

(1992) 12 KAR CK 0019

In the Karnataka High Court

Case No : Writ Petition No. 317 of 1992 (Habeas Corpus)

Mrs. Sudha Shivaram Gowda

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 03-12-1992

Acts Referred:

Constitution of India, 1950 — Article 22, 226

Criminal Procedure Code, 1973 (CrPC) — Section 167, 172 (1), 50, 57

Penal Code, 1860 (IPC) — Section 120 B, 143, 147, 148, 302

Citation : (1993) CriLJ 1533 : (1993) ILR (Kar) 733 : (1993) 1 KarLJ 506

Hon'ble Judges : K.A. Swami, Acting C.J.; N.D.V. Bhat, J

Bench : Division Bench

Advocate : C.H. Hanumantharaya, for the Appellant; B.V. Acharya, A.G. and Shimoga Subbanna, HCGP, for the Respondent

Judgement

K.A. Swami, Actg. C.J.

1. In this petition under Art. 226 of the Constitution, Smt. Sudha, wife of Sri. Shivaram Gowda, MLA who is implicated as an accused in Crime No. 94/1992 on the file of the Bellur Police Station registered for the offences punishable under sections 143, 147, 148, 302 r/w 120-B, I.P.C. has sought for a writ in the nature of habeas corpus directing the State Government to release her husband Sri. L. R. Shivaram Gowda who is shown as accused No. 7 in the aforesaid case. Though in the prayer it is stated that the learned Judicial Magistrate, First Class, Nagamangala should be directed to set at liberty Sri. L. R. Shivaram Gowda, accused No. 7 in the case, but the effect of the prayer is to direct the State to set at liberty Sri L. R. Shivaram Gowda.

2. In the petition, as well as in the additional statement filed, several grounds are raised starting from the registration of the case on 23-9-1992 and arresting of Sri. L. R. Shivaram Gowda on 23-11-1992 and the validity of the order of remand passed on 24-11-1992. Learned counsel for the petitioner Sri. C. H. Hanumantharaya also urged all those grounds before us.

3. The State has filed objections and also additional objections in reply to the petition and the additional statement filed by the petitioner. However, at the end of the arguments, learned Counsel for the petitioner Sri Hanumantharaya submitted that this Court may confine this case only to the validity of the order of remand dated 24-11-1992 with reference to the provisions contained in S. 167 of the Criminal P.C. Therefore, it is not necessary for us to advert to the several contentions raised and urged with reference to the validity of arrest and other aspects of the matter. All those contentions are left open and this order shall not be construed to cover those aspects even though the same are raised in the petition and the additional statement. We also make it clear that the fact that the learned Counsel has confined the petition to the validity of the order of remand after raising other grounds, shall not affect the defence of the accused with reference to those aspects in the trial.

4. As already pointed out, on 23-9-1992 Crime No. 94/1992 was registered in Bellur Police Station. Sri. L. R. Shivaram Gowda was arrested only on 23-11-1992 at 10.15 a.m. at Bangalore. He was arrested by the C.O.D. Officer, Bangalore. Sri. L. R. Shivaram Gowda was produced before the Judicial Magistrate, First Class, Nagmangala on 24-11-1992 in his residence. While producing Sri. L. R. Shivaram Gowda, an application for remanding him to police custody was also filed as per Annexure-A produced by the petitioner. On the basis of the said application, the learned Magistrate has passed an order remanding Sri. L. R. Shivaram Gowda to police custody till 3-12-1992.

5. The main contention of Sri Hanumantharaya, learned Counsel appearing for the petitioner is that as per sub-section (1) of S. 167 of the Code of Criminal Procedure, it is incumbent upon the Officer producing the accused seeking police custody remand to produce copies of the entries in the case diary; that in the instant case, no such copies of the entries in the police diary were produced. Therefore, the order passed by the learned Magistrate only on the basis of the remand application is bad in law. In support of this contention, the learned counsel has also placed reliance on several decisions, to which we will advert at the relevant time.

