Advocate : Sri. Kashinath Rao Patil, for the Appellant;

Judgement

K.A. Swami, Actg. C.J.

1. In this petition under Art. 226 of the Constitution petitioner has sought for a declaration that the detention of the petitioner's husband by name Shafi is illegal, unconstitutional and without jurisdiction and for issue of a writ in the nature of habeas corpus to the respondents directing them to release Sri Shafi and also to pay a sum of Rs. 6,000/- as compensation.

2. The facts undisputed are as follows :

On 23rd March, 1992 the Sub-Inspector of Police, Byadgi, caught Sri Shafi red-handed while transporting sandal-wood billets of the value of Rs. 40,000/- within the limits of Byadgi Police Station. He was driving the vehicle in which sandalwood billets were being transported. The Sub-Inspector of Police arrested him and filed a First Information Report in the concerned Police station and also produced Sri Shafi before court within 24 hours. The learned Magistrate in the first instance remanded him to judicial custody and thereafter granted bail on 3-7-1992 on the following terms :

"The accused No. 1 Shaffi is released on bail on his executing a Personal Bond and two surety Bonds for Rs. 50,000-00. The accused No. 1 shall attend the

Byadgi Police Station on Wednesday and Sunday between 2 to 4 p.m. in every week. The sorties shall produce the solvency certificate."

3. The husband of the petitioner has not complied with the conditions of the bail nor he has challenged the order dated 3-7-1992 passed by the learned J.M.F.C., Byadgi in Crime No. 43 of 1992. If the husband of the petitioner is aggrieved by the conditions imposed by the learned Magistrate, it is open to him to challenge those conditions under the provisions of the Code of Criminal Procedure before this Court or before the Sessions Court. The husband of the petitioner has not chosen to do so. On the contrary, the present petition is filed on the basis that the conditions imposed are onerous : that the very arrest and detention of Sri Shaffi is illegal and unconstitutional, therefore, the respondents be directed to release Shri Shaffi immediately and also to pay compensation of Rs. 6,000/-.

4. It is contended by Sri Kashinath Rao Patil, learned counsel for the petitioner, that as the Police Sub-Inspector, Byadgi, himself is the complainant and he caught Shri Shaffi red-handed while transporting sandal-wood billets, he could not have arrested Sri Shaffi having regard to the provisions contained in Section 154 of the Code of Criminal Procedure.

5. It is not possible to accept the contention of Shri Kashinath Rao Patil, which overlooks the provisions contained in Chapter IX of the Karnataka Forest Act, 1963 (hereinafter referred to as the "Act"). Sub-section (2) of S. 62 of the Act, empowers a Forest Officer or a Police Officer, who has reason to believe that a vehicle has been or is being used for the transport of forest produce in respect of which there is reason to believe a forest offence has been or is being committed, to require the driver or the other person incharge of such vehicle to stop the vehicle and cause it to remain stationary as long as may reasonably be necessary to examine the contents in the vehicle and inspect all records relating to the goods carried which are in the possession of such driver or other person in charge of the vehicle. Sub-section (1) of Section 62 of the Act, empowers seizure. Sub-section (3) thereof, further provides that every officer seizing any property u/s 62, shall place on such property or the receptacle or vehicle (if any) in which it is contained a mark indicating that the same has been so seized and shall, as soon as may, be make report of such seizure, as provided in clauses (a) and (b) thereof. Section 74 of the Act, empowers a Forest Officer or a Police Officer to arrest without warrant any person reasonably suspected of having been concerned in any forest offence punishable with imprisonment for one month or upwards, if such person refuses to give his name and residence or gives a name or residence which there is reason to believe to be false, or if there is reason to believe that he will abscond. u/s 77 of the Act, the District Magistrate or any Magistrate of the first class specially empowered in this behalf by the State Government, may try summarily under the Code of Criminal Procedure any forest offence punishable with imprisonment, which may extend to six months, or with fine which may extend to five hundred rupees, or with both. Therefore, the Sub-Inspector of Police was, by law, authorised to arrest Sri

Shaffi, who was caught red-handed while transporting sandal-wood billets of the value of Rs. 40,000/- within the limits of Byadgi Police Station. As such, he was also entitled to file the F.I.R. in the concerned Police Station and produce Sri Shaffi before the Court within 24 hours.

5A. Section 154 of the Code of Criminal Procedure, does not in any way take away the authority of the Police Officer who is empowered under the Act, to seize the forest produce in respect of which the offence is committed, arrest the person committing such offence and produce him before the Magistrate. The said section only provides that every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant, and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. Sub-sections (2) and (3) thereof, are not relevant for our purpose.

