

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**WPHC No. 9 of 2020**

- Kiyamunddin Hasan @ Panna S/o Late Kallu Hasan, aged about 65 years (prisoner) through his wife namely Jubeda Beham W/o Kiyamuddin Hasan @ Panna aged about 60 years, R/o Mudapar, Tahsil and District Korba C.G.

-----Petitioner

VERSUS

1. State of Chhattisgarh through: the Secretary, Department of Home (Jail), Mantralaya, Mahanadi Bhawan, Nawa Raipur, District Raipur C.G.
2. The Director General and Inspector General Prison, the Jail and Correctional Services Chhattisgarh, Jail Road, Raipur, District Raipur C.G.
3. The District Magistrate, Korba, District Korba, C.G.
4. The Jail Superintendent, District Jail, Korba, District Korba C.G.
5. The Superintendent of Police, Korba, District Korba C.G.
6. The Station House Officer, Out Post-CSEB, Korba, Police Station- Kotwali, Korba, District Korba C.G.

-----Respondents

For Petitioner	:	Mr. Dharmesh Shrivastava, Advocate
For Respondent -State	:	Mr. Gagan Tiwari, Dy. G.A.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****Per Parth Prateem Sahu, J.****07/10/2020**

1. The petitioner who has been arrested by the Police has filed this petition through his wife seeking writ of Habeas Corpus with the following reliefs.

“10.1 That this Hon'ble Court may kindly be pleased to call for the entire records pertaining to the case of the petitioner for perusal of this Hon'ble Court.

10.2 That, this Hon'ble Court may kindly be pleased to issue a writ in the nature of habeas corpus to release the petitioner from illegal detention from the respondent authorities as he has been arrested by the respondent no. 6 and detained in illegal judicial custody before respondent no. 4.

10.3 That, this Hon'ble Court may kindly be pleased to pass an order whereby the respondent authorities may kindly be directed to pay the petitioner a sum of Rs. 5,00,000/- as

compensation for mental harassment and illegal detention from 12.08.2020.

10.4 That, any other writs and direction which this Hon'ble Court deems fit and just in the facts and circumstances of the case be granted to the petitioner.

10.5 That the cost of the petition may kindly be awarded in favour of the petitioners.”

2. Facts of the case in nutshell are that the petitioner who is doing the business of sale and purchase of scrap materials/ articles was arrested by the police of Out Post- CSEB, Police Station- Kotwali, District Korba C.G. on 12-08-2020 in connection with the Istgasa No. 9/2020 under Section 41(1)(d) of Code of Criminal Procedure, 1973 (for short “Cr.P.C.”). He was produced before the Judicial Magistrate Ist Class District Korba who granted judicial custody to the police, pending investigation. This made the petitioner to file this writ petition.
3. Mr. Dharmesh Shrivastava, learned counsel for the petitioner submits that the petitioner was arrested only on the basis of Istgasa and under the provisions of Section 41(1-4) {the correct provision is Section 41(1)(d) of the Cr.P.C.} which is not a cognizable offence. The Judicial Magistrate who passed the order of remand was not having the jurisdiction or authority to pass such an order of remand and grant judicial custody under the provisions of Section 167(2) of the Cr.P.C. He submits that as there being no offence registered against the petitioner, particularly, under the provisions of Indian Penal Code or under any law, the Magistrate ought not to have passed an order of remand granting judicial custody to the police, putting the petitioner behind the bar without registering any case for punishable offence(s). The petitioner will deem to be in illegal detention. He further submits that under the Cr.P.C, the procedure of investigation starts with, drawing a proceeding under Section 154 and ends with the proceedings to be drawn in accordance with the Section 166 of the Cr.P.C.

4. Upon hearing the learned counsel for the petitioner, we have put specific query to him with regard to the maintainability of this writ petition for issuance of writ of habeas corpus. Learned counsel submits that the writ petition is maintainable as without registering any cognizable offence against the petitioner, police authorities arrested him and further without looking into the remand papers, Judicial Magistrate has passed an order of remand and sent the petitioner to jail. Learned counsel, in support of his submission, places his reliance in a judgment passed by High Court of Kerala in the case of **Manikandan v. S.I. of Police, Nallam Police Station** passed in **C.M.P. 3967 of 2007** reported in **Laws (Ker) 2007 11 13** decided on **29.11.2007** and the judgment passed by learned Single Judge of this Court in case of **Sheoprasad v. State of Chhattisgarh** reported in **2001CJ(CHH) 100**, decided on 12.03.2001 in Misc. Criminal Application No. 506/2000. He submits that in absence of the arrest of the petitioner for any cognizable offence, his detention by the Police will come within the purview of illegal detention, hence this writ petition is maintainable.