6. On the contrary, it is contention of the learned Advocate General that Sri. L. R. Shivaram Gowda was produced before the jurisdictional Magistrate within a period of 24 hours from the date and time of his arrest and the jurisdictional Magistrate, on considering the application for remand passed a considered order remanding Sri L. R. Shivaram Gowda to police custody till 3-12-1992. Therefore, this is not a case in which Sri L. R. Shivaram Gowda can be considered to be in unauthorised custody so as to seek a writ in the nature of habeas corpus and therefore, the petition is not maintainable. It is further contended that the order passed by the learned Magistrate cannot be held to be without jurisdiction merely on the ground that it is passed without the production of the copies of the entries made in the case diary pertaining to Sri L. R. Shivaram Gowda. It is submitted that as long as the Magistrate was competent

to pass an order under S. 167, the non-production of the copies of the entries in the police diary did not in any way affect the jurisdiction; that even on the merits also, the petitioner is not entitled to a writ in the nature of habeas corpus. Lastly, it is submitted by the learned Advocate General that the police custody remand expires today and Sri L. R. Shivaram Gowda is going to be produced before the learned Judicial Magistrate, First Class, Nagamangala today and the C.O.D. Police would be seeking for judicial custody remand and not police custody remand and therefore, the police custody remand made for a period of 10 days being within the statutory period laid down by S. 167 of the Criminal P.C. also disables the petitioner from seeking the relief sought for in the petition.

7. In the light of the contentions urged, the following points arise for consideration :-

1. Whether in a case like this, issue of a writ in the nature of habeas corpus is maintainable ?

2. Whether the order of remand dated 24-11-1992 passed by the learned Judicial Magistrate, First Class, Nagamangala can be held to be invalid in law ?

Point No. 1 :

8. It is no doubt true that if a detenu or an accused in a criminal case is in lawful custody, writ in the nature of habeas corpus would not lie. But in a case where the petitioner contends that the detenu or the accused in a criminal case is not in lawful custody and therefore, he is liable to be set at liberty, it is not possible to hold that such a petition is not maintainable and throw away that petition at the outset. In such a case, this Court is required to consider whether the detenu or accused in a criminal case is in lawful custody. In the instant case, as already pointed out, it is the contention of the petitioner that the very order of remand dated 24-11-1992 is invalid and therefore, it is not permissible to continue to keep Sri. L. R. Shivaram Gowda in custody as it would be unauthorised custody. Thus the very order on the basis of which Sri. L. R. Shivaram Gowda is held in custody is challenged. Therefore, we are of the view that in a case like this, a petition under Art. 226 of the Constitution seeking a writ in the nature of habeas corpus is maintainable.

Learned Advocate General has placed reliance on a decision of a Full Bench of the High Court of Ramesh Kumar Ravi @ Ram Prasad Vs. The State of Bihar, and 3 Others, Out of the 4 questions decided by the Full Bench, 2 questions were as follows :-

"iii) Whether a defect or illegality in the order of a remand of an accused person is incurable and he can claim a writ of habeas corpus despite the fact that on the date of hearing he is in custody under a valid order of remand ?

iv) Whether the judicial orders of a Criminal Court (stricto sensu) under the Code of Criminal Procedure, are amenable to quashing by a writ of certiorari ?"

The Full Bench answered question No. (iii) that as on the date, the order was passed, the detenu or accused was in authorised custody, the petition for a writ of habeas corpus was not maintainable. As far as the 4th question was concerned, the Full Bench answered that the judicial orders of a criminal Court *stricto sensu* passed under the Code of Criminal Procedure are not amenable to quashing by a writ of certiorari when there is a remedy available under the Code of Criminal Procedure.

Based upon the aforesaid decision, the learned Advocate General contended that in effect the petitioner's prayer would amount to seeking a writ of certiorari; that if the writ of certiorari cannot be issued, question of issuing a writ in the nature of Habeas Corpus does not arise.

