
(2007) 12 MAD CK 0121

In the Madras High Court

Case No : Criminal O.P. No. 10653 of 2007 and M.P. No. 1 of 2007

Andi, Ponnaiya, Chinnakalai and Vellaichamy

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 07-12-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167(5), 190, 190(1), 460
Penal Code, 1860 (IPC) — Section 294, 424, 427, 447

Citation : (2008) 2 LW(Cri) 741

Hon'ble Judges : A. Selvam, J

Bench : Single Bench

Advocate : P. Vairava Sundaram, for the Appellant; P. Rajendran, Government Advocate for Respondent No. 1 and T. Chandrasekaran, for the Respondent

Final Decision : Dismissed

Judgement

A. Selvam, J.—This criminal original petition has been filed, praying to quash the case registered in Crime No. 108 of 2007 under Sections

294(b), 427 & 447 of Indian Penal Code.

2. It is stated in the petition that one Vellaikalai, a resident of Avichipatti Village, Natham Taluk, Dindigul District, has lodged the complaint in

question and the same has been registered in Crime No. 108 of 2007, wherein the present petitioners have been shown as the accused. Further it

is stated in the petition that the second petitioner has been arrested on 02.03.2007 and even though the complaint in question has been registered

in Crime No. 108 of 2007 on 01.03.2007, the respondent has not filed the requisite final report within six months from the date of arrest of the

second petitioner i.e., on 02.03.2007, as contemplated in Section 167(5) of the Code of Criminal Procedure. Under the said circumstances, the

present petition has been filed so as to quash the case registered in Crime No. 108 of 2007.

3. The learned Counsel appearing for the petitioners has strenuously contended that the complaint in question has been registered in Crime No.

108 of 2007 on 01.03.2007 under Sections 294(b), 427 and 447 of Indian Penal Code and the second petitioner has been arrested on

02.03.2007 and from 02.03.2007, as per Section 167(5) of the Code of Criminal Procedure, the respondent ought to have filed a final report

within six months, but, the respondent has not done it and under the said circumstances, the entire case registered in Crime No. 108 of 2007 is

liable to be quashed.

4. In support of his contention, he has drawn the attention of the Court to the following decisions;

(a) The first and foremost decision is reported in 2007(1) MWN (Cr.) 268 Azalea Veronica v. State, represented by Inspector of Police, Airport

Police Station, Chennai wherein this Court has held that if there is any contravention of mandatory requirements of Section 167(5) of the Code of

Criminal Procedure, would amount to clear case of abuse of process of law and the entire proceedings are liable to be quashed.

(b) The second decision is reported in 1982 Criminal Law Journal 744 Jaya Sankar Jha v. State (Calcutta High Court) wherein it has been held

that no attempt by investigating officer to satisfy the Magistrate as required by Section 167(5) of the Code of Criminal Procedure has been made

and therefore, the investigation is illegal.

5. The learned Government Advocate (criminal side) has also equally contended that the case registered in Crime No. 108 of 2007 has been

enquired into and the respondent has also filed a final report and the same has been taken on file in Calendar Case No. 51 of 2007 and once the

concerned Magistrate has taken cognizance, the mere antecedent illegality or irregularity would not vitiate the entire proceedings and therefore, the

present petition deserves dismissal.

6. For better appreciation and also for easy reference, the Court has to look into the provisions of Section 167(5) of the Code of Criminal

Procedure and the same reads as follows;

If in any case triable by a Magistrate as a summons-case, the investigation is not

concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.

7. From the close reading of the provision of Section 167(5) of the Code of Criminal Procedure, it is easily discernible that a mandatory duty is cast upon the particular Magistrate to make necessary order so as to stop further investigation if the same is not concluded within a period of six months from the date of arrest of the accused concerned and further it is learnt that the Magistrate is having power to elongate the period specified in the said Section on the basis of special reasons and also in the interest of justice.

8. With these legal backdrops, the Court has to further analyse the present case. It is an admitted fact that the complaint in question has been registered on 01.03.2007 in Crime No. 108 of 2007 under Sections 294(b), 427 and 447 of Indian Penal Code and all the alleged offences can be tried summarily. The concerned Magistrate has submitted a report, wherein it has been clearly stated that the respondent has filed a final report and the same has been taken on file in Calendar Case No. 51 of 2007. Therefore, it is very clear that the respondent has filed a final report and the concerned Magistrate has taken cognizance of the same u/s 190(b) of the Code of Criminal Procedure. Now, the Court has to analyse whether the entire proceedings relating to Calendar Case No. 51 of 2007 can be quashed.

9. In 1996 Criminal Law Journal P-1137 (Supreme Court) *Durgesh Chandra Saha v. Chandra Saha and Ors.* wherein the Honourable Apex Court has held that unnecessary liberal construction of Section 167(5) of the Code of Criminal Procedure with a view to protect the right against deprivation of personal liberty is not called for.

10. In 1983 Criminal Law Journal P-1748 *Jagannathan and Ors. v. State* wherein this Court has held that once a case is taken cognizance of by a competent Court and the proceedings of the case has commenced, the mere antecedent illegality or irregularity in the investigation, on the basis of which the final report has been filed, will not invalidate or vitiate the proceedings

unless it is shown that prejudice has been caused thereby to the accused or any miscarriage of justice has resulted thereby. Hence the illegal investigation conducted beyond the prescribed period of six months, without the order of the Magistrate would not vitiate the taking cognizance of the offence and the subsequent proceedings.

