

(2015) 02 AHC CK 0132

In the Allahabad High Court

Case No : Criminal Misc. Writ Petition No. 5337 of 2015

Ritesh

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 25-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167, 167(2), 267, 268, 309

Explosives Act, 1884 — Section 5

Penal Code, 1860 (IPC) — Section 120 B, 216, 302, 307, 413

Citation : (2015) 2 ACR 1385 : (2015) 3 ADJ 665 : (2015) 3 ALJ 282 : (2015) 89 ALLCC 574

Hon'ble Judges : Amar Saran, J; Amar Singh Chauhan, J

Bench : Division Bench

Advocate : Neeraj Pandey and Raj Kumar Sharma, for the Appellant

Final Decision : Dismissed

Judgement

Amar Singh Chauhan, J.—Heard learned counsel for the parties.

By order dated 7.7.2010, passed by the Under Secretary, State Government of U.P., the transfer of the petitioner was permitted and by consequential order dated 12.7.2010, passed by Inspector General, Jail, the petitioner was transferred from Ghazipur Jail to Jaunpur Jail. The petitioner was facing a trial before ADJ Fast Track Court, Ghazipur in Case Crime No. 115/2006, under Section 302, 307 and 120 B, 427, 216, 413, 420 IPC and Section 7 of Criminal Law Amendment Act and Section 5 of Explosive Act, P.S. Karanda, district Ghazipur.

2. Firstly the petitioner was sent to Ghazipur Jail by the Judicial Magistrate, Ghazipur by exercising his remanding power under Section 167/309 Cr.P.C. Later on by the order dated 7.7.2010, passed by the Under Secretary, State Government of U.P., the transfer of the petitioner was permitted and the petitioner was transferred to District Jail Jaunpur on administrative ground by the order dated 12.7.2010, passed by Inspector General, Jail, respondent No. 2 and

subsequently, the Superintendent, District Jail Ghazipur by his order dated 15.7.2010 has sent the petitioner to District Jail Jaunpur and since then he is in District Jail Jaunpur.

3. Learned counsel for the petitioner submitted that Remand Magistrate can remand the accused who is in judicial custody only under Section 167 and 309 Cr. P.C., and can keep the supervisory vigil upon the accused persons. It is further submitted that only Remand Magistrate or trial Court, under whose direction the accused person has been remanded to judicial custody, can pass any type of order relating to the transfer of the under trial prisoner.

4. It is further submitted by the learned counsel for the petitioner that Hon'ble the Supreme Court and various High Courts including this High Court Allahabad are of the view that under trial prisoners cannot be transferred on the administrative ground by the State Government or by the Jail Authorities. It is submitted that in special circumstances the accused may be transferred from one jail to another jail only after getting the permission of the concerned Magistrate/Court. In this case before transferring of the accused from one jail to another jail, no permission has been taken from the concerned Magistrate/Court.

5. Learned counsel for the petitioner has given the reference of a judgment of Apex Court in The State of Maharashtra and Others Vs. Saeed Sohail Sheikh etc. etc., AIR 2013 SC 168 : (2013) CriLJ 214 : (2013) 1 RCR(Criminal) 200 : (2012) 10 SCALE 660 and stated that in that case it has been held that the under trial prisoner can only be transferred with the permission of the Judicial Authority after giving an opportunity of being heard to the under trial prisoner.

6. It is further submitted that as a rule of law the prisoner should be given an opportunity of hearing before his transfer from one jail to another.

7. In support of his contention, the learned counsel for the petitioner referred few cases of various Courts; like, Sunil Batra Vs. Delhi Administration and Others etc., AIR 1980 SC 1579 : (1980) CriLJ 1099 : (1978) CriLJ 1741 : (1980) 3 SCC 488 : (1978) 4 SCC 494 : (1980) SCC(Cri) 580 : (1979) SCC(Cri) 155 : (1980) 2 SCR 557 : (1979) 1 SCR 392 , Single Judge Case of Court in Misc. Single No. 7677 of 2014 (Ram Shlok Pandey v. State of U.P. In the aforesaid cases relevant provisions regarding the transfer of the prisoners have been discussed.

8. It is further submitted by the learned counsel for the petitioner that before proving the guilt by Court beyond reasonable doubt the prisoner is not a convicted person and he be dealt like a innocent person.

9. Learned AGA supported the grounds of the impugned orders and submitted that there is no reason to interfere with the impugned orders passed by the State Authority and the Jail Authorities.

