
(2015) 11 MAD CK 0131

In the Madras High Court

Case No : Criminal Appeal(MD) No. 595 of 2014 and M.P. No. 1 of 2015

Nazeer Jalaludeen and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 24-11-2015

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 167(2)
Penal Code, 1860 (IPC) — Section 120(B), 153(A), 302, 307, 341
Terrorist and Disruptive Activities (Prevention) Act, 1985 — Section 20(4)(bb)
Unlawful Activities (Prevention) Act, 1967 — Section 16(1)(a), 17, 18, 19, 20

Citation : (2016) 1 MLJ(Cri) 604

Hon'ble Judges : S. Tamilvanan and B. Rajendran, JJ.

Bench : Division Bench

Advocate : M. Radhakrishnan, for the Appellant; V.M.R. Rajentren, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Dr. S. Tamilvanan, J.—The criminal appeal has been preferred by the appellants/accused, seeking an order to call for the records relating to the order, dated 20.10.2014 made in Cr.M.P. No. 3980 of 2014 on the file of the Principal Sessions Court, Thiruvallur District and set aside the same.

2. The short point involved in this Criminal Appeal is as to whether the Court below has dismissed CrI.M.P. No. 3980 of 2014 filed by the appellants/accused under Section 167(2) of Cr.P.C against law, so as to warrant any interference by this Court, as argued by the learned counsel for the appellants.

3. In the petition filed before the Court below, the appellants/accused have stated that they were arrested and remanded to judicial custody on 18.06.2014 by the respondent police for the alleged offence punishable under Sections 341 , 307 , 302 IPC r/w 153(A) and 120(B) IPC and Section 16(1)(a) , 17 , 18 , 19 and 20 of the Unlawful Activities (Prevention) Act, 1967 (in short "the Act") in Crime

No. 746/2014 of T2 Ambattur Estate Police Station and the learned counsel for the appellants contended that the appellants/accused were in custody for 91 days as per the break up details given, which reads as follows :

4. It is not in dispute that the charge sheet should have been filed within 90 days, however, the time limit could be extended under Section 43(D) of the Act, based on the report filed by the Public Prosecutor. In the impugned order, dated 20.10.2014, the learned Principal District and Sessions Judge, Thiruvallur, has stated that the same was allowed by the Court below, extending the time for investigation for a further period of three months under Section 43(D) of the Act. In view of the same, the learned Principal District and Sessions Judge, dismissed the petition filed by the appellants, seeking statutory bail under Section 167(2) Cr.P.C.

5. Mr. M. Radhakrishnan, learned counsel appearing for the appellants submit that on 15th October 2014, 90 days period was over and therefore, the respondent was not entitled to file a petition through the Public Prosecutor, seeking extension of time, on 16.10.2014, however, the Court below has allowed the petition.

6. In this regard, Mr. V.M.R. Rajendren, learned Additional Public Prosecutor, relying on the decision, Ravi Prakash Singh Vs. State of Bihar , contended that the date on which, the accused was remanded to judicial custody should be excluded in calculating the 90 days time, hence, the report was filed by the Public Prosecutor well within the time limit. The relevant portion of the decision relied on by the learned Additional Public Prosecutor reads as follows :

"12. In State of M.P. v. Rustam and others[5], this Court has laid down the law that while computing period of ninety days, the day on which the accused was remanded to the judicial custody should be excluded, and the day on which challan is filed in the court, should be included. That being so, in our opinion, in the present case, date 5.7.2013 is to be excluded and, as such, the charge sheet was filed on ninetieth day, i.e., 3.10.2013. Therefore, there is no infringement of Section 167(2) of the Code."

7. The Hon"ble Supreme Court has categorically held in the latest decision referred to above that for computing 90 days period, the date on which, the accused was remanded to judicial custody should be excluded. Since, the date of remand is excluded, the Court has rightly presumed that on the 90th day, the learned Public Prosecutor filed a petition for extension of time, as contemplated under Section 43(D) of the UAP Act, 1967.

8. In Sanjay Dutt Vs. State through C.B.I., Bombay, , a Constitution Bench of the Supreme Court relying on various earlier decisions, has held thus :

"(2)(b) The "indefeasible right" of the accused to be released on bail in accordance with Section 20(4)(bb) of the TADA Act read with Section 167(2) of the Code of Criminal Procedure in default of completion of the investigation and

filing of the challan within the time allowed, as held in *Hitendra Vishnu Thakur* is a right which ensures to, and is enforceable by the accused only from the time of default till the filing of the challan and it does not survive or remain enforceable on the challan being filed. If the accused applies for bail under this provision on expiry of the period of 180 days or the extended period, as the case may be, then he has to be released on bail forthwith. The accused, so released on bail may be arrested and committed to custody according to the provisions of the Code of Criminal Procedure. The right of the accused to be released on bail after filing on the challan, notwithstanding the default in filing it within the time allowed, as governed from the time of filing of the challan only by the provisions relating to the grant of bail applicable at the stage."

9. It cannot be disputed that as per Article 21 of the Constitution of India, speedy justice is a fundamental right. Hence, it is a mandatory requirement to file a final report (charge sheet) in any criminal case, at an early date, after completing the investigation. However, when the alleged offence is serious in nature. the prosecution is in need of extension of time for completing the investigation, as per procedure stipulated under relevant provision of law, Public Prosecutor should file report for extension of time, stating the progress of investigation. Accordingly, the Public Prosecutor filed a petition, seeking further time of 90 days. Having considered the facts and circumstances, extension of time was granted and the petition filed under Section 167(2) of Cr.P.C was dismissed by the Court below. It is crystal clear that the respondent had filed a report seeking extension of time through the Public Prosecutor by way of report on the 90th day, hence, in the light of the decisions rendered by the Hon"ble Supreme Court referred to above, the same is filed well within time and therefore, we could not find any error or infirmity in the impugned order passed by the Court below, so as to warrant any interference by this Court and hence, the criminal appeal is liable to be dismissed.

In the result, the Criminal Appeal is dismissed. Consequently, connected miscellaneous petition is also dismissed.