We may point out that without even seeking a writ of certiorari to quash the order of remand, it is open to the accused or a prisoner in custody or any one of their relatives to seek a writ in the nature of habeas corpus and such a writ can be issued if it is proved that the custody is not authorised custody and it is unauthorised. We may also point out that unlike the other writs, writ of habeas corpus is not controlled by any technical objection or limitation. The jurisdiction to issue writ of habeas corpus is wider and the limitations that are placed against the issue of writs of other nature would not apply to a writ of habeas corpus because personal liberty with which it is concerned is given utmost importance. Therefore, whenever a citizen or a person approaches this Court alleging that personal liberty of a person or citizen is unauthorisedly curbed, this Court cannot refuse to look into that petition, but find out as to whether the grievance of the petitioner is justified in law or not. Hence we are of the view that this aspect of the matter has not been decided in the aforesaid Full Bench decision because the Court has ultimately come to the conclusion that on the date of the issuance of the writ, the person was in lawful custody and therefore, it has been held that writ of habeas corpus would not lie. Therefore, we are of the view that the decision of the Full Bench of the High Court of Patna referred to above cannot be applied to the case on hand. We accordingly answer Point No. 1 in the affirmative.

Point No. 2 :

9. As already pointed out, the case was registered as long back as on 23-9-1992 in Bellur Police Station and it was handed over to the COD for investigation on 24-9-1992.

10. Before we consider the contention based on S. 167, Cr.P.C., the background under which Sri L. R. Shivaram Gowda came to be arrested is necessary to be borne in mind. In the FIR which was filed on 23-9-1992, Sri L. R. Shivaram Gowda was arrayed as one of the accused. He was arrayed as accused No. 32. In the FIR it was also specifically stated thus :-

This complaint was given by K. Rudrachari Bin Annaswamachari. It was received by the Nagamangala Police Station at about 12 Noon on 23-9-1992. The incident as alleged in the FIR had taken place between 8.45 and 9.00 a.m. on 23-9-1992.

Thus within 3 hours the FIR came to be lodged in the Police Station at Bellur though the incident took place at the 7th Kilometre in between Kanchanahalli to Chunchanahalli. The FIR was received by the jurisdictional Magistrate on the same day at about 8.10 p.m. It is stated by learned counsel that the distance between Bellur and Nagamangala is about 12 K. Ms. On the same day, the inquest was also done. The statements of Nagamma, w/o K. B. Gangadhara Murthy (deceased) and also Kamamma w/o Bhaskarachari were recorded at the time of the inquest. In her Statement, Nagamma has stated thus :

Similarly, Smt. Kamamma has also stated thus :

We may also point out that Kamamma is no other than the mother of the deceased. In addition, the statement contained in the FIR also can be used for corroboration. Apart from this, before the arrest of Sri L. R. Shivaram Gowda, the other accused viz., accused Nos. 1 to 6 have been arrested on several dates and have been produced before the jurisdictional Magistrate and their police custody have been obtained on certain dates. Copies of the entries in the case diary of 15-10-1992, 16-10-1992, 18-10-1992, 20-10-1992, 21-10-1992 and 22-10-1992 have been produced. The case diaries pertaining to the other dates are no doubt not produced. When Shivaram Gowda was produced before the learned Magistrate, case diary was not produced but only an application filed by the C.O.D. seeking police custody remand was produced. It contained sufficient material to give an idea to the Magistrate about the complicity of Sri L. R. Shivaram Gowda and the necessity to continue him in the police custody. The application itself runs into 14 pages. The case history starting from the time of filing the FIR has been given in the remand application. The remand application also contains the arrest and production of accused Nos. 1 to 6 on various dates and their continuance in the police custody. It also states the necessity for continuing Sri L. R. Shivaram Gowda in Police custody. We may only reproduce the relevant portion of the application.

The aforesaid contents of the application filed for extending police custody remand contains the reasons for police custody remand. The learned Magistrate on perusing the application and also on questioning Sri L. R. Shivaram Gowda and on being satisfied that Sri L. R. Shivaram Gowda was not subjected to ill-treatment passed the following order :

"Accused A-7 Sri L. R. Shivaram Gowda son of late Patel Ramegowda Lalankere village is produced before me at 5.30 a.m. by Sri V. B. Toranagatti H & B, COD, Bangalore. Accused stated that police arrested him yesterday about 10.00 a.m. alleges no ill treatment COD Inspector filed application praying for the remand of the accused to the police custody. On the ground that the places where the accused was absconding have to be traced. Some more information have to be collected from him some more accused have to be arrested after collecting informations. Accused has to be interrogated on documents in this case. For all these reasons the COD police have sought for the custody of the accused to them looking to the contents of the remand applications, the grounds made by

the I.O. for police custody are reasonable.