10. After hearing the learned counsel for the rival sides and considering the facts and circumstances of the case, it is clear that Section 267 would be attracted in the course of any enquiry, trial or other proceedings under this Code and on the

satisfaction of a criminal Court for passing such an order. Section 267 does not make any distinction with respect to nature of detention and is applicable to under trial prisoners also. Section 268 provides that the State Government may, at any time having regard to the matters specified in Sub-section (2) by general or special order, direct that any person or class of persons shall not be removed from the prison in which he or they may be confined or detained, and thereupon, so long as the order remains in force, no order made under Section 267, where before or after the order of the State Government, shall have effect in respect of such person or class of persons. Transferring a detenu or an accused including an under trial prisoner from one jail to another would not mean the change of custody or change of the nature of the custody i.e. from judicial custody to police custody. There is no requirement under the provisions of Section 167 that the remand Magistrate while ordering for judicial custody of the accused is to mention the place also. The only requirement under Clause (b) of Sub-section 2 of Section 167 of the Code provides that accused must be produced before the Magistrate on the date of remand and the Magistrate has been restrained from authorising the detention of the accused in any custody under that section unless he is produced before him.

11. It has been contended by the learned counsel for the petitioner that the under trial prisoners cannot be transferred from one jail to another except in accordance with the order passed by the judicial authority under whose order they are detained in judicial custody in jail. It is further contended that jail authority has no jurisdiction to transfer the under trial on administrative ground. On transfer of under trial prisoners before passing the order of transfer the opportunity of hearing have not been given to the petitioner and if no such hearing is provided to the petitioner the order of transfer would be vitiate as held by Hon"ble Supreme Court in State of Maharashtra v. Mohd. Saeed Sohail Sheikh, 2012 Law Suit (SC) 741.

12. After considering the citation we are of the opinion that jail authority in State of U.P. is empowered to transfer the under trial vide paragraph 138 read with para 409-A of the U.P. Jail Manual whereas in the State of Maharashtra such power is lacking, therefore, the ratio of case law cited by the petitioner is foreign to the State of U.P.

Paragraphs 138, 409 A of Jail Manual are quoted below:

"138: The Superintendent may recommend the transfer to another jail of any prisoner whose detention in the prison is considered to be in expedient for local or disciplinary reasons or for any other sufficient course to the District Magistrate. The District Magistrate may order for transfer of such prisoners to the neighboring district. The reasons for transfer should always be communicated to the District Magistrate and the Superintendent of Jail of the district to which the prisoner is transferred and should also be recorded on the history ticket of the prisoner concerned. The Inspector General of Prisons shall inform of such transfers. The Superintendent shall recommend to the Inspector General of

Prisons for the transfer of prisoners be transferred to the district either than neighboring district."

13. By means of para 40 of the Rules in the Jail Manual which are applicable to superior and ordinary classes of convicts have been made applicable to superior and ordinary classes of under trial prisoners also except in the manner as provided in Chapter XVIII. Para 409-A reads as under:

"409-A : Except as provided in this Chapter, the rules in the Jail Manual applicable to superior and ordinary classes of convicts shall apply to superior and ordinary classes of under trial prisoners also."

By virtue of para 409-A all the rules of Jail Manual which are applicable to superior and ordinary class of convicts have thus been made applicable to superior and ordinary class of under trial prisoners also. Thus para 138 which deals with transfer of convicts legally can be made use of in the case of under trial prisoners also.

Para 138 requires the following condition to be fulfilled for transfer of a convict which in turn applies to the under trial prisoners also namely (I) their has to be a recommendation from the Superintendent for transfer of the prisoner to another jail (ii) the detention in the prison should be considered to be inexpedient for local or disciplinary reasons (iii) or there should be any other sufficient cause. The District Magistrate has been authorized to pass order for transfer of such prisoner including under trial prisoner to the neighboring district and reason for such transfer should be communicated to the District Magistrate and Superintendent of the jail of the district to which he is transferred and should also be recorded on the history ticket of the prisoner concerned. Information is to be given to the Inspector General Jail to the district other than the neighboring district the recommendation is to be made to the Inspector General of Prison who is competent to pass such order."

14. In this case the Inspector General Jail has passed the order of transfer of the petitioner from Ghazipur jail to Jaunpur jail after obtaining the permission from Secretary State Government of Uttar Pradesh. In the case of Balram Singh Yadav v. State of U.P. and others, (1991) JIC 95, a Division Bench of this Court had already taken a view that the transfer of the accused or under trial prisoners in view of para 137 read with 409 A from one jail to another was permitted and Section 167(2) of the Code of Criminal Procedure, which could not be a bar for such transfer. More over the impugned order is purely administrative, which ought not to be reasoned order. The petitioner has challenged the order dated 7.7.2010, for which he has not given any explanation for delay which shows the laches on the part of the petitioner. Besides this the petitioner has neither disclosed the fact that he is fully aware or cooperating for speedy disposal of trial nor he has mentioned the stage of trial.

For the reasons state above, we do not find any illegality in the order of transfer, transferring the petitioner from District Jail Ghazipur to district jail Jaunpur and,

therefore, we are not inclined to interfere with the order of transfer impugned in the petition.

In view of the above, there is no merit in this petition and the same is liable to be dismissed.

The petition is accordingly dismissed.