

SUPREME COURT OF INDIA

Ravi Prakash Singh @ Arvind Singh

Vs.

State of Bihar

Crl.A.No.325 of 2015

(Dipak Misra and Prafulla C.Pant JJ.)

20.02.2015

JUDGMENT

PRAFULLA C. PANT, J.

1. This appeal is directed against the judgment and order dated 24.12.2013 passed by the High Court of Judicature at Patna in Criminal Miscellaneous No. 48019 of 2013 whereby said Court has dismissed the petition under Section 482 of the Criminal Procedure Code, 1973 (for short "the Code") and declined to interfere with the order dated 22.10.2013, passed by Sessions Judge, In-charge, Kaimur at Bhabua in Bail Petition No. 542 of 2013, and upheld the refusal to release the appellant on bail under Section 167(2) of the Code.

2. Brief facts of the case are that appellant Ravi Prakash Singh @ Arvind Singh surrendered before Chief Judicial Magistrate, Kaimur on 5.7.2013 in connection with Crime No. 89 of 2013, registered at Police Station, Chainpur, relating to offences punishable under Section 302 read with Section 34 and Section 120B of the Indian Penal Code and under Section 27 of Arms Act. He was remanded to judicial custody till 19.7.2013. His remand was extended under Section 167 of the Code from time to time, and the last remand under said provision was granted till 3.10.2013. On 3.10.2013, the appellant moved an application under Section 167(2) of the Code for his release on the ground that the charge sheet has not been filed. On the same day, i.e., 3.10.2013, it was endorsed in the order sheet by the Chief Judicial Magistrate that as per report of the clerk of the Court, charge sheet has already been received, as such, the bail application moved under Section 167(2) of the Code was rejected by the Magistrate on the very day and further remand order

was passed under Section 209 of the Code. Endorsement "seen" was also made by the Magistrate on 3.10.2013 on the charge- sheet.

3. On 22.10.2013, the case was committed to the Court of Sessions Judge. The applicant moved bail application No. 542 of 2013 before the Sessions Judge, Kaimur at Bhabua seeking bail on the ground that he was entitled to be released on bail under Section 167(2) of the Code. He further pleaded that the Chief Judicial Magistrate has erred in law in rejecting his bail application on said ground. However, the In- charge Sessions Judge, who disposed of the above bail application, also opined that since the charge sheet had already been submitted, as such, the appellant was not entitled to bail on the ground that charge- sheet was not received within time.

4. On this, appellant Ravi Prakash Singh @ Arvind Singh appears to have moved a petition under Section 482 of the Code before the High Court of Judicature at Patna, praying that order passed by the Sessions Judge, as above, and the one passed by the Magistrate be quashed. But the High Court also took the view that since the charge sheet had already been filed within the period of ninety days, as such, it did not find any error in the orders passed by the courts below.

5. We have heard learned counsel for the parties and perused the original record of the case.

6. Sub-section (2) of Section 167 of the Code reads as under:-

"167(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that-

(a) The Magistrate may authorize the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding-

(i) Ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) Sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) No Magistrate shall authorize detention of the accused in custody by the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;

(c) No Magistrate of the second class, not specially empowered in this behalf by the high Court, shall authorize detention in the custody of the police.

Explanation I. - For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in Custody so long as he does not furnish bail.

Explanation II. - If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorizing detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be.

Provided further that in case of a woman under eighteen years of age, the detention shall be authorized to be in custody of a remand home or recognized social institution."

Above Proviso (a) to sub-section (2) of Section 167 of the Code provides that the Magistrate shall not authorize detention of an accused in custody in which the investigation relating to offence punishable with death, imprisonment for life or imprisonment for a term not less than ten years and if the investigation not completed within ninety days, the accused shall be entitled to be released on bail.

7. Admittedly, the appellant surrendered before the Magistrate on 5.7.2013. It is also not disputed that on 3.10.2013 the appellant moved an application for his release on bail under proviso (a) to sub-section (2) of Section 167 of the Code. However, the order sheet of the case shows that there is endorsement of the Magistrate on 3.10.2013 that the charge sheet has already been received.

8. The charge sheet against the appellant, in the original record, shows that the Investigating Officer signed it and submitted the same on 30.9.2013. Though the clerk concerned has not made any endorsement as to when actually the charge sheet was received, but there is endorsement of the Chief Judicial Magistrate which shows that he has mentioned "seen" on 3.10.2013 and signed at the top of the first page of the charge sheet. Order sheet of the court of the Magistrate also corroborates that on 3.10.2013 the clerk concerned reported to Chief Judicial Magistrate that the charge sheet had already been received.

9. It is argued on behalf of the learned senior counsel for the appellant that the appellant should have been given benefit of Section 167(2) of the Code. According to him, it was 91st day of detention on 3.10.2013. It is further contended by Mr. Nagendra Rai, learned senior counsel, that even Sunday or holiday on ninetieth day cannot deprive the benefit of proviso (a) to sub-section (2) of Section 167 of the Code. In support of his arguments he relied upon cases of Powell Nwawa Ogechi v. The State (Delhi Administration)[1] and State of Maharashtra v. Sharan B. Sarda[2]. In Sharan B. Sarda (supra) single Judge of Bombay High Court, and in Powell Nwawa Ogechi (supra) the Division Bench of Delhi High Court took the view that even if last day for filing charge sheet is holiday, the accused cannot be deprived of benefit of Section 167(2) of the Code.

10. Contrary to this, in N. Nureya Reddy and another v. State of Orissa[3], the Division Bench of Orissa High Court, interpreting the provisions of Section 167(2) of the Code read with Section 10 of the General Clauses Act, held that if ninetieth day is a holiday, filing of charge sheet on the next day should be treated sufficient compliance of filing of charge sheet within a period of ninety days and it cannot be said that provision contained in Section 167(2) of the Code is infringed.

11. In Chaganti Satyanarayana and others v. State of Andhra Pradesh[4], it has been held by this Court that period of ninety days under Section 167(2) of the Code shall be computed from the date of remand of the accused and not from the date of his arrest under Section 57 of the Code. However, in the present case, we have to see the relevant date as the date when the accused surrendered and remanded by the court.

12. In State of M.P. v. Rustam and others^[5], this Court has laid down the law that while computing period of ninety days, the day on which the accused was remanded to the judicial custody should be excluded, and the day on which challan is filed in the court, should be included. That being so, in our opinion, in the present case, date 5.7.2013 is to be excluded and, as such, the charge sheet was filed on ninetieth day, i.e., 3.10.2013. Therefore, there is no infringement of Section 167(2) of the Code.

13. For the reasons, as discussed above, in our opinion, the High Court has not erred in law in dismissing the petition under Section 482 of the Code, and upholding the refusal of bail to appellant prayed by him under Section 167(2) of the Code.

14. Accordingly, the appeal is dismissed. Lower court record be sent back forthwith.

[1] 1986 (3) Crimes 577 [2] 1983 (2) Crimes 254 (Short Note) [3] 1985 CRLJ 939 (Orissa) [4] (1986) 3 SCC 141 [5] 1995 Supp (3) SCC 221