

(1981) 09 AP CK 0012

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 494 of 1981

Kandimalla Koteswara Rao and Others

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 29-09-1981

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 436
Penal Code, 1860 (IPC) — Section 430

Citation : (1982) CriLJ 209

Hon'ble Judges : P. Ramachandra Raju, J

Bench : Single Bench

Advocate : C. Padmanabha Reddy, for the Appellant; Addl. Public Prosecutor, for the Respondent

Judgement

1. The petitioners are concerned in Crime No. 168/81 relating to P.S., Addanki. It appears that the case was registered against the petitioners for an offence u/s 430, I.P.C. on the report given to the police against the petitioners that the petitioners interfered with the flow of water in an irrigation channel and committed mischief sometime on or about 1-9-1981. The said offence is a cognizable offence. But it is also a bailable offence. The petitioners appeared before the Munsif Magistrate, Addanki, and requested the Magistrate to take them into custody. They have simultaneously applied by a separate petition for grant of bail. The Magistrate after hearing the Assistant Public Prosecutor rejected CrI.M.P. 654/81 by stating that the petitioners are not under any restraint and so refused to accept their surrender or grant bail. He observed however that if the petitioners so feel they can obtain anticipatory bail, from the Sessions Judge. The petitioners could not have moved the Sessions Judge as S. 430 is a bailable offence and not a non-bailable offence.

2. The short question, which arises for consideration, is whether in a case where the accused is concerned in a cognizable offence which is bailable, he has no right to surrender before the Court and apply for bail. The observations made by

the Supreme Court in *Niranjan Singh and Another Vs. Prabhakar Rajaram Kharote and Others*, assume importance. Section 436 of the Criminal P.C. provides for the right of a person to move for bail in all cases when a person concerned in a bailable offence is arrested or detained without warrant by an officer in-charge of the police station or appears before the Court and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such Court to give bail. The circumstance that the petitioners have surrendered before the Court and moved an application for bail indicates that they were prepared to take the risk of the Magistrate remanding them to prison and dispose of the bail application either simultaneously with the order of remand or sometime subsequent to the order of remand. The petitioners clearly come under the category of persons who were prepared to place themselves under a restraint, the moment the Magistrate accepted their surrender. In the case referred to above, the Supreme Court considered the question as to when a person can be said to be in custody. They answered it by observing :

"He can be in custody not merely when the police arrests him, produces him before a Magistrate and gets a remand to judicial or other custody. He can be stated to be in judicial custody when he surrenders before the Court and submits to its directions."

Therefore, when the petitioners by offering to surrender before the Magistrate were willing to be taken into custody, the Magistrate cannot refuse to take them into custody and on that account, reject the bail application filed by them. He should have accepted their surrender and passed an order remanding them if he was satisfied that it was not a case to grant them any bail.

3. The learned Magistrate has followed the observations made by the Orissa High Court in *Bharmar and Another Vs. State of Orissa*, In that case, the Orissa High Court distinguished the observations made in the Supreme Court decision referred to above by stating that appearance should be only pursuant to a summons issued by the Court. A person can as well avoid an arrest by Police and prefer to be dealt with by the Court. I am not therefore inclined to agree with the views expressed by the Orissa High Court as they run against the observations made in the Supreme Court decision referred to above.

4. The impugned order is accordingly set aside and the Magistrate is directed to receive the petitioners and pass such suitable order remanding them to custody if they do not move for bail. He should also pass appropriate orders if the petitioners move him for grant of bail. The revision is accordingly allowed.

5. Revision allowed.