# A. LAKSHMANARAO

*v.*

# JUDICIAL MAGISTRATE, 1ST CLASS, PARVATIPURAM & ORS.

*November* 24, 1970

[S. M. SIKRI, V. BHARGAVA AND I. D. DUA, JJ.]

*Code of Criminal Procedure,* 1898, *s.* 344(1*A*)—*Validity—Power to adjourn and power to remand—Whether guidelines absent—Order of remand whether must be made in presence of accused to be valid.*

The petitioner was arrested on July 17, 1970 and was produced before a first class Magistrate next day when he was remanded to judicial custody under s. 167(2) Cr. P.C. for 15 days. He was informed at the time of remand that his arrest was in connection with a case relating to dacoity and murder and conspiracy to commit the same. Although a charge-sheet had been submitted against about 148 persons accused in the case the petioner's name was not among them, because as the police later explained, investigations against him had not been completed. The petitioner objected to a second remand on August 1, 1970 but that very day the prosecution filed a supplementary charge-sheet including his name. Remand was then extended upto August 6 and thereafter upto August 20, 1970. On the last mentioned date he was not produced before the magistrate because of alleged want of escort and the remand was extended in his absence. In a petition under Art. 32 of the Constitution the petitioner challenged his detention from August 1 onwards. The remand order of August 20 was challenged on the ground that it was made in his absence and it was urged that the law does not permit remand without actual production of the accused before the Court. The constitutional validity of s. 344(1A) and of the Explanation to the section was also challenged.

HELD : (1) In view of this Court's decision in *Raj Narain's* case it could no longer be urged that the production of an accused before the magistrate for the purpose of remand was a necessary requirement, though as a rule of caution it is highly desirable that the accused should be personally produced before the magistrate so that he may if he so chooses make a representation against his remand. The order of remand dated August 20, 1970 was in the circumstances not contrary to law so as to render the petitioner's custody illegal justifying his release by this Court on *habeas corpus.* It was still open to the petitioner to apply for bail to the appropriate court in accordance with law.

*Raj Narain* v. *Supdt. Central Jail, New Delhi,* [1971] 2 S.C.R. 147 applied. [826 G—827 C]

(ii) Sub-section (1A) of s. 344 of the code vests in the court seized of a criminal case, power to postpone the commencement of or adjourn any inquiry or trial before him by order in writing stating the reasons therefor from time to time on such terms as the court thinks fit and for such time as it considers reasonable. When the case is so postponed or adjourned the court may also by a warrant remand the accused, if in custody. The discretion to adjourn being vested in a court of law has to be exercised judicially on well recognised principles and is therefore immune from challenge on the ground of arbitrariness or want of guidelines. The judicial power to postpone or adjourn the proceedings is to be exer-

A cised only if from the absence of witnesses or any other reasonable cause the court considers it necessary or desirable to do so. It has to record its reasons for so doing. Similarly the discretion to order remand of the accused is to be exercised judicially keeping in view all the facts and circumstances of the case including the nature of the charge the gravity of the alleged offence, the area of investigation, the antecedents of the accused and all other relevant factors which may appropriately help the court in determining whether to keep the accused in custody or to release him B on bail. Reasonable cause for remand according to the explanation covers a case where sufficient evidence is obtained to raise suspicion about the complicity of an accused person in the offence and it appears likely that more evidence may be obtained by remand. [828 C-E]

Further, both the order of adjournment as well as the order of remand are subject to review by the superior courts in accordance with law. The C challenge to the validity of s. 344(1A) on the ground of want of guidelines must therefore fail. [829 H—830 A]

(iii) The suggestion that the explanation could not extend the substantive provisions of sub-s. (1A) has merely to be stated to be rejected because the explanation merely serves to explain the scope of the expression 'reasonable cause.' [829 E]

D (iv) The argument that since s. 344 falls in Ch. 24 Cr. P.C. which contains general provisions as to inquiries and trials and therefore it cannot apply to a case at the stage of investigation and collection of evidence is negatived by the express language of sub-s. (1A) and the explanation. Under sub-s. (1A) commencement of the inquiry or trial can also be postponed. This clearly seems to refer to the stage prior to the commencement of the inquiry. The explanation makes it clear beyond doubt that reasonable cause as mentioned in sub-s. (1A) includes the likelihood of E obtaining further evidence during investigation by securing a remand. Indeed a postponment of an inquiry on trial also seems to be within the contemplation of the general provisions as to inquiries and trials.

[829 C-D]

[Plea to reopen *Raj Narain's* case rejected.]

ORIGINAL JURISDICTION : Writ Petition No. 513 of 1970.

F Petition under Art. 32 of the Constitution of India for writ in the nature of *habeas corpus*.

