
(2000) 02 PAT CK 0017
In the Patna High Court
Case No : Cr.W.J.C. No. 88 of 2000

Surendra Sardar and Buddhu Sardar	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 14-02-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 57
Penal Code, 1860 (IPC) — Section 398

Citation : (2000) 3 PLJR 238

Hon'ble Judges : N. Rai, J;A.K. Verma, J

Bench : Division Bench

Advocate : Amrit Abhijit, for the Appellant; Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for the Petitioners and the Respondents.
2. The present application has been filed by the Petitioners for issuance of a writ of Habeas Corpus directing the Respondents to release them forthwith, who have been detained in custody in connection with Pipra P.S. Case No. 91 of 1999 u/s 398 of the Indian Penal Code(hereinafter to be referred to as the I.P.C.)
3. The Petitioners are facing prosecution u/s 398 of the Indian Penal Code on the allegations that while they were attempting to commit crime, they were apprehended by the police with the help of the public. It is stated that they were arrested on 21.8.99 at 0.18 A.M. and were produced before the Chief Judicial Magistrate, Supaul on 22.8.99 at 7 A.M. i.e. after lapse of 30.42 hours and as such they remained in police custody for more than 24 hours, which is in violation of the provisions of Section 57 of the Code of Criminal Procedure (hereinafter to be referred to as the Cr.P.C.) and as such they should be released forthwith.
4. It appears that the Petitioners raised aforesaid points before the court below

at the time of bail and the court below called for a report from the police and the court below rejected the same as according to the court below there is no violation of Section 57 Code of Criminal Procedure.

5. Learned Counsel for the Petitioners submitted that the Petitioners were detained beyond 24 hours and, therefore, their detention in the police custody beyond 24 hours is impermissible and unlawful and as such they should be released forthwith. In support of the aforesaid submission, learned Counsel for the Petitioners relied upon a judgment of Apex Court in the case of *Manoj v. State of Madhya Pradesh* 1999 (2) PLJR 39 wherein it has been held that if the accused is not produced before any Magistrate within 24 hours of their arrest, their detention is not valid and the accused is entitled to be released on that date. Section 57 of the Code of Criminal Procedure provides that no police officer shall detain in custody a person arrested without warrant for a period exceeding 24 hours. However that period will not include the time necessary for the journey from the place of arrest to the Magistrate's court. The Apex Court dealing with the aforesaid matter held that if a person is not produced within 24 hours, the detention made would become unlawful beyond the said period of 24 hours. Even assuming that the Petitioners were in police custody exceeding 24 hours admittedly the Petitioners were produced before the Magistrate and now they have been remanded to judicial custody under valid order. So today their custody is valid.

6. It is well settled that in matters of Habeas Corpus, the relevant date to determine as to whether the remand is legal or not is the date of hearing of the application and if on the relevant date the remand is found to be legal a person is not entitled to be released. In this connection reference may be made to a Full Bench judgment of this Court in the case of *Babu Nandan Mallah v. State* reported in 1971 BLJR 1058 : 1971 PLJR 605, wherein it has been held that the appropriate time to find out whether the detention is illegal and a writ of habeas corpus should issue, is the date of hearing the application. It is not a condition precedent or a valid order of remand that the accused must at the time of the remand, be in valid custody under a valid remand order. If on the date of hearing of the application the remand is valid, then no writ of habeas corpus can be issued only on the ground that at earlier point of time the remand was invalid.

7. In that view of the matter, no case for issuance of a writ of habeas corpus is made out on the ground that the Petitioner was kept in police custody beyond 24 hours.

8. In the result this application is dismissed.