
(1968) 09 AHC CK 0018
In the Allahabad High Court

The State	Vs	APPELLANT
Raghuraj Singh		RESPONDENT

Date of Decision : 20-09-1968

Acts Referred:

Evidence Act, 1872 — Section 9
Penal Code, 1860 (IPC) — Section 295, 296

Citation : (1968) 38 AWR 855 : (1970) CriLJ 78

Hon'ble Judges : Yashoda Nandan, J; Gayendra Kumar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Yashoda Nandan, J.—This case has come up before us on a reference made by a learned single Judge of this Court because in his opinion there is a conflict between the decisions of two learned single Judges of this Court on the question of law arising for consideration.

2. The relevant facts giving rise to this reference are that Raghuraj Singh was wanted in connection with a cognizable offence alleged to have been committed in Mohalla Akbarabad, Casba and Police Station Sehawan, District Budaun. The offence is alleged to have been committed on the 10th May, 1966. In August, 1966, Raghuraj Singh was arrested in district Bulandshahr and was produced before the Additional District Magistrate (J), Bulandshahr, u/s 167(1), Criminal P. O. It appears that a report was made that the prosecution intended to put up Raghuraj Singh for identification at a test identification parade. The learned Additional District Magistrate (J), Bulandshahr passed an order u/s 167(2), Criminal P. C. authorizing the further detention of Raghuraj Singh. Raghuraj Singh then filed an application before the Additional District Magistrate, Bulandshahr, stating that he had an apprehension that if he was sent to Budaun he would be shown to the witnesses and he consequently prayed that his identification be conducted at Bulandshahr and he be transmitted to Budaun only thereafter. The Additional District Magistrate (J), Bulandshahr, considered the

prayer of Raghuraj Singh as reasonable and ordered that his identification proceedings be held at Bulandshahr and that he should be sent to Budaun only thereafter. This order was communicated to the Superintendent of Police, Budaun, for taking necessary action for conducting the identification proceedings of Raghuraj Singh at Bulandshahr.

3. Instead of holding identification proceedings of Raghuraj Singh at Bulandshahr, an application was made on behalf of the State before the Additional District Magistrate (J), Budaun, for an order of transfer of the accused to Budaun Jail. It was alleged in this application that the witnesses, who were to take part in the identification proceedings, were not prepared to go to Bulandshahr and the police had no power to compel them to do so.. The Additional District Magistrate (J), Budaun, allowed the application and intimated to the Additional District Magistrate (J) Bulandshahr, that as the witnesses were reluctant to go to Bulandshahr the accused be transferred to Budaun Jail. However, the Additional District Magistrate (J) Bulandshahr, intimated to the Additional District Magistrate (J), Budaun, that since he had already passed an order for detention of the accused at Bulandshahr, he could not change it and consequently could not order the transfer, of the accused to Budaun Jail.

4. The Superintendent, District Jail, Bulandshahr, had also been asked by the Additional District Magistrate (J) Budaun through a warrant and order u/s 8 of the Prisoners (Attendance in Courts) Act, 1955, to forward the accused to his Court. But in view of an order to the contrary passed by the Additional District Magistrate (J), Bulandshahr, the Superintendent, District Jail, Bulandshahr expressed his inability to comply with the order of the Additional District Magistrate (J), Budaun.

5. Meanwhile Raghuraj Singh applied for bail to the Sessions Judge, Bulandshahr. It appears that the State Counsel made a statement that identification proceedings of Raghuraj Singh would be held within a month and consequently on the 6th February, 1967, the learned Sessions Judge, Bulandshahr, passed an order directing that the application for bail be put up after a month. On the 6th March, 1967, the bail application again came up for consideration before the Sessions Judge, Bulandshahr and on that date he directed that the application be put up for hearing on the 15th March, 1967. But it was on the 16th March, 1967, that the application actually came up for hearing before the learned Sessions Judge, Bulandshahr. It was urged by the State that Raghuraj Singh should not be released on bail because he was to be put up for identification at a test identification parade. It was further urged on behalf of the State that identification proceedings of Raghuraj Singh could not be held at Bulandshahr and the attention of the learned Sessions Judge was invited to a decision by Satish Chandra, J. in *Kailash Chandra v. State*, Cri. Misc. Case No. 8259 of 1964 D/- 8-2-1965 (All) in which the learned Judge had taken the view that an accused person had no right to demand his identification, much less a right to demand that the identification should be held at a particular place. The learned

Sessions Judge distinguished the decision in Kailash Chandra (supra) on the ground that while in the case decided by Satish Chandra, J. the accused had surrendered in Court and had himself demanded to be put up for identification, in the present case Raghuraj Singh had not surrendered but had been arrested and he did not himself demand identification but it was the prosecution which desired to put him up for identification. The distinction drawn by the learned Sessions Judge between the present case and the decision in Kailash Chandra (supra) is absolutely without any foundation. The learned Sessions Judge placing reliance on a decision of one of us in Mahendra Singh v. State, Cri. Revn. No. 280 of 1963 D/-22-8-1963 (All) ordered that the prosecution should arrange for holding identification proceedings of Baghuraj Singh at Bulandshahr within one month from the 16th March, 1967, and that after the expiry of one month the question of granting bail could be considered by him. The application for bail made by the applicant was rejected but the learned Sessions Judge ordered that the accused could make another application for bail after one month.

