1992 P Cr. L J 131

[Lahore]

Before Muhammad Munir Khan, J

Mst. RAZIA PERVEZ and another---Petitioners

Versus

THE SENIOR SUPERINTENDENT OF POLICE, .

MULTAN and 5 others---Respondents

Writ Petition No.1497 of 1991, decided on 19th June, 1991.

(a) Constitution of Pakistan (1973)---

----Art. 199---Criminal Procedure Code (V of 1898), Ss.54 & 167---Accused was kept in continuous detention for more than fifteen days in police lock-up as a result of his repeated arrest by Station House Officer in more than one cases registered at the same police station and his successive physical remands given by the Magistrate to police---Such conduct of S.H.O. and Magistrate was unwarranted and not in accordance with law---Magistrate and S.H.O. both, however, tendered unqualified apology to the High Court with the promise to be careful in future---State Counsel also gave assurance that police would not apply for further physical remand of the accused in cases already registered against him at the same police station and that he would immediately be sent to judicial lock-up---Proceedings against the Magistrate and the S.H.O. were consequently dropped and writ petition was disposed of accordingly.

(b) Criminal Procedure Code (V of 1898)---

----Ss. 54 & 167---Law does not authorise police to arrest an accused required in more than one cases in one case and to wait for his arrest in the other case till the expiry of the period of remand under S.167, Cr.P.C. or till he is released on bail in the first case---Such commonly committed mischief not only defeats the object of S.167, Cr.P.C. of limiting the period of physical detention of an accused person to fifteen days, but is obviously a joke with the powers of the Magistrate in the matters of remand and custody of an accused person.

(c) Criminal Procedure Code (V of 1898)---

----Ss. 54 & 167---Scope and object of Ss.54 & 167, Cr.P.C.---Person required in more than one cases---Arrest---Procedure---Guidelines.

No doubt, the Police Officer can arrest a person where a reasonable suspicion exists of his having been concerned in any cognizable offence but power given to the Police Officer under section 54, Cr.P.C. being an encroachment on the liberty of a citizen is not unlimited. It is subject to the condition stated therein. An arrest purporting to be under this section would be illegal unless the circumstances specified in the various clauses of the section exist. This section does not give free licence to a Police Officer to arrest anybody he may like. In order to act under this section, there must be a reasonable suspicion of the person to be arrested having been concerned in a cognizable offence. An arrest of a citizen in a reckless disregard of the conditions imposed in this section would make the arrest and detention of the subject illegal and the Police Officer arresting or detaining the subject would be exposed to prosecution under the Pakistan Penal Code and also for departmental action under the relevant rules. Similarly, section 167, Cr.P.C. does not visualize successive and repeated arrests of a person required in more than one cases. An accused required in more than one criminal cases when arrested will be deemed to have been arrested in all the cases registered against him. There is no legal bar for interrogating an accused person with regard to the allegations against him in another case. It is rather desirable that when a person required or accused in more than one cases or where more than one F.I.Rs. are registered against him is arrested and remanded to physical custody, then

he should be interrogated about the allegations against him in all the cases. Instead of acting strictly in accordance with law, the police is following the illegal practice of showing the arrest of the person in one case and on the expiry of remand it again arrests him in another case. It is commonly known that in selected case, police would arrest the accused on his release on bail in the first case. It is nowhere stated in the Criminal Procedure Code and Police Rules that a person required in more than one case when arrested will be deemed to have been arrested in one case and he cannot be arrested simultaneously in more than one case. Section 167, Cr.P.C. simply says that whenever a person is arrested or detained in custody, the Magistrate may authorise his detention in such custody for a term not exceeding fifteen days in the whole. The section does not talk of ?case? it talks of custody only. The longest period for which an accused can be ordered to be detained continuously in police custody by one or more such orders, is only fifteen days. So, the detention of the accused person required in more than one cases already registered against him, for more than fifteen days would be illegal. It would be quite in accordance with law that when a person required in more than one criminal cases of the same police station is arrested in one case, he shall be deemed to have been arrested in all the cases. After continuous physical custody of the accused with the police, the Magistrate will not be justified in granting his physical remand in another case and similarly after the accused is released on bail in one case, he will not be arrested by the police in the other case. It is desirable that the Police Officer, while applying for the physical remand of an accused person should certify that he is not required in any other case and if there are more than one cases against him, then the S.H.O./Investigating officer will state this fact in the remand application. Similarly while granting physical remand, the Magistrate shall inquire from the S.H.O./Investigating Officer as to whether the accused is required in other cases or whether any other case is registered against him at the police station. If the accused has remained with police pursuance to the remand granted under section 167, Cr.P.C. then the Magistrate will be justified in refusing further physical remand of the accused in another case. It goes without saying that whenever the police indulges in these tactics of arresting the accused successively in different case, it is not taken in good taste by the public and the Courts.

