
(2019) 05 CHH CK 0002

Chhattisgarh High Court

Case No: Criminal Miscellaneous Petition No. 635 Of 2016

State Of Chhattisgarh

APPELLANT

Vs

Savita Sahu

RESPONDENT

Date of Decision: May 1, 2019

Acts Referred:

Code Of Criminal Procedure, 1973 " Section 482#Indian Penal Code, 1860 " Section 302, 307, 340, 342#Prisoners (Attendance In Courts) Act, 1955 " Section 3, 3(2), 5, 6

Citation: (2019) 05 CHH CK 0002

Hon'ble Judges: Sanjay K. Agrawal, J

Bench: Single Bench

Advocate: Ravi Bhagat

Final Decision: Allowed

Judgement

1. This petition under Section 482 of the CrPC filed by the applicant/State seeks to question the direction contained in para-22 of the judgment dated

2.5.2015 passed by the Sessions Judge, Dhamtari in Sessions Trial No.45/2014 by which while convicting the respondent herein for offence under

Sections 302 of the IPC for causing death of her son and under Section 307 of the IPC for attempting to cause death of her daughter, directed the

Chief Secretary, State of Chhattisgarh to proceed in accordance with law against the persons responsible under Section 342 of the IPC as the

respondent herein was kept in jail from 13.1.2015 to 21.1.2015 without order of the competent Court, she not produced before the Court on the time of

hearing.

2. The respondent herein was charge-sheeted for offence under Section 302 and 307 of the IPC for murder of his son Bhushan Sahu and for attempt

to commit murder of her daughter Kajal Sahu. During the course of trial from 13.1.2015 to 21.1.2015 she could not be produced for want of non-

availability of police force to escort the respondent to the Court where the trial was pending. Learned Sessions Judge, Dhamtari while convicting the

respondent herein issued the aforesaid direction which has been called in question in this petition.

3. Mr. Ravi Bhagat, learned Deputy Government Advocate appearing for the applicant/State would submit that learned Sessions Judge is absolutely

unjustified in holding that offence under Section 342 of the IPC would be made out for non-production of the respondent herein from 13.1.2015 to

21.1.2015 before the said Court as she was never admitted to the privilege of bail by the competent Court and the person acting in discharge of duty

cannot be said to act criminally with respect to the offence allegedly committed under Section 342 of the IPC, as such, no offence under Section 342

of the IPC is made out. Therefore, direction contained in para-22 of the said judgment deserves to be set aside.

4. None present for the respondent though served.

5. I have heard learned counsel for the petitioner and considered his submission and went through the record with utmost circumspection.

6. It is admitted position on record that on the date of hearing from 13.1.2015 to 21.1.2015 the respondent was in custody, at that time, she could not

be produced before the said Court where Sessions Trial was pending against her at the time of hearing. It is the case of the State that on 13.1.2015

wireless message was sent to the Sessions Judge, Dhamtari intimating that due to non-availability of police squad, the accused and her warrant cannot

be produced and prayer was made for intimating the next date hearing. The Sessions Judge on 21.1.2015 sought explanation from the Superintendent,

Central Jail, Raipur, which he had replied that prisoners are produced before the Court in accordance with the Prisoners (Attendance in Courts) Act,

1955 (hereinafter called as "the Act of 1955") and duty to provide for escorts for production in the Court is that of District Police and the jail

authorities can only request for such escorts to be provided as the necessary infrastructure and man power to provide such escort is available only

with the district police and not with the jail authorities.

7. The Act of 1955 has been enacted to provide for the attendance in Courts of persons confined in prisons for securing their presence for answering

a criminal charge.

8. At this stage, it would be appropriate to notice Sections 3(2), 5 and 6 of the Act of 1955 which provide as under:-

"3. Power of Courts to require appearance of prisoners to give evidence or answer a charge.-

(1) xxx xxx xxx

(2) Any Criminal Court may, if a charge of an offence against a person confined in any prison is material in any matter pending before it,

make an order in the form set forth in the Second Schedule, directed to the officer in charge of the prison.

5. Prisoners to be brought up.-Upon delivery of any order made under section 3 to the officer in charge of the prison in which the person named

therein is confined, that officer shall cause him to be taken to the Court in which his attendance is required, so as to be present in the Court at the time

in such order mentioned, and shall cause him to be detained in custody in or near the court until he has been examined or until the judge or presiding

officer of the court authorises him to be taken back to the prison in which he was confined.