Accused A-7 is remanded to the custody of the Police till 3-12-92 safe custody of police.

Submit report to C.J.M. Mandya.

Call on 3-12-92."

Though in the FIR Sri L. R. Shivaram Gowda was arrayed as accused No. 32 in the application, he was arrayed as accused No. 7 because he was the seventh person to be arrested. The other accused had not been arrested on the date Sri L. R. Shivaram Gowda was arrested. Therefore, we can safely infer that he was shown as accused No. 7. It is not in dispute that no case diary was produced along with the remand application. Therefore, we are now to see whether the non-production of the copies of the entries in the case diary as required under sub-section (1) of S. 167, Cr.P.C. can be held to have vitiated the order of remand. S. 167(1) of Cr.P.C. reads thus :

"167(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed in Section 57, and there are grounds for believing that the accusation or information is well founded, the Officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest judicial Magistrate, a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time, forward the accused to such Magistrate".

There is no doubt that sub-section (1) of S. 167 of the Cr.P.C. requires the Station House Officer or the Police Officer making the investigation who is not below the rank of Sub-Inspector to send a copy of the entries in the diary in the prescribed form relating to the case while forwarding the accused to the Jurisdictional Magistrate seeking the police custody remand. Rule 3 of Chapter V of the Criminal Rules of Practice, 1968 also requires that an application for remand to police custody shall mention the grounds and shall also be accompanied by copies of all entries made up to that stage in the diary maintained under S. 172(1) of the Code and the order remanding the accused person to police custody should be made in the presence of the prisoner and after hearing any objections he may put forward to the proposed order. Sub-rule (3) of Rule 3 also further provides that such remand can be given only for sufficient reasons and only for such period as the Magistrate considers necessary. Sub-Rule (4) of Rule 3 is not necessary for our purpose. In addition to this, learned counsel for the petitioner placed reliance on Order 1348 of the Mysore Police Manual Volume II which also provides that the report should be supported by the copies of the case diaries. Here itself, we may also refer to Circular No. 9/92 dated 17-8-1992 issued by the High Court of Karnataka regarding the production of the accused in the residence of the Magistrate. The said Circular reads thus, -

"No. LCA. I/420/92 HIGH COURT OF KARNATAKA Bangalore Dated : 17-8-1992 CIRCULAR No : 9/1992 It has come to the notice of the High Court that in some cases the investigating agency produce the accused at the residence of the Magistrate seeking remand even on a working day and that by this method the lawyers are prevented from appearing for the accused. It is stated that some times accused are produced at the residence of the Magistrate to seek extension of remand already granted and such extensions are granted at the residence.

It is impressed upon all the Magistrates that whenever an accused person is produced before a Magistrate at his residence on a working day before the commencement of Court hours, and the Magistrate is satisfied that remand to police custody is not necessary to aid effective investigation or the accused is not required to be produced before some other Court, he shall direct the Police to produce the accused in Court on the same day and take up the request for remand in Court and if twenty four hours allowed for detention by Police u/s 57, Cr.P.C. is about to expire when so produced, may authorise further detention to facilitate his production in Court.

In case the accused person is produced at his residence after Court hours or on holidays seeking remand to judicial custody further detention till Court hours on the next working day may be authorised where Prison Rules do not permit receipt of prisoners during specified hours or holidays. If remand to police custody is sought after Court hours at the residence of the Magistrate and the same is granted the Magistrate shall direct the Police depending on the circumstances of the case, to produce the accused in Court on the expiry of the period of remand to police custody. If the period of remand expires on a holiday and no further police custody remand is granted the Magistrate shall follow the aforesaid instructions regarding remand when the accused is produced on a holiday.

