

(1970) 05 PAT CK 0008

In the Patna High Court

Case No : Criminal Writ Jur. Case No. 17 of 1970

Krishna Bahadur

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 19-05-1970

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1971 Patna 237 : (1971) CriLJ 963 : (1971) 4 PLJR 119

Hon'ble Judges : G.N. Prasad, J;A.N. Mukherji, J

Bench : Division Bench

Advocate : C.P. Sinha, Amicus curiae, for the Appellant; Ganesh Prasad Jaiswal, for the Respondent

Final Decision : Partly Allowed

Judgement

G.N. Prasad, J.—This application has been forwarded to this Court from the Central Jail, Patna, where the petitioner, Krishna Bahadur, has been under detention in connection with Patna Kotwali P. S. Case No. 91 (1) 61 u/s 379 of the Indian Penal Code. The case was registered on the 29th January, 1967, upon a report made by one Badri Prasad Bajak to the effect that the petitioner had committed theft in respect of certain clothes from a laundry which the informant was running in Krishna Chowk Dharamshala at Mithapore. The case of the petitioner is that although more than three years have since elapsed, the Investigation Officer of the case has not submitted the final form for reason best known to him. It has further been stated that every 14th or 15th day the petitioner is being sent to Court lock-up and again sent back to the judicial custody at Patna Central Jail without being produced before any Magistrate, and in this manner a long period of over 37 months have elapsed. "Still the I. O. of the case is sitting idle over the submission of the final form of the case. The kind attention of the learned S.D.O., Patna and District and Sessions Judge, Patna was drawn towards the delay over the submission of the final form by the I. O. of the case but bore no fruits". According to the petitioner, his judicial confinement for

more than 37 months without trial is illegal and unconstitutional. The petitioner, therefore, prays that an order be passed for his discharge in the case and that he should be set at liberty immediately.

2. We have looked into the Magistrate's record relating to the case in connection with which the petitioner is under detention. The order-sheet contains a large number of orders in more or less identical terms to the effect that the accused is produced, but the final form not having been received, it is being adjourned to be put up after 15 days. For example, on 25-1-1968, approximately one year after the petitioner was arrested and produced in Court, the following order was passed :--

"Accused in custody produced. Await F. F. and put up on 10-2-68".

Again on 25-1-1969, the following order was passed :--

"Accused in custody produced. Await F. F. Put up on 6-2-69."

Similarly, on 28-1-1970, the following order was recorded :--

"Accused in custody produced. F. F. not received. Await and put up on 11-2-70."

On 11-2-1970, the learned Sub-Divisional Magistrate noted in the order-sheet that the case had been registered on 29-1-1967 and the accused had been arrested and remanded to Jail custody on 30-1-1967, since when he has been lying in judicial custody. The accused in custody has been produced, but the final form has not been received. So the learned Sub-Divisional Magistrate recorded the following order :--

"Bring this delay to the notice of the City S. P. and request him to see that final form is submitted without any further delay. To 10-3-70.

Accused to be produced in the meantime on 24-2-70. Accused as before."

On 10-3-1970, the following order was passed:

"Accused produced. F. F. not received. Await and put up on 7-4-70. Accused in custody to be produced in the meantime on 25-3-70. Accused as before".

On 7-4-1970 the following order was passed :--

"Accused in custody produced. F. F, not received. Remind and put up on 5-5-70. Accused in custody to be produced in the meantime on 21-4-70. Accused as before."

3. It will thus be seen that it is not correct to say, as has been stated in the prisoner's application, that he was not produced before any Magistrate, but merely sent from the Jail to the Court lock-up and back again to the Jail. At the same time it is abundantly clear that the Investigating Officer of the case has been sitting idle over the question of submission of the final form ever since January 1967. The Magistrate's record is wholly silent as to the reason for the

exasperating delay on the part of the Investigating Officer in submitting the final form. It may be mentioned that at the time when the present rule was issued by a Bench of this Court on the 14th April, 1970, it was observed :--

"It appears that the petitioner has been in custody from 29-1-67 and the investigation of the case has not so far been concluded. The Investigating Officer is directed to expedite the investigation of the case."

Even so, learned counsel for the State has not been able to throw any light as to the stage to which the investigation has proceeded or to give even an approximate idea as to how many more years it will take to complete the investigation or to submit the final form. It is manifest from the facts alleged and disclosed that the police officer in charge of the investigation of a simple case of theft of this kind is wholly unmindful of the observation of their Lordships of the Supreme Court in *R.P. Kapur Vs. The State of Punjab*, . At page 870 of the report it was observed as follows :--

"It is very much to be deplored that the police officers concerned did not act diligently in this matter, and it is not surprising that this unusual delay has given rise to the apprehension in the mind of the appellant that the object of the delay was to keep sword hanging over his head as long as possible."

It was further observed :

"It is of utmost importance that investigation into criminal offences must always be free from any objectionable features or infirmities which may legitimately lead to the grievance of the accused that the work of investigation is carried on unfairly or with any ulterior motive".

