

(2012) 07 CAL CK 0162
In the Calcutta High Court

Case No : Writ Petition No's. 17510 (W) of 2011 and 10124 (W) of 2012

Uttam Kumar Barman

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 04-07-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 498A

Citation : (2012) 5 CHN 726

Hon'ble Judges : N. Patherya, J

Bench : Single Bench

Advocate : Debabrata Acharyya, for the Appellant; Partha Sarathi Bhattacharyya and Raju Bhattacharyya for the Council, Sipra Majumdar and Khairul Alam for the State, for the Respondent

Final Decision : Dismissed

Judgement

N. Patherya, J.—By this writ petition, the petitioner seeks to challenge the order dated 7th March, 2012. The case of the petitioner is that he was arrested on 24th July, 2011 and therefore, he was deemed to be under suspension on and from this date. Subsequent thereto, the petitioner was enlarged on bail and therefore, in view of the decisions reported in State of Orissa Vs. Bimal Kumar Mohanty, and R.P. Kapur Vs. Union of India (UOI) and Another, , the order of suspension was liable to be revoked. In fact, an application pursuant to the order dated 3rd January, 2012 was filed and the same was considered and the order passed on 7th March, 2012. As the only reason given in the order dated 7th March, 2012 is the pendency of the Balurghat Police Station Case and for no other reason, the application of the petitioner has been rejected. The order of suspension was issued under Rule 7(2) of the 2001 Rules, which contemplates detention of more than 48 hours on a criminal charge. As no charge has been framed and the proceedings are pending, the release from detention is a valid ground for revoking the order of suspension. Therefore, the pendency of the proceedings cannot be a valid ground for refusing the petitioner's prayer, as has

been done by the order dated 7th March, 2012 and accordingly, the said order be set aside.

2. Counsel for the respondent No. 4 submits that Rule 7(2) of the 2001 Rules specifically provides for detention in custody for more than 48 hours and on such a situation occurring, the detainee is to be deemed as suspended from the date of his detention and such suspension is to continue until further orders. Until further orders has not been explained but in the decision reported in (2009) 2 WBLR 452, it has been held that an application would be required for further orders to be passed. This has also been the decision in (2011) 1 CLJ 50. Enlargement on bail cannot be a reason for revocation of the order of suspension. In an unreported decision in W.P. No. 7077 (W) of 2010, the petitioner was directed to file a representation with the Chairman although such written representation is not to be mandatorily considered by the Chairman. Therefore, in the said decision, which is of a coordinate Bench, the same be followed in view of the decisions reported in (2010) 13 SCC 366 and (2010) 2 SCC. In the event, there are two different views on the same subject, one may be followed but in view of the decision reported in Uttar Pradesh Gram Panchayat Adhikari Sangh and Others Vs. Daya Ram Saroj and Others, , the same issue may also be refereed to a larger Bench. State of Orissa Vs. Bimal Kumar Mohanty, relied on by the petitioner is distinguishable as it does not deal with the deemed suspension under Rule 7(2) of the 2001 Rules so also in R.P. Kapur Vs. Union of India (UOI) and Another, the issue involved in this writ petition was not considered. On the other hand, (2003) 6 SCC 576 was a case where "until further orders" was considered and it has been held that an order of suspension does not loose its efficacy nor it stands automatically terminated the moment the detention comes to an end and the person is set at large. Mere enlarging the petitioner on bail will not warrant revocation of the order of suspension and the order dated 7th March, 2012 calls for no interference.

3. In reply, Counsel for the petitioner seeks to rely on the decision reported in (2010) 3 SCC (Cri.) 473.

4. Having considered the submissions of the parties, Rule 7(2) of the 2001 Rules contemplates deemed suspension where a Teacher is detained for a period exceeding 48 hours. The petitioner in the instant case was arrested on 24th July, 2011 and therefore, deemed suspension came to operate. According to Rule 7(2) of the 2001 Rules, the Teacher is to remain suspended "until further orders" and although the petitioner has contended that he has been enlarged on bail, therefore, there would be no reason for the order of suspension to continue especially when the proceedings in respect of which he was arrested is u/s 498A of the Indian Penal Code. "Until further orders" is, what has arisen for consideration and means an order, which may be passed at a future date. Such order may be either passed by the Council on its own assessment or on an application made by the Teacher. In the instant case, an application has boon filed by the Teacher and the same was considered and rejected by order dated

7th March, 2012. The only reason for rejection is the pendency of the Balurghat Police Station case but while considering the application, the relevancy of the said case to his functioning as a Teacher has not been considered. In fact, Rule 7(2) does not even postulate such consideration and in terms, may be harsh on the Teacher. Simply put Rule 7(2) deems the Teacher to be under suspension from the date he was detained in custody and such suspension is to remain until further orders. Till this date, Rule 7(2) has not been challenged. In several decisions, the said Rule has been considered and in (2009) 1 WBLR 452, it has been held that the earlier decisions of this Court in the case of Basudeb Mallick, Chhabi Chakraborty and Moloy Kumar Laha, are not on a proper construction of the relevant Rules. Therefore, the correctness of Rule 7(2) of the 2001 Rules cannot be considered at this stage when not called by this Court, as in doing so, the Court would be exceeding its jurisdiction.

5. Accordingly, in view of Rajiv Kumar's case, wherein it has been held that merely being enlarged on bail will not warrant revocation of the order of suspension, the order dated 7th March, 2012 calls for no interference.

6. The only ground mentioned in the representation for revocation of the order of suspension is the petitioner being enlarged on bail. In view of Rajiv Kumar's case, this can be no reason.

7. The grounds taken in the writ petition with regard to framing of criminal charge was not before the adjudicating authority nor in the representation dated 26th September, 2011, and therefore, on the grounds pleaded the order also calls for no interference.

8. State of Orissa Vs. Bimal Kumar Mohanty, and R.P. Kapur Vs. Union of India (UOI) and Another, are distinguishable on facts, as both the cases were not dealing with a Rule, such as Rule 7(2) of the 2001 Rules or the term "until further orders" as was done in the case of Rajiv Kumar (Supra), and therefore, is inapplicable to the instant case.

9. The writ petition is accordingly dismissed. As the issue required to be considered raised a question of law, no affidavit has been filed and the allegation in the writ petition is not admitted by the respondents.