6. On the 17th March. 1967, the learned Sessions Judge, Bulandshahr passed an order apparently on the application for bail made by Raghuraj Singh that Raghuraj Singh was not "to be transferred to Budaun Jail till further orders. After the expiry of one month Raghuraj Singh applied afresh for release on bail and ultimately on the 22nd May, 1967, the learned Sessions Judge passed an order that since the State did not want to have identification proceedings at Bulandshahr and the accused could not be kept in jail indefinitely, he be released on bail. It seems that an under, taking was given by Raghuraj Singh that after coming out of the jail he would not take the plea that the witnesses had the opportunity of seeing him.

7. In the meantime, on 7th May, 1967, the Assistant Public Prosecutor made an application before the Additional District Magistrate, (J) Budaun, alleging that the Additional District Magistrate (J) Bulndshahr had no power to take cognizance of the case against Raghuraj Singh accused; that he could pass an order of remand only for a fortnight u/s 167, Criminal P. C. and that the order passed by the Additional District Magistrate, Bulandshahr, directing that the identification proceedings should be held at Bulandshahr was beyond his jurisdiction. It was further stated in the application that id was the Additional District Magistrate (J) Budaun, who had jurisdiction to hold an inquiry into the case against Raghuraj Singh and he alone had the power to order the detention of the accused beyond a period of a fortnight. On the 29th April, 1967, the Additional District Magistrate (J), Budaun, made the present reference to this Court recommending that the orders of the Courts at Bulandshahr be set aside and the accused be directed to be transferred to the District Jail, Budaun, in compliance with the orders of the Additional District Magistrate (J), Budaun.

8. Having heard the learned Counsel for the parties, we are of the opinion that the orders passed by the Additional District Magistrate (J), Bulandshahr, and the Sessions Judge, Bulandehahr directing that Raghuraj Singh be put up for

identification at Balandshahr and detaining him there for that purpose were entirely illegal.

9. The identification proceedings conducted before submission of a charge-sheet against an accused is merely a step in the process of investigation of a crime. When witnesses claim that they had marked the features of an accused during the commission of a crime, the prosecution has to ascertain whether the said claim is correct or incorrect. It is merely for this purpose that the investigating agency puts up an accused at a test identification parade. If the witnesses fail to identify an accused at the test identification parade and there is no other evidence connecting the accused with the crime, the officer in charge of the police station or the investigating officer has to release the accused u/s 169, Cr. P. C. and submit a final report u/s 178(1), Cr. P. C. Identification of an accused at a test identification parade is not a substantive piece of evidence and consequently identification proceedings are not subject to directions by a Court. It was observed in *State Vs. Ghulam Mohiuddin*, that,

Identification parades are held not for the purpose of giving defence advocates material to work on, but in order to satisfy investigation officers of the bona fides of the prosecution witnesses. The identification proceedings being in the nature of tests, no provision for holding them is to be found in the Code or even in the Evidence Act. The proceedings are record of facts which establish the identity of any thing or person and which may be relevant u/s 9, Evidence Act. The facts are to be proved according to law; and in the absence of such proof the identification proceedings are valueless.

In the same case it was further held that,

When, at the commencement of or during the course of the trial, the accused informs the Court that the prosecution witnesses had never seen him committing the crime and he was not even known to them, the Court may, in its discretion, satisfy itself by asking the accused to stand among other persons present in Court and then call upon the witnesses, who appear before the Court to identify the accused and make a note of the result on the record; but the Court cannot make an order for the holding of a regular identification parade at the instance of an accused before the witnesses were examined in Court, there being no provision in the Criminal P. C. authorizing the Court to do so.

10. The substantive evidence against an accused is only his identification by the witnesses in Court and the record of the test identification proceedings can be utilised only for the purpose of corroborating or contradicting the witnesses who identify the accused in Court. In our judgment, *Satish Chandra, J.* correctly held in *Kailash Chandra, Cri. Misc. Case No. 8259 of 1964, D/. 8-2-1965 (All) (Supra)* that an accused had no right to demand that his identification be held at a particular place and the Court has no power to direct the investigating agency either to put up an accused at a test identification parade or to direct that the identification proceedings be held at a particular place.

