

(1995) 03 DEL CK 0061

In the Delhi High Court

Case No : Criminal Writ Petition No. 85 of 1995

Hakeem Abdul Rahiman @ Abdul Kareem

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-03-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) CriLJ 2856 : (1995) 58 DLT 844 : (1995) 33 DRJ 234 : (1995) 2 RCR(Criminal) 601

Hon'ble Judges : M. Jagannadha Rao, C.J;D.K. Jain, J

Bench : Division Bench

Advocate : Akshay Anand, for the Appellant;

Judgement

M.J. Rao, C.J.

(1) The detenu is detained in the State of Kerala. The detention order is passed by the State of Kerala. It is true that Section 9 declaration has been made by the Union of India in Delhi and it is also true that Section 11 representation has been rejected in Delhi. The position is that both the High Courts of Kerala and Delhi have jurisdiction to entertain this writ petition. But the question is whether we should admit the writ petition here in Delhi and drive the State of Kerala to defend this case at Delhi. On this very question there is a Division Bench Judgment of this Court reported as Mambram Valiyatu Kammu @ Kammu vs. Union of India & Others 1991 (1) Delhi 161 wherein the Division Bench has given very good reasons as to why the petition should be returned to the petitioner for presentation in the High Court of Kerala. The Division bench Judgment also related to a detention by the State of Kerala and where a writ petition was sought to be filed in this Court. The observations of the learned Judges in the Head Note, as extracted below, are clear and we are in entire agreement with the said observations:-

"IT is noted for a long time in this Court that writ petitions involving detention orders passed by various State governments are filed in this Court, adding to the

already heavy burden of cases in this Court. From time to time other varieties of writ petitions are filed in bunch in this Court although the petitioners could have got the same relief in different High Courts in India. A few years back large number of writ petitions involving excise duty were filed in this Court, which could have been filed in different High Courts in India. In those cases interim reliefs were granted by this Court on furnishing bank guarantee. We do not want to create an impression on the litigant public that they can easily get a relief in this Court, which perhaps they may not get in other High Courts in India. Particularly, in habeas corpus writ petitions, where we have great anxiety to dispose of the petitions early, it is not possible to do so since the notices of longer duration are required to be issued to the State Governments. After the notices are received they engage a lawyer, who appears in this Court and seeks time to file the counter affidavit. For preparation of counter affidavit the officers of the State Government and the record is required to be brought to Delhi or the lawyer goes to the State capital. This results into loss of time in movement of officials and files. We have seen that some times it takes even four to five months for the hearing of habeas corpus writ petition after notice, for deciding whether rule nisi should be issued or not. Thus, apart from the inconvenience of movement of officers and records and avoidable expenses, where the detention orders are passed by the State Governments it is practically impossible to provide any early relief to habeas corpus detenus in this Court. In most of the detention matters the stock defenses are delay in passing the detention order, non-furnishing of documents, non-furnishing of legible documents or non-furnishing the documents in the language known to the detenu. These grounds of detention can be more effectively and quickly disposed of in the respective High Courts in whose territorial jurisdiction the detention order has been passed. Even if the delay in the disposal of the representation by the Central Government is challenged, a relief against the same can be granted by respective High Courts and not by the Delhi High Court alone. ... (Recent decisions of the Supreme Court in P.N. Kumar and Another vs. M.C.D. (1987- Vol. - Scc 609) and Kanubhai Brahmbhatt Vs. State of Gujarat, , have taken the procedural law of entertainment or writ jurisdictions to a far greater extent. The Supreme Court has held that the petitioners should first file the writ petitions in the High Court and should not rush to the Supreme Court under Article 32 of the Constitution and that the Supreme Court is competent to return the writ petitions for being filed in the High Court if the writ petitions are directly filed in the Supreme Court by-passing the High Court.... The Supreme Court said "There is no reason to assume that the concerned High Court will not do justice". It further observed "faith must be inspired in the hierarchy of courts and the institution as a whole not only in this Court alone and this objective can be achieved only by this Court showing trust in the High Court by directing the litigants to approach the High Court in the first instance. Besides, as a matter of fact, if the matters like the present one are instituted in the High Court there is likelihood of the same being disposed of much more quickly and equally effectively on account of the decentralisation of the process of administration of justice." We may adopt the

same argument and hold that it is our duty to see that the faith in other High Courts is also upheld and also take such approach as permitting the other High Courts to dispose of the habeas corpus petitions quickly and effectively. Borrowing the reasons given by the Supreme Court in P.N. Kumar and modifying them *mutatis mutandis* (as they will answer most of the submissions in these petitions), we can hold that the Kerala High Court would be more convenient from several angles and will be cheaper to the parties. It will save lot of time. It will be easier for the clients to give instructions to their lawyers. Each High Court has its own traditions. They have Judges of eminence who have initiative, necessary skills and enthusiasm. There are also eminent lawyers practicing in Kerala High Court with wide experience in handling different kinds of cases, both original and appellate. Their services would be available to the litigants in the State itself. The heavy pendency in the Delhi High Court can also be a very legitimate consideration in this regard is seen from the ground (7) in P.N. Kumar. As shown by us earlier, we have pendency in all important jurisdictions of about 10 to 15 years. A more serious case is of pendency of criminal appeals and revisions where the accused who could not furnish bail or to whom bail has been refused are languishing in jail, pending trial for long years. For the reasons stated above, we are compelled to return the petitions to their petitioners for being filed in the Kerala High Court. In some petitions we had issued notice, but the said petitions would also be returned, so as to enable the Kerala High Court to dispose of the petitions early. In P.N. Kumar itself the petition was remanded to this Court after a lapse of four years. (Paras 2,5,6,10,12 and 13)".

(2) Learned counsel for the petitioner has submitted that there is a difference in this case, namely ,that Section 9 declaration is made in Delhi and also that Section 11 order is passed in Delhi. But that, in our opinion, makes no difference. That would only show that this Court also has jurisdiction. We may here note the similar observations made by the Division Bench of the Punjab High Court in Ebrahim Aboobaker and Another Vs. L. Achhru Ram, at the end of the Judgment. They read as follows:- @SUBPARA = "In the present case a jurisdiction adequate to the object in view exists in Bombay where the Custodian-General proposes to hold his enquiry and where the property is situate, where the parties reside and where the officials who eventually will deal with this property are functioning. In my opinion the remedy for any wrongs alleged to be done to the petitioners would be more adequate and complete and their grievances better dealt with by the High Court of Bombay than here. I hold accordingly. The issue of a writ, order or direction is discretionary under Article 226 of the Constitution."

(3) For the aforesaid reasons, we direct that the papers be returned to the learned counsel for the petitioner to be presented in the High Court of Kerala. Writ petition is disposed of accordingly.