Karim-ud-Din Khilji for Petitioners.

Maqbool Ahmad Inspector/S.H.O., Aslam Hayat S.I., Muhammad Jahangir S.I. and Abdul Razzaq S.I. present in Person.

ORDER

In this writ petition, Mst. Razia Pervaiz and Mohsan Aleem, petitioners, have challenged the continuous physical detention of Haji Anwarul Hassan for more than fifteen days, although in more than one cases.

2. The learned counsel for the petitioners submitted that for physically detaining Haji Anwarul Hassan with him, the S.H.O. Police Station Saddar Multan, has adopted old tactics inasmuch as although there were more than one cases registered against the detenu at the same police station, yet he arrested him in one case and obtained fourteen days' remand. After the expiry of the period of physical remands, the Magistrate directed that the detenu be sent to jail. Instead of sending him to jail in obedience of the order of the Magistrate, the S.H.O. kept him in the police lock- up by showing his arrest in the other case. Since the conduct of the S.H.O., Police Station Saddar and of Magistrate granting successive physical remands was unwarranted and not in accordance with law, so, I summoned them to explain their position. They firstly tried to justify continuous detention and successive judicial remands for the physical custody of the detenu but ultimately tendered unqualified apology and promised to be careful in future.

The learned Additional Advocate-General gave assurance that the police will not apply for further physical remand of the detenu in cases which have already been registered at the same police station against the detenu and that he will immediately be sent to judicial lock-up. So, I have decided to drop the proceedings against the Magistrate and the S.H.O. The writ petition stands disposed of accordingly.

3. Before parting with the judgment, I feel constrained to observe that the provisions of section 54, Cr.P.C. relating to the arrest of the accused by the police and the provisions of section 167, Cr.P.C. pertaining to the remand of the accused person to police custody have been misused and old unwarranted police tactics of arresting the accused person repeatedly in more than one cases, have been played in the instant case, although the law does not authorise the police to arrest an accused required in more than one cases, in one case and to wait for his arrest in the other case till the expiry of the period of remand under section 167,

Cr.P.C. or till he is released on bail in the first case. This commonly committed mischief not only defeats the object of section 167, Cr.P.C. of limiting the period of physical detention of an accused person to fifteen days but is obviously a joke with the powers of the Magistrate in the matter of remand and custody of an accused person. Section 54 and section 167, Cr.P.C. may be reproduced advantageously:--

Section 54, Cr.P.C.--- (1) Any Police Officer may, without an order from a Magistrate and without a warrant, arrest--

first, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned;

secondly, any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking;

thirdly, any person who has been proclaimed as an offender either under this Code or by order of the Provincial Government;

fourthly, any person in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing;

fifthly, any person who obstructs a Police Officer while in the execution of his duty, or who has escaped or attempts to escape, from lawful custody;

sixthly, any person reasonably suspected of being a deserter from (the armed forced of Pakistan),

seventhly, any person who has been concerned, in or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in, any act committed at any place out of (Pakistan), which, if committed in (Pakistan) would have been punished as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in (Pakistan);

eighthly, any released convict committing a breach of any rule made under section 565, subsection (3); ninthly, any person for whose arrest a requisition has been received from another Police Officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition."

