

(2015) 08 SC CK 0063

In the Supreme Court Of India

Case No : Criminal Appeal No. 1081 of 2015 (Arising out of S.L.P. (Criminal) No. 3611 of 2015), Criminal Appeal No. 1082 of 2015 (Arising out of S.L.P. (Criminal) No. 3612 of 2015) and Criminal Appeal No. 1083 of 2015 (Arising out of S.L.P. (Criminal) No. 4241 of 2

Central Bureau of Investigation

APPELLANT

Vs

Rathin Dandapat and Others

RESPONDENT

Date of Decision : 21-08-2015

Acts Referred:

Arms Act, 1959 — Section 25, 27

Criminal Procedure Code, 1973 (CrPC) — Section 167, 167(2), 173(2), 173(3), 173(4)

Penal Code, 1860 (IPC) — Section 148, 149, 302, 307, 326

Citation : (2015) 3 ACR 3323 : (2015) 9 AD (SC) 472 : AIR 2015 SC 3285 : (2015) 91 ALLCC 231 : (2015) ALLMR(Cri) 3678 : (2015) 3 CCR 386 : (2015) CriLJ 4488 : (2015) 4 Crimes 347 : (2015) 4 JCC 2631 : (2015) 4 JLJR 119 : (2015) 3 NCC 264 : (2015) 4 PLJR 274 : (

Hon'ble Judges : Dipak Misra, J; Prafulla C. Pant, J

Bench : Division Bench

Advocate : Maninder Singh, ASG, Neeraj Kishan Kaul, Senior Advocate, Atreyi Chatterjee, Binu Tamta, B. Raghunath and B.V. Balaram Das, for the Appellant; Pradip Kumar Ghosh, Sr. Adv, Biswajit Manna, Debarpita Basu Mukherjee and Sarla Chandra, Advocates for the Respo

Final Decision : Allowed

Judgement

Prafulla C. Pant, J—A common question of law is involved in these three appeals as to whether no remand in police custody can be given to the investigating agency in respect of the absconding accused who is arrested only after filing of the charge sheet.

2. We have heard learned Counsel for the parties and perused the papers on record.

3. The instant case from which these appeals have arisen, relates to killing of nine persons and injuring large number of villagers of Village Netai of District

Paschim Medinipore in West Bengal. It is alleged that the Respondents in the present appeals and other accused, on 07.01.2011, after forming an unlawful assembly in the rooftop of Respondent No. 1, Rathin Dandapat, committed the crime. First Information Report was lodged on the same day at Police Station Lalgarh in respect of offences punishable Under Sections 148, 149, 326, 307, 302 of Indian Penal Code (Indian Penal Code), and also in respect of offences punishable Under Section 25/27 of Arms Act. The investigation of the case was initially done by regular police, but later transferred to Criminal Investigation Department (CID) of the State. Vide order dated 18.2.2011, passed by the High Court of Judicature at Calcutta in Writ Petition Nos. 1170(W) of 2011, 1172(W) of 2011 and 1181(W) of 2011, the investigation was transferred to Central Bureau of Investigation (for short "the CBI"), the Appellant before us.

4. During investigation accused, namely Abhani Bhusan Singha, Subhendu Mondal, Aswani Chalak, Nabagopal Sanki, Pintu Roy, Gandib Ban Roy, Lob Duley, Banamali Duley, Niranjana Kotal, Rupchand Ahir, Raju Roy and Swapan Roy were arrested. On completion of investigation, the CBI submitted charge sheet dated 4.4.2011 against 21 accused, including the arrested ones and the absconders. It was mentioned in the charge sheet that further investigation of the case was kept open for the purposes of collection of further evidence and the arrest of the absconders. It was also mentioned that further collected evidence during investigation would be forwarded by filing supplementary charge sheet.

