

A THE STATE OF MAHARASHTRA & ORS.

v.

TASNEEM RIZWAN SIDDIQUEE

(Criminal Appeal No.1124 of 2018)

B SEPTEMBER 05, 2018

**[DIPAK MISRA, CJI, A. M. KHANWILKAR AND
DR. D.Y. CHANDRACHUD, JJ.]**

C *Writs – Habeas Corpus – Husband of respondent was arrested by police in connection to an offence under investigation – Thereafter, Magistrate remanded him to police custody – 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 offence under investigation – High Court held that husband of respondent was*
D *illegally and unlawfully detained by the police and made scathing observations against the police officials – On appeal, held: In instant case, admittedly, when the writ petition for issuance of a writ of habeas corpus was filed by the respondent in the High Court, husband of respondent during this time was in police custody*
E *pursuant to an order passed by the Magistrate granting his police custody in connection with FIR – Further, writ petition was filed without challenging the order of the Magistrate – 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*
F *a criminal case – No writ of habeas corpus could have been issued – Thus, High Court erred by entering upon the merits of the arrest in absence of any challenge to the judicial order passed by the Magistrate – Furthermore, the High Court wrongly made scathing observations against the police officials without giving them*
G *opportunity to offer explanation on affidavit – Accordingly, order of the High Court set aside – Penal Code, 1860 – ss.420, 201, 171, 467, 468 and 120-B – Code of Criminal Procedure, 1973 – ss.160 and 41-A – Information Technology Act, 2000 – ss.66, 72 and 72(a) – Indian Telegraphs Act, 1885 – s.26.*

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Allowing the appeal, the Court A

HELD: 1. In the present case, admittedly, when the writ petition for issuance of a writ of habeas corpus was filed by the respondent and subsequently, decided by the High Court her husband was in police custody pursuant to an order passed by the Magistrate granting his police custody in connection with FIR. 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. [Para 9][381-H; 382-A-C] B C

2. The impugned order of the High Court was passed notwithstanding the judicial order of remand was still in operation. The High Court, should not have taken umbrage to the submission made on behalf of the Deputy Commissioner of Police that the respondent's husband could be released if so directed by the Court. The DCP had no other option but to make such a submission. For, he could not have voluntarily released the accused who was in police custody pursuant to a judicial order in force. The High Court ought not to have made scathing observations even against the Investigating Officer without giving him opportunity to offer his explanation on affidavit. [Para 10] [382-F-G] D E

3. Since no writ of habeas corpus could be issued in the fact situation of the present case, the High Court should have been loath to enter upon the merits of the arrest in absence of any challenge to the judicial order passed by the Magistrate granting police custody and more particularly for reasons mentioned in that order of the Magistrate. In a somewhat similar situation, this Court in State represented by Inspector of Police and Ors. v. N.M.T. Joy Immaculate deprecated passing of disparaging and strong remarks by the High Court against the Investigating Officer and about the investigation done by them. Accordingly, the observations made in paragraphs 4 to 6 of the impugned judgment against the concerned police officials in the facts of the present case are expunged. [Para 11] [382-H; 383-A-C] F G H

- A *Saurabh Kumar through his father v. Jailor, Koneila Jail and Anr.* (2014) 13 SCC 436 : [2014] 8 SCR 909 ; *Manubhai Ratilal Patel v. State of Gujarat and Ors.* (2013) 1 SCC 314 : [2012] 8 SCR 993 ; *State represented by Inspector of Police and Ors. v. N.M.T. Joy Immaculate* (2004) 5 SCC 729 : [2004] 2 Suppl. SCR 71 – relied on.

Case Law Reference

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| | [2014] 8 SCR 909 | relied on | Para 9 |
| C | [2012] 8 SCR 993 | relied on | Para 9 |
| | [2004] 2 Suppl. SCR 71 | relied on | Para 11 |

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1124 of 2018.

- D From the Judgment and Order dated 21.03.2018 of the High Court of Judicature at Bombay in Writ Petition No. 1353 of 2018.

Nishant Ramakantrao Katneshwarkar, Adv. for the Appellants.

C. A. Sundaram, Sr. Adv., Nikhil Singhvi, Kanak Bose, Abhishek Gupta, Advs. for the Respondent.

- E The Judgment of the Court was delivered by
A. M. KHANWILKAR, J. 1. Leave granted.

