

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 13.02.2013

WRIT PETITION(CRIMINAL) NO.86/2013

MUSTAFA USMAN LANDGE

..... Petitioner

Through: Mr. Mehmood Pracha and Mr. Sumit
Babbar, Advocates.

Versus

UOI & ORS.

..... Respondents

Through: Mr. Jatan Singh, Advocate for UOI.
Mr. Pawan Sharma, Standing Counsel (Crl.)
with Mr. Sahil Mongia, Ms. Priyanka
Kapoor, Ms. Richa Sharma, Mr. Mohd.
Adnan and Mr. Hemant Kumar, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SANJIV KHANNA, J. (ORAL)

1. The respondents have placed on record copy of the judicial order dated 29.11.2012 passed by the Chief Metropolitan Magistrate, Delhi. Learned counsel for the petitioner relies upon Section 269 of the Code of Criminal Procedure, 1973 (CrPC) and submits that the Jail Superintendant should not have carried out or implemented or complied with the order dated

29.11.2012. Section 269 of the CrPC which has been relied upon by the learned counsel for the petitioner reads as under:-

“269. Officer in charge of prison to abstain from carrying out order in certain contingencies.— Where the person in respect of whom an order is made under Section 267,—

- (a) is by reason of sickness or infirmity unfit to be removed from the prison; or
- (b) is under committal for trial or under remand pending trial or pending a preliminary investigation; or
- (c) is in custody for a period which would expire before the expiration of the time required for complying with the order and for taking him back to the prison in which he is confined or detained; or
- (d) is a person to whom an order made by the State Government under section 268 applies,

the officer in charge of the prison shall abstain from carrying out the Court's order and shall send to the Court a statement of reasons for so abstaining:

Provided that where the attendance of such person is required for giving evidence at a place not more than twenty-five kilometer distance from the prison, the officer in charge of the prison shall not so abstain for the reason mentioned in clause (b).”

2. We do not think the said provision is applicable to the factual matrix of the present case. The petitioner was detained in Delhi and was in judicial custody in FIR No.16/2012 under Section 120B of the Indian Penal Code, Sections 16/18/18A and 20 of the Unlawful Activities (Prevention) Act and Section 5 of the Explosive Substances Act. In the meanwhile, production warrants were issued by a court in Pune. Noticing the said facts Chief Metropolitan Magistrate, Delhi has passed the order dated 29.11.2012. Certain and specific directions have been issued in the said order. For the sake of completeness we reproduce the order dated 29.11.2012 passed by the Chief Metropolitan Magistrate, Delhi, which reads as under:-

“Production warrants have been received from the court of the Judicial Magistrate FC (AC) Court Pune in respect of the prisoners Imran Khan S/o Wajed Khan Pathan & Irfan Mustfa Langde S/o Mustafa Usman Langde presently lodged in Central Jail No.8 Tihar Delhi in case F.I.R. No.16/12 u/s 120b IPC 16/18/18JA/20 UA(P) Act & 5 EXP. SUB ACT P.S. SPECIAL CELL. The Production Warrants are for 18-12-12 on the subject noted above. Report of the jail was called which confirms that the prisoners are involved in the case aforesaid where they due to appear on 5-12-12 in the court of Ms. Asha Menon, Ld. Additional Sessions Judge, Tis Hazari Courts Delhi. Since the date of production in the court concerned does not clash with the date of hearing in the case(s) at Delhi. Supdt. Jail is directed to produce the said prisoners before the court concerned in compliance with the production warrants on the date fixed and thereafter to bring back the prisoners to Central Jail, Tihar for the purpose of their case(s) at Delhi.

Whenever, these accused are required to be produced in aforesaid court in said case beyond Delhi on intimation about date of hearing or on receipt of Production Warrant for further dates, the Supdt. Jail would be at liberty to comply with such direction, unless such date clashes with date (s) of hearing in the case (s) against the prisoners in Delhi Courts. Supdt. Jail & court concerned be informed accordingly. Copy also be sent to the court of Ms. Asha Menon, Ld. Additional Sessions Judge, Tis Hazari Courts Delhi for information.”