6. Similarly, the contention based on the provisions of Section 167, Cr.P.C. cannot be appreciated. It is contended that the arrest is made by the Sub-Inspector of Police, who is a complainant in the case, therefore the detention and production of Shri Shaffi before the Court, are illegal. It is already pointed out that under the provisions of Chapter IX of the Act, the Sub-Inspector of Police is competent to seize the forest produce and arrest Sri Shaffi and also report to the Magistrate and produce the arrested person. Section 167, Cr.P.C. only provides a procedure for detention and custody of the arrested person during the course of investigation when the investigation cannot be completed within 24 hours, fixed thereunder. Therefore, the contention is rejected.

7. Learned counsel for the petitioner place reliance on several decisions of the Supreme Court which are not on the point. Therefore, we would only cite them :-

"In Bhagwan Singh Vs. The State of Rajasthan, the Head Constable against whom the charge of bribe was made, was himself the Investigation Officer. Therefore, the Supreme Court held that the person who was an accused could not have been the prosecuting agency. Such a situation does not exist in the instant case. Hence, the decision is not on the point.

In In the Matter of Madhu Limaye and Others, Mr. Madhu Limaye was detained for the violation of the order passed u/s 144, Cr.P.C. prohibiting the assembly of five or more persons within the limits of 100 yards of Kiul and Lakhisarai railway station. Hence, the case has no bearing on the point with which we are concerned.

8. Similarly, the decisions in Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, and Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, are also not on the point. In the first case, their Lordships of the Supreme Court held that if the accused satisfied the following conditions

namely,

- (1) the length of his residence in the community,
- (2) his employment status, history and his financial condition,
- (3) his family ties and relationships,
- (4) his reputation, character and monetary condition,
- (5) his prior criminal record including any record or prior release on recognizance or on bail,
- (6) the identity of responsible members of the community who would vouch for his reliability,
- (7) the nature of the offence charged and the apparent probability of conviction and the likely sentence in so far as these factors are relevant to the risk of non-appearance, and
- (8) any other factors indicating the ties of the accused to the community or bearing on the risk or wilful failure to appear."

the Court need not insist for sureties and the accused could be let off on personal bounds. It is not the case of the petitioner that her husband has satisfied the aforesaid conditions. Similarly, in the second case the under trial prisoners were languishing in jail awaiting trial for more than the period of punishment prescribed for the offences with which they were charged. Therefore, their Lordships held that it was opposed to Art. 21 of the Constitution. Such is not the situation in the case on hand. Even according to the petitioner, detention of the petitioner's husband as under-trial prisoner has not exceeded period of punishment prescribed for the offence. Therefore the aforesaid decisions have no bearing on the case on hand.

9. The learned counsel also placed reliance on a decision of the Supreme Court in *Moti Ram and Others Vs. State of Madhya Pradesh*, That was a case in which the Supreme Court was concerned with the conditions imposed for grant of bail. In the instant case, if the husband of the petitioner is aggrieved by the conditions imposed by the learned Magistrate, nothing prevents him to challenge the same. Therefore, we do not see any justification to apply the aforesaid decision to the case on hand.

10. The learned counsel also relied upon a decision in *Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others*, in support of his contention that the arrest and the detention are illegal. Therefore, the husband of the petitioner should be awarded compensation. We have already pointed out that the arrest and detention of the husband of the petitioner are not illegal because he was arrested pursuant to the crime alleged to have been committed by him and he was caught red-handed while transporting sandalwood billets in a car which was driven by him. Immediately after the arrest, he was also produced before the Court within

24 hours. The learned Magistrate remanded him to judicial custody and thereafter, there is an order passed by the learned Magistrate granting him bail on certain conditions, which the husband of the petitioner has not complied with. Under these circumstances, it is not possible to hold that the detention of the husband of the petitioner is illegal or unconstitutional. Hence, it is also not possible to hold that this is a case for awarding compensation.

11. For the reasons stated above, petition fails and the same is dismissed. However, we make it clear that if the conditions imposed are onerous it is open to the husband of the petitioner to challenge the same in accordance with the provisions contained in the Code of Criminal Procedure.

12. After we pronounced the order, learned counsel appearing for the petitioner, made an oral application, as per Article 134A of the Constitution, to certify that the case involves a substantial question of law of general importance and that in the opinion of the High Court the said question needs to be decided by the Supreme Court. We are of the view that our decision is based on the provisions contained in the Karnataka Forest Act, 1963, as referred to our order. Hence, we are of the view that the case does not involve a substantial question of law of general importance, which needs to be decided by the Supreme Court. Hence, the certificate sought for, is refused.

13. Petition dismissed.