5. The Respondents, namely, Rathin Dandapat, Md. Khaliluddin, Dalim Pandey, Joydeb Giri, Tapan Dey (all Respondents in Criminal Appeal arising out of S.L.P. (Crl.) No. 3611 of 2015), Chandi Karan (Respondent in Criminal Appeal arising out of S.L.P. (Crl.) No. 3612 of 2015), Anuj Pandey (Respondent in Criminal Appeal arising out of S.L.P. (Crl.) No. 4241 of 2011), and one Kanai Dey, were declared proclaimed offenders. Meanwhile, the trial proceeded and, after providing necessary copies to the accused, as required Under Section 207 of the Code of Criminal Procedure, 1973 (for short "Code of Criminal Procedure"), the Additional Chief Judicial Magistrate, Jhargram, on 9.8.2011, committed the case to the Court of Sessions, Paschim Medinipore. The Court of Sessions on 10.12.2011 framed charge against accused Abhani Bhusan Singha, Subhendu Mondal, Aswani Chalak, Nabagopal Sanki, Pintu Roy, Gandib Ban Roy, Lob Duley, Banamali Duley, Niranjana Kotal, Rupchand Ahir, Raju Roy and Swapan Roy. The last two accused, namely, Raju Roy and Swapan Roy were later declared juveniles and their cases were sent to Juvenile Justice Board, Paschim Medinipore. The present case, as against said two juveniles, is said to be lying stayed vide order dated 8.9.2014, passed by this Court in S.L.P. No. 5699 of 2014. In respect of other accused against whom charge was framed, trial further proceeded and ten Prosecution Witnesses were examined. However, their cross-examination was deferred at the instance of arrested accused persons, other than the juveniles.

6. Out of eight proclaimed offenders, five, namely, Rathin Dandapat, Md.

Khaliluddin, Dalim Pandey, Joydeb Giri and Tapan Dey, were arrested on 29.4.2014, whereafter on 30.4.2014 the CBI sought their remand in police custody. The Additional Chief Judicial Magistrate, Jhargram rejected the prayer of the CBI, aggrieved by which said investigating agency submitted Revisional Application (C.R.R. No. 1510 of 2014) before the Calcutta High Court. Absconder-accused Chandi Karan was arrested on 9.5.2014 by CID of the State, which informed the CBI about his arrest and meanwhile vacation Magistrate remanded judicial custody of said accused up to 12.5.2014. The CBI on 12.5.2014 sought remand in police custody in respect of Chandi Karan, but the same was also rejected by the Additional Chief Judicial Magistrate, Jhargram, against which Revisional Application (C.R.R. No. 1641 of 2014) was filed before the High Court. As to the absconder-accused Anuj Pandey too, CID, West Bengal, on 7.5.2014 informed the CBI about his arrest from Chandrapura in Jharkhand, and he was produced on 8.5.2014 before the Additional Chief Judicial Magistrate, Jhargram where CBI sought remand in police custody but the same was also refused. Aggrieved by said order dated 8.5.2014, passed by the Additional Chief Judicial Magistrate, Revisional Application (C.R.R. No. 1640 of 2014) was filed before the High Court. All the three Criminal Revisions were disposed of by the High Court by separate orders of the same date, i.e., 15.10.2014, against which these criminal appeals are filed through special leave.

7. Before further discussion, we think it just and proper to quote the relevant provisions of law.

8. Proviso to Sub-section (2) of Section 167 Code of Criminal Procedure, which empowers a Magistrate to authorize detention of an accused in the custody of police, reads as under:

Provided that,-

(a) The Magistrate may authorize 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 authorize 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 so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) No Magistrate shall authorize detention of the accused in custody of the

police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;

(c) No Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorize detention in the custody of the police.

9. Sub-section (8) of Section 173, under which investigating agency has power to further investigate the matter in which the report/charge sheet has already been filed, is reproduced hereunder:

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report Under Sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of Sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded Under Sub-section (2).

10. Relevant provision of Sub-section (2) of Section 309 Code of Criminal Procedure, empowering remand of an accused, provides as under:

(2) If the Court after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

xxx xxx xxx

Explanation 1.-If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

11. In State through C.B.I. Vs. Dawood Ibrahim Kaskar and others, AIR 1997 SC 2494 : (1997) CriLJ 2989 : (1997) 2 Crimes 92 : (1997) 5 JT 651 : (1997) 4 SCALE 156 : (2000) 10 SCC 438 : (1997) 1 SCR 212 Supp : (1997) AIRSCW 2434 : (1997) 4 Supreme 490 , a three judge bench of this Court has laid down the law on the issue relating to grant of police custody of a person arrested during further investigation. In paragraph 11 of said case, this Court has held as follows:

11. There cannot be any manner of doubt that the remand and the custody referred to in the first proviso to the above Sub-section are different from detention in custody Under Section 167. While remand under the former relates to a stage after cognizance and can only be to judicial custody, detention under

the latter relates to the stage of investigation and can initially be either in police custody or judicial custody. Since, however, even after cognizance is taken of an offence the police has a power to investigate into it further, which can be exercised only in accordance with Chapter XII, we see no reason whatsoever why the provisions of Section 167 thereof would not apply to a person who comes to be later arrested by the police in course of such investigation. If Section 309(2) is to be interpreted--as has been interpreted by the Bombay High Court in *Mohd. Ahmed Yasin Mansuri v. State of Maharashtra* 1994 Cri.LJ 1854 (Bom),--to mean that after the Court takes cognizance of an offence it cannot exercise its power of detention in police custody Under Section 167 of the Code, the Investigating Agency would be deprived of an opportunity to interrogate a person arrested during further investigation, even if it can on production of sufficient materials, convince the Court that his detention in its (police) custody was essential for that purpose. We are, therefore, of the opinion that the words "accused if in custody" appearing in Section 309(2) refer and relate to an accused who was before the Court when cognizance was taken or when enquiry or trial was being held in respect of him and not to an accused who is subsequently arrested in course of further investigation. So far as the accused in the first category is concerned he can be remanded to judicial custody only in view of Section 309(2), but he who comes under the second category will be governed by Section 167 so long as further investigation continues. That necessarily means that in respect of the latter the Court which had taken cognizance of the offence may exercise its power to detain him in police custody, subject to the fulfilment of the requirements and the limitation of Section 167.

12. The case of *Dinesh Dalmia Vs. C.B.I.*, AIR 2008 SC 78 : (2008) CriLJ 337 : (2007) 7 JT 164 : (2007) 11 SCALE 228 : (2007) 8 SCC 770 : (2007) 9 SCR 1124 : (2007) AIRSCW 6112 : (2007) 6 Supreme 417 , which is relied upon by the High Court, relates to granting of bail Under Section 167(2) Code of Criminal Procedure. In said case, the accused/absconder (Dinesh Dalmia) after his arrest was produced before the Magistrate, and on the request of CBI police custody was granted on 14.2.2006 till 24.2.2006, whereafter on another application further police custody was granted till 8.3.2006. Said accused was remanded to judicial custody, and the accused sought statutory bail Under Sub-section (2) of Section 167 Code of Criminal Procedure as no charge sheet was filed against him by CBI within sixty days of his arrest. The Magistrate rejected the application for statutory bail on the ground that it was a case of further investigation after filing of the charge sheet, and the remand of the accused to judicial custody was Under Section 309 Code of Criminal Procedure, after police remand came to an end, granted Under Section 167(2) Code of Criminal Procedure. The High Court upheld said order and this Court also affirmed the view taken by the High Court.

13. In view of the above facts, in the present case, in our opinion, the High Court is not justified on the basis of *Dinesh Dalmia* (supra) in upholding refusal of remand in police custody by the Magistrate, on the ground that accused stood in custody after his arrest Under Section 309 Code of Criminal Procedure. We have

already noted above the principle of law laid down by the three judge bench of this Court in *State v. Dawood Ibrahim Kaskar (supra)* that police remand can be sought Under Section 167(2) Code of Criminal Procedure in respect of an accused arrested at the stage of further investigation, if the interrogation is needed by the investigating agency. This Court has further clarified in said case that expression "accused if in custody" in Section 309(2) Code of Criminal Procedure does not include the accused who is arrested on further investigation before supplementary charge sheet is filed.

14. For the reasons, as discussed above, we find that the refusal of police remand in the present case is against the settled principle of law laid down by this Court. Therefore, the impugned orders passed by the High Court, affirming the orders of the Additional Chief Judicial Magistrate, Jhargram, are liable to be set aside. Accordingly, the impugned orders passed by the High Court and the orders passed by the Magistrate, declining the police remand, are set aside. The Magistrate is directed to pass fresh orders on the applications made by the Appellant before it relating to granting of police remand of the Respondents in accordance with law.

15. All the three appeals stand allowed.