
(2000) 09 PAT CK 0055

In the Patna High Court

Case No : Criminal W.J.C. No. 400 of 2000

Koomar Indraneel @ Caesar and Another

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 19-09-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167, 207, 208, 209, 309
Penal Code, 1860 (IPC) — Section 34, 366A, 376

Citation : (2001) CriLJ 1040 : (2000) 4 PLJR 538

Hon'ble Judges : Narayan Roy, J; M.L. Visa, J

Bench : Division Bench

Advocate : Dharendra Kumar, for the Appellant; A.N. Singh, SC 8, for the Respondent

Final Decision : Dismissed

Judgement

1. This application by petitioners has been filed for issuance of a writ of habeas corpus directing the respondents to release the petitioners from jail custody on the ground that their detention in violation of Sections 167, 208 and 309 of the Code of Criminal Procedure (in short, Cr.P.C.) is void and illegal.

2. The admitted facts giving rise to this application are that Kadamkuan (Patrakarnagar) PS Case No. 628/98 under Sections 366A/376/34 of the Indian Penal Code (in short, IPC) was registered on the basis of Fardbeyan of informant Reena Kumari aged about 14 years. In the Fardbeyan the informant alleged that on 30-9-98 at about 11 p.m. when she along with her parents was returning to her house after visiting Dashahara fair, a red Maruti car in the way stopped near her. The occupants of the car after opening its gate forcibly dragged her from road in the car. Her mother tried to rescue her but could not as the car moved with speed. Two occupants sitting on the back seat of the car tied the mouth of informant with her "Odhani" and when she tried to raise alarm they threatened her that in case she raised alarm she would be shot dead. According to her, there were three persons in the car and out of them one was driving the car and two

were sitting on the back seat of the car. She was taken to a house where all the three committed rape on her. During the course of rape they were giving threat to her that in case she raised alarm her mother would be brought and they would commit rape on her also. After commission of rape she was again taken in the car and left at a lonely place after again giving threat. The police after investigation submitted chargesheet against the petitioners and the case was committed to the Court of Session where it is numbered as Sessions Trial No. 240/99 and is still pending before the Court of Additional Sessions Judge-XI, Patna. It is also admitted that charges against the petitioners and one another co-accused have been framed on 26-6-2000. Although in the application a number of grounds have been taken such as, investigation was completed without any T.I. parade, charge-sheet was submitted without complying the procedure laid down u/s 9 of Evidence Act, an accused is presumed to be innocent till he is found guilty at the conclusion of trial and, therefore, he is entitled to bail, copies of police papers were not supplied to petitioners before committing the case to the Court of Session etc. and some decisions in support of these grounds are mentioned but those are not relevant for the purpose of this application which has been filed for issuance of a writ of habeas corpus only on the ground that the detention of petitioners in custody is illegal because after commitment of case to the Court of Session they are not being produced before the Court from jail custody.

3. Learned counsel appearing on behalf of the petitioners has submitted that after commitment of a case to the Court of Session an accused is required to be produced after every fifteen days u/s 309, Cr.P.C. before the Court of Session and because the petitioners after their case was committed to the Court of Session were not produced as such before the Court of Session, their detention in jail custody is illegal and the petitioners are entitled to be released from the jail custody. I am unable to accept this submission. Part of Section 309, Cr.P.C. which is relevant for the purpose of present case reads as follows :

309. Power to postpone or adjourn proceedings.-(1) In every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

(2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody :

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time :

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing.

