
(2000) 02 AP CK 0014
In the Andhra Pradesh High Court
Case No : Criminal RC No. 123 of 2000

Md. Jahangeer

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 08-02-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167(3), 3, 376, 397, 435

Citation : (2000) 2 ALD 831 : (2000) 1 ALD(Cri) 639 : (2000) 1 ALT(Cri) 445 : (2000) CriLJ 2188 : (2000) 3 RCR(Criminal) 296

Hon'ble Judges : Vaman Rao, J

Bench : Single Bench

Advocate : Mr. Prabhakar Reddy, for the Appellant; Public Prosecutor, for the Respondent

Judgement

1. This revision case purported to have been filed u/s 397 read with Section 401 Cr.PC challenges the order dated 5-2-2000 passed by the Sub Divisional Magistrate, Bhadrachalam in Criminal MP No. 10 of 2000 in Crime No.2 of 2000 of PS Chinthoor. It is however pointed out by the learned Public Prosecutor that as the matter arises from agency area, it is the Criminal Procedure Code, 1898 that is applicable and not the new Criminal Procedure Code of 1973. The learned Counsel for the petitioner requests this Court to treat this case as a revision u/s 435 of Cr.PC 1898 or in the alternative as a petition u/s 561-A of Cr.PC 1898 for invoking the inherent powers of this Court for challenging the order of the Sub Divisional Magistrate. It appears that the petitioner was involved in an offence punishable u/s 376-G IPC and Section 3(1)(xii) of SCs and STs (PA) Act in Crime No.2 of 2000 on the the of PS Chinthoor, Khammam District. It also appears that having come to know of the registration of FIR against the petitioner, he has surrendered before the Chief Judicial Magistrate, Khammam on 31-1-2000, who directed him to be remanded to the judicial custody. The petitioner was accordingly lodged In judicial custody in Sub Jail Khammam. Thereafter, on 4-2-2000 the Assistant Superintendent of Police, Bhadrachalam moved an application before the Sub Divisional Magistrate, Bhadrachalam u/s 167(3) of

Cr.PC seeking police remand in respect of the petitioner. The learned Sub-Divisional Magistrate accordingly granted police remand for three days commencing from 10.30 a.m., on 9-2-2000. The learned Magistrate also directed some safe guards against using of third degree methods on the petitioner. The learned Counsel for the petitioner contends that neither the application filed by the Assistant Superintendent of Police contains any reasons or any purpose for which police remand is sought, nor the order passed by the learned Magistrate records any reasons to justify the grant of police remand in respect of the petitioner. The learned Public Prosecutor however contends that there is no need for giving any specific reasons for granting of police remand and if the facts and circumstances justify, the Magistrate has powers to grant police remand in respect of an accused. To appreciate the rival contentions, it will be convenient to extract the provisions of Section 167(3) of Cr.PC, 1973 as under:

"167. Procedure when investigation cannot be completed in twentyfour hours:

(3) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing."

2. Thus it is apparent from subsection (3) of Section 167 that a Magistrate shall record reasons while authorising the detention of the accused in the custody of police. The learned Counsel for the petitioner relied on a judgment of the Gujarat High Court reported in *State of Gujarat Vs. Swami Amar Jyoti Shyam*, wherein it is held that remand to police custody of an accused cannot be granted as a matter of course. In the said judgment it was further observed that Section 167(3) of Cr.PC requires the Magistrate to record reasons for granting remand to police custody. The learned Counsel for the petitioner also relied on a judgment of this Court reported in *Yelamanchili Mahesh Babu v. State of A.P.* 1993 (2) ALT (Cri.) 464, wherein the learned Judge emphasised on the fact that in the instant case the police gave specific reasons for which remand to police custody of the accused was sought. The learned Judge further observed that the Magistrate has also recorded cogent reasons justifying the order of remand passed by him and it is in these circumstances, the learned Judge in that case, refused to interfere with the order of granting remand to police custody. In this case, as stated above, the application filed by the Assistant Superintendent of Police omits to mention any reasons or purpose for which police custody is sought, except a bald statement that such a remand is required for further investigation in the case. The learned Sub Divisional Magistrate has also failed to record his reasons for remanding the petitioner to the police custody. Thus the requirement of Section 167(3) of Cr.PC does not seem to have been complied with in this case. In these circumstances, the order dated 5-2-2000 passed by the Sub Divisional Magistrate, Bhadrachalam in Criminal MP No. 10 of 2000 in Crime No.2 of 2000 is set aside. However this does not preclude the police from filing a fresh application for such remand giving reasons. In that case, the learned Sub Divisional Magistrate, Bhadrachalam shall pass orders basing on facts and circumstances of the case, recording his reasons for granting or for refusing the

remand to police custody as required u/s 167(3) of Cr.PC. Accordingly this case is disposed of. No costs.