- F 2. The appellants have assailed the decision of the High Court of Judicature at Bombay dated 21st March, 2018 in Writ Petition No.1353 of 2018, whereby the High Court allowed the writ petition preferred by the respondent, for issue of writ of habeas corpus directing the appellants to produce her husband who, according to the respondent, was illegally and unlawfully detained by the police in connection with FIR No.I-31/2018.

- G 3. The decision of the High Court is assailed essentially on two counts. First, that no writ of habeas corpus could be issued in respect of a person who was in police custody in connection with a criminal case under investigation, pursuant to an order of remand passed by the court of competent jurisdiction. Second, in any case, the High Court should have refrained from making scathing observations against the concerned police officials and the said remarks should be expunged.
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4. Briefly stated, the facts leading to the filing of this appeal are that on 24th January, 2018, a secret information was received by the local police that one Mukesh Pandian, who is a private detective, was obtaining call detail records of different people and was selling them in return for hefty amount of money. The police caused the arrest of Mukesh Pandian and sought call details of Vodafone Company. First Information Report, bearing No.I-31/18 was registered against Mukesh Pandian for offences punishable under Section 420 of the Indian Penal Code (IPC) and Sections 66, 72 and 72(a) of the Information Technology Act, 2000. During the investigation, additional offences under Section 26 of the Indian Telegraphs Act, 1885 and Sections 201, 171, 467, 468 and 120-B of IPC were added. Later on, police arrested one Prasant Palekar and found various mobile chats in his mobile including with Rizwan Alam Siddique (husband of the respondent herein) and other persons. The chat record collected by the police during the investigation, between Rizwan Alam Siddique and Prasant Palekar, disclosed that Rizwan Alam Siddique had asked Prasant Palekar for call details record of the wife of one Nawazuddin Siddique, indicative of involvement of Rizwan Alam Siddique in the commission of offence. As a result, a notice was issued to Rizwan Alam Siddique on 14th February, 2018 under Section 160 of the Code of Criminal Procedure, in response to which he informed the police that he will be travelling till 21st February, 2018 and will appear before the police after 22nd February, 2018. As assured, Rizwan Alam Siddique visited the police station on 23rd February, 2018 for recording of his statement. As the investigation progressed, presence of Rizwan Alam Siddique was found to be necessary by the Investigating Officer who, therefore, tried to get in touch with him by sending messages on his mobile phone on 15th March, 2018. Rizwan Alam Siddique responded to the said messages and showed his willingness to participate in the investigation. However, according to the Investigating Officer he did not cooperate with the police and for which reason, by way of abundant precaution, on 16th March, 2018 the police issued notice under Section 41-A of Cr.P.C. which notice was attempted to be served but refused by Rizwan Alam Siddique. Further, when the Investigating Officer along with his subordinates went to the premises of Rizwan Alam Siddique to serve the said notice, it transpired that Rizwan Alam Siddique was destroying the evidence in his mobile phone as well as in his laptop and, therefore, the Investigating Officer took a conscious decision to arrest him by taking assistance from the nearest police station i.e. Versova

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A Police Station. After his arrest, he was produced before the jurisdictional Magistrate on 17th March, 2018 within the statutory period. The jurisdictional Magistrate gave the police custody of Rizwan Alam Siddique until 23rd March, 2018 after recording his satisfaction for such police remand.

B 5. The respondent, however, rushed to the High Court and filed a writ petition on 18th/19th March, 2018, being Writ Petition No.1353/2018 praying for a direction to the appellants (respondents in the writ petition) to produce her husband before the Court and to justify his detention in accordance with procedure established by law. Further relief claimed was to set her husband Rizwan Alam Siddique at liberty. The writ
C petition was moved on 20th March, 2018 when the Court in its order recorded as follows:

D “4. Mr. Merchant would submit that once this notice is issued, then, in terms of sub-section (1), the police officer was satisfied that the arrest of the petitioner’s husband is not required and that the matter falls under the provisions of sub-section (1) of Section 41. He, therefore, was pleased to issue a notice directing the petitioner’s husband to appear before him at such place as is specified in the notice.

