1993 PCr.LJ 91

[Lahore]

Before Sh. Muhammad Zubair, J

ABDUL QAYYUM---Petitioner

Versus

S.H.O., POLICE STATION SHALIMAR, LAHORE---Respondent

Cr. Misc. No.657/H of 1992, decided on 20th October, 1992.

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

----S. 54(1)---Credible information---Expression credible information used in the section is not a technical legal expression importing that the information must be given upon oath or affirmation---It includes any information which in the judgment of the officer to whom it is given appears entitled to credit in the particular instance and which he believes---Such credible information need not be in writing.

(b) Criminal Procedure Code (V of 189&)--

----S. 54---Object The object of S.54, Cr.P.C.. is to give the widest powers to police officers to arrest the persons involved in cognizable cases and the only limitation placed upon their powers is the necessary requirement of reasonability and credibility to prevent the misuse of such powers by them.

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

----S. 54---Power given to Police Officers under S54, Cr.P.C. encroaches upon the liberty of a person and such wide power, therefore, has to be construed, interpreted and defined strictly---A general definition of what constitutes reasonableness in a complaint or suspicion and credibility of information, cannot be given---Both must depend upon the existence of tangible legal evidence within the cognizance of the Police Officer and he must judge whether the evidence is sufficient to establish the reasonableness and credibility of the charge, information or suspicion.

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

----S. 491---Penal Code (XLV of 1860), S.457/380---Habeas Corpus petition-- Police Officer on the basis of the complainant's application had arrested the detenu, but did not show his formal arrest in the Daily Diary as required by the Police Act---Such information per se did not fulfil the requirement of clause first of S.54, Cr.P.C. Ilaqa Magistrate also without conscious application of his judicious mind had blindly granted remand of accused to the police when produced before him under S.167,

Cr.P.C. which resulted into gross miscarriage of justice---Arrest of detenu and summoning of other two persons mentioned in the petition was, therefore, illegal and they were consequently set at liberty debarring the police from summoning them for further interrogation in the case---Petition was accepted with costs accordingly.

1992 P Cr. L J 131 ref

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

----S. 54(1)---Words used in clause first of S.54, Cr.P.C. are `credible' and `reasonable' information which denotes it must be at least founded on some definite fact tending to throw suspicion on the person arrested and not mere vague surmise or information.

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

----S. 167---Remand---Magistrate while granting remand under S.167, Cr.P.C. should bear in his mind that a Police Officer arresting a person unjustifiably or otherwise than on a reasonable ground is guilty of an offence punishable under 5.220, P.P.C.

Muhammad Amin Dar for Petitioner.

Ch. Ijaz Ahmad, A.A: G. and M. Farani for the State.

Date of hearing: 14th October, 1992.

JUDGMENT

The petitioner has filed this petition under section 491, Cr.P.C. for the recovery of Messrs Abdul Ghani son of Shah Muhammad, Muhammad Rafiq son of Habib Khan and Fazal Mahmood son of Habib Khan, the alleged detenus from the illegal confinement of the respondent on 21-9-1992.

2. Vide my order, dated 22-9-1992, I deputed the bailiff of this Court to recover the alleged detenus from the illegal confinement of the respondent.

According to the bailiff report when he visited Police Station Shalimar, Lahore for the recovery of the alleged detenus in pursuance of the order of this Court at 3-30 p.m. the same day, he found Muhammad Rafiq son of Habib Khan in handcuff in the police room while Abdul Ghani and Mehmood were sitting on the ground alongwith him. According to the report of bailiff, no corresponding entry was recorded in the Daily Diary with regard to the arrest of Muhammad Rafiq in the police station. Muhammad Rafiq was examined in this Court on 23-9-1992. He deposed that he remained in the police station for four days in a room which was meant for Police Constables and he was not produced before any Court during that period. Muhammad Ashraf S.H.O. Police Station Shalimar Lahore was examined in this Court the same day and he deposed that Muhammad Rafiq was arrested by Nemat Ali A.S.I. in case F.I.R. No.246/91, dated 27-5-1992 under section 457/380, P.P.C. in which no accused person was nominated by the complainant. He further deposed that on 18-9-1992, the S.H.O.

