IN THE MATTER OF MADHU LIMAYE & ORS.

December 18, 1968

[J. C. SHAH, V. RAMASWAMI AND A. N. GROVER, JJ.]

Constitution of India, Art. 22(1)—*Necessity of informing person arrested grounds for his arrest—Arrest illegal if Article not complied with—Order of remand by magistrate cannot cure constitutional infirmity.*

The petitioners were arrested on November 6, 1968 at a railway station in Bihar. According to the Sub-Inspector's report recorded in the general diary they had taken out a procession in defiance of a prohibitory order under s. 144 Cr. P.C. and had been arrested under s. 151 Cr. P.C. It was stated that report was being submitted "under sections 107 and 117 of the Criminal Procedure Code and under s. 188 of the Indian Penal Code." On November 6 itself the first petitioner sent a petition under Art. 32 of the Constitution in the form of a letter mentioning that he and his companions had been arrested but no grounds of arrest had been communicated to them and they had been merely told that the arrests had been made "under sections which were bailable". It was prayed that a writ of *Habeas Corpus* be issued. On November 7, 1968 a similar petition was sent by the petitioners from Jail. The additional fact given was that the arrested persons had been produced before the sub-Divisional Magistrate who had on their refusal to furnish bail remanded them to custody upto November 20, 1968. *Rule nisi* was issued by this Court to the State authorities to produce the petitioners before the Court on November 25, 1968. On November 19, 1968 a first information report was recorded in which it was alleged that the petitioners had on November 6, 1968 committed offences under ss. 188 and 143 of the Penal Code. In the return, before this Court it was explained on behalf of the State that the officer-in-charge while forwarding the arrested persons on November 6, 1968, had by mistake omitted to mention s. 143 I.P.C. which was a cognizable offence. It was urged that the order of remand passed by the Magistrate could not be said to be illegal merely because of the omission of s. 143 I.P.C. in the order sheet when the police report clearly made out a case under that section. It was not claimed that the grounds of arrest had been supplied to the petitioners.

HELD : (i) When the arrests were effected by the Sub-Inspector on November 6, 1968, the offences for which the arrests were made were not stated to be cognizable. In the various reports etc. the only offence alleged was one under s. 188 I.P.C. which is non-cognizable. There was force in the suggestion of the petitioners that the first information report came to be recorded formally on November 19, 1968 only because the matter had been brought to this Court by way of a petition under Art. 32 and a further petition had been moved in the High Court under Art. 226. It was not proved that the arrest had been made at the direction of a Magistrate who was present. It was somewhat surprising that no affidavit of the said Magistrate had been filed. It would be legitimate to conclude that the arrest of the petitioners was effected by the police officers concerned without any specific orders or directions of a Magistrate on November 6, 1968 for the offences and proceedings mentioned before in the various reports made prior to November 19, 1968. [159 D-E; 160 B—161 B]

A (ii) The two requirements of cl. (1) of Art. 22 are meant to afford the earliest opportunity to the arrested person to remove any mistake, misapprehension or misunderstanding in the minds of the arresting authority and, also, to know exactly what the accusation against him is so that he can exercise the second right, namely, of consulting a legal practitioner of his choice and to be defended by him. Whenever the Article is not complied with the petitioner would be entitled to a writ of *Habeas Corpus* B directing his release. [162 E—163 C]

In the present case the return filed by the State did not contain any information as to when and by whom the petitioners were informed of the grounds of their arrest. It had not been contended on behalf of the State that the circumstances were such that the arrested persons must have known the general nature of the alleged offences for which they had been arrested. The petitioners were therefore entitled to be released on C this ground alone. [163 F]

(iii) Once it was shown that the arrests made by the police officers were illegal it was necessary for the State to establish that at the stage of remand the Magistrate directed detention in jail custody after applying his mind to all relevant matters. This the State had failed to do. The remand orders were patently routine and appeared to have been made mechanically. If the detention of the petitioners in custody could not continue after their arrest because of the violation of Art. 22(1) of the D Constitution, they were entitled to be released forthwith. The orders of remand were not such as would cure the constitutional infirmities. [163 G—164 B]

Christie & Anr. v. *Leachinsky*, [1947] 1 All, E.R. 567, *Ram Narayan Singh* v. *State of Delhi & Ors.*, A.I.R. 1953 S.C. 277, applied.