The case which is under prolonged investigation is a simple case of theft and it is difficult to imagine that it is of such a complicated character as to necessitate the continuance of the investigation proceeding for more than three years, to be more accurate for nearly forty months. It is manifest that the delay in the submission of the final form is not for the bona fide purposes of investigation into the case, but for a purpose entirely foreign to the needs of the police investigation.

4. Mr. Jaiswal, learned counsel for the State, laid stress upon the legal position that the police has statutory right to conduct the investigation of a cognizable offence in any manner that it thinks advisable or fit, and that, it is not open to the Courts to interfere with the investigation in any manner. In the present case, I am clearly of the opinion that the detention of the petitioner in the Jail is not necessitated by any justification in connection with the police investigation. The detention is obviously intended to keep the sword hanging over the head of the petitioner for as long as possible. In other words, the delay in the submission of the final form is primarily intended for the harassment of the petitioner.

It is to be borne in mind in this connection that had the final form been submitted and cognizance taken on the basis of it, the petitioner would have

been put on trial before a Magistrate, who in case of being Invested with first class powers, would have been empowered to sentence the petitioner to a maximum term of imprisonment for two years. Therefore, had the final form been submitted fairly and without any unreasonable delay, the petitioner might by now have served out the maximum sentence of imprisonment to which he could have been sentenced, if convicted by a first class Magistrate. By reason of the failure of the police to submit the final form even after a lapse of more than three years, the petitioner is being deprived of his personal liberty without trial for an indefinite period.

5. In connection with the statutory duty of the police to investigate into a cognizable offence, it is necessary to bear in mind what was stated by Lord Porter in AIR 1945 18 (Privy Council) . While recognising the statutory right on the part of the police in India to investigate the circumstances of an alleged cognizable crime without requiring any authority from judicial authorities and considering that it would be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court, the noble Lord made the following observation :--

"The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the court to intervene in an appropriate case when moved u/s 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus."

The aforesaid decision of the Privy Council has been approved by the Supreme Court in a number of cases. At the same time it has been pointed out in *Abhinandan Jha and Others Vs. Dinesh Mishra*, that from the provisions contained in Chapter XIV of the Code of Criminal Procedure, it will be seen that very elaborate provisions have been made for securing that an investigation does take place into a reported offence and the investigation is carried out within the limits of the law, without causing any harassment to the accused. The latest decision bearing on the point under consideration is *S.N. Sharma Vs. Bipen Kumar Tiwari and Others*, , where also while recognizing the statutory power of the police to investigate into a cognizable offence, uncontrolled by the Magistrate, reference was made to the observations of Lord Porter, to which I have already referred, and it was held;

"It appears to us that, though the Code of Criminal Procedure gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed, in appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Article 226 of the Constitution under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer mala fide, the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal powers".

It will thus be seen that the power: of this Court to give direction in appropriate cases in the nature of habeas corpus is in no way affected by the statutory right of the police to investigate into a cognizable offence, where the Court is satisfied from the materials placed before it that the delay in the submission of the final form is not bona fide, but really in pursuance of the mala fide exercise of the powers of investigation which the police possesses. The meaning of the expression "mala fide exercise of powers" was explained by Ramaswami, J. in Jaichand Lall Sethia Vs. State of West Bengal and Others, in the following terms :--

"It may be stated in this context that a mala fide exercise of power does not necessarily imply any moral turpitude as a matter of law. It only means that the statutory power is exercised for purposes foreign to those for which it is in law intended. In other words, the power conferred by the statute has been utilised for some indirect purpose not connected with the object of the statute or the mischief it seeks to remedy."

6. Considering the simple nature of the case under investigation, it is impossible to think that the delay of over 40 months in the submission of the final form, resulting in the continued detention of the prisoner in jail can be attributed to the bona fide exercise of the statutory power of the police. It is obviously designed to keep the petitioner under detention for an indefinite period without trial. I am, therefore, of the opinion that this is a fit case in which this Court would be justified in issuing a direction in the nature of habeas corpus.

7. Mr. Jaiswal pointed out that there was no allegation of mala fide against the police investigation in this case. With this contention of Mr. Jaiswal, however, I am unable to agree. In my opinion, the allegations of mala fide are writ large in the present application and amply supported by the records of the Magistrate referred to above.

8. Mr. Jaiswal also drew our attention to Section 63 of the Code of Criminal Procedure, but that section is not relevant because I do not propose to record any order of discharge in favour of the petitioner. As a matter of fact, the prayer of the petitioner for his discharge in the case cannot be entertained at this stage. This is a case in which on account of the intransigence of the Police in the matter of performance of its statutory duty the hands of this Court have been forced to make a direction in the nature of habeas corpus. The reason is that if this Court were to decline to interfere, there is no knowing how many more years the petitioner might have to remain in jail without trial.

9. For the aforesaid reasons, the application is allowed in part and a direction is issued to the officer-in-charge of the Patna Central Jail to set the petitioner at liberty without any further delay.

A.N. Mukherji, J.

10. I agree.