Requests for extension of remand shall not be entertained at the residence unless the remand period expires on a holiday.

These instructions shall be followed scrupulously.

BY ORDER OF THE HIGH COURT, Sd/- (S. VENKATARAMAN) REGISTRAR GENERAL."

On the basis of the aforesaid Circular, it is contended, that as Sri L. R. Shivaram Gowda was produced at 5.30 a.m. on 24-11-1992 before the Court hours, learned Magistrate in accordance with the Circular ought to have extended the police remand only till the commencement of the Court hours and directed the C.O.D. to produce him before the Court and in that event, Sri L. R. Shivaram Gowda would have had the assistance of a counsel.

A reading of Section 167(1), Cr.P.C. and Rule 3 of Chapter V of the Karnataka Criminal Rules of Practice, 1968 and also Order No. 1348 of the Karnataka Police

Manual, Volume II, leaves no doubt that copies of the entries in the case diaries shall have to be produced along with the remand application. But before we could examine whether the non-production of the copies can be held to have affected the jurisdiction of the Magistrate or vitiated the orders of the Magistrate, we must also consider the object with which this provision is made regarding the production of the entries in the case diary. The entries in the case diary afford the Magistrate the information upon which he can decide whether or not he should authorise the detention of the accused person or upon which he can form an opinion as to whether further detention is necessary. Therefore, in a case where up-to-date entries in the case diary are not produced, it is necessary to see as to whether the materials available before the Magistrate were such as would afford him an adequate information on the basis of which he could decide as to whether an order of remand is necessary. The material that was available before the learned Magistrate on the date when Sri L. R. Shivaram Gowda was produced before him on 24-11-1992 has already been adverted to by us.

We must also bear in mind that S. 167(1) of the Cr.P.C. relates to procedural matters. The procedural law is the hand made of justice and cannot at all be used to defeat the ends of justice or to affect the lawful proceedings. It is one thing to say that it is necessary for the police to produce copies of the entries in the case diary and it is quite another thing to say that in the absence of production of case diary the Magistrate will not be competent to pass any order of remand on the application filed by the police. We are of the view that in the absence of production of copies of up to date entries in the case diary, it is open to the learned Magistrate, if he is not satisfied on the material placed before him, to insist upon production of the same and then pass an order of remand and to enable the police to produce the case diary, at the most he can extend the police custody for a day or a few hours as the case may be but in a case where there is adequate material before him and if he is satisfied that the police custody remand is necessary for the purpose of investigation of the case, the Magistrate would not be justified in refusing to grant police custody remand because in such a case refusal to grant police custody remand would affect the investigation, and in some cases it may result in a real culprit escaping from the charge of a crime. It is, therefore, incumbent on the Magistrate to properly apply their mind before passing an order under S. 167(2), Cr.P.C. If adequate materials are not available the Magistrates should insist upon the production of copies of up-to-date entries in the case dairy, and in the meanwhile, order remand for a short period, say, a few hours or a day as the case may be. However, if the materials already before the Magistrate are adequate to make an order of remand under S. 167(2), Cr.P.C. there is no legal impediment to pass an order under S. 167(2), Cr.P.C. subject of course to the limitation reflected there.

In the instant case, we have already extracted the order passed by the learned Magistrate extending the police custody remand. A perusal of the same makes it clear that the learned Magistrate had taken care to ascertain from the accused as to whether he was subjected to any ill-treatment during the period of his police

custody, and he was also further satisfied as per the reasons found in the order that the further police custody remand was necessary. However, the learned Magistrate in the case, in spite of granting police custody remand for a period of 10 days on 24-11-1992 at 5-30 a.m. when he was produced at his residence, as per the Circular issued by this Court ought to have directed them to produce Sri L. R. Shivaram Gowda before the Court either on the same day after the commencement of the Court hours or the very next day. The very purpose of issuing the Circular is to ensure that the police do not obtain police custody remand in the manner so as to deprive a person in custody to have any legal assistance. However, on perusing the case diary made available to us by the learned Advocate General and also on perusing the material that has been produced by the petitioner in this case, we are satisfied that the granting of police custody remand for a period of 10 days cannot be held to be without any ground especially when it is within a period of 15 days. Thus we are of the view that taking into consideration all the facts and circumstances of the case this is not a case in which it could be held that the order passed by the learned Magistrate granting police custody remand for a period of 10 days is without application of mind or without any material.

