

# ALLAHABAD HIGH COURT

Mahesh

Vs.

Union of India

Habeas Corpus Writ Petition No. 2963 of 1986

(S.C. Mathur and B.L. Loomba, JJ.)

06.05.1986

## JUDGMENT

### **S.C. Mathur, J.**

1. The Petitioner who was arrested under Section 8/18 and 8/20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Act No. 61 of 1985), for short 'The Narcotic Act', has sought his release from detention through writ of Habeas Corpus on the sole ground that Charge-sheet has not been filed against him within the period of 90 days referred to in Sub-clause (i) of Clause (a) of the proviso to Sub-section (2) of Section 167 of the Code of Criminal Procedure, 1973, for short 'Code'.

2. The Petitioner was arrested on 23rd December, 1985. The arresting authority was the Central Custom and Excise Officer. On 24-12-85 he was produced before Chief Judicial Magistrate, Lucknow who put him in Judicial custody and sent him to jail. From time to time remand was extended and till date the Petitioner continues to be detained in jail. After completing investigation the Custom authorities filed complaint on 22nd March, 1986. The Petitioner had applied for being enlarged on bail but the application was rejected by the learned Sessions Judge, Lucknow by his order dated 17-2-1986. Thereafter the Petitioner applied for release on bail in this Court but the application was rejected by Hon'ble P. Dayal, J. on 15th April, 1986. Now, the Petitioner has moved the instant application.

3. On behalf of Union of India appearance has been put in through Sri G.K. Mehrotra Advocate. Sri Mehrotra has submitted that the present case is not governed by Section 167 of the Code inasmuch as the investigation was not

done by the Police but the same was done by the officers appointed under the Narcotic Act. The learned Counsel points out that Section 167 appears in Chapter XII of the Code of Criminal Procedure which bears the heading 'Information to the Police and their powers to investigate'. In support of the plea that Section 167 is not applicable the learned Counsel has placed reliance upon the following authorities: *Badaku Joti Svant v. State of Mysore*,<sup>1</sup> *Illias v. The Collector of Customs, Madras*,<sup>2</sup> *The Superintendent of Customs, C.I.U., Cochin v. P.K. Ummerkutty*,<sup>3</sup> and (4) *M.K. Ayoob v. Superintendent, Customs Intelligence Unit Cochin*,<sup>4</sup>

4. Sri Mehrotra has also submitted that the officers of the Custom Department are not guilty of laches inasmuch as they filed the complaint within 90 days.

5. The learned Counsel for the Petitioner has not disputed Sri Mehrotra's claim that the complaint was filed on 22nd March, 1986. He, however, submits that this complaint cannot be equated with a charge-sheet and the Custom Officers although competent and to file charge-sheet preferred to file a complaint and therefore, Section 167 of the Code is attracted. According to the learned Counsel under Section 53 of the Narcotic Act officers appointed under the Act are Police Officers and therefore, investigation by the said officers was by the Police Officers and consequently, they were competent to file charge-sheet.

6. In view of the arguments advanced by learned Counsel for the parties the question for consideration is whether the officers appointed under the Narcotic Act can be considered to be the Police Officers and the investigation by the said officers can be said to be investigation by the Police so as to attract Chapter XII of the Code.

7. Section 4(1) of the Code provides that all offences under the Indian Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained. Sub-section (2) provides that all the offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. The offences in connection of which the Petitioner has been arrested are not the

offences under the Indian Penal Code, but are offences under the Narcotic Act. Accordingly, Sub-section (1) of Section 4 is not applicable. The case is covered by Sub-section (2). According to this Sub-section offences under other laws may also be investigated, inquired and tried according to the provisions of the Code. This is, however, subject to the provisions of Special Acts. Thus, if Special enactment prescribes a different procedure of investigation and trial the said procedure will be followed and not the procedure prescribed by the Code.

8. Chapter XII of the Code in which Section 167 appears, bears the heading-- "Information to the Police and their powers to investigate." This chapter starts with Section 154 and ends with Section 176. Sections 154 and 153 deal with recording of report of an offence. Section 156 confers power upon a police Officer to investigate cognizable offences. Section 157 prescribes the procedure for investigation. Then there are various sections which empower the police officer-in-charge of the investigation to procure attendance of witnesses. If the evidence collected during investigation is insufficient to bring home the charge against the accused persons, the police officer is required to act according to Section 169. If, on the other hand, such evidence makes out a case against an accused the said officer has to act in accordance with Section 170. This Section provides that if upon investigation it appears to the Officer Incharge of the Police Station that there is sufficient evidence or reasonable ground such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence. Section 173(1) provides that the investigation under this Chapter shall be completed without unnecessary delay. Sub-section (2) of this section provides that as soon as the investigation is completed, the officer-in-charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating the names of the parties, the nature of the information, the names of the persons who appear to be acquainted with the circumstances of the case and other particulars. Section 167 deals with the stage after arrest and forwarding of report by the police under Sub-section (2) of Section 173. From Section 167 read with Section 173 it is apparent that the purpose of providing for enlargement of detained person on bail on the expiry of the period prescribed in the proviso in the event of failure of police to submit charge sheet within that time is to ensure that there is no undue delay in bringing the case before a Magistrate. The purpose of the said

