1995 M L D 771

[Lahore]

Before Tassadiq Hussain Jillani, J

Syed MOHSIN ALI SHAH---Petitioner

versus

THE S.H.O., POLICE STATION GARH MAHARAJA---Respondent

Criminal Miscellaneous No.30-H of 1995, decided on 17th January, 1995.

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

----S.54---Effecting arrest of a person---Conditions precedent---Section 54, Cr.P.C. was not enacted by the Legislature to cater for the whims of a police officer---Condition precedent for effecting arrest of a person under S.54, Cr.P.C. are "credible information" or "reasonable suspicion" qua the person sought to be arrested.

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

----Ss.491 & 54---Habeas corpus petition---Police had neither credible information nor reasonable suspicion to warrant arrest of the detenu which was illegal and his detention was declared to be motivated by malice and without lawful authority ---Detenu, however, had already been released.
Ghulam Sarwar and another v. The State 1984 PCr.LJ 2588 ref.

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

----S.54---Arrest of a person by Police under S.54, Cr.P.C.---Note of caution.

A police officer while acting under section 54, Cr.P.C. must administer extreme caution and a deep sense of responsibility. Having received an information or having recorded a statement, he must satisfy himself about the credibility of the information laid down before him and he should, before going any further unless he is prevented by justifiable reasons, reduce it in writing in the case diary his tentative opinion qua the said information. In absence of that, the arrest of a person cannot be justified and would amount to a mala fide exercise of the powers conferred under section 54, Cr.P.C. An officer acting beyond the mandate of this provision would be amenable to disciplinary proceedings; to criminal prosecution and for action in tort.

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

----Ss.167 & 344---Remand to police and judicial custody---Guidelines for Magistrates enumerated.

Following are the gsuidlines to which Magistrates should always adhere to:

"(1) During first 15 days, the Magistrate may authorise the detention of the accused in judicial custody liberally but shall not authorise the detention in the custody of the police except on strong and exceptional grounds and that too, for the shortest possible period.

(2) The Magistrate shall record reasons for the grant of remand.

(3) The Magistrate shall forward a copy of his order passed under section 167, Cr.P.C. to the Sessions Judge concerned.

(4) After the expiry of 15 days, the Magistrate shall require the police to submit complete or incomplete challan and in case, the challan is not submitted, he shall refuse further detention of the accused and shall release him on bail with or without surety.

(5) After the expiry of 15 days, no remand shall be granted unless, the application is moved by the police for the grant of remand/adjournment.

(6) The application moved by the prosecution/police after the expiry of 15 days of the arrest of the accused, be treated as an application for adjournment under section 344, Cr.P.C.

(7) Before granting remand, the' Magistrate shall assure that evidence sufficient to raise suspicion that the accused has committed the offence has been collected by the police and that further evidence will be obtained after the remand is granted.

(8) The Magistrate shall not grant remand/adjournment in the absence of the accused.

(9) The Magistrate should avoid giving remand/adjournment at his residence.

(10) The Magistrate shall give opportunity to the accused to raise objection, if any, to the grant of adjournment/remand.

(11) The Magistrate shall record objection which may be raised by an accused person and shall give reasons for the rejection of the same.

(12) The Magistrate shall examine police file before deciding the question of remand.

(13) If no investigation was conducted after having obtained remand, the Magistrate shall refuse to grant further remand/adjournment.

(14) The Magistrate shall not allow remand/adjournment after two months (which is a reasonable time) of the arrest of the accused unless it is unavoidable.

(15) In case, complete challan is not submitted the Magistrate shall commence trial on the strength of incomplete challan and examine the witnesses given in the list of witnesses.

(16) If the challan is not submitted within 2 months, the Magistrate shall report the matter to the Sessions Judge of the district and also bring the default of the police to the notice of Superintendent of Police of the district.

(17) The Magistrate shall not grant remand mechanically for the sake of cooperation with the prosecution/police.

(18) The Magistrate shall always give reasons for the grant of remand and adjournment.

Ghulam Sarwar and another v. The State 1984 PCr.L1 2588 ref.

Ghulam Sarwar and another v. The State 1984 PCr.LJ 2588 quoted.

Ch. Muhammad Hussain Naqshbandi for Petitioner.

Syed Shabbar Raza Rizvi, Addl. A.-G. for the State.

