

(1997) 03 MAD CK 0029

In the Madras High Court

Case No : Criminal R.C. No. 596 of 1994 and Criminal M.P. No. 6723 of 1994

Arasappan

APPELLANT

Vs

Inspector of Police, (Prohibition Enforcement Wing)

RESPONDENT

Date of Decision : 14-03-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167(5), 167(6), 468, 468(2)
Madras Prohibition Act, 1937 — Section 4(1)

Citation : (1997) 1 CTC 515

Hon'ble Judges : N. Arumugham, J

Bench : Single Bench

Advocate : M. Liagat Ali, for the Appellant; P. Venkatasubramanian, for Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

N. Arumugham, J.—The petitioner is one of the accused, aggrieved by the Order passed by the learned Sessions Judge at Sivagangai in

Pasumpon Muthuramalinga Thevar District, made in Criminal Miscellaneous Petition No. 115 of 1993 dated 17.2.1993 by virtue of Section

167(6) of Code of Criminal Procedure, has preferred this revision challenging the correctness and legality of the said impugned order.

2. The petitioner was arrested along with two others on 31.12.1991 by the respondent police i.e. Prohibition Enforcement wing of Sivagangai for

the alleged offences under Sections 4(1)(i) and 4(1)(k) of Tamil Nadu Prohibition Act. He was released on bail by the respondent on the same

day. The First Information Report along with seizure appears to have been sent to the court and the investigation was taken up by the respondent.

Though the First Information Report was pending before the learned Judicial Magistrate, Devakottai from 31.12.1991, investigation in this case

was not concluded within six months as provided by the law and that therefore, the case records show that two notices were sent to the

Investigating Officer through the Assistant Public Prosecutor Gr.II, attached to the learned Magistrate, one on 14.7.1992 and Anr. on 13.8.1992

intimating them to conclude the investigation and to explain as to why the investigation was not concluded within the time. But, it seems that there

was no response from the respondent. In the result, finding no other alternative, the learned Judicial Magistrate, Devakottai passed an order u/s

167(5) of Criminal Procedure Code, stopping all further proceedings of investigation on 24.9.1992 and thereby discharged the accused who is

the petitioner herein. Aggrieved at this order, the respondent by virtue of subclause 6 of Section 167 of Code of Criminal Procedure, filed a

petition before the learned district and Sessions Judge of Pasumpon Muthuramalinga Thevar District in Criminal Misc. Petition No. 115 of 1993

and prayed for the revision of the order passed by the learned Judicial Magistrate.

3. The learned Sessions Judge, after hearing both parties, decided the case on merits and passed an order on 1.8.1994, setting aside the order

passed by the learned Judicial Magistrate and remanded the matter for further proceedings. For the purpose of convenience and for better

appreciation the impugned Order passed by the learned Sessions Judge has been extracted as hereunder:

It is the Revision Petition filed by the Public Prosecutor against the Order closing the case in Crime No. 6 of 1991 stating that since no charge

sheet is received within six months even after issue of reminders, the case is closed u/s 167(5) of Code of Criminal Procedure. The Magistrate has

further ordered that the bottles are ordered to be destroyed and confiscated to the State.

The Public Prosecutor contends that u/s 468 of Code of Criminal Procedure, the period of limitation for filing of charge sheet is one year.

Therefore the Magistrate is not correct in closing the case exercising the power u/s 167(5) of Code of Criminal Procedure.

Under Section 167(5) of Code of Criminal Procedure, the Magistrate can only stop investigation, in case, Charge-sheet is not filed within six

months. Only 468 Cr.P.C. provided the period of limitation for filing of charge-sheet. Since the offence is punishable with imprisonment for a

period of three months the limitation u/s 468(2) of Code of Criminal Procedure is one year. Therefore, the order of the Magistrate in closing the case is illegal and hence the order is set aside.

The Magistrate is informed that he shall not close the case so hurriedly without even looking into the provisions of law, in future. Hence this petition is allowed.

4. The above Order seems manifestly an erroneous one. As rightly aggrieved by the Order, Mr. Liagat Ali, the learned counsel for the petitioner

persuaded me to refer Sub-section 5 of Section 167 of Criminal Procedure Code, which is extracted as hereunder:

If in any case triable by a Magistrate as a summons case, 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 investigating into offence, unless the Officer, making the investigation,

satisfied the Magistrate that, for specific reasons and in the interest of justice, the continuation of investigation, beyond the period of 6 months is

necessary.