E ORIGINAL JURISDICTION : Writ Petition No. 355 of 1968.

Petition under Art. 32 of the Constitution of India for writ in the nature of *habeas corpus.*

The petitioners Nos. 1 and 2 appeared in person.

M. C. Chagla and *D. Goburdhun*, for the State of Bihar.

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The Judgment of the Court was delivered by

Grover, J. Madhu Limaye, Member of Lok Sabha, and several other persons were arrested on November 6, 1968 at Lakhisarai Railway Station near Monghyr. On the same date Madhu Limaye addressed a petition in the form of a letter to G this Court under Art. 32 of the Constitution mentioning that he along with his companions had been arrested but had not been communicated the reasons or the grounds for arrest. It was stated that the arrested persons had been merely told that the arrests had been made "under sections which were bailable". It was prayed that a writ of *Habeas Corpus* be issued for restoring H liberty as the arrest and detention were illegal. On November 7, 1968, a similar petition was sent from Monghyr jail. The additional fact given was that the arrested persons had been produced before the Sub-Divisional Magistrate who had offered to

release them on bail but they had refused to furnish bail. The Magistrate had, thereupon, remanded them to custody up to November 20, 1968. This Court issued a *rule nisi* to the Government of Bihar and Supdt. District Jail, Moghyr to produce Madhu Limaye and others whose names were given in the order dated November 12, 1968 on November 25, 1968. A

The State of Bihar filed a return but on November 25, 1968 the Court directed the Advocate General of Bihar to produce the relevant documents in connection with the recording of the first information report, the investigation made, the report to the Magistrate and order sheet, etc. The hearing was adjourned to December 2, 1968. B

C

It is apparent from the documents and papers placed before us that on November 2, 1968, the Sub-Divisional Magistrate Monghyr issued an order under s. 144, Cr.P.C. prohibiting assemblage of five or more persons within the limits of 100 yards of Kiul and Lakhisarai Railway Stations for a period of one week from November 5, 1968 to November 12, 1968. According to the report submitted by the Sub-Inspector in-charge of the Government Railway Police Station Kiul to the Sub-Divisional Magistrate, Sadar, Madhu Limaye and others had defied the prohibitory orders issued under s. 144 Cr.P.C., by holding and addressing a public meeting at the railway ground at Lakhisarai Railway Station between 4.30 p.m. and 6.30 p.m. on November 5, 1968 and some out of them had exhorted the public in provocative language to offer satyagraha at the Railway Station and to disrupt the railway communications as also to obstruct the normal functioning of the railway offices at Lakhisarai. It was prayed that their prosecution be ordered under s. 188, Indian Penal Code. Dharamraj Singh Sub-Inspector entered a report (Sanha) No. 109 on November 6, 1968, in the general diary. It was stated *inter alia* that Madhu Limaye and others took out a procession at 3 O'Clock with a flag in violation of the order made under s. 144, Cr.P.C. They had entered the Railway Station for launching a strike shunting slogans. This group had been followed by several other groups of persons the last being the 8th group (the names in each group were mentioned). All these persons had been arrested under s. 151, Cr.P.C. and had been sent to the Sub-Divisional Magistrate, Sadar, Monghyr. These incidents happened in the presence of Shri Mathur, Magistrate 1st Class, Monghyr, Shri B. N. Singh, Railway Magistrate Kiul etc. It was stated that the report was being submitted "under sections 107 and 117 of the Criminal Procedure Code and under s. 188 of the Indian Penal Code". Admittedly no first information report was formally registered on that date which was done on November 19, 1968 at 23.30 hrs. In this report D E F G H

A in which the date of occurrence is mentioned as November 6, 1968 it was stated that the accused persons had entered the Railway Station by illegally forming a mob disobeying the order under s. 144, Cr.P.C. to disturb the normal functioning of the railways and had committed offences under s. 143, I.P.C. and s. 122 of the Railways Act.

