AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.M.P.No.635 of 2016

State of Chhattisgarh, Through Station House Officer, Police Station Kurud, District Dhamtari, Chhattisgarh

---- Applicant

Versus

Smt. Savita Sahu W/o. Late Manharan Sahu, aged about 28 years, R/o. Village Baangar, Police Station Kurud, District Dhamtari, Chhattisgarh

---- Respondent

For Applicant:- Mr.Ravi Bhagat, Govt.Advocate
For Respondent: None present though served

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

01/05/2019

1. This petition under Section 482 of the CrPC filed by the applicant/State seeks to question the direction contained in para-22 of the judgment dated 2.5.2015 passed by the Sessions Judge, Dhamtari in Sessions Trial No.45/2014 by which while convicting the respondent herein for offence under Sections 302 of the IPC for causing death of her son and under Section 307 of the IPC for attempting to cause death of her daughter, directed the Chief Secretary, State of Chhattisgarh to proceed in accordance with law against the persons responsible under Section 342 of the IPC as the respondent herein was kept in jail from 13.1.2015 to 21.1.2015 without order of the competent Court, she not produced before the Court on the time of hearing.

2. The respondent herein was charge-sheeted for offence under Section

302 and 307 of the IPC for murder of his son Bhushan Sahu and for attempt to commit murder of her daughter Kajal Sahu. During the course of trial from 13.1.2015 to 21.1.2015 she could not be produced for want of non-availability of police force to escort the respondent to the Court where the trial was pending. Learned Sessions Judge, Dhamtari while convicting the respondent herein issued the aforesaid direction which has been called in question in this petition.

3. Mr.Ravi Bhagat, learned Deputy Government Advocate appearing for the applicant/State would submit that learned Sessions Judge is absolutely unjustified in holding that offence under Section 342 of the IPC would be made out for non-production of the respondent herein from 13.1.2015 to 21.1.2015 before the said Court as she was never admitted to the privilege of bail by the competent Court and the person acting in discharge of duty cannot be said to act criminally with respect to the offence allegedly committed under Section 342 of the IPC, as such, no offence under Section 342 of the IPC is made out. Therefore, direction contained in para-22 of the said judgment deserves to be set aside.

4. None present for the respondent though served.
5. I have heard learned counsel for the petitioner and considered his submission and went through the record with utmost circumspection.
6. It is admitted position on record that on the date of hearing from 13.1.2015 to 21.1.2015 the respondent was in custody, at that time, she could not be produced before the said Court where Sessions Trial was pending against her at the time of hearing. It is the case of the

State that on 13.1.2015 wireless message was sent to the Sessions Judge, Dhamtari intimating that due to non-availability of police squad, the accused and her warrant cannot be produced and prayer was made for intimating the next date hearing. The Sessions Judge on 21.1.2015 sought explanation from the Superintendent, Central Jail, Raipur, which he had replied that prisoners are produced before the Court in accordance with the Prisoners (Attendance in Courts) Act, 1955 (hereinafter called as "the Act of 1955") and duty to provide for escorts for production in the Court is that of District Police and the jail authorities can only request for such escorts to be provided as the necessary infrastructure and man power to provide such escort is available only with the district police and not with the jail authorities.

7. The Act of 1955 has been enacted to provide for the attendance in Courts of persons confined in prisons for securing their presence for answering a criminal charge.

8. At this stage, it would be appropriate to notice Sections 3(2), 5 and 6 of the Act of 1955 which provide as under:-

> "**3. Power of Courts to require appearance of prisoners to give evidence or answer a charge**.-
> (1) xxx xxx xxx
> (2) Any Criminal Court may, if a charge of an offence against a person confined in any prison is material in any matter pending pending before it, make an order in the form set forth in the Second Schedule, directed to the officer in charge of the prison.
>
> **5. Prisoners to be brought up**.-Upon delivery of any order made under section 3 to the officer in charge of the prison in which the person named therein is confined, that officer shall cause him to be taken to the Court in which his attendance is required, so as to be present in the Court at the time in such order mentioned, and shall cause him to be detained in custody in or near the court until he has

been examined or until the judge or presiding officer of the court authorises him to be taken back to the prison in which he was confined.