5. An apt reading of the above section would clearly envisage that, when the Investigating Officer was not able to complete the investigation within

a period of six months from the date of arrest of accused, who was arrested for the offence, triable as a summons case, unless and until he satisfies

the Magistrate with the extra-ordinary reasons which impelled him to continue the investigation, it is provided that the Magistracy shall make an

Order, stopping further investigation into the offence. The etimological meaning to the words employed in this Sub-section is very clear enough in

providing no option to the Magistrate who takes the case as triable as a summons case and finds that the investigation was not completed within

the period of six months, except to stop further investigation by passing an order. In the instant case, it is noted that, after the expiry of six months

from the date of arrest of the accused, finding that no investigation was completed, the learned Magistrate has served notices to the respondent,

twice, i.e. on 14.7.1992 and on 13.8.1992, through the Assistant Public Prosecutor attached to him and got no response from the respondent.

Thus, it is seen that the Magistrate by himself has prompted the investigating agency to comply with the mandate provided in the above Sub-

section, but got no response.

6. But, pursuant to Sub-section 6 of Section 167 of the Code of Criminal Procedure, the respondent, on the pretext, as though nothing had

happened, placed his grievances before the learned Sessions Judge and the learned Sessions Judge, unfortunately ignored the implications of the

law and passed the impugned order, which resulted in filing of this revision, canvassing the propriety and legality as a whole.

7. As was effected by the learned Sessions Judge, the learned counsel Mr. Venkatasubramanian, who appeared on behalf of the State and the

Public Prosecutor, pointed out that the limitation provided by the Court for filing the charge sheet in the instant case is one year, by virtue of

Section 468 of the Code and he justified the impugned order as a response to circum-vent the effort made by Mr. Liagat Ali, the learned counsel

for the revision petitioner. With great respect to the learned counsel for the respondent, I may, straight away observe, that his very effort in

justifying the impugned order is not correct in the proper perspective of the legal procedure, for the very reasoning that Section 468 of the Code of

Criminal Procedure provides the limitation for taking cognizance of the various category of the offences on the filing of final report, except as

otherwise provided elsewhere in this Code. Therefore, in the light of mandate provided u/s 167(5) of the Code of Criminal Procedure, what has

been provided u/s 468 of the Code of Criminal Procedure is to take place only subject to the mandate provided in the earlier Section. Section 468

of the Code of Criminal Procedure reads as follows:

(1) Except as otherwise provided elsewhere in this code, no court shall take cognizance of an offence of the category specified in subsection (2)

after the expiry of the period of limitation.

(2) The period of limitation shall be -

(a) Six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year.

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year, but not exceeding three years.

(3) For the purpose of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference

to the offence which is punishable with more severe punishment, or, as the case may be, the most severe punishment.

8. If what has been provided as limitation in Sub-section 2(a) of section 468 of Code of Criminal Procedure, exempting the necessity of the

mandate provided under Sub-section 5 of 167 of the Code of Criminal Procedure, it is worthwhile to note that two aspects of legal concept arise,

which are, firstly, the completion of the investigation within a time frame of six months has been mandated under Sub-section 5 of the Section 167

of the Code of Criminal Procedure, but, however, to file the final report or charge-sheet of such offence, triable under a summons case, generally

provides the limitation for one year for the investigating agency and it is the second one. Therefore, the element of providing the limitation for filing

the charge sheet under 1(a) of Section 468 of the Code is distinct and different from that of the one provided under Sub-section 5 of Section 167

of the Code of Criminal Procedure, which contains the limitation for completing the investigation and as such, I understand that there is a

remarkable difference between the two concepts of law and one cannot be allowed to be clubbed or mingled with another. In view of the

phraseology of Section 468 of the Code i.e., "except as otherwise provided elsewhere in this code, no court shall take cognizance of an offence"

would clearly mean and imply that what has been provided u/s 468 of the Code of Criminal Procedure cannot at all be given an over-riding effect

upon the mandate provided under 167(5) of the Code of Criminal Procedure, in which case, the Magistracy can have no option, except to

exercise the power of stopping the investigation, in case the investigating agency fails to complete the investigation within the time fixed, for any

reason. Thus, the fallacy in the impugned order has been identified and for the said reasoning, I am not inclined to accept the contention raised by

