

(2003) 10 PAT CK 0014
In the Patna High Court
Case No : Cr. W.J.C. No. 314 of 2003

Anjay Khatik @ Ajay Bihari	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 28-10-2003

Acts Referred:

Citation : (2003) 10 PAT CK 0014

Final Decision : Dismissed

Judgement

1. This writ petition on behalf of the sole Petitioner has been filed for quashing the order of the Chief Judicial Magistrate, Darbhanga dated 27.9.2003 rejecting the Petitioner's application u/s 167(2) of the Code of Criminal Procedure in connection with L.N. Mithila University P.S. Case No. 91/2003.
2. The facts of the case which are not in dispute are these. On 17.6.2003 L.N.M.U. P.S. Case No. 91/2003 under Sections 452, 324, 342 and 376/34 was instituted against the Petitioner and one Prashant Kumar. The case is that the victim, Sweta Krishnani, was forcibly taken away and raped by the Petitioner. The Petitioner surrendered before the Magistrate in the aforesaid case on 1.7.2003. On 26.9.2003 he filed application for release on the ground that the police had failed to submit charge sheet within the period of 60 days in terms of proviso (a) (ii) to Section 67(2) of the Code of Criminal Procedure. As the case would have it, chargesheet was filed on the very next day i.e. 27.9.2003. On the same day, said application of the Petitioner was taken up for consideration and rejected.
3. It is not in dispute that the chargesheet was submitted within a period of 90 days from the date of Petitioner's surrender/remand. The contention however is that having regard to the offences alleged, the reckoning period would be 60 days and not 90 days for completing the investigation and on failure thereof, releasing the accused under proviso to Section 167(2). The only point for consideration is whether the period of 60 days or 90 days would govern the instant case.

4. Section 167 of the Code of Criminal Procedure so far as relevant may straightaway be quoted as under:

(1) (i)

(2) (a)- the Magistrate may authorise 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 released under the provisions of Chapter XXXIII for the purposes of that Chapter.

....

From perusal of the above provisions it would appear that the benefit of compulsive bail as envisaged in Section 167 is available to an accused where chargesheet is not submitted within a period of 90 days in cases where offence is punishable with death, imprisonment for life or imprisonment for a term of not less than ten years, and 60 days in other cases.

5. The contention of the counsel for the Petitioner is that as the offence u/s 376 of the Penal Code provides for punishment which may be imprisonment "upto ten years", the case would not fall under Clause (a). According to the counsel unless minimum of ten years" imprisonment is prescribed the period for completing the investigation must be reckoned as 60 days for the purpose of Section 167 of the Code of Criminal Procedure. The Section, counsel points out, provides for punishment of not less than seven years which in his submission is less than the period (ten years) which would attract the 90 days clause in the proviso to Sub-section (2) of Section 167. Reliance is placed on decision of the Jharkhand High Court in Sunil Kumar v. State of Jharkhand 2002 (2) Cri 473.

6. The above decision no doubt supports the contention of the counsel but in view of the decision of the Apex Court in Rajeev Chaudhary Vs. State (N.C.T.) of Delhi, does not appear to be a correct decision. Reference to the placitum which culls out the ratio of the decision would bring home the point:

From the relevant part of Section 167 Code of Criminal Procedure it is apparent that in cases where offence is punishable, with imprisonment for 10 years or more, the accused could be detained upto a period of 90 days. In this context,

the expression "not less than" would mean imprisonment should be 10 years or, more and would cover only those offences for which punishment could be imprisonment for a clear period of 10 years or more.... Further, in context also if clause, (i) of proviso (a) to Section 167(2) is considered, it would be inapplicable in case where investigation relates to an offence punishable (1) with death; (2) imprisonment for life; and (3) imprisonment for a term of not less than ten years. It would not cover the offence for which punishment could be imprisonment for less than 10 years.

The aforesaid decision was rendered in context of Section 386 of the Penal Code which provides for punishment of imprisonment for a term which may extend to ten, years and, also, fine. Taking the view that the punishment was not for clear period of ten years or more, the Supreme Court" upheld the decision of the High Court that period of 60 days would apply to attract the benefit of proviso to Section 167(2). The instant case is one u/s 376 of the Penal Code which prescribes punishment of (a) imprisonment for life (b) imprisonment for a term upto ten years besides fine. The submission that punishment of not less than seven years imprisonment is prescribed is totally misconceived, for, what is relevant is the maximum punishment and not the minimum punishment, if any. As the offence u/s 376 IPC is punishable with imprisonment for life i.e. imprisonment for more than ten years, the case, in our opinion, is covered by Sub-clause (i) of the proviso (a) and as chargesheet was submitted within a period of 90 days, the benefit of compulsive bail was not available to the Petitioner. We thus, do not find any error in the order of the Magistrate.

7. In the result, the writ petition is dismissed.