Ram Rishi Anal vs Delhi Adminisration, Delhi And Ors. on 30 January, 1967

Author: Chief Justice

Bench: Chief Justice

JUDGMENT

Hegde, C.J.

(1) This petition for awrit of. habeas-corpus was submitted by the petitioner Ram Rishi.Anal from Jail. At present, he is held in judicial custody in Central Jail, New' Delhi. He prays that he may be set at liberty as his detention, according to him, is an illlegal detention.

(2) The petitioner was arrested on November 7,1966. He says that he was arrested when he was attending a public meeting organised by Gau Raksha Mahabhian Samiti near Parliament Street Police Station. His case is that at the time of his arrest, he was not informed as to the cause of his arrest nor was he produced before any Magistrate at any time, but yet he is continued to be detained. These acts of the respondents, according to him, amount to a contravention of Articles 21 and 22 of the Constitution.

(3) The application of the pentitioner came up before a bench of this Court on January 9, 1967. On that day, notice of the petition was order (4) - The respondents made their return on January 17, 1967. Sri C.L. Chhabra, Deputy Seperintendent of police. Parliament Street police Station, New Delhi, filed an affidavit on behalf of the respondents. Along with the teturn, no documents were produced. In fact, neither the records of the investigation nor the remand orders said to have been made by the various Magistrates were produced before the Court till the respondents were specifically directed to do so.

(5) Sri Chhabra swore in his affidavit that the detenu was arrested on November 7, 1966, while he was participating in the demonstration outside the Parliament house. In his affidavit, he sets out the course of events, that took place on that day. I see no reason to disbelieve that version. It is the case of the petitioner that he had not been produced before any' Magistrate at any time. In support of that plea, he has produced a large number of affidavits, sworn to by persons who are detained along with him. On the other hand, the concerned Magistrates have reported to the effect that petitioner had been produced before them and that they had remanded him to judicial custody on various dates. Though ordinarily I should have accepted the version given by the learned Magistrates in preference to that given by the petitioner and the other detained persons, the various circumstances appearing in this case, to which reference will be made presently, have made me doubt the fact that the petitioner was ever produced before any Magistrate.

(6) After his arrest on November 7, 1966, the petitioner along with several others was taken to the Delhi Cantonment Police Station. We have it from the report of Sri Panna Nand Gupta, Magistrate 1st Class, Delhi, that on that day, under directions from the District Magistrate, he proceeded to Delhi Cantonment Police Station and it is at that place that the petitioner was produced before him. From his report to this Court, it is clear that it is not a case of the petitioner having been produced before him in his court but it is a case of his having gone to the Police Station and there ordered the remand of the petitioner. In his report, he does not say that along with the remand report, the police had produced before him any copy of the entries in the police diary in support of their prayer for remand. It may be remembered that this report and the reports by the other Magistrates were submitted to this Court in pursuance of the order of this Court dated January 20, 1967, wherein they were directed to send the original remand reports submitted to them and the orders passed thereon. The learned Magistrates say that according to the practice prevailing in Delhi, when an under-trial prisioner is produced by the prosecuting agency, the order granting remand is passed on the application made by the police and the same is handed back to the police. If that be so, there will be no record in the Magistrate's court in proof of the order made by him. This practice has dangerous implications. But for the present, that aspect need not bs pursued.

(7) On November 20, 1966, it was said that the petitioner was again remanded to judicial custody by Sri R. N. Melhotra, Magistrate, 1st Class, Delhi. Here again, the petitioner was not produced before the learned Magistrate either in his office or in his house, but the learned Magistrate went to the Central Jail, Tihar, wherein the petitioner was lodged evidently for granting him further remand In justification of his adopting such a course, Sri Mehrotra cites the notification of the Lt. Governor in No. F. 2 (216)/66-Home (P) dated November 1966. Under that notification, a copy of which has been produced before me, the Lt. Governor had accorded approval para 5 of Chapter 1-A of the High Court Rules & Orders Vol. Ill for holding the coirt in Central Jail, Tihar,. New Delhi.by the Magistrates mentioned there in, to try cases under Section 188 1.P.C. against persons arrested in connection with the recent demonstration against cow slsughter. Sri Mehrotra was not the trail Magistrate in 'this case. Sri Anad was the Magistrate at New Delhi where the Concerned incidents took place. It was not for the purpose of trying the petitioner, Sri Mehrotra had been to the Central Jail, Tihar", New Delhi. He had been there for granting a further remand to the petitioner. At that time, no ease against the petitioner was pending before him, nor even a first information report was pending before him. The petitioner had not committed any offence within his jurisdiction. Therefore Sri Mehrotra was not justified in going to the Central Jail, Tihar, for exercising one of his judicial functions. Evidently, he did not realise the damage that he was doing to his position as a judicial officer.

(8) In his report, Sri Mehrotra does not say that 'along with the remand report, the police had produced before him any copy of the entries of the case diary. The orignal remand reports were produced before me for my perusal. As they were in Urdu, I got them translated into English and as desired by the learned Government Advocate, I ordered the return of the originals to him While retaining with me the English translations. From those reports, it is seen that along with none of the remand reports the police had sent the case diary copies or even the copies of the relevant entries in the case diary for the perusal of the learned Magistrates. They had merely informed the Magistrate concerned in their reports that the investigation is still pending and some of the persons concerned

in the case are yet to be arrested and therefore, the petitioner should be further remanded to judicial custody. It was the duty of the police to have submitted acopy of the entry in the police diary along with the remand report. A remand is not given as a matter of course. No one's personal liberty should be interfered with except strictly.in accordance with law. As observed by the Supreme Court in Ram Narayan Singh v. State of Delhi^ "those who feel called upon to deprive other persons of their personal liberty in the discharge of what they conceive to be their duty, must strictly and serupulously observe the forms and rules of the law". In the instant case, Sri Mehrotra ordered the further remand asked for by the police without even carring to know the evidence appearing against the petitioner. To say the least he acted mechanically. The same is true of every ether Magistrate concerned in this case.

