
(2015) 07 GAU CK 0054

In the Gauhati High Court

Case No : Criminal Rev. Pet. No. 421 of 2014 and Crl. M.C. No. 860 of 2014

Nikunja Kathar and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 28-07-2015

Acts Referred:

Arms Act, 1959 — Section 25(1-A), 27

Criminal Procedure Code, 1973 (CrPC) — Section 167(2), 167(2)(a)(i), 362, 397, 401

Penal Code, 1860 (IPC) — Section 120(B), 121-A, 122, 201, 302

Citation : (2015) 4 GLT 575

Hon'ble Judges : Indira Shah, J.

Bench : Single Bench

Advocate : M. Sarania, S.U. Ahmed, M. Goswami, C. Das, Advocates and Z. Kamar, P.P., for the Appellant; Z. Kamar, P.P., M. Sarania, S.U. Ahmed, M. Goswami and C. Das, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Dr. Indira Shah, J.—By filing this application, the applicant/State of Assam, represented by the Inspector of Police CID, Assam, Guwahati, has prayed for modification/cancellation and/or rescind of the order dated 26.09.2014 passed by this Court in Crl. Revision Petition No. 421/2014. Heard Mr. Z. Kamar, learned P.P., assisted by Mr. N.J., Dutta, learned Addl. P.P., appearing on behalf of the State of Assam. Also heard Mr. M. Sarania, learned counsel appearing for the opposite parties/respondents.

2. On the basis of an FIR lodged against, the respondents/opposite parties, Hamren P.S. Case No. 13/2014 registered under Sections 120(B) /121-A /122 /302 /201 /307 /395 IPC read with Sections 25(1-A) /27 of the Arms Act was registered and the said respondents were arrested on 09.06.2014 and were produced before the learned JMFC at Hamren on 10.06.2014.

3. A bail petition on behalf of the opposite parties/respondents was moved on 7.9.2014 wherein it was stated that they have completed the statutory period of

detention but the same was rejected by the learned Judicial Magistrate First Class at Hamren. Against the order of rejection, the opposite parties/respondents had filed an application under Sections 397 /401 read with Section 482 and Section 439 of the Code of Criminal Procedure, 1973, whereby they had prayed in their application for setting aside and to quash the rejection order and to release them on bail. This Court, in terms of Section 167(2)(a)(i) of the Cr.P.C. has observed that there is nothing in the order passed by the trial Court to show that till disposal of the bail petition, any charge sheet was filed against the opposite parties/respondents. The opposite parties/respondents have statutory right under Section 167(2)(a)(i) of the Cr.P.C., to get bail if the investigation is not complete within statutory period of 90 days and thus, the order passed by the said Magistrate was set aside and quashed and the opposite parties/respondents were allowed to go on bail on furnishing bail bonds.

4. It is averred in the petition that part charge-sheet being 11 of 2014 was filed on 08.09.2014 keeping the further investigation open. The said part charge-sheet was also put up before the JMFC at Hamren, on 08.09.2014, in mid-day.

5. The opposite parties/respondents have approached this Court by way of filing the Criminal Revision Petition viz. No. CrI. Rev. Pet. 421/2014, wherein only the impugned refusal of bail order was annexed by the opposite parties respondents, which is, in fact, apart of the order passed on 8.9.2014. This act of annexing a part of the order amounts to misleading the Court and as such, the order passed by this Court on 26.09.2015 is not tenable in law and is liable to be interfered with.

6. It is further submitted by the learned PP., Assam, that on 08.09.2014, the opposite parties/respondents had not completed their statutory period of detention. It was the 90th day of their detention and on the 90th day, itself, the charge-sheet was filed against them.

7. Learned P.P., Assam, has relied on the case of Kaljeet @ Kaljeet Ganjhu @ Kaila Bhogta Vs. The State of Jharkhand--> wherein on the 90th day, charge-sheet was filed and it was held that the CJM was justified in rejecting the petition of the petitioner under Section 167(2)(a)(i) of the Cr.P.C., for his bail.