ORDER

Through this habeas corpus petition, the petitioner sought recovery of his cousin, namely, Syed Munawar Hussain Shah from the alleged custody of S.H.O., P.S. Garh Maharaja. Pursuant to an order of this Court, the bailiff raided the police station and as per his report submitted in Court, the Muharrir of the said police station told him that the alleged detenu was arrested on 8-1-1995 under section 54 of the Cr.P.C. in connection with F.I.R. No.119 of 1993 under section 380/457, P.P.C. vide Report No.8 of Roznamcha. (The case pertains to theft of soap, shampoo etc. from a store). He was further told that the detenu shall be produced before the Resident Magistrate, Garh Maharaja on 12-1-1995. Today, the alleged detenu has appeared in Court. His statement has been recorded according to which he was arrested on 5-1-1995. He alleged that he was tortured in the police station and that he was never produced before the learned Ilaqa Magistrate for the purpose of remand. He has also produced a copy of the medico-alleged report qua the alleged injuries received by him during his detention in the police lock-up.

2. The S.H.O., P.S. Garh Maharaja, on Court query, submitted that the alleged detenu was arrested in the aforementioned case as the complainant had made a statement on 5-1-1995 that the stolen articles could be recovered from the alleged detenu. According to him, after the arrest, the alleged detenu was produced before the learned Resident Magistrate and his remand was obtained on 9-1-1995 but nothing could be recovered from him and ultimately the said learned Magistrate discharged him on 12-1-1995. He, however, admitted that as per the opinion of the S.D.P.O., the alleged detenu has to be interrogated with regard to the murder of his cousin Fazal Abbas and the file of the said murder case has been received by him for further investigation. Petitioner Mohsim Ali who is real brother of the deceased in the murder case has stated in Court that the alleged detenu Syed Munawar Hussain Shah is not involved in the murder case of his brother and that the complainant had named certain other persons but the investigation is not being conducted fairly.

3. In view of the statement of the alleged detenu, the learned Resident Magistrate who granted his physical remand was directed to appear in Court. While appearing in Court right at the outset he admitted his fault in not going through the case file while remanding the accused to police custody. He prayed for forgiveness. The S.H.O. has also sought forgiveness and undertook to be careful in future.

4. I have gone through the police record of case F.I.R. No.119/93 which was registered on 28-5-1993. On 16-1o-1993, the then S.H.O., P.S. Garh Maharaja prepared final report under section 173, Cr.P.C. which, in the operative paragraph, reads as under:---
The case file of the- above-cited case indicates that on 12-4-1994, the investigation of this case was entrusted to S.H.O., P.S. Kotwali .for investigation. On 2-5-1994 he recorded the statement of the complainant to the effect:---

The aforementioned persons were arrested by the I.O. on 5-5-1994. However, after investigation and as per the telephonic direction of S.P., Jhang, the investigating officer decided to have them discharged on 7-5-1994. Case remained dormant and on 5-1-1995, the complainant made yet another statement wherein he implicated the alleged detenu and requested that if Munawar Hussain Shah (detenu) is made to join the investigation, he will lead to the recovery of the stolen articles. Thereafter, the alleged detenu was arrested on 8-1-1995 and on 9-1-1995 an application was moved before the learned Resident Magistrate for obtaining physical remand. The learned Magistrate without either perusing the case file or examining the alleged detenu remanded him to police custody for three days. However, when a bailiff of this Court raided the police station on 11-1-1995, the Resident Magistrate discharged the alleged detenu on 12-1-1995 as nothing had been recovered from him.

5. A bare reading of the provisions of section 54 of the Cr.P.C. under which the alleged detenu was purportedly arrested by the S.H.O. would show that this provision was not enacted by the Legislature to cater for the: whims of a police officer. Section 54, subsection (1), Cr.P.C. reads as under:---

"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."

6. The' conditions precedent for effecting arrest of a person under the aforementioned section are `credible information' or 'reasonable suspicion' qua the person which is sought to be arrested. In a case where report under section 173, Cr.P.C. had already been submitted on 16-10-1993; where the complainant had earlier expressed suspicion on three other persons and had allegedly seen the stolen property in their possession and who too had been discharged, mere statement of such a complainant would not constitute credible information. A perusal of the police file shows that the S.H.O. neither had `credible information' nor `reasonable suspicion' to warrant the detention of Munawar Hussain Shah. His arrest was therefore illegal.