The petitioner appeared in person.

*P. Ram Reddy* and *P. P. Rao*, for the respondent.

G The Judgment of the Court was delivered by

**Dua, J.** The petitioner, A. Lakshmanarao, an Advocate practising at Narasipatnam in the district of Visakhapatnam in the State of Andhra Pradesh has applied under Art. 32 of the Constitution for a writ of *habeas corpus* on the following averments :

H The petitioner, while going home from the court, was arrested on 17th July, 1970 at about 12.30 in the afternoon. He was not shown any warrant at the time of his arrest. He was produced before a Judicial Magistrate, First Class, on 18th July and

remanded to judicial custody under s. 167(2), Cr.P.C. for 15 days. At the time of remand he was informed by the Magistrate that he was accused of offences under ss. 120-B, 121-A, 122 read with 302 and 395, I.P.C. in Crime No. 3 of 1970 (known as Parvatipuram Naxalite Conspiracy Case). This crime had been registered in January, 1970 in which more than 148 persons were sought to be proceeded against. The names of only 148 accused persons were specifically mentioned. The petitioner and one Dr. C. Ramadass were not specifically named. They were apparently included in the expression "others". On 30th March, 1970 a report was filed by the Investigating Officer describing it as a preliminary charge-sheet in which it was stated that the investigation in the case had not been completed and several accused persons had yet to be traced. This report, according to the averments, does not fall under s. 173(1), Cr.P.C. Even in this preliminary charge-sheet the names of the petitioner and Dr. Ramadass were not included. On 1st August when the period of the petitioner's first remand expired, again no charge-sheet was separately filed against him and Dr. C. Ramadass. The prosecution, however, sought extension of the period of remand. When the petitioner objected to further remand a second preliminary charge-sheet was presented to the court on that very day specifically including the petitioner's name. His remand was thereupon extended upto 6th August and thereafter upto 20th August. On 20th August he was not produced in the court because of want of escort and the order of remand was made in his absence. He has expressed ignorance about the period of this remand.

The present petition dated 22nd August, 1970 was forwarded to this Court through the Superintendent. Central Jail, Rajahmundry (Andhra Pradesh). The petitioner challenges the remand orders from the 1st August onwards and claims that his detention is illegal and that he is entitled to be set at liberty. The remand order dated 20th August, 1970 which was made in his absence because he could not be produced before the court on the ground of lack of escort is challenged on the further ground that the law does not permit remand orders without the actual production of the accused before the court.

According to the petitioner who himself argued his case, s. 344(1A), Cr.P.C. does not contain any guidelines for the court in the matter of remand orders and he added that this section is otherwise too inapplicable to the investigation stage of criminal cases. When his attention was drawn to the explanation to s. 344, according to which the likelihood of further evidence being obtained by the remand in cases of suspicion against an accused person raised by the evidence already obtained, he contended that the

explanation could not, as a matter of law, serve to extend the scope of the substantive provision contained in sub-s. (1A). On this premise the petitioner questioned the vires of s. 344(1A) and (2) and the explanation.

In the counter-affidavit sworn by the Judicial Magistrate in whose court the case against the petitioner is pending, while referring to the proceedings held on 1st August, 1970, it is affirmed that the petitioner and Dr. C. Ramadass were produced in court and it was submitted by them that since their names had not shown in the preliminary charge-sheet the court had no power to extend the period of remand. On that very day the prosecution filed a second preliminary charge-sheet in which the petitioner and Dr. C. Ramadass were shown as accused nos. 149 and 150 suspected of having committed offences under ss. 120-B, 121A, 122 read with 302 and 395, I.P.C. The Court thereupon passed an order of remand in respect of both of them. A bail application filed on behalf of the petitioner and Dr. C. Ramadass was thereafter argued by the petitioner and the matter was adjourned to 6th August, 1970 for orders when that application was disposed of.

On behalf of the other respondents a lengthy affidavit has been sworn by S. Veeranarayanareddi, Deputy Superintendent of Police, Crime Branch, C.I.D., Government of Andhra Pradesh, Hyderabad. It is affirmed in this affidavit that the petitioner is an active Naxalite and along with others is accused of charges under ss. 120-B read with ss. 302, 395, 397, 399, 364, 365, 368 and 386, I.P.C. in P.R.C. No. 3/70, pending in the Court of the Judicial First Class Magistrate, Parvatipuram Taluk. A separate complaint under ss. 121-A and 120-B read with 121, 122, 123 and 124A, I.P.C. is also stated to have been filed against the aforesaid persons including the petitioner in the same court in P.R.C. 8 of 1970. These two cases are known as Parvatipuram Naxalite Conspiracy Cases and relate to 46 murders, 82 dacoities, 99 attacks on police and 15 abductions committed by the accused persons in Andhra Pradesh. The accused persons are also alleged to have committed several offences of the types just mentioned in the Agency Tracts of Orissa bordering Andhra Pradesh. The Government of Andhra Pradesh had on account of the gravity of the situation declared certain areas affected by the Naxalite menace in Srikakulam and Warangal Districts as disturbed areas under s. 3 of the Andhra Pradesh Suppression of Disturbances Act, 1948. In the affidavit certain incidents have been traced from 1964 and it is affirmed that as a result of various political developments certain volunteers were recruited from various parts of Andhra Pradesh and the petitioner helped them in creating revolutionary bases in the agency tracts of Visakhapatnam District. There is also reference to one of the accused persons having become an approver and another having made a confes-

sional statement. After stating various facts discovered during investigation it is affirmed that the investigation of this case is limited not only to the State of Andhra Pradesh but it extends to several States where naxalite movement has spread, including West Bengal and Orissa, and as many as 900 witnesses have already been examined during the course of investigation, which has taken nearly nine months. Sanction of the State Government has also been obtained for the prosecution of the petitioner and the other accused persons under s. 196, Cr.P.C. On 12th October, 1970 the investigation was completed and a final charge-sheet filed in the court of the Judicial Magistrate in P.R.C. No. 3 of 1970. The separate complaint against the petitoner and other accused persons mentioned earlier was also filed in the court of the Judicial Magistrate under ss. 121A, 120B read with 121, 123 and 124A, I.P.C. on the same day. It is admitted that the preliminary charge-sheet is not covered by s. 173(1), Cr.P.C. But it is averred that it is only a report pending further investigation seeking extension of remand under s. 344, Cr.P.C. The long period of investigation has been ascribed to the fact that there was an organised attempt on the part of the accused and their followers to thwart the efforts of the authorities in bringing the accused to book. It is admitted that the petitioner is lodged in Central Jail, Rajahmundry and that on 20th August, 1970 he could not be produced before the court for lack of escort. The remand is also admitted to have been extended by the Magistrate, respondent No. 1, from time to time on 3rd and 17th September and 1st October, 1970. The court, it is pleaded, is empowered to pass an order of remand even in the absence of the accused under s. 344, Cr.P.C. unlike the remand order under s. 167, Cr.P.C. Incidentally, in this counter-affidavit there is a reference to the pre-judicial activities in which the petitioner has been indulging in connection with Naxalite movement. The initial non-inclusion of his name in the array of accused persons has been explained on the ground that sufficient corroboration of the approver's testimony incriminating the petitioner was not forthcoming at that stage.

In so far as the question of legality of the remand order dated 20th August, 1970 without producing the petitioner before a Magistrate is concerned, the point is concluded by a recent judgment of this Court in the case of *Raj Narain* v. *Supdt. Central Jail, New Delhi*(1). In that case this Court by majority expressed the view that as a matter of law personal presence of an accused person before a Magistrate is not a necessary requirement for the purpose of his remand under s. 344, Cr.P.C., at the instance of the police, though as a rule of caution it is highly desirable that the accused should be personally produced before the Magistrate so that he may,

(1) [1971] S.C.R. 147

A if he so chooses, make a representation against his remand and for his release on bail. The Court on a review of the decided cases observed :—

> "There is nothing in the law which required his personal presence before the Magistrate because that is a rule of caution for Magistrates before granting remands at the instance of the police. However, even if it be desirable for the Magistrates to have the prisoner produced before them, when they recommit him to further custody, a Magistrate can act only as the circumstances permit."

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C The order of remand dated 20th August, 1970 was in the circumstances not contrary to law so as to render the petitioner's custody illegal justifying his release by this Court on *habeas corpus*. It is unnecessary to point out that it was and still is open to the petitioner to apply for his release on bail to the appropriate court in accordance with law there being no illegal obstacle in his way in this respect.

D

The challenge to the constitutional validity of s. 344(1A), Cr.P.C. is also in our opinion misconceived. Section 344 reads :

> "(1) In every inquiry or trial, the proceedings shall be held as expeditiously as possible and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

E

> (1-A) If, from the absence of a witness, or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, the Court may, if it thinks fit, by order in writing, stating the reasons therefor, from time to time, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody :

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> Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time :

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> Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing.

(2) Every order made under this section by a Court other than a High Court shall be in writing signed by the presiding Judge or Magistrate.

Explanation.—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand."

Sub-section (1-A) was originally numbered as sub-s. (1). The present sub-section (1) of s. 344 was added by the Amending Act 26 of 1955 when the original sub-section (1) was re-numbered as sub-section (1-A). The impugned sub-section vests in the court seized of a criminal case power to postpone the commencement of or adjourn any inquiry or trial before him by order in writing stating the reasons therefor from time to time on such terms as the court thinks fit and for such time as it considers reasonable. When the case is so postponed or adjourned the court may also by a warrant remand the accused, if in custody. This judicial power to postpone or adjourn the proceedings is to be exercised only if from the absence of witnesses or any other reasonable cause the court considers it necessary or advisable to do so. Reasonable cause for remand according to the explanation to this section covers a case where sufficient evidence is obtained to raise a suspicion about the complicity of an accused person in the offence and it appears likely that more evidence may be obtained by remand. The court has in the exercise of its judicial discretion in granting or declining postponement or adjournment of the case and in ordering remand of the accused, to keep in view all the relevant facts and circumstances of the case. The petitioner strongly contended that this section clothes the court with an unfettered, arbitrary and unguided power. A plain reading of the section shows the untenability of the submission. Apart from the fact that it is only when either from the absence of a witness or some other reasonable cause the court considers it either to be necessary or advisable to postpone the commencement of the inquiry or trial or adjourn the hearing of the case that the order can be made, the court is also required to record the order in writing giving the reasons why it thinks fit that the case should be postponed or adjourned. It is further open to the court to impose terms and to fix the period which cannot exceed 15 days at one time. This discretion being vested in a court of law has to be exercised judicially on well-recognised principles and is in our view immune from challenge on the ground of arbitrariness or want of guidelines. In our opinion, therefore, not only are the guidelines clearly contained in the statute but the discretion being judicial is required to be exercised on general principles guided by rules of reason and justice on the facts of each case.

A and not in any arbitrary or fanciful manner. It may also be remembered that if the discretion is exercised in an arbitrary or unjudicial manner remedy by way of resort to the higher courts is always open to the aggrieved party.

The second limb of the challenge is based on the contention
B that s. 344 falls in Chapter 24, Cr.P.C. which contains general provisions as to inquiries and trials. According to this submission this section cannot apply to a case which is at the stage of investigation and collection of evidence only. This argument appears to us to be negatived by the express language both of sub-s. (1A) and the explanation. Under sub-s. (1A) the commencement of
C the inquiry or trial can also be postponed. This clearly seems to refer to the stage prior to the commencement of the inquiry. The explanation makes it clear beyond doubt that reasonable cause as mentioned in sub-s. (1A) includes the likelihood of obtaining further evidence during investigation by securing a remand. The language of s. 344 is unambiguous and clear and the fact that this section occurs in Chapter 24 which contains general provisions as
D to inquiries and trials does not justify a strained construction. Indeed, postponement of an inquiry also seems to be within the contemplation of the general provisions as to inquiries and trials. So this challenge also fails.

The suggestion that the explanation could not extend the sub-
E stantive provisions of sub-s. (1A) has merely to be stated to be rejected because the explanation merely serves to explain the scope of the expression reasonable cause.

The last submission that there is in any event no guideline for making a remand order and, therefore, the power to remand an accused person under s. 344 is *ultra vires* being arbitrary and
F unguided is wholly unacceptable. When a case is postponed or adjourned and the accused is in custody the court has to exercise its judicial discretion whether or not to continue him in custody by making a remand order. The court is neither bound to make an order of remand nor is it bound to release the accused person. The period of remand is in no case to exceed 15 days at a time. The
G discretion to make a suitable order is to be exercised judicially keeping in view all the facts and circumstances of the case including the nature of the charge, the gravity of the alleged offence, the area of investigation, the antecedents of the accused and all other relevant factors which may appropriately help the court in determining whether to keep the accused in custody or to release him
H on bail. The court has to ensure the presence of the accused and a just, fair and smooth inquiry and trial of the offence charged. The order of remand is thus subject to judicial discretion and the order is also subject to review by the superior courts in accordance

with law. The power conferred being judicial the absence of an express, precise standard for determination of the question would not render the section unconstitutional. Detention pursuant to an order of remand which appropriately falls within the terms of s. 344 is accordingly not open to challenge in *habeas corpus.* A

After we had reserved orders the petitioner forwarded to this Court through jail supplementary affidavit containing written arguments. We have gone through the affidavit but we do not find any new point requiring discussion. It only discloses a further attempt to reopen the majority decision of this Court in *Raj Narain's case* (supra) by relying on the minority judgment and by submitting that s. 344(1A), Cr.P.C. offends Art. 19(1)(d) of the Constitution. All that we need say at this stage is that the majority view is binding on us. B C

This petition accordingly fails and is dismissed.

G.C. *Petition dismissed.*