

(1994) 09 PAT CK 0032

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 21 of 1994 (R)

Jugal Pal

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 27-09-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 266, 267, 267(1), 267(2), 268
Prisoners (Attendance in Courts) Act, 1955 — Section 3

Citation : (1996) 1 PLJR 450

Hon'ble Judges : R.N. Sahay, J;P.K. Deb, J

Bench : Division Bench

Advocate : A.K. Kashyap, for the Appellant; M.Y. Eqbal, for the Respondent

Final Decision : Allowed

Judgement

R.N. Sahay, J.—The Petitioner is an under trial prisoner being tried in four serious cases pending in different courts in Daltonganj. He is in custody since 6.8.1991. He was initially lodged in the Daltonganj jail. He was transferred to Gaya Central Jail and then to Buxar Central Jail by the order of the Inspector General of Prisons, Bihar after obtaining orders from the trial Judge by whose order he has been remanded to judicial custody pending trial.

2. The Petitioner by this application challenges the authority of the Inspector General of Prisons to transfer him from Daltonganj jail where he is being tried. He has also challenged the order of the Additional Sessions Judge permitting his transfer from Daltonganj jail to Gaya jail.

3. According to the counter affidavit, the Petitioner had been transferred purely, for administrative reasons under the orders of the State Government to maintain tranquility within the jail and safeguard the lives of the inmates of the Daltonganj jail. It has been pointed out that the Petitioner is being regularly produced in the Daltonganj Courts and he has no right to challenge the order of his transfer. The order of the Inspector General, Prisons, is Annexure-8 to the counter affidavit.

Petitioner has stated in the supplementary affidavit that he was not produced from Buxar jail on 13.5.94 and 24.6.94. As borne out from Annexures 2 and 2/1, he was not produced on more than one occasions in 1992 and 1993.

4. The moot question for consideration is whether the transfer of the Petitioner to Gaya jail and then to Buxar jail was authorized under the law and whether the trial Judge was justified in acceding with the prayer of the Inspector General, Prisons in this regard.

5. Chapter XXII of the Code of Criminal Procedure, 1973 deals, with attendance of persons confined or detained in prisons. Section 266(b) of the Code defines "prison" which include (i) any place which has been declared by the State Government, by general or special order, to be a subsidiary jail; (ii) any reformatory, Borstal institution or other institution of a like nature.

Section 267 of the Code corresponds to Section 3 of the Prisoners (Attendance in Courts) Act, 1955 with modifications:

267. Power to require attendance of prisoners.-(1) Whenever, in the course of an inquiry, trial or other proceeding under this Code, it appears to a Criminal Court-

(a) that a person confined or detained in prison should be brought before the Court for answering to a charge of an offence, or for the purpose of any proceedings against him, or

(b) that it is necessary for the ends of justice to examine such person as, a witness, the court may make an order requiring the officer-in-charge of the prison to produce such person before the Court for answering the charge or for the purpose of such proceeding or, as the case may be, for giving evidence.

(2) Where an order under Sub-section (1) is made by a Magistrate of the second class, it shall not be forwarded to, or acted upon by the officer-in-charge of the prison unless it is counter signed by the Chief Judicial Magistrate to whom such Magistrate is subordinate.

(3) Every order submitted for a countersigning under Sub-section (2) shall be accompanied, by a statement of the fact which in the opinion of the Magistrate render the order necessary and the Chief Judicial Magistrate to whom it is submitted may after considering such statement, decline to countersign the order.

Section 268 authorized the State Government to exclude certain persons from operation of Section 267, and it provides as follows:

268(1): The State Government may, at any time having regard to the matters specified in Sub-section (2) by general or special order, direct that any person or class of persons shall not be removed from the prison in-which he or they may be confined or detained, and thereupon, so long as the order remains in force, no order made u/s 267, whether before or after the order of the State Government, shall have effect in respect of such person or class of persons.

(2) Before making an order under Sub-section (1) the State Government shall have regard to the following matters, namely:

(a) the nature of the offence for which, or the grounds on which, the person or class of persons has been ordered to be confined or detained in prison;

(b) the likelihood of the disturbance of public order if the person or class of persons is allowed to be removed from the prison;

(c) the public interest, generally.

Section 268 of the Code authorizes the Officer-in-charge of the prison to abstain from carrying out order in certain contingencies, where the person in respect of whom an order is made u/s 267:

(a) is by reason of sickness or infirmity unfit to be removed from the prison, or

(b) is under committal for trial or under remand pending trial or pending a preliminary investigation; or

(c) is in custody for a period which in would expire before the expiration of the time required for complying with the order and for taking him back to the prison in which he is confined or detained; or

(d) is a person to whom an order made by the State Government under

Section 270 provides as follows:

Prisoner to be brought to Court in custody.- Subject to the provisions of Section 269, the officer-In-charge of the prison shall upon delivery of an order made under Sub-section (1) of section 267 and duly countersigned, where necessary, under Sub-section (2) thereof, cause the person named in the order to be taken to the Court in which his attendance is required, so as to be present there at the time mentioned in the order, and shall cause him kept in custody in or near the Court until he has been examined or until the Court authorizes him to be taken back to the prison in which he was confined or detained.