provisions is not to entitle a detenu to be enlarged him on bail even though under law no charge sheet is required to be filed and instead only the complaint is required to be made.

9. The entire Chapter XII which contains Section 167 deals with investigation by the Police. It nowhere refers to any other investigation.

10. The conditions requisite for initiation of proceedings are described in Section 10 of the Code. This Section reads as follows:

"190 (1) Subject to the provisions of this Chapter any Magistrate of the First class, and any Magistrate of the Second class specially, empowered in this behalf under Sub-section (2), may take cognizance of any offence-

- (a) upon receiving a complaint of facts which constitute such offence;
- (b) upon a police report of such facts;
- (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

The present case is covered by Clause (a) of Section 190.

11. We may now proceed to consider the provisions of the Narcotic Act in order to find out whether the officers appointed under the said Act can be said to be Police Officers so as to make Chapter XII of the Code applicable to the investigation conducted by them.

12. The Narcotic Act has been enacted to control and regulate the operations relating to narcotic drugs. Chapter II deals with authorities and officers. Sub-section (1) of Section 5 enjoins upon the Central Government to appoint a Narcotic Commissioner. It also provides that the Central Government may appoint such other officers with such designations as it thinks fit for the purposes of this Act. Section 7(1) authorizes the State Government to appoint such officers with such designations as it thinks fit for the purposes of this Act. Thus, under the Act the Central Government as well as the State Government are entitled to appoint officers for the purposes of carrying out the provisions of the Act. Chapter III deals with prohibition, control and regulation of certain operations connected with Narcotic drugs. Chapter IV prescribes offences and

penalties for violation of prohibitory and regulatory provisions. Section 18 which has been invoked against the Petitioner prescribes a maximum sentence of 20 years' rigorous imprisonment and a fine of two lakh rupees. Section 20 has also been invoked. Clause (i) of Section 20 prescribes the maximum sentence of 5 years' rigorous imprisonment and a fine of Rs. 50,000/-. Clause (ii) prescribes maximum punishment of rigorous imprisonment and fine of Rs. 2 Lakhs. Under Section 37 every offence under the Act is cognizable. Section 33 provides that Section 360 of the Code of Criminal Procedure and the Probation of Offenders Act, 1958 shall not apply to a person convicted of an offence under this Act unless such person is under 18 years of age. Under Section 39 Court is empowered to release a person convicted under the Act on probation if the conditions prescribed in the section are fulfilled. Chapter V generally prescribes the procedure to be followed by the officers appointed under the Act. Sub-section (2) of Section 41 authorizes an officer appointed under the (sic) possessing authority to arrest a person on information or personal knowledge that he has committed an offence punishable under Chapter IV Under Section 42(1)(d) such an officer may arrest a person whom he has reason to believe that he has committed an offence punishable under Chapter IV. Section 51 provides that provisions of the Code shall apply in so far as they are not inconsistent with the provisions of the Act, to all warrants issued and arrests searches and seizures made under the Act. Section 52(3) requires the arrested persons to be forwarded without unnecessary delay to the officer in charge of the nearest Police Station or an officer empowered under Section 53. Section 53 is in following terms:

"53 (1). The Central Government, after consultation with the State Government, may, by notification published in the Official Gazette, invest any officer of the department of Central excise narcotics, customs, revenue intelligence or Border Security Force or any class of such officers with the powers of an officer-in-charge of a Police Station for the investigation of the offences under this Act.

(2) The State Government may, by notification published in the Official Gazette, invest any officer of the department of drugs, control revenue or excise or any class of such officers with the powers of an officer in-charge of a Police Station for the investigation of offences under this Act.

(Emphasis supplied)

From the emphasised portion it would appear that the Central Government and the State Government are competent to invest the officers appointed under the Act with the powers of an officer-in-charge of a police station. Once the investment of the power is made, these officers will be competent to exercise the powers exercisable by an officer-in-charge of a police station but thereby they will not become police officers themselves. Accordingly, it is not possible to accept the submission of learned Counsel for the Petitioner that by virtue of the provision contained in Section 53 the officers of the departments who arrested and investigated the case against the Petitioner were not police officer so as to attract Chapter XII of the Code to their investigation.