However, learned counsel for the petitioner has placed reliance on several decisions and we will now advert to the same. In *Re. In Re: Burla Jayarami Reddi and Others*, a Division Bench has held that the provisions under S. 167(1), Cr.P.C. relating to the transmission of a copy of the entries in the diary prescribed under S. 167, Cr.P.C. are mandatory and therefore it is necessary to send along with the remand report a copy of the case diary. It is also further observed that the object of enacting this section is that the entries in the diary should be fair and to see as to whether or not detention of the accused persons should be authorised and also to enable the Magistrate to form an opinion as to whether any further detention is necessary. The investigating officer relating to that part of the Section has to transmit the case diary. In that case, this circumstance was relied upon to find out whether the prosecution case is trustworthy and can be accepted. Evidence of some of the witnesses adduced by the prosecution was rejected on the ground that the case diary was not produced on the date the accused was produced before the Court for seeking police custody remand. This circumstance was used along with several other circumstances for appreciating the evidence on record and it was held that as the case diary was not produced on the date the accused was produced before the Magistrate, the same cannot be held to have come into existence on that date. Therefore, it cannot be said that this case lays down the law that an order of remand is vitiated if it is passed without the production of copies of the entries made in the case diary. Further, in the instant case, we have already pointed out that part from FIR the inquest report including the statements of certain witnesses which obviously forms part of entry in case diary, certain entries relating to some dates were produced earlier. Under these circumstances, the aforesaid decision is not of any assistance to the petitioner.

Learned counsel placed reliance on a decision of the High Court of Swami Hariharanand Saraswati and Others Vs. The Jailor I/C Dist. Jail, Banaras, Reliance was placed on para 32 of the judgment which reads as under :

"As we have pointed out in this case Sri. Gauri Shankar Singh in directing the arrest of the petitioners did not act as Court nor had he an opportunity of applying a "Judicial mind" to the facts of the case. It can also not be said that Sri. Gauri Shankar Singh could properly judge whether the procedure which he adopted was regular, for a person can never be deemed to be a "competent judge of his own cause". The provisions of S. 167(1) Cr.P.C. also indicate to us that the policy of the law is to bring an independent judgment to bear on the matter for, it is provided in that section that the Magistrate before whom an arrested person is produced is also to have before him "a copy of the entries in the diary."

That means that the Magistrate before whom the production has to be made has to scrutinise the act of others and to see whether the act was legal and proper and further whether the formalities required by law had been complied with. In this case Sri. Gauri Shankar Singh had remanded the petitioners into jail custody by an order signed by him on 17-2-1954. Whether the order was signed at the place of occurrence or at police station Chowk or at Kotwal is immaterial because on the affidavits we are to the opinion that the order was signed more or less as a matter of course by Sri Gauri Shankar Singh without his scrutinising as to the legality and propriety of the procedure adopted by himself. At any rate, it is impossible for us to hold that under the circumstances of the case Sri Gauri Shankar Singh could apply a "judicial mind" in regard to these arrests. In paragraph 13 of his affidavit Sri. Gauri Shankar Singh has stated as follows :

"That on the following day (this would be February 18, 1954) the police submitted a report for asking for a further remand before the deponent, but as the deponent was just leaving for some important executive work, he directed the police to take the report to his Link Officer Sri Chitrangad Singh, the Additional City Magistrate of Banaras, for necessary orders"

Learned counsel on the basis of this decision submitted that as the Magistrate is required to scrutinise the case diary, it was necessary for the police to produce it. The submission made by the learned counsel for the petitioner with reference to the aforesaid decision is liable to be rejected in the facts and circumstances of this case which we have highlighted earlier as to how there were adequate materials before the learned Magistrate which did from part of entries in the case diary.