6. It is manifest from Section 268 Code of Criminal Procedure that the State Government may by general or special order direct that any person or class of persons shall be confined or detained in a particular jail. Before making such order, the State Govt. shall have regard to the matters specified in Sub-section (2) of Section 268.

7. in the instant case, the order of transfer has not been passed by the State Government but by the Inspector General of Prisons who cannot be equated with the State Government. The Petitioner had opposed the prayer of the Superintendent of jail, Daltonganj, regarding his transfer to Anr. jail. The Addl. Sessions Judge in his order dated 29.8.1992 did not apply his retiled to the objection raised by the Petitioner because he had already granted permission for the transfer of the Petitioner. In by opinion, the learned Addl. Sessions Judge had no jurisdiction to accord permission for transfer of the Petitioner from Daltonganj

jail and as a matter of fact, no permission was required if the decision of transfer was of the State Government u/s 268, Code of Criminal Procedure. The order of the Inspector General of Prisons being without authority of law, the order of the Addl. Sessions Judge was also rendered without jurisdiction.

8. The Petitioner on 29.9.92 filed a petition praying to keep him in Daltonganj jail. It was submitted on his behalf that he was facing great difficulty while being produced from Gaya jail. Learned trial court in its order dated 29.9.92 referred to the letter No. 1076 dt. 31.7.92 of the Superintendent of Central Jail, Daltonganj whereby in terms of letter No. 2279 dated 14.4.92 of the Inspector General of Jail, Bihar, Patna, for the sake of convenience and to avoid administrative difficulty, permission was accorded vide general letter No. 370 dt. 27.8.92 of the Addl. Sessions Judge. Learned Additional Sessions Judge thought that since it was the responsibility of the administration (prosecution) and department of jail to look after and take care of the health of the prisoners there was no necessity of recalling the earlier order.

9. The Petitioner was not produced on 30.9.92, 1.10.92, 17.11.92, 1.12.92 and 3.12.92. He was produced on 5.1.93. He was again not produced on 2.3.93 and 16.3.93. The Petitioner filed an application on 9.6.93 that he was not being regularly produced in the court and consequently the proceeding of the case was being hampered. It was prayed that he should be detained in Daltonganj jail. This application was also rejected.

10. It appears that Petitioner was granted bail in one case by order dated 27.7.93 in Sessions Trial No. 179/90. However, he could not be released since he has not been granted bail in other cases.

11. Superintendent of Daltonganj jail has stated in his counter affidavit that Petitioner cannot claim that he should be lodged in a particular jail; rather it is the option of the jail authorities keeping into consideration the administrative convenience. Petitioner Was transferred to Gaya jail and then to Buxar jail for valid reasons. The Petitioner cannot be allowed to challenge his transfer since he is being regularly produced.

12. The order of the Inspector General is Annexure-B dated 19th April, 1992. This letter is from Inspector General, Prisons, Bihar, to Superintendent of Daltonganj jail accepting the request of the Superintendent as contained in his letter No. 293 dt. 8.3.92 for transfer of the Petitioner and other prisoners to Gaya jail. This letter does not show that the Inspector General, even if he had authority to transfer the prisoners, had applied his mind before accepting the request of the Superintendent of Daltonganj jail. This is purely a routine order. In my opinion, this cannot be said to be an order in accordance with law, assuming that the Inspector General was acting on behalf of the State Government.

13. Section 309 of the Code of Criminal Procedure in clear terms provided that every enquiry or trial shall be held as expeditiously as possible and in particular when the examination of witnesses has once begun, the same shall continue

from day to day basis until all the witnesses in attendance have been examined, unless the court finds that the adjournment of the same beyond the following day is necessary for reasons to be recorded. The case in question was adjourned for several times only because the Petitioner was not produced from Gaya jail and Buxar jail.

14. It is thus very obvious that the trial of the Petitioner has not been concluded mainly for the reason that he has been lodged far away from the place of trial and it is not possible for the jail authorities to produced him regularly. The statement in the counter affidavit of the Superintendent is not correct that the Petitioner is being regularly produced. I have already noticed above that he was not produced on several occasions.

15. For the reasons stated about, I hold that transfer of the Petitioner from, Daltonganj jail to Gaya jail and then to Buxar jail was not in accordance with law. Hence the order of transfer of the Petitioner as contained in Annexure-B is quashed. The order of the Additional Sessions Judge granting permission for his transfer for this very reason is quashed. This petition is allowed. Writ of mandamus is issued to the Superintendent of Buxar jail to produce him before the trial court. The trial court shall remand the Petitioner to custody in Daltonganj jail and conclude the trial expeditiously preferably within two months from the production/receipt of a copy of this order.

P.K. Deb, J.

16. I agree.