E 5. The factual argument is that this notice is dated 16th March 2018 and it informs the husband of the petitioner to appear before the officer signing this notice on 17th March 2018. Mr. Merchant would submit that sub-section 2 of Section 41-A contemplates issuance of such notice but such phrase would have to be construed as “service or execution of notice”, else sub-section 1 would be
F rendered otiose. Therefore, until the person fails to comply with the terms of notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by the competent Court in this behalf, unable to arrest him for the offence mentioned in the notice. If there was compliance with the notice by the petitioner’s husband, then, no question arises,
G according to Mr. Merchant, of presentation of such petition, but it is the respondents’ assertion that when they sought to serve this notice on the petitioner’s husband, he refused. That is how the panchanama is drawn.

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6. Since Mr. Merchant says and on the basis of the pleadings in the petition, that there was a panchanama drawn and a copy of which is at pages 41 and 42 of the paper book, we have carefully perused it. It is in Marathi. A

7. The whole panchanama has been perused with the assistance of Mr. Yagnik, learned APP, who with all his persuasive ability, could not find any sentence therein to the effect that the petitioner's husband refused to accept this notice when it was served on him at his place of work/his office. In these circumstances and particularly when the notice at page 42 also contains below the signatures of panchas and the senior police inspector, the signature of the accused, then, whether it is a signature acknowledging the notice and it's receipt or is it asserting, as is now stated across the bar by Mr. Yagnik, his refusal. Once such a statement is absent in the panchanama, then, we prima facie find it very difficult to agree with Mr. Yagnik. B C

8. However, Mr. Yagnik prays for time to produce the contemporaneous record, which according to him, would indicate that the noticee/husband of the petitioner refused to accept the notice referable to and styled as one under sub-section (1) of Section 41-A of Cr.P.C. On a query as to where is the original record or the contemporaneous record, the answer of Mr. Yagnik is that today in the ongoing legislative assembly session, there is a query and which has to be answered by the concerned Minister and he requires the original documents so also officer's presence in the legislature secretariat. That is how the whole record has been taken to the legislative assembly secretariat. Mr. Yagnik, therefore, seeks time till tomorrow, which is 21st March 2018 at 11.00 a.m.. We post this matter tomorrow, 21st March 2018 at 11.00 a.m. only to enable Mr. Yagnik to produce such record and answer the queries of the Court; else, all the consequences in law shall follow. D E F

9. This opportunity is granted to Mr. Yagnik only because the document at pages 41 and 42 denotes that not only the petitioner's husband was present at his office but he and his staff handed over the articles and details of his e-mail identity, mobile and related information. The panchanama records that preparation of the same G

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A had commenced at 20.10 hours and ended at 22.10 hours on 16th March 2018.

10. Stand over to 21st March 2018 at 11.00 a.m.”

B 6. Again, the matter was listed on 21st March, 2018 when the Division Bench of the High Court perused the record produced by the Public Prosecutor, including the entry in the police diary, the remand report and other documents. It held that the said record did not show necessary compliance of the mandate of law before the arrest of Rizwan Alam Siddique. After recording that finding, it went on to observe that such arrest infringes the valuable right guaranteed under Article 21 of the Constitution and, therefore, acceded to the request of the respondent to set Rizwan Alam Siddique at liberty forthwith. At the same time, the High Court went on to make scathing observations against the police officials as recorded in paragraphs 4-6 of the impugned judgment, which read thus:

D “4. A brief hearing today resulted in Ms. Pai seeking time to take instructions and after speaking to the Deputy Commissioner of Police. At her request, the matter was taken up at 1.00 p.m. and when it was called out, on instructions from the Deputy Commissioner of police, who is present in court, it is stated that the said Deputy Commissioner has no objection to the petitioner being released, if so directed by this court.

E 5. Once we have noted, in terms of our earlier order and even at today’s hearing that he is not obliging this court by making any statement, then, he must admit that he has taken law in his hands and he would voluntarily proceed to release the petitioner’s husband from custody. This was the expectation from this police officer and if he had apologised genuinely and bonafide and sought time to release the petitioner’s husband, we would not have directed any action to be taken against him. However, he remains adamant and persists that only if this court says that the petitioner’s husband should be released, he would have no objection to such release. He would bring now to the court, the proceedings before the Magistrate and the contents of the remand report, which, according to him, permit him to detain the petitioner’s husband in custody till 23rd March, 2018.