4. The aforesaid provisions of Section 309, Cr.P.C. which are incorporated in Chapter XXIV of Cr.P.C. under the heading "General provisions as to enquiries and trials" are only in respect of power of Court to postpone or adjourn proceedings. These provisions are applicable in every inquiry or trial either before a Magistrate or a Court of Session. Admittedly, the case of petitioners has been committed to the Court of Session under the provisions of Section 209, Cr.P.C. which provides that if "it appears to a Magistrate that the offence is triable exclusively by the Court of Session, he shall commit the case to the Court of Session after complying with the provisions of Section 207 or Section 208, as the case may be," and Sub-section (b) of this section provides that "subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial". The provisions of Section 209, Cr.P.C. make it clear that when a Magistrate commits a case to the Court of Session and remands the accused to custody, that remand is during and until the conclusion of trial. No doubt Sub-section (2) of Section 309, Cr.P.C. also states about the remand of the accused to jail custody and requires that in case a Court "after taking cognizance of an offence or commencement of trial finds it necessary or advisable to postpone the commencement of or to adjourn any inquiry or trial it may from time to time for reasons to be recorded postpone or adjourn the same on such terms as it thinks fit for such time as it considers reasonable and may by a warrant remand the accused if in custody" but then this remand by a Court of Session in a case which has already been committed to it by the Magistrate of an accused who has been remanded to jail custody u/s 209(b), Cr.P.C. is only for the purpose of production of accused in Court from the jail custody on the date next fixed in the case. After the commitment of case to the Court of Session when the trial is opened there, only then the appearance of accused from jail custody is required for the purpose of different stages of trial such as, hearing on charge matter, recording the evidence of witnesses, examination of accused u/s 313, Cr.P.C., hearing argument, delivery of judgment etc. It is only for these stages the accused who is already in jail custody is sent back to custody for his production on the next date fixed by the Court, when, it adjourns the trial for reasons to be recorded. When an accused at the time of commitment of a case to Court of Session is remanded to jail custody by a Magistrate u/s 209(b) that remand prescribes the limit of detention of accused in custody which is during and until the conclusion of trial. The word "trial" appearing in this section undoubtedly means trial before the Court of Session. In such situation no fresh remand by the Court of Session prescribing the limit of detention of accused in custody is at all required. By no stretch of imagination it can be held that the order of a Magistrate passed u/s 209(b), Cr.P.C. remanding an accused to jail custody during and until conclusion of trial will come to an end when accused is produced before the Court of Session or he is not produced on some dates fixed

in the case. If it is held so it will be against the expressed provisions of Section 209((b), Cr.P.C. because a Magistrate at the time of commitment of case to the Court of Session has been authorised by Section 209((b) to remand an accused to jail custody subject to the provisions of bail during and until conclusion of trial and if he passes any such order that remains in force during the trial until its conclusion and it does not require to be supported by any further order of remand by the Court of Session.

5. Now coming to the submission advanced on behalf of petitioners that an accused in custody has to be produced before the Court of Session where his case has been committed by a Magistrate after every fifteen days as required by Section 309, Cr.P.C. I find that the limit of fifteen days for remanding an accused to custody as provided u/s 309, Cr.P.C. is meant for Magistrate only and not for the Court of Session which is clear from the proviso to Sub-section (2) of Section 309, Cr.P.C. according to which "no Magistrate shall remand an accused person to custody under this Section for a term exceeding fifteen days at a time". The absence of mention of Court of Session in this proviso leaves no room for any doubt that a Court of Session has been kept out of this proviso defining the limit of period of remand at a time of an accused to custody. So I find no substance in the submission raised on behalf of petitioners in this regard.

6. Learned counsel for the State has submitted that charges in this case have already been framed on 26-6-2000 and the case is now pending for recording evidence of prosecution witnesses. The petitioners in their supplementary affidavit have admitted that charges have been framed on 26-6-2000 when they were produced in Court but according to them, it has been done so by order of this Court passed in Cr. Misc. No. 4260 of 2000. It is not the case of petitioners that charges have been framed against them without their production in Court or any prosecution witness has been examined in their absence.

7. It is true that Annexure-3 which is a report of the Court below which was called for by this Court in Cr. Misc. No. 4260 of 2000, states that hearing on charge matter could not be taken up on 10-1-2000 which was the date fixed for such hearing and on subsequent dates also because on all such occasions all the three accused were not produced from jail custody and some time either one or two accused were produced. Supplementary affidavit filed on behalf of the petitioners further shows that this Court has passed order in Cr. Misc. No. 4260/2000 to take action against the jail authority if the petitioners are not produced in Court and expedite the trial.

8. As the petitioners are in jail custody it is desirable that their trial should be expedited and for this their production from jail custody in Court on the date fixed in the trial is necessary. The trial Court will ensure that henceforth on all the dates fixed in the case the petitioners are produced from jail custody and if they are not produced in that case, the trial Court is again reminded to take necessary action in accordance with law against the person/persons responsible for this default.

9. There being no merit in this application, the same is dismissed with the aforesaid observations.

Narayan Roy, J.

10. I agree.