(9) Sri M.M. Aggarwal, Magistrate 1st Class, Delhi, further extended the remand of the petitioner On December 4, 1966, December 16,. 1966 and December 30, 1966. On none of those occasions, the police had cared to submit either the police diary or copy of any entry therein along with the remand report. They just asked the learned Magistrate to extend the petitioner's remand. He complied with their request. On none of the aforementioned occasions, the petitioner was produced before Sri Aggarwal either in his Court or in his his house. Sri Aggarwal says that on every one of those occasions, he went to the Central Jail and passed the order prayed for. In justification thereof, as in the case of Sri Mehrotra, he relies on the order of the Lt. Governor referred to earlier. As seen earlier that order does not afford any justification for his. conduct.

(10) On January 18, 1967, the petitioner's remand was again extended by Sri V.K. Chib, Magistrate 1st Class, Delhi. Even before Sri Chib, no case diary entry was produced. Sri Chid, like other referred to earlier, had to go to the Central Jail to pass the order of remand. He also appears to be of the opinion that he had to do so because of the earlier mentioned order of the Lt. Governor. It may be noted that Sri Chib extended the remand of the petitioner after this petition was filed in this Court (11) It is strarge that none of the aforementioned Magistrates were aware of the conditions under which a remand under Section 167 (2) Cri./P.C. can be granted. On their own showing, they have not informed themselves about the requirements of 167 (2) . It is obvious that with them the personal liberty of an individual is not a matter of much concern. They have been blindly extending the remand of the petitioner, time and again just because the police prayed for such . orders. Their anxiety to rely on the notification of the Lt. Governor in justification of their conduct of going to the Central Jail for passing the orders in question, shows how lightly they have taken their judicial functions and the proprieties connected with them. As seen from the first information, the offences alleged to have been committed by the petitioner fall under Sections 147/148/149/188/307/332/353/ 336/394/395/436/506 and 120B Indian Penal Code and Section 9 of the Punjab Safety Act. The notification of the Lt. Governor did not authorise any of the Magistrates to try the petitioner or any one else for those offences inside the Jail. That notification merely authorised the Magistrate concerned to try only offence under Section 188 Indian Penal Code . Further as already mentioned, the .Magistrate having jurisdiction to try the case against the petitioner is the New Delhi Magistrate and not any one of the Magistrate who passed orders of remand in the pititioner's case.

(12) From that has been said, it follows that the remand reports submitted by the police in the petitioner's case did not comply with the requirements of Section 167 (1) Cr. P.C. inasmuch as those reports were not accompained by any copy of the entries in the police diary. That being so the learned Magistrates should not have entertained those applications. It is also likely that the petitioner was never produced before those Magistrates. I am inclined to think that the remand orders referred to earlier were passed behind the back of the petitioner. If that be so, there is a further contravention of Section 167 (1) Criminal Procedure Code.

(13) Under Section 167 (2), the maximum period for which aperson could be remanded either to police custody or judicial custody is 15 days. This is made clear by the language of that provision which says "THEMagistrate to whom an accused person is forwarded under this section 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 in the whole,....."

If the investigation of the case is not complete by the end of the said period of 15 days and if the investigating officer thinks that there is sufficient evidence or reasonable ground proceeding against an accused, he has to forward the accused as contemplated by Section 170 (1) of the Code of Criminal Procedure under custody to a Magistrate who can take cognizance of the offence. Thereafter, further remand can be granted only by that Magistrate and that under Section 344 Cr. P.C. The first provision to Section 344 (I A) empowers the jurisdictional Magistrate to remand an accused person to custody under that section for a term not exceeding 15 days at a time. A combined reading of Section 61, 167, 169, 170, and 344 Cr. P.C. supports the above conclusions of mine. That is also the view taken by the various High Courts. It would suffice if reference is made to the decision of the Allahabad High Court in Duki v. State*.

(14) The above discussion leads to the conclusion that the orders remanding the petitioners to custody made by Sri Mehrotra on November 20, 1966, Sri Aggrawal on December 4, 1966, December 16 , and December 30, 1966 and Sri Chib on January 13, 1967, were made without the authority of law. Further, they had no jurisdiction to make those orders. Hence those orders are wholly invalid orders. From that, it follows that the petitioner's detention in pursuance of those orders is an illegal detention.

(15) The validity of the petitioner's arrest on November 7, 1966, does not arise for consideration now. It may be that his arrest on. that day was quite lawful. At present, all that this Court is concerned is about the validity of his detention. Therefore, I should have only regard, as laid down by the Supreme Court in Ram Narayan Singh's case referred to earlier, to the legality or otherwise of his detention, at the time of the return and not with reference to the institution of the proceedings.

(16) It may be, as contended by the learned Government Advocate, the action of those who indulged in arson, looting and rioting on November 7, 1966, is wholly deplorable. There is no doubt that they had shown scant respect for law. But those circumstances can afford no justification for the illegal detention of the petitioner. Evasion, worse still, defiance of law by the State or its officers is agreater danger to the rule of law than its infringement by the citizens.

(17) This case emphasises the need and necessity of separating the executive from the judiciary in Delhi immediately.

(18) For the reasons mentioned above, this petition is allowed and it is ordered that the petitioner be set at liberty forthwith.