11. The manner in which an officer investigating the crime will carry on the investigation is entirely the concern of the police and is not subject to any control by the Court. In *Abhinandan Jha and Others Vs. Dinesh Mishra*, while considering the provision contained in Chapter XIV, Cr. P. C. the Supreme Court observed that,

But the point to be noted is that the manner and method of conducting the investigation are left entirely to the police, and the Magistrate, BO far as we can see, has no power under any of these provisions, to interfere with the same.

The Supreme Court quoted with approval the following observations made by the Judicial Committee in AIR 1945 18 (Privy Council)

Just as it is essential that every one accused of a crime should have free access to a Court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes on them the duty of inquiry. In India as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable Crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary, not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always of course, subject to the right of the Court to intervene in an appropriate case when moved u/s 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus.

In *State of West Bengal Vs. S.N. Basak*, the Supreme Court observed as follows:

Section 154 deals with information in cognizable offences and Section 156 with investigation into such offences and under these sections the police has the statutory right to investigate into the circumstances of any alleged cognisable offence without authority from a Magistrate and this statutory power of the police to investigate cannot be interfered with by the exercise of power u/s 439 or under the inherent power of the Court u/s 561-A, when there was no case pending at the time excepting that the person against whom the investigation has started had appeared before the Court, had surrendered and had been admitted to bail.

As already stated, the holding of a test identification parade, is merely a step in the investigation of a crime and it is entirely up to the investigating agency to decide as to whether it would hold a test identification parade or not and if it decides to do so, the venue for it.

12. The crime in respect of which Raghuraj Singh was arrested is alleged to have

been committed in District Budaun and the learned Additional District Magistrate (J), Bulandshahr. was not competent either to hold an inquiry or to hold the trial of Righuraj Singh. Consequently the learned Additional District Magistrate, Bulandshahr, had no power to detain the accused at Bulandshahr for a term exceeding 15 days in view of Section 167(2), Cr. P. O. The learned Sessions Judge, Bulandshahr, also, in our opinion acted in contravention of the law by directing Righuraj Singh's detention at Bulandshahr after the expiry of a fortnight from the date of his arrest. It is only the Magistrate having jurisdiction to take cognizance of the offence, who can remand an accused to custody in exercise of powers u/s 344, Cr. P. C. after the expiry of 15 days mentioned in Section 167(2), Cr. P. C, if the investigation has not been completed (See *Dukhi and Another Vs. State and Another*, decided by Desai and Beg, JJ.)

13. This case was referred to a target Bench because the learned Single Judge" before whom it came up for hearing was of the opinion that there is a conflict of decisions between two learned Single Judges of this Court. His attention was invited to the decision in *Mahendra Singh*, Cri. Revn. No. 280 of 1968 D/. 22-8-1968 (All) (Supra) decided by one of us on the 22nd August, 1968. The learned Sessions Judge, Bulandshahr, has also placed reliance on this decision. In that case the accused was wanted at Bulandshahr in connection with a case u/s 295/296 I. P. C. He surrendered in the Court of the Additional District Magistrate (J), Mathura. An application was moved on behalf of the accused before the Additional District Magistrate (J), Bulandshahr, that his identification test be conducted in the jail at Mathura, The application was allowed by the Additional District Magistrate (J) Bulandshahr. Subsequently on an application made on behalf of the State, the learned Additional District Magistrate, Bulandshahr recalled his earlier order and directed that the accused be brought from Mathura Jail to Bulandshahr, so that his identification proceedings may be held in Bulandshahr Jail. On a revision filed by the accused, this Court took the view that the Additional District Magistrate, Bulandshahr ""having once ordered that the identification of the applicant should be carried out in Mathura Jail, had no jurisdiction to review and vacate that order and later on direct that the accused should be brought from Mathura and put up for identification at Bulandshahr." The decision was based on the reasoning that the learned Additional District Magistrate had no jurisdiction to review his order. The question as to whether a Court had the power to make a judicial order directing the police to hold a test identification parade at a particular place was not considered in that decision.

14. Raghuraj Singh was arrested as far back as 1966 and because of the unfortunate manner in which the Additional District Magistrate, Bulandshahr and the learned Sessions Judge, Bulandshahr, have acted, the inquiry proceedings do not seem to have started yet. Due to the lapse of time, much valuable evidence might have been lost. Courts must bear in mind that it is not for them to hamper the investigations of crimes, by orders which might result in miscarriage of justice.

15. Before parting with this case we might observe that the reliance placed by the learned Additional District Magistrate, Budaun on the provisions of the Prisoners (Attendance in Courts) Act, 1955, was also misconceived. These provisions apply only after a charge sheet has been submitted and the Court has taken cognizance of the case.

16. In the result, this reference is accepted and the orders passed by the learned Additional District Magistrate (J), Bulandshahr, and the learned Sessions Judge, Bulandshahr, directing that Raghuraj Singh be detained and put up for identification at Bulandshahr are quashed.