

(2000) 03 OHC CK 0031

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 186 of 2000

Bhikari Charan Awasti alias Bhiku and Another

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 03-03-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167(2)

Citation : (2000) 89 CLT 716 : (2000) 89 CLT 533 : (2000) CriLJ 2642 : (2000) 18 OCR 448 : (2000) 1 OLR 571

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : B.P. Ray, P. Mohanty, B. Sahoo and P.K. Pattnaik, for the Appellant;
Addl. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

L. Mohapatra, J.—This is an application u/s 439 of the Code of Criminal Procedure ("Cr.P.C." for short) for grant of bail.

2. As it appears charge-sheet has been submitted u/s 302/34, I.P.C. and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act against the petitioners. The petitioners filed an application before the Special Judge, Sundargarh, u/s 167(2). Cr.P.C. stating that they were arrested on 15.7.1999 and the final form (charge-sheet) had been submitted in the Court of S.D.J.M., Sundargarh on 8.11.1999 against both the petitioners. The application was moved on the ground that the charge-sheet having not been submitted in the Court having jurisdiction and competent to take cognizance of the offences, they were entitled to the benefit of proviso to Section 167(2) of Cr.P.C. The said application was filed on 19.11.1999. The learned Special Judge, Sundargarh, called for the records in G.R. Case No. 340 of 1999 and after looking into the same rejected the application on 8.12.1999.

3. Shri B. P. Ray, learned counsel appearing for the petitioners, submits that the

day on which the application for bail was filed before the Special Judge, Sundargarh, charge-sheet was not available and therefore, the petitioners are entitled to the benefit of proviso to Section 167(2), Cr.P.C. The learned counsel has relied upon the decision reported in , 1999 OLR 451, (1999) 17 OCR 400, Ramesh Das v. State of Orissa. In the said reported decision, the accused filed an application for grant of bail u/s 167(2), Cr.P.C. stating that the prosecution had failed to submit the charge-sheet within the prescribed period of 1 20 days from the date of his remand. The case was adjourned to the next day by the Special Judge on which date the charge-sheet was filed. On such background this Court held that since no charge-sheet had been submitted on the date the application was filed, the accused was entitled to the benefit under Proviso to Section 167(2) Cr.P.C. In the present case, it appears that the charge-sheet was filed on 8.11.1999, whereas the petitioners were remanded on 15.7.1999. Therefore, the investigation was completed and final form (charge-sheet) was submitted within the prescribed period of 1 20 days. The learned counsel for petitioner has drawn the attention of this Court to the order dated 11.11.1999 passed by the learned S.D.J.M. in the relevant G.R. Case which is quoted below :

"U.T.P. Bhikari Charan Awasti, Raj Kumar Awasti and Bhuban Tanty are produced in jail custody. F.F. not received. Case posted to 24.11.1999 for F.F."

Relying on the said order, the learned counsel submits that the charge-sheet had in fact not been submitted before the Court till 11.11.1999. Though from the record it is found that the charge-sheet was submitted on 8.1 1.1999 and the said fact has also been admitted by the petitioners in their petition u/s 167(2), Cr.P.C. filed before the Special Judge. Sundargarh, it is not understood as to how the learned S.D.J.M. has recorded in his order dated 11.11.1999 that he had not received the final form.

4. Before entering into the question as to whether petitioners are entitled to be enlarged on bail under the Proviso to Section 167(2), Cr.P.C, it is necessary to refer to the legislative intention behind incorporation of such a proviso in the 1973 Code. Section 167 of the 1973 Code corresponds to Section bearing the same number of the old Code, but the new Code has introduced certain new provisions. Proviso to Section 167(2) of the 1973 Code provides two safeguards to a person charged with an offence who is to be detained for the purpose of investigation. The safeguards are detention in judicial custody and not in police custody and that the total period of detention would not be more than 90 days (now 1 20 days) where investigation relates to offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years. Introduction of such a proviso was felt necessary as the Joint Committee had observed :

"There was persistent complaint that investigations are not being completed quickly by the police and that in many cases accused persons are kept in detention for very long periods causing hardship and misery to such under-trial prisoners and their families. Although some provisions are already there in the

existing Code requiring investigations to be completed quickly, they have not had the desired effect. The Committee feels" that a drastic remedy is called for in this behalf."

As is evident from the said proviso, the object of incorporating the proviso is to see that a person arrested by police does not languish unnecessarily in prison awaiting completion of investigation. By this provision it is also intended to prevent possible abuse by the police of their powers. The provisions contained in Section 167(2) are mandatory and failure of the investigating agency in completing the investigation within the prescribed period entitles the accused to be enlarged on bail.

5. In the present case, the final form (charge-sheet) was submitted within the prescribed period before the learned S.D.J.M. in whose Court the G.R. Case was pending. Non-submission of the charge-sheet before the Special Judge does not give a right to the accused to claim benefit under the proviso to Section 167(2), Cr.P.C. I am, therefore, of the view that the petitioners are not entitled to the benefit under proviso to Section 167(2), Cr.P.C. and accordingly the application is dismissed.

6. However, I direct the learned Special Judge, Sundargarh, to make an enquiry and find out as to why the final form (charge-sheet) was not placed before the S.D.J.M., Sundargarh, in G.R. Case No. 340 of 1999 on 11.11.1999 although the same had been submitted on 8.11.1999. On completion of enquiry if the learned Special Judge, Sundargarh finds that any officer is responsible for not placing the final form before the Magistrate on 11.11.1999, appropriate action should be taken against such officer.