

**MISCELLANEOUS CRIMINAL.***Before Bhide J.***BAL KRISHNA—Petitioner***versus***THE CROWN—Respondent.**

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*Dec. 10.***Criminal Miscellaneous No. 221 of 1930.**

*Criminal Procedure Code, Act V of 1898, section 167—Remand to police custody—when to be granted—duty of Magistrate—Counsel—whether accused entitled to be represented by.*

*Held*, that the object of requiring an accused person to be produced before a Magistrate for purposes of remand under section 167, Criminal Procedure Code, is to enable the Magistrate to see that the remand is necessary, and also to enable the accused to make any representation he may wish to make in the matter.

*Evans, In re* (1), and *Sundar Singh v. Crown* (2), followed.

*Held also*, that a remand to police custody ought not to be granted by a Magistrate without satisfying himself as to its necessity, and the period of remand should be restricted to the requirements of each case. In granting a remand to police custody, a Magistrate ought to state his reason, as required by section 167, Criminal Procedure Code;

*And*, that the total period of remand to police custody for the investigation of any particular offence, which is permissible under section 167, Criminal Procedure Code, being fifteen days, if further detention is considered necessary, the proper course is to proceed under section 344, Criminal Procedure Code. A remand under section 344, Criminal Procedure Code can, however, be only to Magisterial custody.

*Krishnaji Pandurang Joglekar, In re* (3), followed.

*Held further*, that an accused person is entitled to be represented by counsel in proceedings under section 167, Criminal Procedure Code, and that the counsel for the accused

(1) (1926) I. L. R. 50 Bom. 741. (2) (1931) I. L. R. 12 Lah. 16.

(3) (1899) I. L. R. 23 Bom. 32.

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should be informed on application, when and where the accused will be produced for obtaining a remand.

*Application under sections 491 and 561-A of the Criminal Procedure Code, praying that the body of the prisoner Kewal Krishna be produced before the High Court, etc., etc.*

A. R. KAPUR, for Petitioner.

CARDEN-NOAD, Government Advocate, for Respondent.

BHIDE J.

BHIDE J.—This is an application under sections 491 and 561-A of the Criminal Procedure Code, for the release of one Kewal Krishna, who was arrested by the police on the night between the 15th and 16th November, and has been detained in their custody, and in the alternative for his transfer to the judicial lock-up and for reasonable facilities being granted for interviews with him

It appears that on his arrest Kewal Krishna was produced before the Additional District Magistrate, Lahore, and was remanded by him to police custody till the 30th November for investigation of certain charges under section 20 of the Arms Act and sections 302 and 120-B of the Indian Penal Code. On the latter date he was produced before the Additional District Magistrate, Amritsar, and a further remand for four days was granted by him for investigation of charges under section 20 of the Arms Act and section 307, Indian Penal Code. This period was extended by ten days by another magistrate at Lahore, by order, dated 4th December, 1930.

It appears that during the first period of remand the legal advisers of Kewal Krishna were allowed to have interviews with him on the 24th and 25th November, but no attention was paid to a third application

made for the purpose, and in spite of a reminder no reply was given. It was stated before me that certain relations of Kewal Krishna had been granted an interview in the meantime and hence a fresh interview with a legal adviser was considered unnecessary. It was not admitted on behalf of the petitioner that any interview had been granted to relations as alleged, but even if this were so, this was no excuse for not allowing the counsel an interview, which may have been required for an entirely different purpose.

But there is another matter which is much more serious. On the 26th November, *i.e.* four days before the expiry of the period of the first remand, the counsel for the petitioner made an application to the Additional District Magistrate asking for information as to when and where the accused person was to be produced before a Magistrate on the expiry of his remand. A copy of this application was sent to the Superintendent of Police who was also requested for the same information. But no such information was given till after a fresh remand was obtained from a magistrate at Amritsar. No explanation is forthcoming—as to why the counsel was given no information and why a fresh remand was obtained from a magistrate at Amritsar, when the first remand had been obtained from the Additional District Magistrate at Lahore.

The police knew—or ought to know—that an accused person is entitled to be represented by counsel in proceedings before a magistrate under section 167, Criminal Procedure Code [cf. *Evans, In re* (1) and *Sundar Singh v. Crown* (2)]. The object of requiring an accused person to be produced before a magistrate

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for purposes of remand under section 167, Criminal Procedure Code, obviously is to enable the magistrate to see that the remand is necessary and also to enable the accused to make any representation he may wish to make in the matter. It is easy to see that legal assistance may be very useful on such an occasion. The manner in which the second remand was obtained at Amritsar, without giving any information to counsel, raises a strong suspicion that this procedure was deliberately adopted by the police with a view to avoid inconvenient objections to the further remand which they wanted. If so, their conduct in this matter must be strongly deprecated.

The above suspicion has been strengthened by my examination of the police diaries. The first remand was obtained for investigation of offences under section 20 of the Indian Arms Act and sections 302 and 120-B, Indian Penal Code, and was granted for the maximum period of fifteen days permissible under section 167, Criminal Procedure Code. The second remand purports to have been obtained under section 20 of the Arms Act and section 307, Indian Penal Code, read with section 120-B, Indian Penal Code. But there was really no evidence in support of any fresh charge under section 307, Indian Penal Code, against Kewal Krishna, and this was admitted by the police officers in whose presence the diaries were put up before me. The accused was suspected of being a party to a conspiracy to commit murders for political purposes, and all that had been done in the interval was to obtain a statement of the accused and some little evidence in addition relating to that charge. The police might have at the most asked for a remand under section 344, Criminal Procedure Code, but the remand in that case, if it had been granted, could only be to the judi-

cial lock-up as the maximum period for which the accused could be remanded to police custody under section 167, Criminal Procedure Code, had already expired. This is the view taken by the Bombay High Court in *Krishnaji Pandurang Joglekar, In re* (1) and this is also the view adopted by this Court in the instructions issued to subordinate Courts (see paragraph 28, Chapter VI, Volume II, Rules and Orders of the High Court).