B The State of Bihar has filed a return according to which the circumstances in which the prohibitory order was promulgated under s. 144, Cr.P.C., are set out. It was stated that from the leaflets circulated by the Lakhisarai unit of the Samyukta Socialist Party on November 4, 1968, it appeared that the party had decided to hold a public meeting on November 5, 1968 C and to launch satyagraha at Lakhisarai on November 6, under the leadership of Madhu Limaye. On November 5, Madhu Limaye and others held a public meeting of about 400 persons at the railway ground in defiance of the order under s. 144 Cr.P.C. and exhorted the public to hold satyagraha at Lakhisarai Railway Station on November 6 etc. A report was submitted D by the officer-in-charge of the Kiul Government Railway Police Station on November 6, on which the Sub-Divisional Magistrate, Sadar, made an order on November 11, 1968 directing show cause notices to be issued to Madhu Limaye and others as to why action under s. 188, Indian Penal Code, should not be taken against them. On November 6, 1968, a procession of about 200 persons of Samyukta Socialist Party led by Madhu E Limaye and others came to the main gate of the platform of Lakhisarai Railway Station where a Magistrate, Inspector of Railway Police and Officer-in-charge of Kiul Government Railway Police Station were present. When these persons, in spite of the warning, forcibly entered the platform and violated the order under s. 144, Cr.P.C., the Magistrate on duty, Shri K. B. F Mathur, directed the police officers present to arrest them. Madhu Limaye and others were arrested and a case was instituted against them. They were produced before the Sub-Divisional Magistrate who, on November 6, remanded them to jail custody till November 20, as they refused to furnish bail bonds. On November 6, another report was submitted by the officer-in- G charge, Kiul Government Railway Police Station for the incidents which happened on November 6, 1968. A case had been started on that report and show cause notices had been issued for November 20, 1968 as to why action should not be taken under s. 188, I.P.C. It was claimed that Madhu Limaye and others had committed offences under s. 188 and under s. 143 H Penal Code (which is cognizable) by violating the orders made under s. 144 Cr.P.C., and by forming unlawful assembly. It was explained that while forwarding the arrested persons the officer-in-charge, my mistake, omitted to mention s. 143. It

was asserted that the order of remand passed by the Sub-Divisional Magistrate could not be said to be illegal merely because of omission of s. 143, Indian Penal Code, in the order sheet when the police report clearly made out a case under that section. It was affirmed that Madhu Limaye and others had not been arrested on November 6, while they were participating in a peaceful satyagraha or that the officer-in-charge Kiul purported to arrest all these persons only under ss. 151, 107 and 117 of the Cr.P.C.

The annexures attached to the return filed by the State and the documents contained in the original records which were sent for have revealed the following state of affairs. On November 6, the officer-in-charge, Government Railway Police Station Kiul made what is called report (annexure-D) under s. 107(3), Cr.P.C. This contained a prayer that Madhu Limaye and 115 others, *vide* list attached, should be bound over under s. 107 with an order to furnish ad-interim bonds. It was stated under column No. 5 (brief history of the case) that as their acts on November 6, 1968 between 09.15 hrs. and 16.30 hrs. on the Lakhisarai Railway Station were likely to lead to breach of peace and disturb public tranquility they had been arrested under s. 151, Cr.P.C. The same police officer addressed a letter to the Sub-Divisional Magistrate, Sadar, to the following effect :

> "I am forwarding herewith the following accused persons (list attached herewith) in custody as they have been arrested u/s 151|107|117(3), Cr.P.C. They may kindly be remanded in jail Hazat for a fortnight by which time report u/s 107/117(3) Cr.P.C. and 188 I.P.C. be routed through proper channel."

As stated in the return two show cause notices were issued by the Sub-Divisional Magistrate Shri P. P. N. Sahi on November 11, 1968 relating to the incidents on November 5, 1968 and the following day. Madhu Limaye and others were asked to show cause why action should not be taken against them under s. 188. On November 19, 1968 another order was made by a different Sub-Divisional Magistrate Shri K. K. Pathak saying that a petition had been filed on behalf of the State in which it was alleged that the accused persons had committed offences under ss. 143/448 I.P.C., by forming unlawful assembly with the common object of committing criminal trespass in violation of the duly promulgated order under s. 144 Cr.P.C. It was prayed that these persons be summoned for being tried for offences under the aforesaid sections. A show cause notice appears to have been issued on or about November 20, 1968. The remand orders which were passed on November 6 and 20, 1968

A were made on the basis that the accused persons had been "arrested and forwarded under custody under ss. 151/107/117 Cr.P.C. by Sub-Inspector, Government Railway Police Station Kiul".

