G. Shravan Kumar and Vs State of A.P.

Court: Andhra Pradesh High Court

Date of Decision: Feb. 22, 2002

Acts Referred: Antiquities and Art Treasures Act, 1972 â€" Section 25
Criminal Procedure Code, 1973 (CrPC) â€" Section 167, 167(2)
Penal Code, 1860 (IPC) â€" Section 411

Citation: (2002) 1 ALD(Cri) 557 : (2002) 2 ALT(Cri) 16 : (2002) 1 APLJ 264 : (2002) CriLJ 2997

Hon'ble Judges: Bilal Nazki, J

Bench: Single Bench

Advocate: A. Ramanarayana Cin, in Cri Petn. No. 3256/ 2000 and K. Mahipathy Rao, in Cri Petn. No. 3313/2000, for the Appellant; Public Prosecutor, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Bilal Nazki, J.
The petitioners were arrested on 7-7-2000 by the Inspector of Police, East zone, Task Force at Central Bus station,

Gowliguda. A case at Afzulgunj police station being Cr. No. 347 of 2000 was registered u/s 411, IPC and Section 25 of Antiques and Treasurers

Act, 1970. After their arrest the petitioners moved bail application before the IV Metropolitan Magistrate contending that same offence for the

same occurrence had been registered at Peddakothapally police station, Mahaboobnagar district being Cr. No. 61 of 1997 and in that case the

Magistrate, Kollapur had already granted them bail therefore they could not be kept in custody for the offence for which they had already been

bailed out by a competent Magistrate. In spite of this plea their bail application was rejected. They moved the Additional Metropolitan Sessions

Judge, Hyderabad. He was also informed that the accused had been bailed out by a competent Court, but he also rejected the bail application with

the following observations,

If the case has been registered against the petitioner/accused and others for the same offence in Cr. No. 61/97 of P.S. Peddakothapally and if the

S.H.O. Afzalgunj P.S. files a memo before IV M.M. to transfer the case record in Cr. No. 347/2000 of P.S. Afzalgunj to P.S. Peddakothapally,

Mahaboobnagar district, the Magistrate will consider the same. Till then I am of the view that it is not desirable to grant the bail to the

petitioner/accused in view of the seriousness of the offence said to have been committed by the accused. Hence this petition is dismissed.

When this matter was brought to the notice of this Court an explanation was sought from I Additional Metropolitan Sessions Judge, thereafter,

comments were also sought from the Magistrate and also the police concerned. The Station House Officer, Afzalgunj P.S. filed an affidavit. He

stated in his affidavit that on 7-7-2000 the petitioners were arrested in Crime No. 347/2000 and during investigation it had come to light that the

theft of idols was subject matter of Cr. No. 61 of 1997 of P. S. Pedakottapalli in Mahaboobnagar district, therefore Cr. No. 347/2000 of P.S.

Afzalgunj was transferred to Pedakottapalli P.S. Since the case in Cr. No. 347/2000 had been transferred to Pedakottapalli P.S. therefore there

was no case pending with the P.S. Afzalgunj. The only case pending against them was Cr. No. 61 of 1997 in which they had been bailed out on

24-7-2000, therefore their arrest after 24-7-2000 was illegal. But, the accused continued to remain in custody till 11th August, 2000 when this

Court ordered their release. The learned Public Prosecutor had contended before this Court that although the facts were known to the Magistrate

and no request for remand was made, yet the Magistrate continued remanding the accused in Cr. No. 347/2000 of P.S. Afzalgunj. Record was

summoned and after perusing the record this Court passed the following order on 5-10-2001:

Some important questions need to be decided in this case. Court is pained to see that remands are granted by the Magistrate, not on mere asking,

but also without asking. In this case the IV Metropolitan Magistrate has granted remand twice when it was not even asked for. No record was

produced before him when he granted the remand. The people involved had been bailed out by the appropriate Court and in spite of that, they

were kept in custody for a long period of time till the intervention of this Court. In order to give appropriate direction it is necessary that the import

of the provisions of Cr. P.C. are taken in correct perspective so that the civil rights of people particularly the right to freedom is not jeopardized.

Unfortunately even the Public Prosecutor has not taken this case very seriously and she seldom appears. Therefore a request be made to Sri C.

Padmanabha Reddy, learned Senior counsel to appear in this case as amicus curiae. Copies of the various orders passed by this Court from time

to time and explanations tendered by the I Addl. Metropolitan Sessions Judge and IV Metropolitan Magistrate, Hyderabad shall be furnished to

him within a week. Let a request be made by the Registry to the learned Advocate General to assist the Court. The relevant papers be furnished to

him also.

List immediately after Dassera vacation.