7. A police officer while acting under section 54, Cr.P.C. must administer extreme caution and a deep sense of responsibility. Having received an information or having recorded a statement, he must satisfy himself about the credibility of the information laid down before him and he should, before going any further unless he is prevented by justifiable reasons, reduce it in writing in the case diary his tentative opinion qua the said information. In absence of `that, the arrest of a person cannot be justified and would amount to a mala fide exercise of the powers conferred under section 54, Cr.P.C. An officer acting beyond the mandate of this provision would be amenable to disciplinary proceedings; to criminal prosecution and for action in tort.

8. Coming to the conduct of the Resident Magistrate, I am constrained to observe that the learned Magistrate who had a supervisory role and who had to ensure that the Investigating Officer remains within the bounds of law did not bother to go through the file while granting physical remand of the alleged detenu for three days. A mandatory provision to produce an arrested person before the Magistrate within 24 hours of his arrest was meant to ensure that the lives, liberty and honour of the citizens is not thrown in the hands of a man in uniform who unbridled by any judicial restraint is likely to lose balance leading to misery, tyranny, oppression and corruption. The Magistrates have been empowered to remand a person to police and judicial custody under sections 167 and 344, Cr.P.C. The High Court Rules and Orders and several judgments of this Court have laid down guidelines for the Magistrates to follow while exercising these powers. It is, however, unfortunate that these guidelines are generally not adhered to with the consequent result that the complaints of police excesses abound. If the Magistrates fail to discharge their functions enjoined in law and maintain the dignity of their exalted institution, the public loses faith in them. Such Magistrates emerge not as symbols of justice and mercy but as abettors in incidents of torture and oppression. It would be pertinent to remind the Magistrates of the -guidelines to which they should always adhere to and which have been laid down in a judgment of this Court reported in 1984 PCr.LJ 2588 (Ghulam Sarwar and another v. The State). These are as follows:---

"(1) During first 15 days, the Magistrate may authorise the detention of the accused in judicial custody liberally but shall not authorise the detention in the custody of the police except on strong and exceptional grounds and that too, for the shortest possible period.

(2) The Magistrate shall record reasons for the grant of remand.

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(4) After the expiry of 15 days, the Magistrate shall require the police to submit complete or incomplete challan and in case, the challan is not submitted, he shall refuse further detention of the accused and shall release him on bail with or without surety.

(5) After the expiry of 15 days, no remand shall be granted unless, the application is moved by the police for the grant of remand/adjournment.

(6) The application moved by the prosecution/police after the expiry of 15 days of the arrest of the accused, be treated as an application for adjournment under section 344, Cr.P.C.

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(15) In case, complete challan is not submitted the Magistrate shall commence trial on the strength of incomplete challan and examine the witnesses given in the list of witnesses.

(16) If the challan is not submitted within 2 months, the Magistrate shall report the matter to the Sessions Judge of the district and also bring the default of the police to the notice of Superintendent of Police of the district.

(17) The Magistrate shall not grant remand mechanically for the sake of cooperation with the prosecution/police.

(18) The Magistrate shall always give reasons for the grant of remand and adjournment.

9. The learned Additional Advocate-General has very frankly and fairly conceded that the S.H.O. went beyond his lawful duty in arresting the alleged detenu and that the allegations of torture prima facie have substance. He submits that as the S.H.O. is likely to be prejudiced by this petition, he will get in touch with the D.I.-G. Faisalabad to ensure that the investigation of the murder case of petitioner's brother is entrusted to

an upright officer not below the rank of a D.S.P. in the Faisalabad Range Crimes Branch.

10. Section 491, Cr.P.C. primarily stipulates a remedy in all cases of wrongful detention. It confers upon a person when he is in custody the right to have tested and determined by this Court the vires of the order under which he is being detained. Even in this habeas corpus petition the petitioner has basically challenged the order of detention and had prayed for an order whereby `the detenu is immediately ordered to be produced before this Hon'ble Court and be treated according to law'. The detenu has already been released and the order of detention has been declared to be motivated by malice and without lawful authority.

11. The petitioner has prima facie been wronged. He has the remedy of having a case registered or filing a private complaint or/and of filing a suit for damages. The learned Magistrate who passed the remand order in derogation to the guidelines laid down by this Court has expressed remorse and sought forgiveness. He is given a word of caution to be careful in future and follow the mandate of law an enshrined in the Code of Criminal Procedure and the precedent case-law quoted above. The conduct of the S.H.O. calls for serious scrutiny by the D.I.-G., Faisalabad who may take any appropriate action which he deems fit against him under law.

12. This petition stands disposed of in the above-noted terms.

N.H.Q./M-1926/L Order accordingly.

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