

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2020

CORAM

THE HON'BLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.Nos.18040 and 14411 of 2020

M.Kishore,
S/o.Murugan.

... Petitioner
in both Crl.O.Ps.

Vs.

The Inspector of Police,
Kaaramadai Police Station,
Coimbatore District.
(Crime No.132 of 2019)

... Respondent
in Crl.O.P.No.18040/2020

The Inspector of Police,
Periyanaayakkan Paalaiyam Police Station,
Coimbatore District.
(Crime No.328 of 2019)

... Respondent
in Crl.O.P.No.18040/2020

Crl.O.P.No.18040 of 2020: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records of the remand order dated 26.06.2020 on the file of the learned Judicial Magistrate Court, at Mettupalayam pending trial in C.C.No.166 of 2020 in Crime No.132 of 2019 on the file of the respondent police and set aside the same.

Crl.O.P.No.14411 of 2020: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records of the remand order dated 21.08.2020 on the file of the learned V Judicial Magistrate Court, at Coimbatore in Crime No.328 of 2019 on the file of the respondent police pending investigation and set aside the same.

For Petitioner in
Crl.O.P.No.18040/2020 : Ms.S.Suriyakala
Crl.O.P.No.14411/2020 : Mr.B.Thiyagarajan

For Respondents : Mr.C.Raghavan
in both Crl.O.Ps. Government Advocate (Crl.side)

ORDER

The issue involved in both the cases are common and hence they are taken up together, heard and disposed of through this common order.

2.The petitioner has been arrayed as A1 in Crime No.132 of 2019 (Crl.O.P.No.18040 of 2020) and Crime No.328 of 2019 (Crl.O.P.No.14411 of 2020). The petitioner has several cases filed against him and he was in judicial custody in some other case. The respondent Police in both the cases effected a formal arrest through Prisoner on Transit Warrant (in short P.T. Warrant) on 03.04.2020 in Crl.O.P.No.18040 of 2020 and on 11.05.2020 in

CrI.O.P.No.14411 of 2020, respectively. Even though the formal arrest took place on these two days, the petitioner was not immediately produced before the concerned Magistrate seeking for a remand in those cases.

3.Insofar as the case involved in CrI.O.P.No.18040 of 2020 is concerned, the petitioner was produced before the Court below only on 26.06.2020 and similarly in CrI.O.P.No.14411 of 2020, the petitioner was produced before the Court below only on 21.08.2020 and he was remanded in both the cases. Questioning this inordinate delay in producing the petitioner before the Court below and the order of remand passed by the Court below, these criminal original petitions have been filed before this Court.

4.The learned counsel for the petitioner by relying upon the judgment of the Division Bench in the case of *State by Inspector of Police Vs. K.N.Nehru* reported in *2012 (1) Madras Weekly Notes (CrI.) 4* submitted that the accused person who is secured through a P.T. warrant, should be produced immediately before the concerned Court, failing which, the

detention becomes illegal and the same will violate the fundamental right guaranteed under Article 21 of the Constitution of India. The learned counsel submitted that in the present case, the petitioner was produced before the Court below after an inordinate delay of nearly two months in CrI.O.P.No.18040 of 2020 and three months in CrI.O.P.No.14411 of 2020. The court below did not take into consideration this inordinate delay and had mechanically remanded the petitioner from the date of his production and as a result of the same, the petitioner lost his fundamental right of liberty guaranteed under the constitution of India. The learned counsel further submitted that by the time the petitioner was remanded in these two cases, he was enlarged on bail in all the other cases.

5.Per contra, the learned Government Advocate appearing on behalf of the respondent Police by relying upon the status report/counter filed in these cases submitted that there are several serious criminal cases pending against the petitioner and in the present cases, final report has already been filed against the petitioner and the same has been taken on file by the Court below in C.C.No.166 of 2020 (CrI.O.P.No.18040 of 2020) and in

C.C.No.1443 of 2020 (CrI.O.P.No.14411 of 2020). The learned Government Advocate submitted that these cases are now at the stage of trial and a direction may be issued by this Court for early disposal of these cases.

6.This Court has carefully considered the submissions made on either side and the materials available on record.

7.The only issue that requires consideration of this court is as to whether the delay caused by the respondent Police in producing the petitioner before the Court below after formally arresting him through a P.T. warrant, will vitiate the remand order passed by the Court below?

8.The purpose of a P.T. warrant is only to direct the production of a person confined or detained in a prison through a lawful order. Such a warrant cannot be interpreted to mean that the same will authorize the Police to curtail the liberty of a person by keeping the accused person in custody till he is produced before the concerned Court. In other words, a person cannot be kept under remand on the strength of a PT warrant and he

has to be necessarily produced before the concerned Court at the earliest point of time. It will be relevant to take note of the following judgements ;

(a) CBI v. Anupam J. Kulkarni, reported in (1992) 3 SCC 141.

“13. Whenever any person is arrested under Section 57 CrPC he should be produced before the nearest Magistrate within 24 hours as mentioned therein. Such Magistrate may or may not have jurisdiction to try the case. If Judicial Magistrate is not available, the police officer may transmit the arrested accused to the nearest Executive Magistrate on whom the judicial powers have been conferred. The Judicial Magistrate can in the first instance authorise the detention of the accused in such custody i.e. either police or judicial from time to time but the total period of detention cannot exceed fifteen days in the whole. Within this period of fifteen days there can be more than one order changing the nature of such custody either from police to judicial or vice-versa. If the arrested accused is produced before the Executive Magistrate he is empowered to authorise the detention in such custody either police or judicial only for a week, in the same manner namely by one or more orders but after one week he should transmit him to the nearest Judicial Magistrate along with the records. When the arrested accused is so transmitted the Judicial Magistrate, for the remaining period, that is to say excluding one week or the number of days of detention ordered by the Executive Magistrate, may authorise further detention within that period of first fifteen days to such custody either police or judicial. After the expiry of the first period of fifteen days the further remand during the period of investigation can only be in judicial custody. There cannot be any detention in the police custody after the expiry of first fifteen days even in a case where some more offences either serious or otherwise committed by him in the same transaction come to light at a later stage. But this bar does not apply if the same arrested accused is involved in a different case arising out of a different transaction. Even if he is in judicial custody in connection with the investigation of the earlier case he can formally.

*be arrested regarding his involvement in the different case and associate him with the investigation of that other case and the Magistrate can act as provided under Section 167(2) and the proviso and can remand him to such custody as mentioned therein during the first period of fifteen days and thereafter in accordance with the proviso as discussed above. **If the investigation is not completed within the period of ninety days or sixty days then the accused has to be released on bail as provided under the proviso to Section 167(2). The period of ninety days or sixty days has to be computed from the date of detention as per the orders of the Magistrate and not from the date of arrest by the police.** Consequently the first period of fifteen days mentioned in Section 167(2) has to be computed from the date of such detention and after the expiry of the period of first fifteen days it should be only judicial custody.”*

(b) State v. K.N. Nehru, (2012) 1 MWN (Cri) 4 : (2011) 2 LW (Cri) 579

42. From the above discussions, the following conclusions emerge:

- (1)
- (2) *If the Investigating Officer in the latter case decides to arrest the Accused, he can go over to the prison where the Accused is already in judicial remand in connection with some other case and effect a formal arrest as held in Anupam Kulkarni case. When such a formal arrest is effected in prison, the Accused does not come into the physical custody of the Police at all, instead, he continues to be in judicial custody in connection with the other case. Therefore, there is no legal compulsion for the production of the Accused before the Magistrate within 24 hours from the said formal arrest.*
- (3) *For the production of the Accused before the Court after such formal arrest, the Police Officer shall make an Application before the Jurisdictional Magistrate for issuance of P.T. Warrant without delay. If the conditions required in Section 267 of the Code of*

Criminal Procedure are satisfied, the Magistrate shall issue P.T. Warrant for the production of the Accused on or before a specified date before the Magistrate. When the Accused is so transmitted from prison and produced before the Jurisdictional Magistrate in pursuance of the P.T. Warrant, it will be lawful for the Police Officer to make a request to the learned Magistrate for authorising the detention of the Accused either in Police custody or in judicial custody.

- *(4) After considering the said request, the representation of the Accused and after perusing the case diary and other relevant materials, the learned Magistrate shall pass appropriate orders under Section 167(1) of the Code of Criminal Procedure.*

- *(5) If the Police Officer decides not to effect formal arrest, it will be lawful for him to straightaway make an Application to the Jurisdictional Magistrate for issuance of P.T. Warrant for transmitting the Accused from prison before him for the purpose of remand. On such request, if the Magistrate finds that the requirements of Section 267 of the Code of Criminal Procedure are satisfied, he shall issue P.T. Warrant for the production of the Accused on or before a specified date.*

- *(6) When the Accused is so transmitted and produced before the Magistrate in pursuance of the P.T. Warrant from prison, the Police Officer will be entitled to make a request to the Magistrate for authorising the detention of the Accused either in Police custody or in judicial custody. On such request, after following the procedure indicated above, the Magistrate shall pass appropriate orders either remanding the Accused either to judicial custody or Police custody under Section 167(1) of the Code of Criminal Procedure or dismissing the request after recording the reasons.*

- *(7) Before the Accused is transmitted and produced before the Court in pursuance of a P.T. Warrant in connection with a latter case, if he has been ordered to be released in connection with the former case, the Jail Authority shall set him at liberty and return the P.T. Warrant to the Magistrate making necessary endorsement and if only the Accused continues to be in judicial custody, in connection with the former case, he can be transmitted in pursuance of P.T. Warrant in connection with the latter case.”*

(c) K.S Muthuramalingam v State (2010) 2 MWN (Cri) DB

“11. A conjoint reading of Sections 267 and 269, Cr.P.C. will make it clear that the purpose of P.T. warrant is to direct the production of a person who is confined or detained in prison by a lawful order. It cannot be interpreted to mean that the P.T. warrant shall be an authorisation to curtail the liberty of the person and keep him in custody till the date on which his production is sought for. The mere pendency of a P.T. warrant shall not be enough to keep a prisoner in the prison beyond the date of expiry of the sentence, if he is a convict or beyond the date on which the remand expires unless the remand is extended by a competent Court. The pendency of a P.T. warrant cannot be equated with a remand and the same cannot be construed to be an authorisation for detaining a person beyond the period for which he was remanded or committed to undergo punishment.

13. From the above, it is quite obvious that the scope of the P.T. Warrant cannot be enlarged by assuming the same to be an authorisation for detaining the prisoner beyond the period of detention. It will be effective only if his detention is otherwise authorised as on the date on which he is supposed to be produced before the Court issuing P.T. Warrant.”

9. It is clear from the above judgments that where the investigating officer decides to arrest the accused person through a formal arrest, the accused person does not come into the physical custody of the police and for the purpose of calculating the period of 60 days or 90 days as contemplated under the proviso to Section 167(2) of Cr.P.C., it can be computed only from the date of detention as per the orders of the Magistrate and not from the date of formal arrest by the Police. A P.T. Warrant cannot

be used for the purpose of keeping a person in detention without producing him before the concerned Court and such non-production will certainly curtail the liberty of a person. If an accused person is produced before the Court with an inordinate delay and thereafter if he is remanded to judicial custody, the custody of the accused person in the concerned case will be calculated only from the date of his remand and the period prior to it where he was kept under detention on the strength of the P.T. warrant, will not be taken into consideration. Such a practice has been deprecated by this Court and such delay in producing the accused person before the Court after a formal arrest through a P.T. warrant, will certainly violate the liberty guaranteed under Article 21 of Constitution of India.