Section 167, Cr.P.C: - (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation or information is well founded, the Officer-in-charge of the police station or the Police officer making the investigation if he is not below the rank of Sub Inspector shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate 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 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 not 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:

Provided that no Magistrate of the third class, and no Magistrate of the second class not specially empowered in this behalf by the Provincial Government shall authorize detention in the custody of the police.

(3) A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

(4) The Magistrate giving such order shall forward a copy of his order, with his reasons for making it, to the Sessions Judge."

4. No doubt, the Police Officer can arrest a person where a reasonable suspicion exists of his having been concerned in any cognizable offence but power given to the Police Officer under this section being an encroachment on the liberty of a citizen is not unlimited. It is subject to the condition stated therein. An arrest purporting to be under this section would be illegal unless the circumstances specified in the various clauses of the section exist. This section does not give free licence to a Police Officer to arrest anybody he may like. In order to act under this section, there must be a reasonable suspicion of the person to be arrested having been concerned in a cognizable offence. An arrest of a citizen in a reckless disregard of the conditions imposed in this section would make the arrest and detention of the subject illegal and the Police Officer arresting or detaining the subject would be exposed to prosecution under the Pakistan Penal Code and also for departmental action under the relevant rules. Similarly, section 167, Cr.P.C. does not visualize successive and repeated arrests of a person required in more than one cases. An accused required in more than one criminal cases when arrested will be deemed to have been arrested in all the cases registered against him. There is no legal bar for interrogating an accused person with regard to the allegations against him in another case. It is rather desirable that when a person required or accused in more than one cases or where more than one F.I.Rs. are registered against him is arrested and remanded to physical. custody, then he should be interrogated about the allegations against him in all the cases. Instead of acting strictly in accordance with law, the police since long is following the illegal practice of showing the arrest of the person in one case and on the expiry of remand it again arrests him in another case. It is commonly known that in selected case, police would arrest the accused on his release on bail in the first case. It is nowhere stated in the Criminal Procedure Code and Police Rules that a person required in more than one case when arrested will be deemed to have been arrested in one case and he cannot be arrested simultaneously in more than one case. Section 167, Cr.P.C. simply says that whenever a person is arrested or detained in custody, the Magistrate may authorise his detention in such custody for a term not exceeding fifteen days in the whole. The section does not talk of ?case?, it talks of custody only. The longest period for which an accused can be ordered to be detained continuously in police custody by one or more such orders, is only fifteen days. So, the detention of the accused person required in more than one cases already registered against him, for more than fifteen days would be illegal. It would be quite in accordance with law that when a person required in more than one criminal cases of the same police station is arrested in one case, he shall be deemed to have been arrested in all the cases. After continuous physical custody of the accused with the police, the Magistrate will not be justified in granting his physical remand in another case and similarly after the accused is released on bail in one case, he will not be arrested by the police in the other case. It is desirable that the Police Officer, while applying for the physical remand of an accused person should certify that he is not required in any other case and if there are more than one cases against him, then the S.H.O./Investigating Officer will state this fact in the remand application. Similarly while granting physical remand, the Magistrate shall inquire from the S.H.O./Investigating Officer as to whether the accused is required in other cases or whether any other case is registered against him at the police station. If the accused has remained with police pursuance to the remand granted under section 167, Cr.P.C. then the Magistrate will be justified in refusing further physical remand of the accused in another case. It goes without saying that whenever the police indulges in these tactics of arresting the accused successively in different case, it is not taken in good taste by the public and the Courts.

The Inspector-General of Police will ensure that the provisions of section 54, Cr.P.C. are not misused by the subordinate Police Officers. The Home Secretary, Government of the Punjab, Lahore, will also ensure that successive remands authorising the physical custody of an accused person are discouraged.

N.H.Q./R-8/L??
Order accordingly.

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