3. Section 269 CrPC has a purpose and object behind it. An accused, who is facing trial and arrested in one FIR, may be required to enter appearance or appear before a Court in another FIR registered at a different place. The court concerned may, therefore, issue production warrants for appearance of the accused who is detained in a jail at a different place where he is facing trial or under committal proceedings or pending preliminary investigation. In such circumstances, the Officer in charge of the prison may abstain from carrying out the court order, but is required to send a statement of reasons to the said court for so abstaining. The requirement of sending statement of reasons means that there should be a justification and cause why the court's order should not be followed. In the present case the Chief Metropolitan Magistrate, Delhi after examining the factual matrix, status and the proceedings pending in Delhi, has passed a judicial order. The said judicial order was required to be complied. The order dated 29.11.2012 is a

judicial order issuing directions and not an order issuing production warrant for appearance of an accused who is detained in another jail. It is not an order under Section 267 CrPC. Section 269 is an adjunct to Section 267 CrPC and the two provisions have to be read harmoniously. The main purpose of the said provision is to check delays when criminal proceedings are pending in different courts. The provision does not confer a right or privilege on a prisoner.

4. Any other interpretation would lead to incongruities and undesirable situations where an accused, who is facing prosecution in different courts for separate offences, can delay the subsequent proceedings or investigation relating to subsequent offences till the first proceedings have concluded or come to an end. That obviously was not and cannot be the legislative intent. This would be destructive and prevent speedy disposal of other cases involving heinous or serious offences, whereas the offence in the first case may not be so serious. We cannot ignore that committal proceedings, trial etc. in an earlier crime may get prolonged. The interpretation as suggested by the petitioner would enure to the benefit of an accused facing trial in another court and result in stay of proceedings in other courts. An unintended benefit/advantage to the accused would follow as by long lapse

of time the evidence may fade away. Cr.P.C. is a procedural law and has to be read in a practical and pragmatic manner to make it meaningful and not as a procedure, which creates impediment or will cripple proceedings in other cases. Cr.P.C. does not postulate that proceedings will continue only in one case. The following observations of a single Judge of Allahabad High Court in *Ranjeet Singh v. State of U.P. and Others*, 1995 Cri.L.J. 3505, are apposite:-

“8. I am of the opinion that Section 269 of the Code has a salutary purpose. All criminal proceedings must conclude as expeditiously as possible. If commitment proceedings or the trial is in progress, carrying out of the order under Section 269 of the Code may disrupt the speedy disposal of the case. Section 269 is aimed at uninterrupted disposal of the proceedings which are in progress and hence, the officer-in-charge of the prison has to abstain from carrying out the orders under Section 267 of the Code. Normally when the accused is confined in prison, he is incapable of moving out and commit further offence in another district. His detention prevents him from doing so. Perhaps the law makers did not foresee a case where the accused after release on bail commits a crime in another district and soon thereafter gets his bail cancelled to hinder the investigation of the crime subsequently committed by him. The legislature could hardly foresee that even in heinous offences like murder, the commitment proceedings may remain in doldrums for half a decade as in the present case. It appears to me that the only reasonable construction of words, "is under committal for trial or under remand pending a preliminary investigation," occurring in Section 269 is that the commitment proceedings, trial or investigation, as the case may be, should be in actual progress and not merely pending. In a case where the proceedings are not in actual progress, an accused can be reasonably sent for the purposes of another investigation,

committal proceedings or trial. Thus, when an order has been passed by the Magistrate under Section 267 of the Code, the officer-in-charge of the prison may with the consent of the concerned Court or the Investigating Officer carry out the order under Section 267 of the Code.

9. There is yet another aspect of the matter. The mere fact that committal proceedings are pending in respect of the applicant at Faizabad does not take away the jurisdiction of the Magistrate at Lucknow to pass an order under Section 267 of the Code and for this reason, too, the order passed by the learned Chief Judicial Magistrate, Lucknow does not suffer from any infirmity.”

5. We do not, therefore, think that reliance placed upon Section 269 CrPC is relevant and helps the cause of the petitioner. The writ of habeas corpus otherwise is also not maintainable in view of the recent pronouncement of Supreme Court in *Manubhai Ratilal Patel v. State of Gujarat*, (2013) 1 SCC 314, wherein it has been held that a writ of habeas corpus is devised for production of an individual illegally restrained or confined. Habeas corpus petition cannot be entertained when a person is committed to judicial custody or police custody by order of a competent court and prima facie it does not appear that the order passed is mechanical or is wholly illegal.

6. We clarify that the counsel for the petitioner has not pressed other issues/questions raised in the present writ petition and has only relied upon

Section 269 CrPC. Counsel for the petitioner has stated that if required and necessary he would press the other aspects at another time before an appropriate forum/court. We have not commented on other aspects.

7. With the aforesaid observations the writ petition is dismissed.

SANJIV KHANNA, J

SIDDHARTH MRIDUL, J

FEBRUARY 13, 2013

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