SUPREME COURT OF INDIA

Narendra Kumar Amin

Vs.

CBI

Crl.A.No.94 of 2015

(V.Gopala Gowda and C.Nagappan JJ.)

15.01.2015

JUDGMENT

V.GOPALA GOWDA, J.

1. Leave granted.

2. This appeal is filed by the accused appellant against the judgment and order dated 16.08.2013 of the High Court of Gujarat at Ahmedabad in Special Criminal Application (quashing) No. 2167 of 2013 rejecting the Default Bail under Section 167 (2) of the Code of Criminal Procedure, 1973 (in short "Cr.P.C.") to the appellant in a case instituted by filing a charge sheet dated 3.7.2013 submitted by the CBI in the Court of Additional Chief Judicial Magistrate, Court No.II, Mirzapur, numbered as Special Criminal Case No. 1 of 2013 on 8.7.2013.

3. The appellant/accused was arrested on 4.4.2013 for an offence which had taken place on 15.6.2004, which is popularly known as the fake encounter death of Ishrat Jahan. The offence alleged against the appellant was punishable with life imprisonment or death and what is popularly called Default Bail becomes the indefeasible right on the expiry of 90 days in the event of non filing of police report by then. On 3.7.2013 the first respondent viz. CBI filed what they called the charge sheet which is alleged by the appellant as a misnomer because it does not comply with the statutory requirement of police report under Sections 173 (2) and 173(5) of Cr.P.C.

4. The appellant by a written application dated 4.7.2013 claimed his right to be released on bail. According to the appellant, the last extension of detention in

custody was made on 21.6.2013 and the period of remand was extended upto 5.7.2013. There was no existing order of remand to custody between 5.7.2013 and 8.7.2013. Therefore, his custody during that period is illegal. It is further stated by Mr. Ram Jethmalani, the learned senior counsel for the appellant that there was no judicial order of remand made on 3.7.2013 and the custody was illegal for all the days between 3.7.2013 and 8.7.2013.

5. It is further contended that the documents required to be filed along with the police report were admittedly filed by CBI in some installments and completed only on 8.7.2013. In view of the aforesaid statement of facts, the appellant/accused is entitled to be released on bail on the following grounds:

a) The impugned judgment of the High Court is erroneous because the period in question had already expired. 26 days of April leaving aside 4.4.2013, namely the date of arrest, 31 days of May, 30 days of June and 3 days of July complete the period of 90 days. The error of law committed by the High Court is to exclude the first day of arrest, namely, 4.4.2013.

b) It is further contended that once the period of 90 days expired even according to the High Court on 3.7.2013, any further detention without judicial order under Section 209 or Section 309 of the Cr.P.C. as the case may be, is a requirement of law. The order made during the investigation on 21.6.2013 expired on 5.7.2013. Therefore, it could not have any legal efficacy after 3.7.2013 because the power under Section 167 of Cr.P.C. comes to an end.

c) It is further contended by the learned senior counsel that no cognizance was taken on 3.7.2013. The accused had no right to oppose on the ground of want of sanction or total want of legal evidence. The right could not be claimed nor could the court intelligently adjudicate upon it without the documents which had to be filed under Section 173(5) of Cr.P.C.

6. It is further contended by the learned senior counsel that even on the finding of the High Court that the police power came to an end on 3.7.2013, after that it required an order under Section 209 and not under Section 167 of Cr.P.C. The provision for bail under this proviso is in favour of liberty and must be liberally construed. In support of this contention, the learned senior counsel has also placed reliance upon the following two constitutional Bench judgments of this Court in 1) K.Veeraswamy v. Union of India & Ors.[1] and 2) Uday Mohanlal Acharya v. State of Maharashtra[2].

7. The learned senior counsel for the CBI has filed their counter statement opposing the relief sought for by the appellant/accused in this appeal.