6. Officer in charge of prison when to abstain from carrying out order.-"Where the person in respect of whom an order is made under section 3

(a) is, in accordance with the rules made in this behalf, declared to be unfit to be removed from the prison where he is confined by reason of sickness

or other infirmity; or

(b) is under committal for trial; or

(c) is under remand pending trial or pending a preliminary investigation; or

(d) is in custody for a period which would expire before the expiration of the time required for removing him under this Act and for taking him back to

the prison in which he is confined, the officer in charge of the prison shall abstain from carrying out the order and shall send to the court from which

the order had been issued a statement of reasons for so abstaining: Provided that such officer as aforesaid shall not so abstain where—

(i) the order has been made by a criminal court; and

(ii) the person named in the order is confined under committal for trial or under remand pending trial or pending a preliminary investigation and is not

declared in accordance with the rules made in this behalf to be unfit to be removed from the prison where he is confined by reason of sickness or

other infirmity; and

(iii) the place, where the evidence of the person named in the order is required, is not more than five miles distant from the prison in which he is

confined.

9. Sub-section (2) of Section 3 of the Act of 1955 provides where a person is detained in jail, any criminal court can under Section 3(2) of the Act

direct the jail authority to produce the detenu before it for answering a charge of an offence pending before it; and on receipt of such direction the jail

authorities have to produce him under Sec. 5 of the Act before the directing Court if his case is covered by any of the clauses of the Proviso to

Section 6 of the Act (See Kanu Sanyal v. Dist. Magistrate, Darjeeling and others AIR 1974 SC 510).

10. The question for consideration would be whether offence under Section 342 of the IPC is made out for non-production of the respondent herein

before the Court from 13.1.2015 to 21.1.2015 ?

11. Section 340 of the IPC provides for wrongful confinement and Section 342 of the IPC provides punishment for wrongful confinement.

Sections 340 and 342 of the IPC provide as under:-

“340. Wrongful confinement.-Whoever wrongfully restrains any person in such a manner as to prevent that person from proceedings beyond

certain circumscribing limits, is said “wrongfully to confine” that person.

342. Punishment for wrongful confinement.-Whoever wrongfully confines any person shall be punished with imprisonment of either description for a

term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

12. Where a person is wrongfully restrained in such a manner as to prevent that person from proceeding beyond certain circumscribed limits, he is

wrongfully confined within the meaning of this Section. The essential ingredients of the offence “wrongful confinement” are that the accused

should have wrongfully confined the complainant and such restraint was to prevent the complainant from proceeding beyond certain circumscribed

limits beyond which he / she has a right to proceed (See *Raju Pandurang Mahale v. State of Maharashtra* and another AIR 2004 SC 1677). Likewise,

in the matter of *Shyam Lal Sharma v. The State of Madhya Pradesh* AIR 1972 SC 886 it has been held by the Supreme Court that wrongful

confinement is wrongful restraint in such a manner as to prevent that person from proceeding beyond certain circumscribed limits.

13. Reverting to the facts of the present case, it is quite vivid that the respondent herein was required to produce from 13.1.2015 to 21.1.2015 before

the competent Court as per order of the criminal Court, but despite demand necessary police force was not provided to the jail authorities by the

District Police, therefore, she could not be produced before the jurisdictional criminal Court. However, on the subsequent date when the charge was

framed against her, she was produced and thereafter cross-examination of the witnesses were concluded in her presence. Merely because on account

of non-availability of police force if she could not be produced to the Court, it cannot be held that accused/respondent herein was wrongfully restrained

in such a manner to prevent her from proceeding beyond certain circumscribed limit as during that period she was not enjoying the privilege of bail

granted by any competent Court, as such, learned Sessions Judge is absolutely unjustified in giving direction to the Chief Secretary of the State to

proceed under Section 342 of the IPC for prosecution of the responsible officer as the authorities have clearly established that on account of non-

availability of police force, accused cannot be produced and sought to know the next date of hearing and such non-production is for bona fide and valid

reasons for which direction to prosecution, that too for offence under Section 342 of the IPC is clearly unjustified.

14. For the foregoing reasons, para-22 of the judgment dated 2.5.2015 passed by the Sessions Judge, Dhamtari in Sessions Trial No.45/2014 is hereby

set aside.

15. The CrMP is allowed to the extent indicated hereinabove.