13. A perusal of the various provisions of the Narcotic Act shows that it is a complete Code relating to offences under the Act. For this reason also, in view of Sub-section (2) of Section 4, Chapter XII will not be applicable to the present case.

14. A similar argument as was advanced by learned Counsel for the Petitioner in the present case, was advanced before their Lordships of Supreme Court in *Badaku (sic) case (supra)* in respect of Central Excise Officers appointed under the provisions of the Central Excise and Salt Act, 1944. Section 21 which came-up for interpretation before their Lordships reads as follows:

"21 (1). When any person is forwarded under Section 19 to a Central Excise Officer empowered to send persons so arrested to a Magistrate, the Central Excise Officer shall proceed to inquire into the charge against him.

(2) For this purpose the Central Excise Officer may exercise the same powers and shall be subject to the same provisions as the officer-in-charge of a police station may exercise and is subject to under the Code of Criminal Procedure, 1898, when investigating a cognizable case....

Negating the plea their Lordships observed, thus "... It is true that Sub-section (2) confers on the Central Excise Officer under the Act the same powers as an officer-in-charge of a police station has when investigating a cognizable case, but this power is conferred for the purpose of Sub-section (1) which gives power to a Central Excise Officer to whom any

arrested person is forwarded to inquire into the charge against him. Thus, under Section 21 it is the duty of the Central Excise Officer to whom an arrested person is forwarded to inquire into the charge made against such person.... It does not, however, appear that a Central Excise Officer under the Act has power to submit a charge-sheet under Section 173 of the Criminal Procedure Code. Under Section 190 of the Code of Criminal Procedure a Magistrate can take cognizance of any offence either (a) upon receiving a complaint of facts which constitute such offence, or (b) upon a report in writing of such facts made by any police officer, or (c) upon information received from any person other than a police officer, or upon his own knowledge or suspicion, that such offence has been committed. A police officer for purposes of Clause (b) above can in our opinion only be a police officer properly so-called as the scheme of the Code of Criminal Procedure show and it seems, therefore, that a Central Excise Officer will have to make a complaint under Clause (a) above if he wants the Magistrate to take cognizance of an offence, for example, under Section 9 of the Act...

The proposition laid down by their Lordships is fully applicable to the facts of the present case. In the present case also the officers appointed under the Narcotic Act are appointed for the limited purpose of discharging their duties under the Act. They cannot, therefore, be called Police Officers within the contemplation of the Code of Criminal Procedure. Accordingly, the said officers could only file a complaint under Clause (a) of Section 190 and not a charge sheet under Clause (b) of the said section. The Petitioner's learned Counsel, therefore, fruitlessly contends that the officers of the Narcotic Department were entitled to file a charge sheet and their failure to do so within 90 days entitled the Petitioner to be enlarged on bail.

15. In Illias case (supra) also same view was expressed by their Lordships of the Supreme Court. In this case their Lordships were dealing with the Customs Act, 1962. In view of the extensive powers conferred under the Act upon a custom Officer it was submitted before their Lordships that the power to file a charge sheet flows from the said powers. Negating the submission their Lordships observed that even though under the new Customs Act of 1962 a Customs Officer has been invested with many powers which were not to be found in the

provisions of the old Sea Customs Act of 1978, he cannot be regarded as a "Police Officer" within the meaning of Section 25 of the Evidence Act. This authority also negatives the Petitioner's plea.

16. Even if it is held that the principle of release on the expiry of the period of 90 days contained in Section 167 of the Code of Criminal Procedure would be applicable in the present case, the Petitioner can not be entitled to be enlarged on bail as the said section applies only when there is undue delay in investigation of the case. For an offence of the nature involved in the present case Section 167 treats a delay of beyond 90 days fatal to a detention of an accused person but within the period of 90 days no objection can be taken. As already noticed, in the present case a charge sheet could not be filed and only a complaint could be made. This complaint has been made within the period of 90 days. In the circumstances, the Petitioner cannot claim the writ prayed for.

17. In view of the Supreme Court decisions discussed hereinabove, it is not necessary to consider the other cases cited at the Bar.

18. In view of the above, the petition fails and is hereby dismissed.

Petition dismissed.

Cases Referred.

1. AIR 1966 SC 1746
2. 1970 Cri LJ 998
3. 1983 Cri LJ 1860
4. 1984 Cri LJ 949