entrusted the investigation of this case to said Nemat Ali when Muhammad Riaz A.S.I. failed to trace out the real culprits and to mike the recovery of stolen goods and also recommended that the case may be consigned to record, as untraced vide his Zimni No.19, dated 10-9-1992. Nemat Khan A.S.I. when examined in this Court deposed that he formally arrested Muhammad Rafiq the alleged detenu, on 22-9-1992 at 7-00 a.m. vide Zimni No.22. As he had to appear in the High Court the same day at 8-00 a .m., he could not show his formal arrest in the Daily Diary as required by law.

3. The learned counsel for the petitioner vehemently contended that the police had no right to arrest the alleged detenu under section 54, Cr.P.C. as alleged by the said A.S.I. in this case in which Muhammad Rafiq or his companions were not nominated as accused persons. He also urged that the detention of Muhammad Rafiq who was found in handcuff by the bailiff was illegal as there was no corresponding entry of his arrest in the daily diary of the Police Station Shalimar when bailiff raided the police station and recovered they detenus. In the end, he forcibly submitted that the A.S.I. (Nemat Khan) in order to set up a false defence before this Court has fabricated Zimni No.22, dated 22-9-1992.

4. The learned counsel appearing for the complainant and the Police Officer, on the other hand, urged that the police has got ample powers arrest a person under section 54, Cr.P.C. even if the accused is not nominate in the F.I.R. provided it has got some credible information or reasonable suspicion against the accused person. He also submitted that the Police Officer though showed the arrest of the accused person in the Zimni referred to above but could not show the formal arrest of the alleged detenu in the Daily Diary, as he had to appear before the High Court on the same day. In the end, he submitted that on the direction of this Court the Police officials are facing departmental inquiry for this negligence and no useful purpose would be served by ordering the registration of a case or any further action against them.

5. I have heard the learned counsel for the parties at length and perused the police a carefully.

6.Before embarking upon this discussion what are powers of the police under section 54, it would be advantageous to reproduce the relevant provision of section 54, Cr.PC. cause first under which the Police Officer made arrest in this case, reads: --

> 54--(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 of his having been so concerned.

7. Under the provision of clause first of section 54, Cr.P.C., the Police Officer can arrest a person in the following four conditions:--

(a) The accused is involved in a cognizable offence;

(b) Against the accused a reasonable complaint has been made for the said offence;

(c) A credible information is received by the Police Officer that he is involved in a cognizable offence; and

(d) Reasonable suspicion exists that the said person is involved in the cognizable offence.

8. The expression `credible information' is not a technical legal expression importing that the information must be given upon oath or affirmation. It includes any information which in the judgment of the officer to I whom it is given appears entitled to credit in the particular instance and which he believes. The credible information mentioned therein need not be in writing.

> What is a reasonable complaint or reasonable suspicion, no doubt, depends upon the facts of each case. But it should be at least founded upon some definite feelings tending to throw suspicion on the person arrested and the proceedings." 1948 A.L.W. 130 (F.B.)

9. The object of section 54, Cr.P.C. is to give the widest powers to the police Officers to arrest the persons who are involved in cognizable cases and the only limitation placed upon their power is the necessary requirement of reasonability and credibility to prevent the misuse the powers by the Police officers.

10. As the powers mentioned above given to the Police Officers under section 54, Cr.P.C, encroaches upon the liberty of a person, this wide power has to be construed, interpreted and defined strictly. A general definition of what constitutes reasonableness in a complaint or suspicion and credibility of information cannot be given. Both must depend upon the existence of tangible legal evidence within the cognizance of the Police Officer and, he must judge whether the evidence is sufficient to establish the reasonableness and credibility of the charge, information or suspicion. It has been laid down by this Court in 1992 P Cr. L J 131. An arrest which is beyond the provisions of section 54, Cr.P.C. would be illegal and void per se".