8. In Suresh Kumar Bhikamchand Jain Vs. State of Maharashtra and Another, , it was held that on completion of 90 days in cases where offences are punishable for more than 10 years and the investigating authority fails to file the charge sheet within the statutory period, the accused is entitled to be released on statutory bail.

9. There is no dispute to the legal position that as per section 167(2) of the Cr.P.C., an accused will be entitled to get bail if the chargesheet is not filed within 90 days. However, the contention of the applicant State of Assam is that the charge-sheet, in this case, was filed on the 90th day of the detention of the accused persons and therefore, they were not entitled to get default bail.

10. The opposite parties/respondents, in their objection petition, have contended that on completion of 90 days from the date of remand, the bail petition was moved on the 91st day which was rejected by the lower Court and therefore, this Court had rightly set aside and quashed the order passed by the learned Court below. Moreover, the opposite parties/respondents were not aware of the subsequent order passed by the learned Court below which reflects that on the same day, the charge-sheet was filed. According to the opposite parties/respondents, the bail petition was taken-up for hearing at 3 PM, and the learned Court below passed the rejection order at 3.45 PM. The opposite parties/respondents had applied for the certified copy of the order on the same day and the prosecuting Inspector at Hamren Magistrate Court, provided them, the certified copy of the order at 4.30 PM, which, according to them, was the last order of the day so passed by the learned Court below. If any order was passed subsequent to furnishing of the certified copy of the order, that was not in the knowledge of the said opposite parties/respondents and hence, there was no suppression of material facts.

11. In the cited case of *Pragya Singh Thakur Vs. State of Maharashtra* reported in (2011) 10 SCC 445 it is to be held that the period of 60 days or 90 days has to be computed from the date of detention as per the orders of the Magistrate and not from the date of arrest by the Police. Accordingly, 90 days period would start running from the date of first remand of the accused.

12. Herein, in this case, the accused opposite parties/respondents were produced before the Court on 10.06.2014 and thereafter, they were given in police custody for 10 days.

13. Learned Counsel for the opposite parties relying on the case of *Abdul Basit Vs. Abdul Kadir Choudhary*, has submitted that there are no provisions in the Cr.P.C. authorizing the High Court to review its judgment passed either in exercise of its appellate or revisional or original criminal jurisdiction. Such a power cannot be exercised with the aid or under the cloak of Section 482 of the Code. Section 362 of the Code mandates that no Court, when it has signed its judgment of final order disposing of a case shall alter, or review the same except to correct a clerical or an arithmetical error. Paragraph No. 26 is quoted herein below:

"26. In the instant case, the order for bail in the bail application preferred by the accused-petitioners herein finally disposes of the issue in consideration and grants relief of bail to the applicants therein. Since, no express provision for review of order granting bail exists under the Code, the High Court becomes functus officio and Section 362 of the Code applies herein barring the review of judgment and order of the Court granting bail to the accused-petitioners. Even though the cancellation of bail rides on the satisfaction and discretion of the Court under Section 439(2) of the Code, it does not vest the power of review in the Court which granted bail. Even in the light of fact of misrepresentation by the accused-petitioners during the grant of bail, the High Court could not have

entertained the respondent/informant's/prayer by sitting in review of its judgment by entertaining miscellaneous petition";

14. Admittedly, the opposite parties/respondents/accused persons were produced before the lower Court on 08.09.2014. Computing the period of detention from the date w.e.f. 08.09.2014, it can be seen that they have already completed the period of their respective 90 days detention, on 07.09.2014. The break-up of computation of 90 days detention period, is, as under:

15. The bail petition for the opposite parties/respondents/accused persons was moved on 08.09.2014 i.e. on 91st day of their detention. The said bail petition was not rejected on the ground that they have not completed the statutory period of detention, but the same was rejected by the Court because of serious nature of offence, and in that view of the matter; there is no such error apparent on the face of the record, to review the order so passed by this Court, on 26.09.2014 as prayed for by the applicant State of Assam. Accordingly, this misc. application praying for modification and cancellation of this Court's order dated 26.09.2014 stands rejected and the same shall stand disposed of accordingly. In view of final order passed by this Court, on 26.09.2014, in Crl. Revn. P. No. 421/2014 the same shall stand disposed of.