The IV Metropolitan Magistrate, Hyderabad in his explanation dated 27-9-2001 stated:

I submit that on the oral request of the Court constable of Afzalgunj police station or A.P.P. the remand of the accused was extended on 18-7-

200 to 1-8-2000 and also on 1-8-2000. Due to efflux of time, heavy pressure of work and since one year has lapsed from 18-7-2000, now I am

unable to recollect my memory as to who of these two have orally requested to extend the remand of the accused on 18-7-2000 and also on 1-8-

2000. I submit that only due to good faith I went on to grant remand of the accused without insisting on to file written requisition since that is the

practice in Metropolitan Courts at Hyderabad in extending remand. I submit that I will be more careful in future. I am tendering herewith my

unconditional apology. I pray the Hon''ble High Court to pardon me.

In the affidavit filed by the Police Inspector he stated that the police Afzalgunj is not aware of the circumstances under which the remand of the

accused persons was extended by the IV Metropolitan Magistrate, Hyderabad.

2. In the light of all this record what is astonishing to the Court is that, there is a practice at Metropolitan Court at Hyderabad to extend remand

without even a requisition as has been stated by the Magistrate in his explanation dated 27-9-2001. That would mean that, even if police does not

need a person in custody, once a remand is given, the Magistrates would go on extending the remand till the maximum period. Whether a

Magistrate can grant remand at the first instance or extend subsequently without a request from the police, or not, is not a question which is

undecided. There are number of judgments dealing with Section 167 of Code of Criminal Procedure particularly dealing with two aspects, one

with regard to production of the accused before the Magistrate and secondly with regard to request for remand. With regard to production of the

accused before the Magistrate, a Division Bench of this Court in M.A. Dharman Vs. State of Andhra Pradesh by Secretary to Government,

General Administration Department and Others, held:

It is true that u/s 167(2)(b) of the Code of Criminal Procedure, production of the accused person before the Magistrate both at the time of seeking

his remand and extension of the remand, is compulsory. In our opinion, though physical production of the accused before the Magistrate at the time

of seeking his initial remand can never be dispensed with, absence of his physical production would not incurably vitiate a subsequent order of

extension of his remand, if it is physically impossible to produce him in person. For instance, if the accused person is mortally injured or grievously

ill and in the hospital, he may not be in a position to be produced before the Magistrate. The two would not and cannot possibly require that he

should nevertheless be produced before the Magistrate even to his detriment and danger to his very life. Instances are not lacking where an

accused person charged with many offences may have to be produced on a particular date at two different places and it is obvious that by no

magic can he be produced at both the places at the same time. Yet another instance is where curfew is imposed and an accused person cannot

possibly be carried to the relevant Magistrate without infracting the law. The instances listed are only illustrative, but not exhaustive, as there may

be many other factors which may hinder or bar the actual physical production of an accused. The law does not therefore compel or insist upon

impossibility of performance of the requirement enacted u/s 167(2)(b) of the Code of Criminal Procedure. In other words it is always open to

either the prosecuting agency or the jail authority to put forward a plea of impossibility of production of an accused person before the learned

Magistrate and if the learned Magistrate is satisfied that the plea is well founded, he may, for special reasons to be recorded in writing, extend the

remand of the accused person even without his production. We, however, hasten to add that non-availability escorts for non-production of the

accused person hardly constitutes a ground for infraction of the mandatory requirement of S, 167(2)(b) of the Code of Criminal Procedure.

With respect to the production of detenu at the time of the remand, non availability of escort was held to be not a sufficient ground for not.

producing the accused before the Magistrate, but this was not accepted by the Full Bench of this Court in Kurra Dasaratha Ramaiah and Others

Vs. State of Andhra Pradesh, . The Full Bench held that non availability of police escort is a valid ground for non-production of the accused before

Magistrate for extend ing remand u/s 167, Cr. PC. provided there are justifiable causes for such nonavailability of escort. Therefore, on the first

question that whether it is necessary and always imperative to produce the accused before the Magistrate for getting a remand, the law is well

settled by the Full Bench. In para 22 of the Full Bench judgment the Court stated:

We agree with the view of the Division Bench in M.A. Dharman Vs. State of Andhra Pradesh by Secretary to Government, General

Administration Department and Others, to the extent it held;

...It is always open, to either the prosecuting agency or the jail authority to put forward a plea of impossibility of production of an accused person

before the learned Magistrate and if the learned Magistrate is satisfied that the plea is well founded, he may, for special reasons to be recorded in

writing, extend the remand of the accused person even without his production

With great respect to the learned Judges, we express our inability, for the reasons already stated, to agree with the view that;

Non-availability of escorts for non-production of the accused person hardly constitutes a ground for infraction of the mandatory requirement of

Section 167(2)(b) of the Code of Criminal Procedure.

