
(2010) 10 MAD CK 0416
In the Madras High Court
Case No : Criminal R.C. No. 987 of 2010

Kannan

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 28-10-2010

Acts Referred:

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

Citation : (2010) 10 MAD CK 0416

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Advocate : N. Sudharsan, for the Appellant; I. Paul Nobel Devakumar, for the Respondent

Final Decision : Allowed

Judgement

P.R. Shivakumar, J.—The submissions made on both sides were heard. The original records sent for from the court below, have also been perused.

2. It is the contention of the learned Counsel for the Petitioner that the Investigating Officer did not complete the investigation within the period of 90 days in accordance with Section 167(2) of Code of Criminal Procedure and that hence the Petitioner had got a right under the said provision to be released on bail. On the other hand, the learned Government Advocate (Crl. Side), representing the Respondent would state that though the right u/s 167(2) of Code of Criminal Procedure is termed to be an indefeasible right of the accused to be released on bail, the accused should have been availed of the right to come on bail before ever it has got extinguished by the submission of a final report and that in this case when the petition u/s 167(2) Code of Criminal Procedure was filed, the final report of the Investigating Officer was also filed and hence the alleged right of the Petitioner got extinguished.

3. As an answer to the above said contention, the learned Counsel for the Petitioner, would submit that actually the petition u/s 167(2) Code of Criminal

Procedure was filed in the morning and at that point of time no final report had been filed and that hence the Petitioner should be construed to have availed the right before it got extinguished.

4. It is the further contention of the learned Counsel for the Petitioner that simply because the Magistrate concerned chooses to postpone passing an order and in the meantime, the final report is submitted, it cannot be said that the indefeasible right u/s 167(2) of Code of Criminal Procedure has not been availed of before it has got extinguished and that the filing of the charge-sheet subsequent to the filing of the petition u/s 167(2) of Code of Criminal Procedure will not cause extinction of the above said right. In support of his contention, the learned Counsel for the Petitioner mainly relies on the judgment of the Hon''ble Supreme Court in Uday Mohanlal Acharya Vs. State of Maharashtra, , wherein it has been stated that the moment the accused files a petition for being released on bail, he is deemed to have availed of the indefeasible right to be released on bail and that the erroneous rejection or dismissal of the petition and the subsequent filing of the charge-sheet will not cause extinguishment of such a right.

5. Moreover in Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, , the Hon''ble Supreme Court has held that after the expiry of the mandatory period stipulated u/s 167 of Code of Criminal Procedure, the Magistrate cannot go on remanding the accused without applying his mind as to the necessity to pass an order of remand and in the very said judgment it has also been observed that the state is under a legal obligation to provide legal aid to such accused to protect the right conferred upon him.

6. In Aslam Babalal Desai Vs. State of Maharashtra, , the Hon''ble Supreme Court opined that Section 167(2) of Code of Criminal Procedure being a provision dealing with the personal liberty of the individuals should be construed strictly and if two interpretations are possible, one in favour of the accused and the other against him, the interpretation in favour of the accused should be adopted.

7. The cumulative effect of all those decisions will go to show that though the right of the accused to be released on bail on the failure of the Investigating Officer to complete the investigation and submit the final report within the time stipulated in Section 167 Code of Criminal Procedure is said to be indefeasible, it ceases to be indefeasible and get extinguished as soon as a final report is submitted, if the said right is not availed of prior to the filing of the final report. It has also been indicated as to when a person is said to have availed of the right. Clear views have been expressed to the effect that once the application is filed expressing willingness of the accused to come on bail and his readiness to furnish sureties, it must be held that he had availed of such a right, the very moment, he made it known to the court and that the subsequent filing of the final report before ever an order is passed, will not take away such a right. In the present case, the specific allegation of the Petitioner is that the petition for bail u/s 167(2) Code of Criminal Procedure was filed in the morning and the learned

Judicial Magistrate waited till the morning session was over and in the meantime, the Investigating Officer was made to file the final report so as to defeat the right of the Petitioner to be released on bail. The said contention of the Petitioner that the petition u/s 167(2) Code of Criminal Procedure was filed first in point of time and the final report was submitted subsequent to the filing of the said petition has not been denied by the Respondent. Therefore, this Court has to accept the contention of the learned Counsel for the Petitioner that the Petitioner availed his right of being released on bail u/s 167(2) Code of Criminal Procedure before ever such right got extinguished by the filing of the final report.

8. For the above said reasons, this Court comes to the conclusion that the order of the learned Judicial Magistrate does not withstand the scrutiny of this Court and the same deserves to be set aside. Accordingly the order of the Judicial Magistrate No. I, Chengalpattu dated 15.09.2010 made in Crl.M.P. No. 3681 of 2010 is set aside and Crl.M.P. No. 3681 of 2010 shall stand allowed. The Petitioner shall be released on bail on his executing a bond for a sum of Rs. 10,000/- (Rupees ten thousand only) along with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate No. I, Chengalpattu and on a further condition that the Petitioner, after release, shall appear before the said Magistrate on the first working day of every month at 10.30 a.m and also on the hearing dates.