

(2012) 11 KL CK 0171
In the High Court Of Kerala
Case No : B.A. No. 7841 of 2012

Padinjare Kunhikkattil Kunhanandan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 06-11-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 158, 161, 167, 167(2)(a), 170
Explosive Substances Act, 1908 — Section 3, 5
Penal Code, 1860 (IPC) — Section 109, 118, 120B, 143, 147

Citation : (2012) 4 KLJ 839

Hon'ble Judges : P. Bhavadasan, J

Bench : Single Bench

Advocate : K. Gopalakrishna Kurup, K. Deepa and K. Suresh, for the Appellant;
C.K. Sreedharan, (Spl. PP), for the Respondent

Judgement

P. Bhavadasan, J.—Petitioner, who is the 13th accused in Crime No. 433 of 2012 of Vadakara Police Station, who is alleged to have committed offences punishable under Sections 143, 147, 148, 302 read with Section 149, 120B, 109, 118, 201, 212, 46 and 471 Indian Penal Code and Sections 3 and 5 of the Explosive Substance Act, has approached this court again seeking bail. The petitioner along with two other accused persons, namely, accused Nos. 8 and 14, had on an earlier occasion approached this court for the very same relief by filing B.A. 6580 of 2012, which was dismissed by order dated 18.9.2012. In the said order, the facts have been narrated in detail and therefore, it is unnecessary to reiterate the facts in this order again.

2. Apart from contending that the materials collected during investigation against the petitioner is totally insufficient to prima facie show that he is involved, a novel contention is now taken based on Annexure II to the effect that the so-called final report filed by the investigating agency cannot be treated as a final report, since in the so-called final report said to have been filed by the investigating officer, he reserves the right to continue the investigation and right to file further reports. The contention is that, if that be so, the so-called final

report said to have been filed can be treated only as an interim report and the final report is yet to be filed. If that be so, the petitioner has been in custody from 23.6.2012 onwards, and the period of 90 days as contemplated u/s 167(2) (a) Cr.P.C. is over, and the petitioner is entitled to statutory bail. It is further contended that by styling the report now filed as final report, the petitioner cannot be denied his statutory right and Cr.P.C. does not envisage piecemeal filing of final reports at all. At any rate, according to the learned counsel, it could not be said that the final report now before court, on the basis of which cognizance of the offence has been taken and the matter has been committed to the Sessions Court, can be called as a final report in the eye of law. Even though the petitioner approached the lower court for bail on the basis of the above contention, it is pointed out that without properly appreciating the law on the point, the application has been dismissed.

3. Learned Special Public Prosecutor on the other hand contended that apart from the fact that the above contention was available even on the earlier occasion, the contention lacks merit in the eye of law. The contention now taken that final report filed, on the basis of which cognizance has been taken by the JFCM court concerned, and the case has been committed to the Sessions Court, is not a final report cannot be countenanced. It is true, according to the learned Special Public Prosecutor, that by way of abundant caution, the investigating officer has stated that further probe may be necessary in the matter to ascertain the involvement of other persons. But that does not mean that the report now filed is not a final report. The above contention, according to the learned Special Public Prosecutor, was not urged when the petitioner appeared in pursuance to the summons issued by the court or at the time when copies of the documents were handed over u/s 207 Cr.P.C., or at the time of committal u/s 209 Cr.P.C. At no point of time, the petitioner had contended that the report, on the basis of which cognizance was taken by the JFCM court concerned, is not a final report. Frustrated by the successive failures to get bail, the petitioner has now come forward with an untenable contention, which, according to the learned Special Public Prosecutor, is only to be rejected.

4. Learned Special Public Prosecutor drew the attention of this court to Section 173(2) Cr.P.C., and pointed out that final report contemplated under the Cr.P.C. is a report which contains materials as mentioned in Section 173(2) Cr.P.C. If on the contents of the report, the learned Magistrate concerned feels it sufficient to take cognizance of the offence, then the mere fact that the investigating agency is entitled to further probe into the matter does not mean that the report filed is not a final report. Drawing attention to Section 173(8) Cr.P.C., it was contended that filing of final report does not preclude the investigating officer from further probing into the matter. Even though Cr.P.C. does not contemplate any permission of the court concerned for further investigation, judicial precedents have held that it is only appropriate that when further investigation is found necessary by the investigating officer, that matter be brought to the notice of the court concerned and authorization obtained. Learned Special Public Prosecutor

contended that the report now filed is a final report as far as the prosecution is concerned and the contention that the petitioner is entitled to statutory bail u/s 167(2)(a) Cr.P.C. is baseless. Learned Special Public Prosecutor also invited the attention of this court to the fact that on the earlier occasion when the petitioner moved for bail, the final report has already been filed and there was no contention from the side of the petitioner that final report said to have been filed cannot be treated as a final report and can be treated only as an interim report.