Mr. Venkatasubramanian, on behalf of the State. In Jagannathan and Others Vs. The State, a learned single Judge of this Court, had the occasion

to consider an identical question of law as is involved in the instant case, by the number of case laws decided by the Apex Court, cataloguing and

finally observe at page 1757, as follows:

On a plain reading of Section 167(5) and the decisions rendered by the Supreme Court, the Calcutta High Court, and the Rajasthan High Court,

it is patently clear that if in any case triable 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 must make an order stopping the investigation into the offence unless the officer making the investigation has, before the expiry of the said six months" period, satisfied the Magistrate that for special reasons and in the interest of justice, the continuation of the investigation beyond the period of six months is necessary, and that the investigation conducted beyond the period of six months without the permission of the Magistrate has to be held as illegal, because investigation beyond the period of six months without such permission of the Magistrate is clear breach of the directions given under this provision. In this context, I would like to observe that the failure on the part of the Court to stop the investigation on the expiry of six months, as provided u/s 167(5), will not ipso facto be deemed to be an implied permission by the Court to the Investigating Officer to continue the investigation beyond the prescribed period, as the continuation of the investigation beyond the prescribed period could be permitted by the Court only for special reasons and in the interest of justice. Once there is an order passed stopping the investigation, as rightly pointed out in Babulala's case by the single Judge of the Rajasthan High Court, the accused involved in the concerned summons case has to be released forthwith in case he is in jail custody, since the power to remand and retain the accused in custody u/s 167 arises only when the investigation is pending, unless an application has been taken out by the police officer before the expiry of six months and that has been rejected and a revision is pending against the said order. It is to be noted that the question of revision u/s 167(6) will not arise unless the officer making the investigation has taken out an application before the Magistrate u/s 167(5) before the expiry of six months" period and that has been rejected.

9. The above ratio held by the learned single Judge of this Court in the above case seems to apply to the core of the instant case in all the form and

I have my preference of adding my reasons that the Magistrate has exercised his power u/s 167(5) of the code, not by sending one reminder, but

two, through the officer of his court on 14.7.1992 and 13.8.1992 and even so, the respondent Investigating Officer never responded to any. For

the said reasons, I am able to see that the respondent has lost every one of their right by the order passed by the learned Judicial Magistrate u/s

167(5) of the Code of Criminal Procedure stopping the entire proceedings and that, under the circumstances, involving Sub-section 6 of Section

167 of the code by the Investigating Agency as if nothing had happened and got the matter agitated before the learned Sessions Judge and the

consequent order passed by the learned Sessions Judge referring to the other provision of law is clearly an erroneous approach. There cannot be

any revision or grievance to be put-forth by the Investigating Officer by virtue of Sub-section 6 of Section 167 of the code, for the simple reason

that, not only, the respondent failed to approach the Judicial Magistrate and convince him with extra-ordinary reasons for continuing the

investigation beyond six months, but also failed to respond to the two letters addressed by the Judicial Magistrate. It is, therefore, on these factual

aspects, the respondent has lost his credibility and merits to file any application before the Sessions Court. But, in the light of the observation made

by me as above and one the principles of law decided by this court already and in the context of mandate provided by Section 167 of the Code of

Criminal Procedure and particularly Sub-section 5 of the Section of the code, I have no hesitation in holding that the impugned order lacks legal

merits and accordingly, it is liable to be set aside.

10. In the result, for all the foregoing reasoning, the revision succeeds and accordingly, it is allowed. Consequently, the impugned order passed by

the learned Sessions Judge of Pasumpon Muthuramalinga Thevar District at Sivagangai in Crl.M.P.No.159 of 1993 dated 1.8.1994 is hereby set-

aside and the order passed by the learned Judicial Magistrate, Devakottai dated 24.9.1992 is hereby restored and thereby the further investigation

by the respondent is stopped. Consequently, the Criminal Miscellaneous Petition is closed.