11. Applying the aforementioned principle of law to the facts of the present case, I find, in this case, the 1.0. arrested Abdul Hamid son of Channan Din on 28-8-1992 under section 54, Cr.P.C. for the recovery of stolen goods and later on got him discharged. Thereafter, Abdul Rehman and Muhammad Tariq were also interrogated and taken into custody under section 54, Cr.P.C. and they remained with the police on remand for two days and they were later on got discharged from Ilaqa Magistrate on 3-9-1992. Muhammad Riaz, A.S.I. on 10-9-1992 recommended that the case may be consigned to the record as untraced. Thereafter, the investigation was transferred to Nemat Ali A.S.I. on 18-9-1992. The said Nemat Ali on the basis of one application given to the S.H.O. by the complainant, reproduced in the Zimni that he has got strong suspicion against Muhammad Rafiq and his companions, who were recovered as detenus from Shalimar Police Station, by the bailiff of this Court, requested that if they be arrested, his stolen articles would be recovered from them.

12. On the basis of the aforementioned application, Nemat Ali, A.S:I arrested Muhammad Rafiq but did not show his formal arrest in the Daily Diary, as required by the Police Act.

13. The sole question for determination by this Court is whether Nemat Ali was competent to make the arrest of Muhammad Rafiq detenu or summon other two persons mentioned in the petition under section 54(1), Cr.P.C. on the basis of the application, which gives vague material and is based upon tangible evidence, just to make another investigation into a case which remained untraced till 22-9-1992, in order to probe and unduly oblige the complainant.

14. This information per se does not fulfil the requirement of clause first of section 54, Cr.P.C., because the words used in clause first of that section are `credible' and reasonable information which denotes it must be at least founded on some definite fact tending to throw suspicion on the person arrested and not mere vague surmise or information. Still less have the police any power to arrest persons, as they some times appear to do, merely on the chance of something being thereafter proved against them.

15. The manner in which the Police Officer entered into the investigation of this case on the basis of the application of the complainant, without there being some material for fresh investigation, if approved, would play havoc with the liberty of a citizen, which has been enshrined in the Constitution of Pakistan. If the police is permitted to make roving enquiry into the untraced cases, without there being some positive and definite clue, then -it would frustrate the very object of clause first of section 54, Cr.P.C.

The perusal of police file reveals that the Illaqa Magistrate, without conscious application of his judicious mind, blindly granted remand to the police of the person, produced before him under section 167, Cr.P.C., which normally has resulted into gross miscarriage of justice. The Magistrate while granting remand under section 167, Cr.P.C. should bear this fact in his mind that a Police Officer arresting a person unjustifiably or otherwise than on a reasonable ground is guilty of an offence punishable under section 220,P.P.C.

16. I have given my anxious consideration to this aspect of the case whether some action should be taken against these persons for not showing formal arrest of Muhammad Rafiq; the alleged detenu in the Daily Diary as required by law. I find, great force in the submission of the learned counsel for the Police Officer that as they are being proceeded against departmentally for their negligence, no useful purpose would be served by taking further action against these Police Officials. Anyhow, they must be warned that they should be careful in future. The arrest of Muhammad Rafiq detenu and summoning of other two persons mentioned in the petition was illegal, hence, I accept this petition with costs of Rs.3,000. Nemat Ali, A.S.I. is directed to pay the costs of Rs.3,000 within one month, from the announcement of this order, failing which, it would be recovered as arrears of land revenue from-him. Muhammad Rafiq and two other persons mentioned in the petition are set at liberty and the police is debarred from summoning them for further interrogation in this

N.H.Q./A-244/L Petition accepted.

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