Madhu Limaye, who has addressed arguments in person, has raised, *inter alia*, the following main contentions :

B 1. The arrests on November 6, 1968 were illegal inasmuch as they had been effected by Police Officers for offences which were non-cognizable.

2. There was a violation of the mandatory provisions of Art. 22(1) of the Constitution.

3. The orders for remand were bad and vitiated.

C

4. The arrests were effected for extraneous considerations and were actuated by *mala fides*.

The entire sequence of events from November 5, 1968 onwards is somewhat unusual and has certain features which have not been explained on behalf of the State. In the first place D when the arrests were effected by the Sub-Inspector In-charge of Government Railway Police Station on November 6, 1968 the offences for which the arrests were made were not stated to be cognizable. In the various reports etc., to which reference has been made the only offence alleged was one under s. 188 I.P.C. which is non-cognizable. On November 6, 1968 apart from E the allegation of commission of offences under s. 188 the police reports disclose a variety of proceedings which were sought to be taken. Section 151 in all likelihood was invoked for effecting the arrests but proceedings were initiated under s. 107 which appears in Chapter VIII of the Cr.P.C. Under that section the Magistrate can require a person about whom information has F been received that he is likely to commit a breach of peace, to show cause why he should not be ordered to execute a bond for a period not exceeding one year, for keeping peace. Under s. 117, which was also invoked, the Magistrate makes an enquiry as to the truth of an information. But proceedings under s. 107 have to follow the procedure laid down in Chapter VIII and arrest cannot be effected unless a Magistrate issues a war- G rant for that purpose under s. 114. Section 151 which has been repeatedly referred to in various documents is meant for arresting without a warrant and without orders from a Magistrate if a police officer knows of a design to commit any cognizable offence and if it appears to him that the commission of such offence cannot be otherwise prevented.

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There can be no manner of doubt, and this position has hardly been controverted by Mr. Chagla for the State, that in all the documents which were prepared before November 19.

1968 there was no mention of an offence under s. 143 I.P.C. having been committed by Madhu Limaye and other persons who were arrested on November 6, 1968. It is obviously for that reason that no formal first information report was recorded on November 6, 1968 which would have necessarily been done if the police officers effecting arrests had thought of s. 143, Indian Penal Code which is a cognizable offence. No explanation has been furnished on behalf of the State as to why the information which was recorded in the general diary on November 6, was not recorded as an information in cognizable cases under s. 154 of the Cr.P. Code. There is force in the suggestion of Madhu Limaye that the first information report came to be recorded formally on November 19, 1968 only because the matter had been brought to this Court by way of a petition under Art. 32 of the Constitution and after a *rule nisi* had been issued and a petition under Art. 226 had been filed in the Patna High Court. The authorities then realised that they had been completely oblivious of the true position that arrests could not have been effected for a non-cognizable offence made punishable under s. 188, Indian Penal Code or for taking proceedings under s. 107, Cr.P.C. Under s. 151 Cr.P.Code the police officer could have arrested without a warrant but Mr. Chagla has not sought justification for the arrests under that provision. He has pointed out that a prihibitory order had been issued under s. 144 which had been defied by Madhu Limaye and the other persons and therefore an offence had been committed under s. 143 I.P.C. The mere omission, he says, to mention a section cannot affect the legality or validity of the proceedings. Mr. Chagla has also laid a great deal of emphasis on the statement in the return that when Madhu Limaye and others were arrested they had violated the orders under s. 144, Cr.P.C. and the Magistrate on duty Shri K. B. Mathur directed the police officers present to arrest them. The return is supported by an affidavit of Shri S. C. Prasad, Magistrate 1st Class, Monghyr according to whom the contents of para 6 in which this statement occurs were true to his knowledge. It is somewhat surprising that the affidavit of Shri K. B. Mathur has not been filed who would have deposed to all that happened in his presence and the reasons for ordering the arrests. It is most unusual and extraordinary that in spite of arrests having been ordered by the Magistrate there is not one word in any of the papers or documents which have been produced relating to this fact. The least that was expected was that there would have been some mention of the order in the detailed statement entered in General Diary by the Sub-Inspector in-charge Kiul Police Station on November 6, on the basis of which a formal first information report was registered on November 19, 1968. There, however, only the pre-