Our disagreement does not mean, as we have already explained, that the prosecution can always take the plea of non-availability of escort for non-

production of the accused and the Magistrate is bound to accept that plea and pass an order extending the period of remand. The Magistrate must

be satisfied that as a fact escort personnel were not available and so could not be provided for reasons beyond the control of the police or jail

authorities. There may be cases where it may not be possible for the police or jail authorities to spare escort personnel for production of the

accused; grave law and order situations necessitating diversion of the entire police force for that purpose are not uncommon contemporary

phenomena, Natural disasters may sometimes compel the Government or District Administration to divert the police force to render help to the

victims or to engage in salvaging operations. Communal riots, group clashes and inter-caste feuds threatening the even tempo of the society are no

longer rare occurences. It is not possible to enumerate instances or causes resulting in non availability of escort personnel for production of the

accused before a Magistrate u/s 167. Therefore, non availability of police escort is a valid ground for non-production of the accused before the

Magistrate for extending remand u/s 167, Cr. P.C. Provided there are justifiable causes for such non-availability of escort.

For remanding an accused to custody the police officer has to transmit to the Judicial Magistrate a copy of the entries in the diary relating to the

case and also produce the accused before the Magistrate. This condition is applicable to the first remand as well as subsequent remands and after

perusing the record if the Magistrate thinks fit he can grant remand. Proviso (a) to Sub-section (2) of Section 167, Cr. P.C. is reproduced:

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen

days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody

under this paragraph for a total period exceeding --

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than

ten years.

(ii) Sixty days, where the investigation relates to any other offence.

And on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is

prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be to released under the provisions

of Chapter XXXIII for the purpose of that chapter.

This proviso makes it abundantly clear that the Magistrate can authorise the detention of the accused person beyond the period of 15 days if he is

satisfied that adequate grounds exist for doing so. Therefore, if there is no record as has been the case in the present case and if there is no request

where is the question of arriving at the satisfaction that the grounds for extending the remand exist. The record of the present case reveals that there

is only one application moved by the police on 8-7-2000 seeking remand of the accused. On 10-7-2000 the Magistrate recorded ""The accused

Al and A2 are produced today at 11.40 a.m. through P.C. 5075 and 1876 of Aftalgunj P.S. They did not complain any ill-treatment. Perused the

documents of the crime, prima facie case is made out against them. They are remanded to judicial custody till 18/7."" On 18-7-2000 the Magistrate

recorded; ""Al and A2 are produced from the jail. C.S. not filed. Call on 1/8. R.E. till then."" On 1-8-2000 the Magistrate again recorded; ""Al and

A2 are produced from the jail. C.S. not filed. Call on 14/8. R.E. till then."" So, on 18-7-2000 and 1-8-2000 only the accused were produced

before him but no request for further remand was made. By that time the bail applications filed by the petitioners before the 1 Addl. Metropolitan

Sessions Judge, Hyderabad had been rejected. Again on 14-8-2000 the Magistrate wrote; ""Al and A2 are produced from the jail. C.S. not field.

Call on 24/8. R.E. till then."" By that time this Court, had ordered their release on bail, therefore, the Magistrate cancelled the order by giving a

cross to the order and wrote another order; ""Al and A2 are present. C.S. not. filed. They are directed to appear before this Court on receipt of S.

S. after filing of C.S."" This clearly shows that there was no application of mind at any stage. Jail authorities did not need the accused. It was only

the investigating agency which could need the accused for the purpose of investigation. In the light of explanation given by the Magistrate, the

accused were not even present before him when he went on extending the remand. Whether extensions of remand can be given as a routine is also

not res Integra and has already been decided by a Division Bench of this Court in M.A. Dharman Vs. State of Andhra Pradesh by Secretary to

Government, General Administration Department and Others, . The Court after considering various judgments held:

In other words, extension of remand of the accused person beyond 15 days is not a matter of course or a routine exercise, and it is only where the

Magistrate is satisfied that adequate grounds exist extension of remand is warranted and not otherwise. Proviso (a) thus casts upon the Magistrate

an onerous duty as extension of remand results in deprivation of liberty of the accused person....

Therefore, the practice which is prevalent has to be discouraged. The Magistrates are not empowered to extend remands in rou tine as has been

done in the present case. They are supposed to apply their mind to the facts of the case and then grant extensions. In any case, where there is no

request either by police or by any jail authority, in my view, remand cannot be extended and in such a situation what, is to be done by the

Magistrate is provided in Section 167 of Cr. P.C. itself. Explanation-I to Sub-section (2) of Section 167 lays down:

Explanation-I -- For the avoidance of doubts it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the

accused shall be detained in custody so long as he does not furnish bail.

Therefore, if there is no request for remand or the Magistrate finds that there are no sufficient grounds for extension of remand the Magistrates are

bound to inform the accused persons that they can be released provided they furnish bail.

3. With these observations these petitions are disposed of.