8. The de-facto complainant's senior counsel Mr. Huzefa Ahmadi, has opposed the appeal seeking to justify the impugned order passed by the High Court, inter alia, contending that the police report was submitted on 3.7.2013 i.e. within 90 days as the stipulated 90 days were completed only on 4.7.2013. In support of this contention he has placed reliance upon the judgments of this Court in 1) Chaganti Satyanarayana & Ors. v. State of Andhra Pradesh[3] and 2) Central Bureau of Investigation, Special Investigation Cell-I, New Delhi) v. Anupam J. Kulkarni[4]. Further reliance is placed upon the decision in State of M.P. v. Rustam & Ors.[5], wherein this Court has held that clear 90 days have to expire before the right of indefeasible bail begins.

9. Further, it is contended that the right of the appellant to seek default bail under Section 167 (2) would accrue only on the expiry of the period of 90 days, i.e. on 5.7.2013. In the present case, application under Section 167 (2) made by the appellant on 4.7.2013 is premature. Further he has placed strong reliance in justification of the reason assigned by the High Court with regard to the police report filed in this case within 90 days.

10. Section 173 (2) of Cr.P.C. enumerates the information that must be detailed in the police report forwarded to the Magistrate by the Investigating Officer. This includes:

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and if so, whether with or without sureties;

(g) whether he has been forwarded in custody under section 170.

11. Further under Section 190 (1) (b) Cr.P.C. which states that it is upon a police report that the Magistrate may take cognizance of the offences. In the instant case, as could be seen, it is the learned Additional Chief Judicial Magistrate ("ACJM" in short), who has ordered on 3.7.2013 as under:

> "The charge sheet is hereby ordered to be registered after due verification. In case of accused No. 1 Shri P.P. Pandey order has been passed on 21.6.2013 below application under Section 82 of the Code of Criminal Procedure to appear before this Court on 31st July, 2013. Yaadi be made to respective Jail Superintendent of accused No. 2 Shri D.G. Vanzara and accused No. 3 Dr. N.K. Amin. Issue summons to accused No. 4 Shri G.L. Singhal, accused No. 5 Shri J.G. Parmar, Accused No. 6 Shri Tarun Barot and accused No. 7 Anaju Jhman Chaudhary mentioned in charge sheet, for the offence under Sections 302, 364, 368, 346, 120-B, 201, 203, 204, 217, 218 of Indian Penal Code and Sections 25 (1) (e), 27 of the Arms Act."

12. The learned senior counsel appearing for the de-facto complainant placed strong reliance upon the said order of the learned ACJM to contend that the cognizance of the offences alleged in the report, filed in the Court, was taken on 3.7.2013, but the same has not been challenged by the appellant. Therefore, it is not open for the appellant to seek default bail for non filing of the full set of documents along with the report on 3.7.2013.

13. In this regard he squarely relied on the three Judge Bench judgment of this Court in Central Bureau of Investigation v. R.S. Pai & Anr.[6] wherein at para 7, regarding relevant documents to be submitted at the time of charge sheet, it is held as under:-

> "7. From the aforesaid sub-sections, it is apparent that normally, the investigating officer is required to produce all the relevant documents at the time of submitting the charge-sheet. At the same time, as there is no specific prohibition, it cannot be held that the additional documents cannot be produced subsequently. If some mistake is committed in not producing the relevant documents at the time of submitting the report or the charge-sheet, it is always open to the investigating officer to produce the same with the permission of the court. In our view, considering the preliminary stage of prosecution and the context in which the police officer is required to forward to the Magistrate all the documents or the relevant extracts thereof on which the prosecution proposes to rely, the word "shall" used in sub-section (5) cannot be interpreted as mandatory, but as directory. Normally, the

documents gathered during the investigation upon which the prosecution wants to rely are required to be forwarded to the Magistrate, but if there is some omission, it would not mean that the remaining documents cannot be produced subsequently. Analogous provision under Section 173(4) of the Code of Criminal Procedure, 1898 was considered by this Court in Narayan Rao v. State of A.P. (SCR at p. 293) and it was held that the word "shall" occurring in sub-section (4) of Section 173 and sub-section (3) of Section 207-A is not mandatory but only directory. Further, the scheme of sub-section (8) of Section 173 also makes it abundantly clear that even after the charge-sheet is submitted, further investigation, if called for, is not precluded. If further investigation is not precluded then there is no question of not permitting the prosecution to produce additional documents which were gathered prior to or subsequent to the investigation. In such cases, there cannot be any prejudice to the accused. Hence, the impugned order passed by the Special Court cannot be sustained."