However learned counsel for the petitioner placed reliance on a decision in a *Ishwar Singh v. Pandey Singh* 1984 (9) RCC 270 and laid stress on the words regarding transmission of copies of the entries in the case diary to the nearest judicial Magistrate and submitted that it is obligatory on the part of the C.O.D. to produce copies of the entries in the case diary in the prescribed form as per S.

172(1) of the Criminal P.C.

We have already considered the scope and the object of production of copies of the case diary. Therefore, we are of the view that the stress in the aforesaid words cannot make any change with respect to what we have expressed above, as long as this is a case in which it could be said that no case in which it could be said that no case diary was produced. We also do not consider it necessary to consider in detail the decision reported in Govind Prasad Vs. The State of West Bengal, and Ajit Kumar Sannah Vs. The State of Assam and Others, because both those decisions deal with non-compliance with the requirement of S. 50 Cr.P.C. with which we are not concerned in this case.

Learned counsel placed reliance on a single Judge decision of the High Court of Ashok and Others Vs. The State, That case also related to S. 50 of the Criminal P.C. Therefore, we do not consider it necessary to deal with the same in detail.

Lastly, learned counsel placed reliance on a decision of R.K. Nabachandra Singh Vs. Manipur Administration, In that case, it has been held that if the police do not transmit to Court, a copy of the case diary relating to the case to satisfy the Magistrate that there are grounds for believing that the accusation is well-founded and remand is necessary, the Magistrate has no jurisdiction to direct arrest of the accused and it is the duty of the police to comply with the provisions of S. 167(1), Cr.P.C. and the Magistrate should insist on such strict compliance and if the police do not satisfy the Magistrate that the document is not necessary the Magistrate may release the accused. It is not possible to agree with the proposition laid down in the case that the Magistrate may release the accused under S. 167(1), Cr.P.C. in the absence of the production of copies of the case diary.

We have already pointed out that in the absence of production of copies of the case diary, if there are other materials before the Magistrate in the form of F.I.R. inquest report which form part of the case diary and from those materials it is possible to make out that the person produced it required to be detained in the police custody for further investigation, it would be open to the Magistrate to extend police custody and such a case cannot be held to be a case of non-production of the case diary altogether. We are of the view that the proposition of law laid down in the aforesaid case is widely worded and it cannot at all be accepted.

Another decision in Rabindra Rai Vs. State of Bihar, was relied upon to point out that the jurisdiction exercised under S. 167 of the Criminal P.C. is a judicial function and therefore, the order must be informed by reasons and must be passed upon the relevant material. The proposition cannot at all be disputed. The function performed by the Magistrate under S. 167 Cr.P.C. is a judicial function and it relates to the person who is in custody and therefore, the learned Magistrate is required to closely scrutinise the material before him while granting or refusing to grant the police custody remand sought for by the police.

Lastly, learned counsel placed reliance on a decision of the Supreme Court in *In the Matter of Madhu Limaye and Others*, In that case, the provisions of Art. 22 of the constitution were considered. It must be pointed out here that in that case, there was an order passed by the Sub-Divisional Magistrate, Mongir prohibiting assembly of 5 or more persons within a limit of 100 yards for a period of one week from November 5, 1968 to November 12, 1968. Sri, Madhu Limaye in violation of the said order tried to enter the area which was prohibited for entry and he was arrested and kept under detention and the grounds on which he was taken into custody were not informed. Therefore, it was a case falling under Art. 22(1) of the Constitution and the provisions of S. 167 of the Criminal P.C. were not pressed into service and the Supreme Court came to the conclusion that the detention was vitiated because two requirements of Art. 22 of the Constitution were not complied with. Therefore, a writ in the nature of habeas corpus was issued. Thus it is clear that the said decision stands on a different footing and it cannot at all be applied to a case where a person is taken into custody on the basis of a criminal case registered against him involving serious offence. Therefore, we are of the view that the said decision also cannot be of any assistance to the petitioner.

For the reasons stated above, point No. 2 is answered in the negative. Consequently, the petition fails and the same is dismissed.

11. Petition dismissed.