

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No. 1242 of 2016

Arising out of P.S. Case No. - null Year - null Thana - null District - MUZAFFARPUR

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Nitin Raj Verma, S/o Shambhu Prasad Verma, Resident of BSNL Quarter Gandhi Chowk, P.S. - Town Police Station, District - Chapra (Bihar)

.... Petitioner

Versus

1. The Director General of Police, C.B.I., New Delhi
2. The Deputy Inspector General of Police, C.B.I./EO-III New Delhi
3. The Superintendent of Police, C.B.I./EO-III New Delhi
4. The Investigating Officer, C.B.I./EOU-IX New Delhi
5. The I.G. Prison, State of Jharkhand, Ranchi
6. The Jail Superintendent, Birsa Munda Central Jail, Hotwar Ranchi
7. The Registrar Establishment, Civil Court, Muzaffarpur

.... Respondents

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Appearance :

For the Petitioner : Mr. Sanjay Kumar Sinha, Advocate

For the Res. No. 5 & 6 : Mr. Nishi Nath Ojha, Advocate

For the Res. No. 1 to 4 : Mr. Bipin Kumar Sinha, Advocate

For the Res. No. 7 : Mr. Mrigank Mauli, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
CAV JUDGMENT

Date:17-11-2017

The petitioner is a charge sheeted accused in connection with RC/221/2012/E0001, dated 02.01.2012 pending in the court of learned Special Judicial Magistrate, CBI, Muzaffarpur. The petitioner has invoked the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India for a direction to the respondents to consider and count the period of custody of the petitioner in connection with the aforesaid case from 19.10.2012 i.e. the date of arrest of the petitioner in connection with some other case i.e. RC-221/2011/E/0001 and RC221/2011/E/0002 pending before the learned Special Judicial Magistrate, CBI, Ranchi or to count the period from the date the petitioner made prayer before the court of learned Special Judicial



Magistrate, CBI, Muzaffarpur for production and remand in the present case i.e. on 04.01.2014 or to count the custody from the date on which the authorities of Birsa Munda Jail received the production warrant for production of the petitioner in the present case i.e. on 05.01.2014 or be counted from the date of filing of the charge sheet in the present case on 19.11.2013.

2. To consider the aforesaid prayer, it would be apt to look into the brief facts of this case including the relevant dates. There is no dispute that the petitioner was in custody in connection with some other case since 19.10.2012. The petitioner was never arrested in connection with the present case i.e. RC-221/2012/E/0001 registered on 02.01.2012. After completion of investigation, the police submitted charge sheet in this case on 19.11.2013 and in the relevant column of the charge sheet, it is mentioned that the petitioner is in custody with some other case as referred above. Thereafter, the petitioner came to know about his involvement in the present case and, accordingly, moved the learned Special Judicial Magistrate, CBI, Muzaffarpur on 04.01.2014 for issuance of a production warrant. The learned Special Judicial Magistrate, CBI, Muzaffarpur, accordingly, issued a production warrant addressed to the Jail Superintendent, Birsa Munda Jail, Ranchi. However, the petitioner could finally be produced before the learned Special Judicial Magistrate, CBI, Muzaffarpur only on 12.01.2015 and



was remanded to judicial custody on the same day.

3. Main contention of the petitioner is that he was not responsible for non-remand in this case for the circumstances which were beyond his control, rather under control of the respondents. Hence, for delayed production of the petitioner in the present case, the petitioner cannot be faulted. Therefore, the period of custody of the petitioner should be counted, at least, from the date on which the petitioner put forward prayer to the learned Special Judicial Magistrate, CBI, Muzaffarpur for his remand in the present case. Further contention of the petitioner is that in the facts and circumstance of this case, the period of custody of the petitioner in some other case should be added to count his custody in the present case also. Reliance has been placed on the case of **Govt. of Andhra Pradesh and another etc. v. Anne Venkateswara Rao etc. etc.** reported in **AIR 1977 S.C. 1096**, **Sundeep Kumar Bafna Versus State of Maharashtra And Another** reported in **(2014) 16 SCC 623** and **Niranjan Singh And Another Versus Prabhakar Rajaram Kharote And Others** reported in **(1980) 2 SCC 559**.

4. The respondents-CBI filed counter affidavit disputing the claim of the petitioner on the ground that in all the above referred cases, allegation against the petitioner is that he was involved in hacking the online transaction of bank and lakhs of rupees from the different account holders was transferred through RTGS (Real Time Gross Settlement)



from one account to another. It is further asserted that similar prayer of the petitioner was refused by the learned Special Judicial Magistrate, CBI, Muzaffarpur on 30.06.2016 and the said order was not challenged before any appellate/revisional authority and directly the writ jurisdiction of this Court has been invoked suppressing the aforesaid material facts, as such, the writ application is fit to be dismissed on this ground alone. It is also asserted in the counter affidavit that the trial is already going on.

5. It is worth to mention that before filing of the aforesaid counter affidavit on 21.04.2017, the petitioner filed I.A. No. 1491 of 2017, dated 17.04.2017 praying therein that order dated 30.06.2016 passed by the learned Special Judicial Magistrate, CBI, Muzaffarpur contained in Annexure-1 and 1/B be quashed.

6. Contention of the respondents is that in no circumstance, the period of custody of the petitioner in the present case can be counted from the date prior to his remand in the present case. There is no statutory provision for counting the period undergone by the petitioner in some other case.

7. This one is not a case of surrender or arrest of the petitioner in the referred case. This is a case of procurement of attendance of accused confined or detained in prison. The case of the petitioner is governed by Chapter XXII of the Code of Criminal Procedure (in short the "Cr.P.C."). Section 267 to Section 269 of the Cr.P.C. which are



relevant for this purpose are being reproduced below:-

“Section 267. Power to require attendance of prisoners. – (1) Whenever, in the course of an inquiry, trial or other proceeding under this Code, it appears to a Criminal Court, --

(a) that a person confined or detained in a prison should be brought before the Court for answering to a charge of an offence, or for the purpose of any proceedings against him, or

(b) that it is necessary for the ends of justice to examine such person as a witness,

the Court may make an order requiring the officer in charge of the prison to produce such person before the Court for answering to the charge or for the purpose of such proceeding or, as the case may be, for giving evidence.

(2) Where an order under sub-section (1) is made by a Magistrate of the second class, it shall not be forwarded to, or acted upon by, the officer in charge of the prison unless it is countersigned by the Chief Judicial Magistrate to whom such Magistrate is subordinate.

(3) Every order submitted for countersigning under sub-section (2) shall be accompanied by a statement of the facts which, in the opinion of the Magistrate, render the order necessary, and the Chief Judicial Magistrate to whom it is submitted may, after considering such statement, decline to countersign the order.

Section 268. Power of State Government to exclude certain persons from operation of section 267. --- (1) The State Government may, at any time, having regard to the matter specified in sub-section (2), by general or special order, direct that any person or class of persons shall not be removed from the prison in which he or they may be confined or detained, and thereupon, so long as the order remains in force, no order made under section 267, whether before or after the order of the State Government, shall have effect in respect of such person or class of persons.



(2) Before making an order under sub-section (1), the State Government shall have regard to the following matters, namely:--

(a) the nature of the offence for which, or the grounds on which, the person or class of persons has been ordered to be confined or detained in prisons;

(b) the likelihood of the disturbance of public order if the person or class of persons is allowed to be removed from the prison;

(c) the public interest, generally.

Section 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 kilometers distance from the prison, the officer in charge of the prison shall not so abstain for the reason mentioned in clause (b)."

8. A bare perusal of the aforesaid provisions of Section 269 of the Cr.P.C. would reveal that in four situations, the officer in charge of



prison shall abstain from carrying out the Court's order regarding production of the accused. In the present case, clause (b) of the aforesaid Section is applicable as the petitioner was accused in custody in another case and under remand pending inquiry/trial.

9. Thus, there is no unfettered right in favour of the accused that production warrant issued under Section 267 Cr.P.C. for production of the particular accused should be honoured by the concerned authorities in each and every case without fail. Section 268 Cr.P.C. above gives power to the State Government to pass necessary order in this regard.

10. The record reveals that the two cases were pending before the learned Special Judicial Magistrate, C.B.I., Ranchi against the petitioner, for inquiry/trial. In the circumstances, the authorities could have simply informed the Court regarding reason for non-compliance of the production order. The record does not reveal as to under what circumstances, the order could not be complied earlier than production of the petitioner in the case on 12.01.2015.

11. Since the prayer for counting the period of detention is mainly for the purpose of getting remission etc. in the event of conviction. The observation in the judgment of A.V. Rao's (**supra**) is relevant to be noticed. In paragraph 7 of the judgment, the Hon'ble Apex Court held as follows:-

"..... The argument is that the expression "period of



*detention” in Section 428 includes detention under the Preventive Detention Act or the Maintenance of Internal Security Act. It is true that the section speaks of the “period of detention” undergone by an accused person, but it expressly says that the detention mentioned refers to the detention during the investigation, enquiry or trial of the case in which the accused person has been convicted. **The section makes it clear that the period of detention which it allows to be set off against the term of imprisonment imposed on the accused on conviction must be during the investigation, enquiry or trial in connection with the “same case” in which he has been convicted.**(emphasis is mine) We therefore agree with the High Court that the period during which the writ petitioners were in preventive detention cannot be set off under Section 428 against the term of imprisonment imposed on them.”*

12. The observation aforesaid clearly indicates that “detention during the investigation, inquiry or trial of the case in which the accused person has been convicted is only relevant for consideration of period of detention”.

13. In para 8 of the judgment, the Hon’ble Apex Court observed as follows:-

“There is however substance in the other point raised by the writ petitioners regarding the computation of the period during which the writ petitioner in each case should be held to have suffered imprisonment on conviction. In A. V. Rao’s case (W.P. 1865/76), he was already in detention under the Preventive Detention Act when the First Information Report was lodged on December 18, 1969 in connection with the sessions cases. Some of the co-accused in these cases were arrested and produced before the



Magistrate for remand on December 19, 1969, but Rao was produced before the Magistrate sometime in April, 1970 after he was released from preventive detention. It was argued that he also could have been produced before the Magistrate for remand on December 19, 1970. On behalf of the respondent, State of Andhra Pradesh, it was contended that as Rao was already in detention under the Preventive Detention Act, it was not possible to produce him before the Magistrate for remand until the period of preventive detention was over. We do not find any justification in law for the position taken up by the State. Rao being already in custody, the authorities could have easily produced him before the Magistrate when the First Information Report was lodged. Nothing has been pointed out to us either in the preventive detention law or the Code of Criminal Procedure which can be said to be a bar to such a course. That being so we think that the claim that the entire period from December 19, 1969, when many of the co-accused were produced before the Magistrate, to April 18, 1970 should be treated as part of the period during which Rao was under detention as an undertrial prisoner, must be accepted as valid. A. V. Rao's appeal No. 484 of 1976 is allowed to this extent."

14. Evidently, the aforesaid provisions of the Code of Criminal Procedure was not placed before the Hon'ble Bench and the Hon'ble Apex Court observed that there is no provision in the Code of Criminal Procedure which can be said to be a bar to such a course i.e. to produce the accused in custody before the Magistrate when the First Information Report was lodged.

Other two cases relied by the petitioner and



referred above do not cover the point involved in this case.

15. Therefore, in my view, the petitioner shall be deemed to be in custody in the referred case from 12.01.2015 only when the petitioner was for the first time produced in the case and remanded to judicial custody.

16. With the aforesaid observation, this writ application stands disposed of.

(Birendra Kumar, J)

Kundan/-

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