10. In the present case, the respondent police did not produce the petitioner before the learned Magistrate, till the petitioner was enlarged on bail in all the other cases. That apart, the respondent also took advantage of this situation and filed a final report in both the cases and thereafter produced the petitioner before the concerned Magistrate and secured his judicial custody. It is therefore clear that the respondent police had

indirectly achieved on the strength of a P.T. warrant, what they could not have achieved under the Code of Criminal Procedure. Such questionable practises by taking advantage of a P.T.warrant, continue to be adopted by the police. In the present case if the petitioner had been produced before the concerned Magistrate Court immediately after he was formally arrested by the respondent police and the petitioner had been remanded to Judicial Custody, the petitioner would not have lost the important right provided under the proviso to Section 167(2) of Cr.P.C. That apart, the petitioner would have also had the opportunity to apply for bail in these two cases also. The respondent Police by adopting a skewed practice have defeated the right of the petitioner and thereby the liberty of the petitioner was directly violated. This practice must be immediately stopped by the Police and even in case where a person is involved in serious offences, the correct procedure has to be adopted scrupulously. The procedure that has been provided under the Code of Criminal Procedure is common to both lighter offences and serious offences and hence irrespective of the nature of offence, the police is expected to follow the correct procedure failing which it will result in the violation of the fundamental right guaranteed under

Article 21 of the Constitution of India.

11.The respondent Police have completed the investigation in both the cases and a final report has been filed and it has also been taken on file by the Court below. This Court has to necessarily interfere with the order of remand of the petitioner in both the cases since the petitioner has been produced after an inordinate delay before the concerned Magistrate Court after being formally arrested through a P.T. warrant. Accordingly, they are set aside.

12.Taking into consideration the facts and circumstances of the case, these Criminal Original Petitions are disposed of as follows:

(a) the petitioner is enlarged on bail in Crime No.132 of 2019 (Crl.O.P.No.18040 of 2020) on the file of the Inspector of Police, Kaaramadai Police Station, Coimbatore District, subject to the condition that the petitioner executes a bond for a sum of Rs.5,000/- with two sureties for a like sum, to the satisfaction of the learned Judicial Magistrate, Mettupalayam.

(b) the petitioner is enlarged on bail in Crime No.328 of 2019 (CrI.O.P.No.14411 of 2020) on the file of the Inspector of Police, Periyanaayakkan Paalaiyam Police Station, Coimbatore District, subject to the condition that the petitioner executes a bond for a sum of Rs.5,000/- with two sureties for a like sum, to the satisfaction of the learned Judicial Magistrate No.V, (FAC), Coimbatore.

(c) the petitioner shall report before the concerned respondent Police in both the cases, every Friday at 5.30 p.m., till the disposal of the cases in C.C.No.166 of 2020, on the file of the learned Judicial Magistrate, Mettupalayam and in C.C.No.1443 of 2020, on the file of the learned Judicial Magistrate No.V, (FAC), Coimbatore.

(d) the petitioner shall be present during every date of hearing before the concerned Court in both the calendar cases without fail.

(e) the learned Judicial Magistrate, Mettupalayam, in C.C.No.166 of 2020 and the Judicial Magistrate No.V, (FAC), Coimbatore, in

C.C.No.1443 of 2020, shall commence the proceedings immediately and shall dispose of the cases within a period of three months from the date of receipt of copy of this order and;

(f)The trial shall be conducted on a day to day basis in accordance with the guidelines given by Hon'ble Supreme Court reported in *Vinod Kumar Vs State of Punjab [2015 (1) MLJ (Crl) 288 SC]*. If the petitioner adopts any dilatory tactics, it is open to the Court below to insist upon the presence of the petitioner and remand him to custody as per the judgment of the Hon'ble Supreme Court in *State of Uttar Pradesh Vs. Shambhu Nath Singh (JT 2001 (4) SC 3191)*.

06.01.2021

Note: Upload order copy by 11.01.2021.

Speaking order/Non-Speaking order

Index :Yes

Internet:Yes

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To

- 1.The Inspector of Police,
Kaaramadai Police Station,
Coimbatore District.
(Crime No.132 of 2019)

- 2.The Inspector of Police,
Periyanaayakkan Paalaiyam Police Station,
Coimbatore District.
(Crime No.328 of 2019)

- 3.The Public Prosecutor,
High Court, Madras.

N.ANAND VENKATESH, J.,

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Crl.O.P.Nos.18040 and 14411 of 2020

06.01.2021