

(1984) 08 PAT CK 0045
In the Patna High Court

Ramchander Nonia and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 13-08-1984

Acts Referred:

Constitution of India, 1950 — Article 21, 22
Criminal Procedure Code, 1973 (CrPC) — Section 164, 167, 309
Penal Code, 1860 (IPC) — Section 399

Citation : (1985) CriLJ 894 : (1984) PLJR 936

Hon'ble Judges : Ram Naresh Thakur, J; Anand Prasad Sinha, J

Bench : Division Bench

Judgement

Anand Prasad Sinha, J.

1. The point for consideration in this case is that when some accused involved in a criminal case is produced before the court of the Chief Judicial Magistrate and thereafter remanded to be produced on the next date and if the accused persons thereafter are transferred to another jail on the basis of a production warrant received from the Chief Judicial Magistrate of another place and that the prisoners are sent beyond the jurisdiction of the court by the order of the Chief Judicial Magistrate and not produced on subsequent dates will be termed illegal detention and as to whether it will make the accused persons entitled to be set at liberty on the basis of violation of Articles 21 & 22(2) of the Constitution and Section 167(2) and also Section 309(2) of the Code of Criminal Procedure (hereinafter to be referred to as the Code).

2. It appears that the four petitioners were sent up in Pachrukhi P.S. Case No. 93/82 Under Sections 399 and 402 of the Penal Code and 25(A) and 26 of the Arms Act on 29-12-1982 before the Chief Judicial Magistrate, Siwan. They were remanded and were ordered to be produced on 12-1-1983. On 12-1-1983, they were produced before the learned Chief Judicial Magistrate and they were further remanded to jail custody to be produced on 25-1-1983. In between this period, it appears that on the requisition by the police they were given on remand to the

police, statements u/s 164 of the Code had been recorded and also there was prayer for bail.

3. An information had been given by the Superintendent of Jail, Siwan on 14-1-1983 to the Chief Judicial Magistrate that on the basis of the production warrant by the Chief Judicial Magistrate, Gorakhpur, the petitioners had been transferred to Gorakhpur jail as they were wanted in several criminal cases pending before the Chief Judicial Magistrate, Gorakhpur. Further, it appears from the ordersheet dt. 25-1-1983 that some of the accused persons involved in this case (not the petitioners) had also been sent to the court of the Chief Judicial Magistrate, Chapra in connection with some criminal cases and they had been kept confined in jail at Chapra. Accordingly, the petitioners were not produced on 25-1-1983 and also on the subsequent dates before the Chief Judicial Magistrate, Siwan as they were in custody of the court of the Chief Judicial Magistrate at Gorakhpur.

4. The question of illegal detention as contemplated under Articles 21 & 22(2) of the Constitution is specifically with regard to certain conditions when the detention is altogether illegal as every citizen has got a fundamental right, when arrested and detained in custody, that he shall not be detained in custody beyond a period of 24 hours without the authority of a Magistrate.

5. The provision as laid down in Sections 167(2) and 309(2) of the Code deals with detention and remand of any arrested accused or person in connection with a criminal case. Section 167(2) of the Code is concerned primarily up to the stage of filing of the police report (commonly known as chargesheet) and the moment chargesheet is submitted, the detention of an accused shall be guided by the provisions laid down u/s 309(2) of the Code. Any contravention or breach will reflect a detention illegal or not authorised by law.

6. In the instant case, it appears that the petitioners had been sent to Gorakhpur within the knowledge and permission of the Chief Judicial Magistrate and that being so, it will be construed that during the relevant period when the petitioners were detained at Gorakhpur they were, as a matter of fact, in custody of the court at Gorakhpur and not at Siwan. Therefore, the question of illegal detention will purely depend upon the fact as to whether they had been produced before Gorakhpur Court in accordance with law or not. There is absolutely no statement made in the petition that they had not been produced there. Even if there would have been any statement in this respect, the jurisdiction would have been with regard to that High Court under which the court at Gorakhpur lay.

7. When an accused detained in custody of a court is sent out side its jurisdiction and thus there being no production in that court, such non-production is neither illegal nor unauthorised violating Articles 22(2) and 21 of the Constitution and also Sections 167(2) and 309(2) of the Code.

8. Under the circumstances, in the facts of this case, the detention of the petitioners cannot be said to be illegal, keeping in view the fact that they had not

been produced before the Chief Judicial Magistrate, Siwan as they had been sent to the court of the Chief Judicial Magistrate at Gorakhpur.

9. A report had been called for from the Chief Judicial Magistrate, Siwan and the report has been received which has been produced by Mr. Hoda today and it is kept on record. From the perusal of the report it appears that since the time they have been sent back to Siwan jail, they are being produced regularly in accordance with Jaw.

10. Further it appears that the cognizance has already been taken against the petitioners, but there is no order of commitment and that is natural because the petitioners had been sent to Gorakhpur, as stated above, and records had been sent to this Court.

11. In view of the discussions made above, no ground for quashing of the detention has been made out and accordingly, this application is dismissed. Let the lower court records be sent down forthwith and all further proceedings in the case will be taken up expeditiously.

Ram Naresh Thakur, J.

12. I agree.