5. Learned Special Public Prosecutor would contend that this court on the earlier occasion had made a detailed probe into the materials available against the petitioner and came to the conclusion that there are sufficient materials to show the involvement of the petitioner. That finding stands and in the light of that finding, the present contention of the petitioner that even assuming that all the materials collected by the prosecution against the petitioner are true, there is no case made out against him, cannot be entertained.

6. Both the counsel relied on the decisions reported in Dinesh Dalmia Vs. C.B.I., in support of their contention. In addition, learned counsel appearing for the petitioner relied on the decisions reported in Hayarunnisa and Others Vs. State of Kerala, , Sanjay Dutt v. State through C.B.I., Bombay, 1994 KHC 1243 and Sadhwi Pragyna Singh Thakur Vs. State of Maharashtra, .

7. As rightly pointed out by the learned Special Public Prosecutor, as regards the materials available against the petitioner, a re-look is not warranted in view of the earlier order of this court, wherein this court, after perusing the CD, had come to the conclusion that there are sufficient materials against the petitioner and others to prima facie show that they are involved in the incident. In the light of the said finding, the attempt on the part of the petitioner to reagitate the same issue cannot be countenanced.

8. What then remains to be considered is the contention based on the final report said to have been filed by the investigating officer.

9. The petitioner has produced Annexure II, which is the final report said to have been filed by the investigating officer, based on which cognizance of the offence has been taken by the JFCM concerned against the petitioner and others, and committal proceedings have been completed. The portion in Annexure II, on which considerable reliance is placed by the learned counsel for the petitioner, reads as follows: "A1 A14 A7, A25" (Investigation regarding the involvement of other persons along with accused Nos. 1 to 14 in respect of the conspiracy to do away with Shri. C.P. Chandrasekharan and investigation regarding the persons who had aided accused Nos. 7 and 25 in keeping away from law is being continued and further report will be submitted as and when the investigation in that regard is complete.)

10. Based on the above recital in Annexure II, the contention raised is that Annexure II report cannot be treated as final report and it can be treated only as an interim report, since investigation is being continued with respect to the

incident, namely, the conspiracy and other aspects of the case. Further contention is that if Annexure II cannot be treated as a final report and could be treated only as an interim report, then, Section 167 Cr.P.C. comes into play and since the petitioner has been in custody from 23.6.2012 onwards, the statutory period prescribed for his detention of 90 days is over and he is entitled to statutory bail.

11. Though the argument may look attractive at the first blush, on a close and careful scrutiny it can be found to be without any basis or merits. Section 173 Cr.P.C. reads as follows:

173. Report of police officer on completion of investigation.-(1) Every investigation under this Chapter shall be completed without unnecessary delay. (1A) The investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer in charge of the police station. (2)(i) As soon as it is completed, the officer-in-charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government stating (a) the names of the parties; (b) the nature of the information; (c) the names of the persons who appear to be acquainted with the circumstances of the case; (d) whether any offence appears to have been committed and, if so, by whom; (e) whether the accused has been arrested; (f) whether he has been released on his bond and, if so, whether with or without sureties; (g) whether he has been forwarded in custody u/s 170. (h) whether the report of medical examination of the woman has been attached where investigation relates to an offence u/s 376, 376A, 376B, 376C or 376D of the Indian Penal Code, (ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the Commission of the offence was first given. (3) Where a superior officer of police has been appointed u/s 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer-in-charge of the police station to make further investigation. (4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit. (5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report- (a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation; (b) the statements recorded u/s 161 of all the persons whom the prosecution proposes to examine as its witnesses. (6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part

from the copies to be granted to the accused and stating his reasons for such request. (7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5). (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 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).

The final report filed before a court with the object of the court taking cognizance of the offence is the report contemplated u/s 173(2) Cr.P.C. If a report containing the details as contemplated u/s 173(2) Cr.P.C. is filed before a court, and, if the court concerned feels it sufficient enough to take cognizance of the offence, the report so filed can be treated only as a final report. It is no doubt true that Section 173(8) Cr.P.C. enables the investigating officer to continue further investigation. As rightly pointed out by the learned Special Public Prosecutor even though Section 173(8) Cr.P.C. does not contemplate permission of the court concerned for further investigation, in view of the judicial precedents on the point, the investigating officer has to inform the court concerned that further investigation is being carried on in the matter.

12. One has to notice that the court takes cognizance of an offence vis-a-vis the accused. There may be instances where some of the accused persons are yet to be identified or some of them may be absconding. But those factors by themselves are not sufficient to prevent the investigating officer from filing the final report regarding the offence alleged to have been committed by the accused persons. Nor is there any fetter on the court concerned to take cognizance of the offence as against the available accused persons.

13. In fact these aspects were considered in the decision reported in Dinesh Dalmia's case (*supra*). In paragraph 19 of the said decision, it was held as follows:

19. A charge-sheet is a final report within the meaning of sub-section (2) of Section 173 of the Code. It is filed so as to enable the court concerned to apply its mind as to whether cognizance of the offence thereupon should be taken or not. The report is ordinarily filed in the form prescribed therefor. One of the requirements for submission of a police report is whether any offence appears to have been committed and, if so, by whom. In some cases, the accused having not been arrested, the investigation against him may not be complete. There may not be sufficient material for arriving at a decision that the absconding accused is also a person by whom the offence appears to have been committed. If the investigating officer finds sufficient evidence even against such an accused who had been absconding, in our opinion, law does not require that filing of the

charge-sheet must await the arrest of the accused.

14. It is true that the attempt on the part of the investigating agency to file reports in the name of final report so as to deny statutory right available to the accused cannot be appreciated. But that does not mean that the investigating officer cannot file a report as against the available accused following the procedure laid down u/s 173(2) Cr.P.C.

15. In the decision reported in Sadhwi Pragyna Singh Thakur's case (supra) it is true that it was held that detention beyond a period of 90 days, if the final report is not laid within that period, is illegal and the accused concerned has a statutory right to get bail. In the same decision, it was also held that the right is not an indefeasible right and if the charge sheet is filed within the time stipulated, the statutory right to bail no longer subsists.

16. In the decision reported in Sanjay Dutt's case (supra) it was held that if within the statutory period of 90 days the charge sheet is not laid, the accused is entitled to statutory bail and further detention is illegal.

17. There cannot be no dispute regarding the fact that if Annexure II cannot be treated as a final report and can be treated only as an interim report, then the petitioner is entitled to statutory bail u/s 167(2)(a) Cr.P.C. But on going through Annexure II, it can be seen that all the necessary particulars as envisaged u/s 173(2) Cr.P.C. are available in the report and the statements in the final report along with the materials produced are sufficient to take cognizance of the offence. At any rate, in the case on hand the JFCM concerned thought the materials now available to be sufficient enough to take cognizance of the offence and he did so. The case was committed to the Sessions Court since the offences were exclusively triable by a court of Sessions.

18. On the two earlier occasions, the petitioner had moved this court for bail. Both the applications were filed after the filing of the final report and after the cognizance has been taken by the court concerned. On neither of those occasions, the present contention was taken by the petitioner. As rightly pointed out by the learned Special Public Prosecutor, the present contention based on Annexure II is clearly an after thought and springs out of frustration in having failed to get bail on the earlier occasions.

19. Learned Special Public Prosecutor pointed out that as far as the prosecution is concerned, Annexure II can be treated as the final report and the prosecution is ready and prepared for a trial of the case and if this court is so inclined, an expeditious trial may be ordered.

20. It is unnecessary to go into the materials against the petitioner, for, that exercise has already been undertaken. As of now, the claims based on Annexure II and Section 167(2)(a) Cr.P.C. are concerned, cannot be entertained. This court is given to understand that the case has been committed to the Sessions court, and the said court has made over the case to Additional Sessions Court (Special

Court for Marad Cases), Kozhikode for trial and disposal. In the light of the submission made by the learned Special Public Prosecutor, it is only proper that a direction be issued to the trial court to make an attempt to dispose of the case as expeditiously as possible. Thus, while rejecting the prayer for bail made by the petitioner, and dismissing the application, there will be a direction to the trial court to take up the case as expeditiously as possible and dispose of the same in accordance with law, at any rate, on or before 31.7.2013.