11. In 1987 CLJ 70 C. Bhaskaran Nair v. State of Kerala and Ors. the Division Bench of Kerala High Court has held as follows;

Section 167(5) has not fixed any time limit beyond which investigation cannot continue. The main purpose of the provision is to avoid the serious

abuse of an arrested person being kept in custody indefinitely while the investigation goes on leisurely. The object of that provision is mainly to

protect the interest or under trial prisoners. It cannot be said that the restriction is applicable only in cases of investigation involving under trial

prisoners. It equally applies to investigation of cases where accused were either arrested and released on bail or surrendered and released on bail

also. It is true that Section 167(5) is intended as a mandate to the investigators to complete investigation in summons cases within six months of the

arrest of the accused except in cases where the continuance beyond six months is necessary for special reasons and in the interests of justice. The

authority to decide the existence of those special reasons and interests of justice is not the investigating agency but the Magistrate. It is always the

duty of the investigating agencies, whenever they feel that investigation cannot be completed within the prescribed period and special reasons and

interests of justice demand continuance of investigation beyond six months, to bring these reasons to the notice of the Magistrate and get orders for

extension of time. Investigation conducted after six months without an order from the Magistrate, at any rate, will not vitiate that part of the

investigation, in the absence of prejudice or miscarriage of justice being shown. From the wordings of Section 167(5) it cannot be said that a

legislative intent that the investigator can approach the Magistrate for extension of time or the Magistrate can order extension of time only before

the expiry of six months and not thereafter. Such an interpretation will defeat the very purpose of investigation and bringing offenders to justice. So

also simply because six months have expired there is no question of the Magistrate being divested of jurisdiction to extend time in deserving cases.

It is the judicial satisfaction of the Magistrate that has to decide whether continuance of the investigation has to be allowed due to existence of

special reasons and in the interests of justice or stopped due to absence of these reasons. Such an order is justiciable also.

12. In 2000 CLJ 675 State of Himachal Pradesh v. Rehmat Ali it has been held that infringement of provision of Section 167(5), will not vitiate entire trial.

13. From the conjoint reading of the decisions mentioned supra, it is made clear to the Court that the investigation conducted after six months

without an order from the Magistrate, at any rate, will not vitiate that part of the investigation, in the absence of prejudice or miscarriage of justice

being shown and further it is made clear that once a case has been taken cognizance of by a competent Court and the proceedings of the case has

been commenced, the mere antecedent illegality or irregularity in the investigation on the basis of which the final report has been filed, will not

invalidate or vitiate the proceedings unless it is shown that prejudice has been caused thereby to the accused or any miscarriage of justice has

resulted thereby.

14. In the instant case, as narrated earlier, the respondent has not finished his investigation within six months from the date of arrest of the second

accused on 02.03.2007. The concerned Magistrate has also not invoked the mandatory provision of Section 167(5) of the Code of Criminal

Procedure. Despite of the defects, as pointed out earlier, the respondent has continued his investigation and ultimately filed the requisite final report

and the same has been taken on file in Calendar Case No. 51 of 2007. The concerned Magistrate has taken cognizance u/s 190(b) of the Code of

Criminal Procedure.

15. At this juncture, it would be more useful to look into Section 460 of the Code of Criminal Procedure. Section 460 of the said code deals with

irregularities which do not vitiate proceedings. In Section 460(e) it is stated like thus;

(e) to take cognizance of an offence under Clause (a) or Clause (b) of Sub-section (1) of Section 190;

16. Therefore, it is very clear that if any irregularities have been done in taking cognizance of a particular offence, the said irregularities do not

vitiate the entire proceedings as per Section 460(e) of the Code of Criminal Procedure.

17. It has already been pointed out that in the instant case, the respondent has conducted investigation beyond the period of six months as

contemplated u/s 167(5) of the Code of Criminal Procedure. The concerned Magistrate has also failed to invoke the mandatory requirement of the

said Section. But, the respondent has filed a final report and the same has been taken on file in Calendar Case No. 51 of 2007 under Sections

424, 447 & 294(b) of Indian Penal Code. It has already been pointed out that once a case has been taken cognizance of by a competent Court,

the antecedent illegality or irregularity would not invalidate or vitiate the subsequent proceedings and further the Division Bench of the Kerala High

Court in 1987 Cri.L.J. 170 has clearly held that the investigation conducted after six months without an order from the Magistrate, at any rate, will

not vitiate that part of the investigation, in the absence of prejudice or miscarriage of justice being shown. It is not an exaggeration to say that the

entire mistake has been committed by the concerned Magistrate as well as the concerned investigating officer and for the mistake committed by

them, the innocent person viz., the defacto complainant, should not be penalised and further the authorities cited by the learned Counsel appearing

for the petitioners are not suited to the facts and circumstances of the present case and under the said circumstances, the same cannot be relied

upon.

18. Even at the risk of jarring repetition, the Court would like to point out that the Division Bench of the Kerala High Court in C. Bhaskaran Nair

Vs. State of Kerala and Others, has clearly held that the investigation conducted after six months without an order from the Magistrate, at any rate,

will not vitiate that part of the investigation. Therefore, it is very clear that the case registered in Crime No. 108 of 2007, cannot be quashed.

19. In view of the foregoing narration of both the factual and legal premise, this Court has not found any valid force in the argument advanced by

the learned Counsel appearing for the petitioners and whereas the argument advanced by the learned Government Advocate is really having

subsisting force.

20. In fine, this petition deserves dismissal and accordingly is dismissed.

Consequently, connect miscellaneous petition is also dismissed.