A B C D E F G H

A sence of certain officers and other persons including Shri Mathur is noted. It would be legitimate to conclude that the arrest of Madhu Limaye and his companions was effected by the police officers concerned without any specific orders or directions of a Magistrate on November 6, 1968 for the offences and the proceedings mentioned before in the various reports made prior B to November 19, 1968.

The submission of Madhu Limaye on the second point has hardly been effectively met on behalf of the State. Art. 22(1) provides that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to con- C sult and be defended by a legal practitioner of his choice. Madhu Limaye had, in his petitions addressed to this Court, made a positive assertion that he and his companions had not been informed of the grounds for their arrest. In the return filed by the State this assertion has neither been controverted nor has anything been stated with reference to it It appears that the D authorities wanted to invoke all kinds of provisions like ss. 151, 107/117 of the Cr.P.C. apart from s. 188 of the Indian Penal Code. Since no arrest could be effected for an offence under s. 188 by the police officers without proper order these officers may have been naturally reluctant to comply with the mandatory requirements of Art. 22(1) by giving the necessary information. E At any rate, whatever the reasons, it has not been explained even during the course of arguments before us why the arrested persons were not told the reasons for their arrest or of the offences for which they had been taken into custody.

Art. 22(1) embodies a rule which has always been regarded F as vital and fundamental for safeguarding personal liberty in all legal systems where the Rule of Law prevails. For example, the 6th Amendment to the Constitution of the United States of America contains similar provisions and so does Art. XXXIV of the Japanese Constitution of 1946. In England whenever an arrest is made without a warrant, the arrested person has a right to be informed not only that he is being arrested but also G of the reasons or grounds for the arrest. The House of Lords in *Christie & Another* v. *Leachinsky*(1) went into the origin and development of this rule. In the words of Viscount Simon if a policeman who entertained a reasonable suspicion that X had committed a felony were at liberty to arrest him and march him off to a police station without giving any explanation of why he H was doing this, the *prima facie* right of personal liberty would be gravely infringed. Viscount Simon laid down several proposi-

(1) [1947] 1 All E.L.R. 567.

tions which were not meant to be exhaustive. For our purposes we may refer to the first and the third : A

> "1. If a policeman arrests without warrant upon resonable suspicion of felony, or of other crime of a sort which does not require a warrant, he must in ordinary circumstances inform the person arrested of the true ground of arrest. He is not entitled to keep the reason to himself or to give a reason which is not the true reason. In other words, a citizen is entitled to know on what charge or on suspicion of what crime he is seized. B
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> 2. C
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> 3. The requirement that the person arrested should be informed of the reason why he is seized naturally does not exist if the circumstances are such that he must know the general nature of the alleged offence for which he is detained."

Lord Simonds gave an illustration of the circumstances where the accused must know why he is being arrested : D

> "There is no need to explain the reasons of arrest if the arrested man is caught red-handed and the crime is patent to high Heaven."

The two requirements of clause (1) of Art. 22 are meant to afford the earliest opportunity to the arrested person to remove any mistake, misapprehension or misunderstanding in the minds of the arresting authority and, also, to know exactly what the accusation against him is so that he can exercise the second right, namely, of consulting a legal practitioner of his choice and to be defended by him. Clause (2) of Art. 22 provides the next and most material safeguard that the arrested person must be produced before a Magistrate within 24 hours of such arrest so that an independent authority exercising judicial powers may without delay apply its mind to his case. The Criminal Procedure Code contains analogous provisions in ss. 60 and 340 but our Constitution makers were anxious to make these safeguards an integral part of fundamental rights. That is what Dr. B. R. Ambedkar said while moving for insertion of Art. 15A (as numbered in the draft Bill of the Constitution) which corresponded to present Art. 22 : E F G

> "Article 15A merely lifts from the provisions of the Criminal Procedure Code two of the most fundamental principles which every civilised country follows as principles of international justice. It is quite true that these two provisions contained in clause (1) and clause H

A (2) are already to be found in the Criminal Procedure Code and thereby probably it might be said that we are really not making any very fundamental change. But we are, as I contend, making a fundamental change because what we are doing by the introduction of Article 15A is to put a limitation upon the authority both
B of Parliament as well as of the Provincial Legislature not to abrogate these two provisions, because they are now introduced in our Constitution itself."

As stated in *Ram Narayan Singh* v. *State of Delhi & Ors.*(1) this Court has often reiterated that those who feel called upon to deprive other persons of liberty in the discharge of what they
C conceive to be their duty must, strictly and scrupulously, observe the forms and rules of law. Whenever that is not done the petitioner would be entitled to a writ of *Habeas Corpus* directing his release.

It remains to be seen whether any proper cause has been
D shown in the return for declining the prayer of Madhu Limaye and other arrested persons for releasing them on the ground that there was non-compliance with the provisions of Art. 22(1) of the Constitution. In *Ram Narayan Singh's* case(1) it was laid down that the Court must have regard to the legality or otherwise of the detention at the time of the return. In the present case the return dated November 20, 1968 was filed before the
E date of the first hearing after the *rule nisi* had been issued. The return, as already observed, does not contain any information as to when and by whom Madhu Limaye and other arrested persons were informed of the grounds for their arrest. It has not been contended on behalf of the State that the circumstances were such that the arrested persons must have known the general
F nature of the alleged offences for which they had been arrested; *vide* proposition No. 3 in *Christie & Another* v. *Leachinsky*(2). Nor has it been suggested that the show cause notices which were issued on November 11, 1968 satisfied the constitutional requirement. Madhu Limaye and others are, therefore, entitled to be released on this ground alone.

G Once it is shown that the arrests made by the police officers were illegal, it was necessary for the State to establish that at the stage of remand the Magistrate directed detention in jail custody after applying his mind to all relevant matters. This the State has failed to do. The remand orders are patently routine and appear to have been made mechanically. All that
H Mr. Chagla has said is that if the arrested person wanted to challenge their legality the High Court should have been moved

(1) A.I.R. 1953 S.C. 277. (2) [1947] 1 All E.L.R. 567.

under appropriate provisions of the Criminal Procedure Code. But it must be remembered that Madhu Limaye and others have, by moving this Court under Art. 32 of the Constitution, complained of detention or confinement in jail without compliance with the constitutional and legal provisions. If their detention in custody could not continue after their arrest because of the violation of Art. 22(1) of the Constitution they were entitled to be released forthwith. The orders of remand are not such as would cure the constitutional infirmities. This disposes of the third contention of Madhu Limaye.

We have been pressed to decide the question of *mala fides* which is the fourth contention of Madhu Limaye. Normally such matters are not gone into by this Court in these proceedings and can be more appropriately agitated in such other legal action as he may be advised to institute or take.

We would like to make it clear that we have ordered the release of Madhu Limaye and the other arrested persons with regard to whom *rule nisi* was issued on the sole ground of violation of the provisions of Art. 22(1) of the Constitution. We desire to express no opinion on the legality or illegality of the arrests made on November 6, 1968 of these persons with reference to the first point, namely, that the police officer purported to have effected the arrests for the offences under s. 188, Indian Penal Code, and under s. 151 as also in respect of proceedings under s. 107 of the Cr.P.C., as these matters are *sub judice*. We may also proceed to add that any expression of opinion or observation in these proceedings shall not affect the course of the enquiry or trial of the arrested persons concerning the occurrences on November 5 and 6, 1960 which may be pending in the courts in the State of Bihar and such proceedings shall be disposed of in accordance with law.

Madhu Limaye and other arrested persons have already been ordered to be released by this Court and no further directions are necessary in the matter of their being set at liberty.

G.C. *Petitions allowed.*