In the said decision it is held that if some mistake is committed in not producing the relevant documents at the time of submitting the report, it is always open to the investigating officer to produce the same with the permission of the court. The Bench proceeded further to observe that if further investigation is not precluded, then there is no question of not permitting the prosecution to produce additional documents which were gathered prior to or subsequent to the investigation and the word "shall" used in sub-section (5) cannot be interpreted as mandatory, but as directory. Therefore, it is contended that the High Court is justified in refusing to grant Default Bail in favour of the appellant.

14. With reference to the aforesaid rival legal contentions we have examined the impugned order to find out the correctness of the findings and reasons recorded keeping in view the statutory provisions under Section 173 (2)and (5) read with Section 2 (r) of Cr.P.C. and with reference to the judgments on which both the learned senior counsel placed reliance upon. In our considered view, it is an undisputed fact that the charge sheet was filed on 3.7.2013 that is 90th day. Section 2 (r) of Cr.P.C. defines the expression "police report" as a report forwarded by a police officer to a magistrate under Section 173 (2) of Cr.P.C. The particulars to be furnished in the police report which are extracted as above are complied with in the instant case. Therefore, filing of the police report as required under Section 173 (2) is within 90 days in the instant case.

15. The High Court while dealing with this aspect has carefully considered the aforesaid relevant aspects of the case and stated its reasons at para 10.1 which reads thus:

> "10.1 From the above, it was seen that the contents of the charge-sheet set-out in its prefatory details, showed the revelations in the investigation. The Investigating Officer mentioned the role played by the accused persons. The Investigating Officer opined on the basis of the material collected by him during the investigation that the prima-facie commission of offence in his view was made out. It was evidently clear that the charge sheet as presented incorporated all the necessary details required under Section 173 (2) including that whether offence was committed and by whom, which was in terms of clause (d) of Section 173 (2) What is described as bare and empty format, in fact disclosed the contents necessary in law to be mentioned. It could not be viewed as a format hollow in its contents not to enable the Magistrate to take the cognizance."
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> Therefore, the High Court is right in rejecting the prayer of default bail under Section 167 (2) of Cr.P.C. Upon the filing of the police report, cognizance was taken by the learned ACJM on 3.7.2013 which is evident from the order passed by him which is extracted above. It is pertinent to point out that the said order remains unchallenged by the appellant. Therefore, it is not open for him to turn around and contend that cognizance was not taken by the learned ACJM on 3.7.2013. On this count, the contentions urged by the learned senior counsel Mr. Ram Jethmalani appearing for the appellant are wholly untenable and liable to be rejected.

16. The observation made at para 76 of the constitution Bench judgment of this Court in the case of K. Veeraswamy (supra) that the report is complete if it is accompanied by all documents and statement of witnesses as required under Section 173 (5) of Cr.P.C. cannot be construed as the statement of law, since it was not made in the context of the police report under Section 2 (r) read with Section 173 (2) (5) and (8) of Cr.P.C. On the contrary, the three Judge Bench of this Court in the decision in Central Bureau of Investigation v. R.S. Pai's case (supra), after referring to the earlier judgment of the coordinate Bench in Narayan Rao's case (supra) categorically held that the word "shall" used in sub- Section (5) cannot be interpreted as mandatory, but directory. The said statement of law is made after considering the provisions of Section 2(r) read with Section 173 (5) and (8) of Cr.P.C. Therefore, filing of police report containing the particulars as mentioned under Section 173 (2) amounted to completion of filing of the report before the

learned ACJM, cognizance is taken and registered the same. The contention of the appellant that the police report filed in this case is not as per the legal requirement under Section 173 (2) & (5) of Cr.P.C. which entitled him for default bail is rightly rejected by the High Court and does not call for any interference by this Court.

17. We find no merit in the appeal and the same is dismissed.

[1] (1991) 3 SCC 655 para 76
[2] (2001) 5 SCC 453 para 13
[3] (1986) 3 SCC 141 para 25
[4] (1992) 3 SCC 141
[5] (1995) Supp 3 SCC 221
[6] (2002) 5 SCC 82