The magistrates who granted the second and the third remands appear to have done so without looking at the police diaries. It is to be regretted that magistrates frequently fail to realise their responsibility in the matter, though the law and the High Court rules on the subject are perfectly clear. Section 167, Criminal Procedure Code, requires a magistrate remanding an accused person to police custody to state his reasons in writing. This provision has not been complied with in the present instance. If the magistrates had cared to study the diaries, as it was their duty to do before granting a remand, they would not have, I think, failed to discover that there was no legal justification for remanding the accused to police custody after the expiry of the first remand. I would also take the opportunity to invite attention to the rules on the subject in Chapter VI, Volume II of the Rules and Orders of the High Court in which the subject has been dealt with at great length and stress has been laid on the great care necessary in remanding accused persons to police custody. It will appear from these instructions that a remand to police custody ought not to be granted by a magistrate without satisfying himself as to its necessity and the

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period of remand, ought also to be restricted to the requirements of each case.

I may incidentally remark that the practice of obtaining remands from any magistrate at the choice of the police which appears to prevail at present is objectionable. It is true that under section 167, Criminal Procedure Code, it is not necessary that the magistrate granting a remand should be the magistrate having jurisdiction to try the case. But this latitude is obviously left merely to provide for cases in which it may not be possible to approach such magistrate owing to distance or similar difficulties. But, in the absence of such difficulties it is, I think, desirable that the magistrate in charge of the *ilaga* should be approached for purposes of a remand. In the present instance, the first remand was granted by the Additional District Magistrate at Lahore. The second remand was obtained at Amritsar, apparently because there was likelihood of difficulties owing to the presence of counsel for the accused at Lahore. The magistrate at Amritsar, however, granted a remand for four days only. So, on the third occasion, a third magistrate was approached who was complacent enough to grant a remand for a further period of ten days without giving any reasons. If the police are required by a rule to approach the magistrate in charge of the *ilaga*, in the absence of any special reasons, the magistrate will have a greater sense of his responsibility, will be able to keep a close watch over the investigation and will be in a better position to judge the necessity of fresh remands. The accused person also will not then be left in doubt as to when and where he will be produced for purposes of a fresh remand.

The total period of remand to police custody for investigation of an offence permissible under section

167. Criminal Procedure Code, having expired, there was no legal justification for the second and third remands to police custody granted in the present instance. The police had obtained a statement of the accused and some little evidence in addition as already stated and they might have perhaps adopted the procedure laid down under section 344, Criminal Procedure Code, but they did not do so. I do not know whether they consider the evidence, obtained by them, to be sufficient to justify action under that section. This is a matter for them to decide. The accused is said to have made a statement before the police implicating himself and others, but he alleged before me that the statement had been obtained by coercion and was false. It is not possible for me to go into this question in these proceedings, but it is open to the accused to make a representation to the magistrate concerned or the District Magistrate, and it will be for them to inquire into the matter. I may note, however, that there was no allegation of any ill-treatment in the petition before me, although counsel and relations of Kewal Krishna had interviews with him during the period of remand.

As the maximum period of remand permissible under section 167, Criminal Procedure Code, has expired and as no proceedings have been taken under section 344, Criminal Procedure Code, I see no justification for the detention of the accused in custody at present. I accordingly direct his release on furnishing security of Rs. 10,000 to the satisfaction of the District Magistrate for his appearance before him if and when required. I may add, however, that if the police decide to take action under section 344, Criminal Procedure Code, it will be open to the District Magistrate

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(or any other magistrate having jurisdiction to try the case before whom the case may be put up) to pass fresh orders in this matter after considering the evidence available.

N. F. E.

*Petition accepted in part.*

**APPELLATE CRIMINAL.**

*Before Bhide and Tapp JJ.*

SULTAN AND OTHERS—Appellants

*versus*

THE CROWN—Respondent.

Criminal Appeal No. 711 of 1930.

*Indian Penal Code, 1860, sections 34, 38, 302—Murder—committed, by one of several accused—No common intention to injure deceased—Each accused liable for his own act only.*

The parents of the deceased girl having refused consummation of her marriage to the appellant S., he and two others armed themselves with *lathis* and proceeded to demand the girl. On being refused, S. struck her a single *lathi* blow which killed her; the other two appellants at the time inflicting minor injuries upon the girl's relatives; the common intention being merely to carry away the girl.

*Held*, that if the murder of the girl had been prompted by a common intention, then on the application of section 34 of the Penal Code there could have been only one offence for the commission of which each of the participators was equally liable.

*Barendra Kumar Ghosh v. Emperor* (1), followed.

*But*, as there was no common intention to cause hurt to the deceased and the fatal blow dealt by the appellant S. was an unpremeditated act springing from his mind alone, the other two appellants were not constructive participators in that act, even though they may have struck one or more blows. It was not logical, therefore, to hold that, while they did not participate in the act of murder owing to the