5. Mr. Gagan Tiwari, learned counsel representing the State, controverting the submission made by the counsel for the petitioner submits that the petitioner was arrested by the police on suspicion within the time prescribed, he was produced before the Judicial Magistrate and the learned Magistrate has passed an order of granting remand of the petitioner to the police. As the petitioner is behind the bar under the order of learned Magistrate, the custody of the petitioner is a judicial custody and cannot be termed as illegal detention. He submits that in the aforementioned facts of the case, when the petitioner is under the judicial custody, the writ petition seeking writ of habeas corpus is not maintainable. He places his reliance on **State of Maharashtra and others v. Tasneem Rizwan Siddiquee** reported in **(2018) 9 SCC 745**. He further contended that the petitioner aggrieved by remand order passed by the learned

Magistrate has challenged the same by way of Revision petition before the Sessions Court which was dismissed. The petitioner is already pursuing his remedy available to him under the law.

6. We have learned counsel for the respective parties and also perused the record.
7. The writ of habeas corpus can be maintainable under Article 226 of the Constitution of India only to secure the relief of a person found to be detained illegally. Illegal detention means the detention by any person or authority without following the procedure of law. In this case the petitioner was arrested by the Police. He was produced before the Judicial Magistrate and by virtue of the order passed by the Judicial Magistrate, he was sent to judicial custody. The submission of the learned counsel for the petitioner that in the facts of the case the Judicial Magistrate ought not to have passed the order of remand and sending the petitioner in judicial custody. This ground may be available to the petitioner to challenge the order passed by the Judicial Magistrate but before appropriate forum by filing appropriate proceedings.
8. The Hon'ble Supreme Court in **Tasneem Rizwan Siddiquee (supra)** while dealing with the issue of maintainability of the habeas corpus petition in identical situation where the person in pursuance of remand order passed by the Judicial Magistrate was in police custody and held thus:

“10. The question as to whether a writ of habeas corpus could be maintained in respect of a person who is in police custody pursuant to a remand order passed by the jurisdictional Magistrate in connection with the offence under investigation, this issue has been considered in *Saurabh Kumar v. Jailor, Koneila Jail*, (2014) 13 SCC 436 and *Manubhai Ratilal Patel v. State of Gujarat*, (2013) 1 SCC 314. It is no more res integra. In the present case, admittedly, when the writ petition for issuance of a writ of habeas corpus was filed by the respondent on 18-3-2018/19-3-2018 and decided by the High Court on 21-3-2018 her husband Rizwan Alam Siddiquee was in police custody pursuant to an order passed by the Magistrate granting his police custody in

connection with FIR No. I-31 vide order dated 17-3-2018 and which police remand was to ensure till 23-3-2018. Further, without challenging the stated order of the Magistrate, a writ petition was filed limited to the relief of habeas corpus. In that view of the matter, it was not a case of continued illegal detention but the incumbent was in judicial custody by virtue of an order passed by the jurisdictional Magistrate, which was in force, granting police remand during investigation of a criminal case. Resultantly, no writ of habeas corpus could be issued.”

9. In the case at hand also, after arrest, police produced the petitioner before the jurisdictional Magistrate and the Magistrate passed an order granting police remand. This being the position, the petitioner is not in an illegal detention. Further, going by the pleadings and relief(s) sought, there is no challenge to the order passed by the Judicial Magistrate but as submitted by the learned counsel for the State that the order, passed by the learned Magistrate, was challenged by way of filing a Revision petition before the Sessions Court which came to be dismissed is sufficient to show that the petitioner has already approached the appropriate forum by way of filing a Revision to challenge the order of learned Magistrate challenging its sustainability under the law.
10. The judgment relied upon by the learned counsel for the petitioner of the Kelera High Court in **Manikandan case (supra)** is arising out of the proceedings filed under Revisionary jurisdiction and not in writ petition for issuance of habeas corpus. The other judgment of **Sheoprasad (supra)** relied upon by the learned counsel for the petitioner is passed in a criminal case filed under Section 482 of Cr.P.C. and not as a writ petition(Habeas Corpus).
11. The petitioner has filed this writ petition as habeas corpus on 31-08-2020, and also challenged the order of Magistrate by way of filing Revision before the Sessions Court which is not denied by him, in fact, he has not brought to the notice of the Court that he has already pursued his remedy

available to him against the order passed by the Judicial Magistrate. This amounts to suppression of facts.

12. In the aforementioned facts of the case, no writ of habeas corpus can be issued. The petition is highly misconceived which is liable to be and is hereby dismissed.

13. In the facts of the case, we were intended to impose cost but, refrained ourselves from passing such order.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge