

Central Bureau of Investigation

Vs

Nazir Ahmed Sheikh

Criminal Appeal No. 43 of 1996

(K. Ramaswamy, G.B. Pattanaik JJ)

05.01.1996

ORDER

1. Leave granted.

2. Though the respondent has been served with notice, he has not been either appeared in person or through counsel, we request Shri R. S. Sodhi, the learned counsel to assist the Court as Amicus Curiae. We express our appreciation for the valuable assistance rendered by him. The facts fairly are not in dispute. On October 26, 1990, at about 9.30 a. m. Inspector Dharamveer of BSF was kidnapped in pursuance of criminal conspiracy by some of the accused persons, while he was travelling in a minibus from Nishat to Srinagar. The accused Nazir Ahmed Sheikh Goldenter shot him dead from is AD-56 rifle in cold blood, as a result of which, Inspector Dharamvir died instantaneously. During the course of the investigation, the recoveries were made and confessional statement under Section 15 of the Terrorist and Disruptive Activities (Prevention) Act, 1978 (for short, 'the Act') was recovered. In addition thereto, the investigation has collected other evidence. On March 6, 1992, a charge- sheet was filed along with a material before the Designated Court explaining the reasons for the delay in filing the charge-sheet. By order dated December 29, 1992, the Designated Court has granted bail to the respondent on the ground that since the occurrence had taken place on October 26, 1990 and the charge-sheet came to be filed on March 6, 1992 without even calling for the relevant case diary. Calling that order in question, the above appeal has been filed.

3. It is not in dispute from these facts that the arrest of the respondent came to be made on March 8, 1991 and the charge-sheet was filed on March 6, 1992. The question is whether the charge-sheet was filed within the time or whether the accused is entitled to be enlarged for failure to file the charge sheet. Section 20(4) deals with the modification of the time prescribed under Section 167 of the Criminal Procedure Code, 1973 (for short, the Code) with regard to the filing of the charge-sheet. In view of the fact that the charge-sheet contains a charge that, the murder of the officer was committed the accused is liable to conviction under Section 302 I. P. C. Clause(b) of Section 167 would apply. It says that with reference to sub-section (2) of Section 167 for the words 15 days, 90 days and 6 months wherever occurs shall be construed with reference to one year and one year respectively as envisaged under sub-section (4) of Section 20 of the Act. It is seen that when the accused has been arrested on March 8, 1991, the Investigating Officer is enjoined to produce him before the Magistrate having jurisdiction, within 24 hours from the date of the arrest. Consequently, the limitation of one year would begin to run and be counted from next date of the arrest, namely, March 9, 1991. Since the charge-sheet has been filed on March 6, 1992, the Designated Court was

not justified in holding that the charge-sheet was not filed within the limitation prescribed under sub-section (4) of Section 20 of the Act, i.e. one year. The later amendment to the Act seeking permission of the Court for extension of the time or filing the necessary material to show the grounds on which the investigation could not be completed within the period has no application since the arrest was made prior to the amendment of the Act.

4. Under these circumstances, the Designated Court was clearly in error in enlarging the accused. The order is accordingly set aside. The appeal is accordingly allowed. We are informed that the respondent has already been in detention in connection with other cases. Appeal allowed.