6. Officer in charge of prison when to abstain from carrying out order.—Where the person in respect of whom an order is made under section 3—

(a) is, in accordance with the rules made in this behalf, declared to be unfit to be removed from the prison where he is confined by reason of sickness or other infirmity; or

(b) is under committal for trial; or

(c) is under remand pending trial or pending a preliminary investigation; or

(d) is in custody for a period which would expire before the expiration of the time required for removing him under this Act and for taking him back to the prison in which he is confined, the officer in charge of the prison shall abstain from carrying out the order and shall send to the court from which the order had been issued a statement of reasons for so abstaining: Provided that such officer as aforesaid shall not so obstain where—

(i) the order has been made by a criminal court; and

(ii) the person named in the order is confined under committal for trial or under remand pending trial or pending a preliminary investigation and is not declared in accordance with the rules made in this behalf to be unfit to be removed from the prison where he is confined by reason of sickness or other infirmity; and

(iii) the place, where the evidence of the person named in the order is required, is not more than five miles distant from the prison in which he is confined."

9. Sub-section (2) of Section 3 of the Act of 1955 provides where a persons is detained in jail, any criminal court can under Section 3(2) of the Act direct the jail authority to produce the detenu before it for answering a charge of an offence pending before it; and on receipt of such direction the jail authorities have to produce him under Sec. 5 of the Act before the directing Court if his case is covered by any of the clauses of the Proviso to Section 6 of the Act (See **Kanu Sanyal**

v.Dist. Magistrate, Darjeeling and others[1]).

10. The question for consideration would be whether offence under Section 342 of the IPC is made out for non-production of the respondent herein before the Court from 13.1.2015 to 21.1.2015 ?

11. Section 340 of the IPC provides for wrongful confinement and Section 342 of the IPC provides punishment for wrongful confinement. Sections 340 and 342 of the IPC provide as under:-

> "**340. Wrongful confinemen**t.-Whoever wrongfully restrains any person in such a manner as to prevent that person from proceedings beyond certain circumscribing limits, is said "wrongfully to confine" that person.
>
> **342. Punishment for wrongful confinement**.-Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both."

12. Where a person is wrongfully restrained in such a manner as to prevent that person from proceeding beyond certain circumscribed limits, he is wrongfully confined within the meaning of this Section. The essential ingredients of the offence "wrongful confinement" are that the accused should have wrongfully confined the complainant and such restraint was to prevent the complainant from proceeding beyond certain circumscribed limits beyond which he / she has a right to proceed (See **Raju Pandurang Mahale v. State of Maharashtra and another**[2]). Likewise, in the matter of **Shyam Lal Sharma v. The State of Madhya Pradesh**[3] it has been held by the Supreme Court that wrongful confinement is wrongful restraint in such a manner as to

1 AIR 1974 SC 510
2 AIR 2004 SC 1677
3 AIR 1972 SC 886

prevent that person from proceeding beyond certain circumscribed limits.

13. Reverting to the facts of the present case, it is quite vivid that the respondent herein was required to produce from 13.1.2015 to 21.1.2015 before the competent Court as per order of the criminal Court, but despite demand necessary police force was not provided to the jail authorities by the District Police, therefore, she could not be produced before the jurisdictional criminal Court. However, on the subsequent date when the charge was framed against her, she was produced and thereafter cross-examination of the witnesses were concluded in her presence. Merely because on account of non-availability of police force if she could not be produced to the Court, it cannot be held that accused/respondent herein was wrongfully restrained in such a manner to prevent her from proceeding beyond certain circumscribed limit as during that period she was not enjoying the privilege of bail granted by any competent Court, as such, learned Sessions Judge is absolutely unjustified in giving direction to the Chief Secretary of the State to proceed under Section 342 of the IPC for prosecution of the responsible officer as the authorities have clearly established that on account of non-availability of police force, accused cannot be produced and sought to know the next date of hearing and such non-production is for *bona fide* and valid reasons for which direction to prosecution, that too for offence under Section 342 of the IPC is clearly unjustified.

14. For the foregoing reasons, para-22 of the judgment dated

2.5.2015 passed by the Sessions Judge, Dhamtari in Sessions Trial No.45/2014 is hereby set aside.

15. The CrMP is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr.M.P.No.635 of 2016

Applicant State of Chhattisgarh

Versus

Respondent Smt. Savita Sahu

(**Head-note**)

(English)

Non-production of accused in custody for non-availability of police force, jail authorities cannot be prosecuted for offence under Section 342 of the Indian Panel Code.

(हिन्दी)

पुलिस बल की अनुपलब्धता के कारण अभियुक्त अभिरक्षा से पेश नही, जेल प्राधिकारियों को भारतीय दण्ड संहिता की धारा 342 के अपराध के अंतर्गत अभियोजित नहीं किया जा सकता।