

(1967) 07 BOM CK 0008

In the Bombay High Court

Case No : Criminal Application No's. 673 and 674 of 1967

Yeshwant Bapuji Mokashi

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 26-07-1967

Acts Referred:

Bombay Police Act, 1951 — Section 96
Contempt of Courts Act, 1971 — Section 3, 4
Criminal Procedure Code, 1898 (CrPC) — Section 167, 344

Citation : AIR 1968 Bom 273 : (1967) 69 BOMLR 859 : (1968) CriLJ 903 :
(1968) MhLj 140

Hon'ble Judges : Palekar, J;Chitale, J

Bench : Division Bench

Advocate : V.S. Kotwal and S.R. Chitnis, for the Appellant; C.R. Dalvi, Asst.
Govt. Pleader and V.H. Gumaste, Govt. Pleader, for the Respondent

Judgement

Palekar, J.

(1) These are applications by one Yashwant Bapuji Mokashi by one of which he prays that one Malati Sitaram Mokashi be released from unlawful custody and by the other for action in contempt against two C. I. D. Officers, Sub-Inspector S. A. Shinde (Respondent 2) and Police Inspector Shravan Kiro Ahir (Respondent 3).

(2) The facts leading to these applications are briefly these: On 25-6-1967 there was theft of nearly Rs. 84,000 in the Thana Branch of the Dena Bank. In connection with this theft the petitioner's brother Sitaram Bapuji Mokashi, who was the Accountant of the Bank, and the watchman of that bank were arrested on 27-6-1967. The offence was registered at the Thana Police Station. On 30-6-1967 the investigation was transferred to the C. I. D. Department, Bombay, and Shinde, Police-Sub-Inspector C. I. D. was deputed for investigation. In the course of investigation on 2-7-1967 Shinde arrested Malati Sitaram Mokashi, the wife of Sitaram Bapuji Mokashi and the sister-in-law of the present petitioner. Malati was produced before the Judicial Magistrate, First Class, Thana, on

3-7-1967 and she was remanded into police custody till 10-7-1967. On 10-7-1967 when Malati was produced before the learned Magistrate, a bail application which had been filed earlier was heard by the learned Magistrate and rejected. On rejection, Malati was remanded to police custody upto 15-7-1967. As 15-7-1967 was a Saturday, the learned Magistrate ordered that she be produced before him at 8 a.m.

(3) On 15-7-1967 Malati was not produced before the learned Magistrate as required. The Investigating Officer Shinde who was present informed the Court that during the course of the investigation he had gone to Sultanpur in Uttar Pradesh and had only returned on the 13th, and in the meantime Malati and some of the other accused were being interrogated by higher officers of the Department, and just at that moment he did not exactly know the whereabouts of Malati. He also assured the Magistrate that the police officers, who had taken charge of the accused and gone out-side Thana for investigation, would produce the accused before the nearest Magistrate in the locality. The learned Magistrate apparently was not satisfied with the explanation given by the Investigating Officer and he therefore, passed the following order:-

"Accused No. 3 (Malati) and No. 4, who are directed to be produced before me today at 8 a.m. they are not produced. P. S .I. Shinde says that the custody of these accused is with higher officers. He learns that the accused are out of Thana. The bail application is set down for orders on 18-7-1967. P. S. I. Shinde or whoever is in charge of investigation is directed to produce accused Nos. 3 and 4 before me at 11 a.m." Malati was accordingly to be produced before the learned Magistrate on 18th July 1967.

(4) In the meantime, however, the remand period granted by the learned Magistrate having expired on 15-7-1967, respondent No. 3, Ahir, Police Inspector, C. I. D. produced Malati for further remand before the Additional Chief Presidency Magistrate, Greater Bombay, and obtained a further remand into police custody till 28-7-1967. Shinde informed the Judicial Magistrate, First Class, Thana, about this on 16-7-1967.

(5) But already there was the order of the learned Judicial Magistrate for the production of Malati before him on 18-7-1967, and normally, therefore, she ought to have been produced before him. On the contrary, the Police Prosecutor made an application to the Judicial Magistrate for vacating the order passed by the learned Magistrate on 15-7-1967. In this application he stated as follows:-

"The C. Ds. of the case are separable submitted by I. O. (Investigating Officer) for Your Honour's persual to give an idea of the vital stage of investigation. Today production of the accused at this juncture is likely to affect the success-in-investigation which is already complicated on account of modus operandi of the offence.....

The vacation of the order will surely further the ends of investigation and eventually of justice."

The learned Advocate on behalf of Malati strongly objected to the prayer in the application and pointed out that in spite of clear orders passed by the learned Judicial Magistrate for the production of the accused including Malati before the learned Magistrate, the Investigating Officers had flouted those orders, and therefore, they were liable to be proceeded in contempt. On hearing both the sides, the learned Magistrate directed the issue of a notice to the officers, Shinde and Ahir, to show cause why contempt proceedings should not be instituted. The notice was made returnable on 25-7-1967, but in the meantime, the petitioner has filed the present applications.

(6) It is contended on behalf of the petitioner that the Investigating Officers in this case have deliberately flouted the orders of the learned Judicial Magistrate, and therefore, are liable in contempt. Malati was ordered to be produced before him on 15-7-1967 at 8 a.m. She had been arrested on 2-7-1967 and the remand into police custody would have soon exceeded the statutory fifteen days allowed by S. 167, Cri. P. C. So instead of producing Malati before the Judicial Magistrate on 15-6-67, she was produced before the Presidency Magistrate, Greater Bombay, on that day and a further remand till 28-7-1967 was obtained from the Presidency Magistrate, Bombay. It was contended that the procedure followed by the Investigating Officers in this case was not merely irregular, but illegal. And to add to that illegality when a further order was passed by the learned Magistrate on that day that Malati should be produced before him on 18-7-1967, the officers flouted that order by not producing her before him. It was, therefore, contended that both the Officers in this respect were guilty of contempt. For the same reasons, it was further contended that the custody of Malati was illegal, and, therefore, she was liable to be released.

(7) Before considering the nature of contempt in this case, we will have to see the provisions of law with regard to police custody. The case, as already noted, was registered at the Thana Police Station, outside Greater Bombay, and, therefore, the Magistrate having jurisdiction to try the case was the learned Judicial Magistrate, First Class, Thana. During the course of the investigation, it is not disputed, investigation had to be made in Bombay and elsewhere and Malati and the other accused who were in custody had to be taken from place to place. Even, so, ordinarily speaking, the accused, who were once produced before the Judicial Magistrate having jurisdiction to try the case, ought to have been produced before the Judicial Magistrate having jurisdiction to try the case, ought to have been produced before him from time to time, and the orders of such Magistrate should have been solicited for further remands, if necessary. What has been done in this case is that instead of obtaining continuous remands from the Judicial Magistrate, Thana, Malati was produced during the course of investigation before a Presidency Magistrate, Bombay, and orders for remand were obtained from the latter Magistrate. Section 167 Cri. Pro. Code lays down the procedure when the investigation cannot be completed in 24 hours. Under sub-section (1) of that section, a person who is arrested and detained in custody is required to be forwarded to the nearest Judicial Magistrate within 224 hours

fixed by Section 61 of the Code. Sub-section (2) then provides that "the Magistrate to whom the accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole. If he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction. Sub-section (3) provides that a Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing. It is now the accepted position in law that in view of sub-section (2) of section 167, the period of detention in police custody of the police shall record his reasons for so doing. It is now the accepted position in law that in view of sub-section (2) of section 167, the period of detention in police custody shall not exceed fifteen days in the whole. If the accused is produced before a Magistrate having jurisdiction, he can give the accused in the custody of the police for a total number of fifteen days in the whole. If the accused is produced before a Magistrate having jurisdiction, he can give the accused in the custody of the police for a total number of fifteen days, and not more. If the investigation is incomplete, the only way is to obtain remand u/s 344 Cr. Pro. Code. That is the position which has been recognized by this court as far back as 1898.....(See In Re Krishnaji Pandurang Joglekar, (1899) ILR 23 Bom 32. It was held in that case that u/s 167 of the Code of Criminal Procedure the period for which a Magistrate can authorize the detention of the accused in police custody is fifteen days on the whole, including one or more remands. Sub-section (2) falls into two parts. The first part deals with the authority of the Magistrate to detain the accused in such custody as the Magistrate thinks fit during the course of investigation. The custody may be magisterial custody or police custody, but in either case, during the course of the investigation, the total period cannot exceed fifteen days. What applies to a Magistrate having jurisdiction to try the case equally applies to a Magistrate who has no jurisdiction. The second part of that sub-section imposes a further duty on a Magistrate who has no jurisdiction to try the case, and that part says that when such a Magistrate who has no jurisdiction to try the case or commit it for trial considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction. In other words, a Magistrate having no jurisdiction to try the case or commit it for trial considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction. In other words, a Magistrate having no jurisdiction to try the case will have to consider when an accused is already in custody and how long he is in custody; and subject to the controlling provision, viz., that the total period in police custody should not exceed fifteen days, he will be entitled to order further detention so as not to exceed that period. But if during the interval he feels that further detention is unnecessary, he may forward the accused to the Magistrate having jurisdiction. To the same effect is the decision in Bal Krishna v. The Crown ILR Lah 435: AIR 1931 Lah 99. Following the

decision of the Bombay High Court already referred to, it was held in that case that the total period of remand to police custody for the investigation of any particular offence which is permissible u/s 167 Cr. Pro. Code being fifteen days, if further detention is considered necessary, the proper course is to proceed u/s 344 Cri. Pro. Code. It was also observed that a remand u/s 344 Cri. Pro. Code can, however, be only to Magisterial. No objection is now raised to this proposition, viz. that a Magistrate whether he had jurisdiction to try the case or not shall not remand the accused into police custody for a period exceeding fifteen days in the whole.

(8) But some complications have been created by a somewhat different provision made by the Bombay Police Act, 1951. Section 96 so far as is relevant provides:-

(1) Notwithstanding anything contained in.....sub-section (2) of section 167 of the Code of Criminal Procedure, 1989-

(i).....

(ii) the Presidency Magistrate in Greater Bombay to whom an accused person is forwarded under sub-section (2) of section 167 of the Code, may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit for a term not exceeding fifteen days at a time."

The difference between this provision and the provision in sub-section (2) of section 167 Cri. Pro. Code will be immediately apparent. Where the accused is produced before a Presidency Magistrate in Greater Bombay, irrespective as to whether the Presidency Magistrate has or has no jurisdiction to try the case, the Presidency Magistrate has the authority to remand an accused into police custody even for a period of more than fifteen days. The only limitation is that "at a time" he shall not remand for a period exceeding fifteen days. It is contended on behalf of the respondents that in view of this provision. Malati was produced by the officer who was at that time investigating the offence in Bombay before the Presidency Magistrate at Bombay and remanded into police custody till 28-7-1967. Indeed, if Malati had been produced before the Thana Magistrate, police custody till 28-7-1967 could not have been obtained, but since the investigation was going on in Bombay and she had to be produced before the Presidency Magistrate, Bombay, a request was made to the Presidency Magistrate for remand into police custody till 28-7-1967, and thus Malati was taken into legal police custody by the officers.

(9) Mr. Kotwal on behalf of the petitioner contended that the Investigating officers were not entitled to produce Malati before the learned Presidency Magistrate and obtain remand into police custody. The proper court was the court of the Judicial Magistrate, First Class, Thana, and the order passed by the learned Presidency Magistrate remanding Malati to police custody was an unauthorized order. He contended that the provision in S. 96 of the Bombay Police Act, 1951, was intended to apply to the specific case contemplated in the

second part of sub-section (2) of Section 167 of the Cri. Pro. Code. He particularly refers to the first part of Section 96 where the reference is to an accused person forwarded under sub-section (2) of Section 167 of the Code. Mr. Kotwal contends that the first part of sub-section (2) of Section 167 refers to the accused forwarded u/s 167 (1) and since Section 96 of the Bombay Police Act specifically refers to an accused forwarded u/s (2) of Section 167, the accused contemplated by Section 96 must be the accused referred to in the Second part of sub-Section (2) of Section 167. When asked as to what particular type of case this might apply in actual practice, he cited the instance of a Magistrate outside Greater Bombay revising his opinion, during the period of remand, that not he, but the Presidency Magistrate in Greater Bombay has jurisdiction to try the case. According to Mr. Kotwal, it was king of case contemplated by section 96 of the Bombay Police Act. It is true that section 96 applies to a person who is forwarded under sub-section (2) of Section 167 of the Code, but there is no justification to hold that the person described in Section 96 is covered only by the second part of sub-section (2) of Section 167 and not the first part of sub-section (2) of Section 167 Cri. Pro. Code. Even in the first part of sub-section (2) of Section 167, the person is one who has been "forwarded" u/s 167. Secondly, Mr. Kotwal was not able to explain why in such a case it was necessary to provide in S. 96 that the authority given to the Presidency Magistrate is not only in respect of a person who would be tried by him, but also one whom he could not try. In our opinion, the controlling part of Section 96 consists of the words "whether he has or has not jurisdiction to try the case, "and if that part of section is to be given and meaning, a Presidency Magistrate is entitled not only to remand into police custody for more than 15 days a person who would be eventually tried by him, but also a person who may not be tried by him but in respect of whom police investigation is still pending in Greater Bombay. It is quite possible to conceive a case of this kind, say, for example, a case of conspiracy registered in a remote Police Station in Uttar Pradesh. The case may involve wide complications and the principal investigation in it may have to be made in Greater Bombay. If the Magistrate in Uttar Pradesh is the only Magistrate who can lawfully grant remands, the investigation in Greater Bombay will have to be interrupted in order to produce the accused again before the U. P. Magistrate on the day fixed. Most of the period of remand will be consumed in travelling to and from, and hardly any investigation will be possible in Greater Bombay. Therefore, even though a Presidency Magistrate may have no jurisdiction to try the case, he is given jurisdiction under S. 96 to grant remands. The reason, apparently, for remands into police custody for an unlimited period in Greater Bombay, is that cases of immense complications arise here, and it is very often difficult to trace all the accused and collect the necessary evidence due to the vastness of the place, its huge population and the unusual living conditions. Therefore, while the Legislature thought it necessary so far as areas outside Greater Bombay are concerned, that the police custody should in no case exceed fifteen days, no such limitation should be placed on a genuine investigation made in Greater Bombay. The only limitation is that the Presidency Magistrate will exercise his judicial

discretion in the matter and grant a remand such remand to police custody not exceeding fifteen days at a time. It will render the provision futile it is held that when the principal investigation is to be made in Greater Bombay, the accused should not be produced for remand before a Presidency Magistrate in Bombay, but should, every time, be produced before the Magistrate in U.P. where the offence is registered. In our opinion, there is no sufficient justification for limiting the application of S. 96 to the accused mentioned in the second part of sub-section (2) of S. 167 Cri. P. C.

(10) But the matter does not rest there. Technically, it may be possible to argue that the Investigating Officers did follow the legal procedure in putting up Malati before the Presidency Magistrate for being remanded into police custody. The question of propriety, however, remains. The officers know that this is an investigation into an offence registered in Thana and they also know that the accused including Malati had been initially produced before the Judicial Magistrate, First Class, Thana, who had jurisdiction to try the case. It was also known that the earlier remands had been given by the Judicial Magistrate, First Class, Thana. Merely because the Bombay Police Act provides method by which it was possible to extend the period of police remand, it would not be open to the police officers to produce the accused before the Presidency Magistrate and obtain remands into police custody which normally they would not have been able to obtain under S. 167, Cr. P. C. The choice is not left to the police in such matters. Indeed, there are cases where it might be inconvenient to produce the accused before the Magistrate who has jurisdiction in the case on the date fixed for production in view of the difficulties of distance, transport and the like, but, otherwise, the police ought to produce the accused before the Magistrate who has jurisdiction to try the case. The Magistrate having jurisdiction has a greater responsibility towards the case than a Magistrate who has no jurisdiction. Similarly, he is in a better position to keep a watch over the progress of the investigation than the Magistrate who has no such jurisdiction. Moreover the accused also would not be left in doubt as to when and before whom they would be produced for fresh remands. Therefore, as pointed out in ILR 12 Lah 435= AIR 1931 Lah 99 the practice of obtaining remands from any Magistrate of the choice of the police is objectionable. In the present case, we find that there was no difficulty whatsoever in producing the accused including Malati before the learned Judicial Magistrate, First Class, Thana. Even if the investigation was going on for the most part in Bombay, so far as Malati was concerned, there could have been no difficulty whatsoever in producing her before the Thana Magistrate, because Thana is hardly 20 miles from Bombay, about an hour's run by car. By adopting these tactics the investigating Officers have laid themselves open to the charge that they wanted deliberately to flout the order of the Magistrate when a clear direction was given that the accused including Malati must be produced before him on a certain date. They have further carried the pitch by informing the Magistrate on 18-7-1967 that the production of the accused before him was "likely to affect the success in investigation which is

already complicated on account of the modus operandi of the offence." This was thoroughly objectionable. Investigating Officers cannot be permitted to tell Judicial Magistrate that the production of the accused before them, that is the very accused whom the Magistrate will have to try in the case, will complicate the success in investigation. The learned Government Pleader on behalf of the Investigating Officers has tendered an unconditional apology for the procedure which had been adopted by the officers. In extenuation, he only referred to the provisions of S. 96 of the Bombay Police Act and also to the order passed by the Judicial Magistrate at an earlier stage on 10-7-1967 wherein he seemed to approve the procedure adopted by the officers in producing the accused before the Presidency Magistrate, Bombay. It must be said that the petitioner had not alleged any mala fides against the officers, nor can it be doubted that the investigation in this case would not be easy, because cash to the extent of Rs. 84,000 has been stolen from the strong room of the bank. The accused, at least some of them, might have been required by the officers constantly with them, so that on the information given by them, they could confront parties through whose hands the money might have passed. Moreover, the accused including Malati were produced before the Presidency Magistrate, in every case before the period of remand had expired. Under these circumstances, we accept the apology tendered on behalf of the officers, and we do not think, we need say more in the matter except that we thoroughly disapprove the manner in which the learned Judicial Magistrate has been treated in this case. It was objectionable on the part of the Police Officer to write letters to the learned Magistrate instead of attending his Court personally.

(11) As regards the habeas corpus petition, we have already suggested to the parties that if they are inclined to apply for bail, we will be willing to consider the application, and in view of this, it is not necessary to proceed with the application for habeas corpus.

(12) Order accordingly.