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6. We do not think any assistance can be derived from the entries in the diary or the remand proceedings. We do not think that the order of the Magistrate remanding the petitioner's husband to police custody till 23rd March, 2018 can bind this court and if the true and correct facts had been brought to the notice of the concerned judicial officer, possibly, he would not have passed the order on the request of this police officer. Therefore, while we direct, after holding that the petitioner's husband was unlawfully detained, his release from the custody forthwith, we also direct the superior police officials, particularly the functionary in the Department of Home, Government of India to launch disciplinary proceedings and the petitioner and her husband may initiate or file civil suit and criminal prosecution against this police officer for taking the law in his hands. Such prosecution shall continue uninfluenced by any proceedings that may be initiated against the petitioner's husband for having violated the law." A
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7. Aggrieved by this decision, the appellants have filed the present appeal on two counts, as already indicated in paragraph 3 above. The respondent, on the other hand, has supported the decision of the High Court and submits that the appeal is devoid of merit. It is also brought to our notice that Rizwan Alam Siddique has already been released after the impugned judgment. In response to this submission, counsel for the appellants would submit that the appellants are more concerned about the scathing observations made by the High Court against the police officials and would be more than content if liberty is granted to the police to proceed against the said Rizwan Alam Siddique in accordance with law. D
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8. We have heard Mr. Nishant Ramakantrao Katneshwarkar, learned counsel for the appellants and Mr. C.A. Sundaram, learned senior counsel appearing for the respondent. F

9. 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 the case of *Saurabh Kumar through his father Vs. Jailor, Koneila Jail and Anr.*,¹ and *Manubhai Ratilal Patel Vs. State of Gujarat and Ors.*² It is no more *res integra*. In the present case, admittedly, when G

¹(2014) 13 SCC 436

²(2013) 1 SCC 314

A the writ petition for issuance of a writ of habeas corpus was filed by the respondent on 18th/19th March, 2018 and decided by the High Court on 21st March, 2018 her husband Rizwan Alam Siddique 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 17th March, 2018 and which police remand was to enure till 23rd March, 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.

10. Reverting to the prayer for expunging the scathing observations made in the impugned judgment, in particular paragraphs 4-6, reproduced earlier, it is submitted that the said observations were wholly unwarranted as the concerned Deputy Commissioner of Police who was present in Court, could not have given concession to release Rizwan Alam Siddique in the teeth of a judicial order passed by the Magistrate directing police remand until 23rd March, 2018. Moreover, it is evident that the High Court proceeded to make observations without giving any opportunity, whatsoever, to the concerned police officials to explain the factual position on affidavit. The writ petition was filed on 18th/19th March, 2018 and was moved on 20th March, 2018 when the Court called upon the Advocate for the appellants to produce the record on the next day i.e. 21st March, 2018. The impugned order came to be passed on 21st March, 2018, notwithstanding the judicial order of remand operating till 23rd March, 2018. The High Court, in our opinion, should not have taken umbrage to the submission made on behalf of the Deputy Commissioner of Police that the respondent's husband could be released if so directed by the Court. As aforesaid, the DCP has had no other option but to make such a submission. For, he could not have voluntarily released the accused who was in police custody pursuant to a judicial order in force. The High Court ought not to have made scathing observations even against the Investigating Officer without giving him opportunity to offer his explanation on affidavit.

11. Suffice it to observe that since no writ of habeas corpus could be issued in the fact situation of the present case, the High Court should

have been loath to enter upon the merits of the arrest in absence of any challenge to the judicial order passed by the Magistrate granting police custody till 23rd March, 2018 and more particularly for reasons mentioned in that order of the Magistrate. In a somewhat similar situation, this Court in *State represented by Inspector of Police and Ors. Vs. N.M.T. Joy Immaculate*³ deprecated passing of disparaging and strong remarks by the High Court against the Investigating Officer and about the investigation done by them. Accordingly, we have no hesitation in expunging the observations made in paragraphs 4 to 6 of the impugned judgment against the concerned police officials in the facts of the present case.

12. As aforesaid, even though this appeal succeeds, since the respondent's husband Rizwan Alam Siddique has already been released after the impugned judgment, the Investigating Officer may proceed against him in connection with the stated crime registered as FIR No.I-31/2018 strictly in accordance with law and not merely because the impugned order has been set aside. We may not be understood to have expressed any opinion regarding the guilt or otherwise of the respondent's husband or correctness of the charges levelled against him.

13. Accordingly, this appeal is allowed in the aforementioned terms.

Ankit Gyan

Appeal allowed.

³(2004) 5 SCC 729