

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION No.29887 of 2018

Date: 27.09.2018

Between :

Ahamed Riswan

... Petitioner

And

The State of Andhra Pradesh,
rep. by its Principal Secretary,
Home Department,
Velagapudi, Amaravathi,
Guntur District and others.

... Respondents

COUNSEL FOR PETITIONER : Mr. B. Kumar, Senior Counsel
representing Mr. B. Vijaysen Reddy

COUNSEL FOR RESPONDENTS : A.G.P. attached to A.G. (A.P.)

THE COURT MADE THE FOLLOWING:

ORDER : (per Hon'ble Sri Justice C.V. Nagarjuna Reddy)

This writ petition is filed for issue of Habeas Corpus directing release of Mr. A.T. Maideen, s/o. Ahamed Thambi (for short "the detenu") from the police custody.

A detailed counter affidavit and additional counter affidavit are filed. In the counter affidavit, it is *inter alia* averred that though the detenu was granted bail in connection with Crime Nos.452/2017, 66/2016, 432/2015 and 32/2016 of different Police Stations, on account of non-production of sureties in Crime No.66/2016 of Siddhout P.S., he was remanded to the judicial custody at Central Prison, Kadapa, and during the period of custody, he has been produced before the jurisdictional Magistrates concerned under P.T. Warrants in connection with Crime Nos.112/2016, 240/2017, 42/2017, 135/2017 and 104/2017 of different Police Stations.

The learned Assistant Government Pleader for Home has drawn the attention of this Court to two docket orders i.e., (1) CrI.M.P.No.731 of 2018 (PRC.No.10/2018) and (2) CrI.M.P.No.730 of 2018 (Crime No.104/2017) passed by the jurisdictional Magistrates concerned, taking the detenu into custody in connection with Crime Nos.42/2017 and 104/2017, respectively.

Mr. B. Kumar, learned Senior Counsel, representing Mr. B. Vijaysen Reddy, learned counsel for the petitioner, submitted that unless formal arrest of the detenu is shown, the jurisdictional Magistrates had no authority or jurisdiction to pass such orders.

We are afraid, we cannot adjudicate on the legality or otherwise of the Judicial orders passed by the jurisdictional Magistrates. The grievance of the detenu in this writ petition is that inspite of this Court allowing W.P.No.14693 of 2018, by order dated 17.07.2018, the police are not releasing him from the custody and that, therefore, they are holding the detenu under illegal custody. When the detenu is detained under various judicial orders passed by the jurisdictional Magistrates, we cannot term such custody as illegal custody, as there is a distinction between an illegal custody and the custody made in pursuance of an illegal judicial order. In the latter case, unless the judicial orders are set aside by the competent Court, the custody cannot be termed as illegal.

In this view of the matter, we are not inclined to grant the relief sought for in this writ petition. However, the detenu is left with the liberty to question the above mentioned or any other similar orders passed by the jurisdictional Magistrates claiming appropriate reliefs thereof.

The writ petition is accordingly dismissed with the above observations. No order as to costs.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

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Msr



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