

**(2017) 09 BOM CK 0097**  
**In the Bombay High Court**  
**Case No : 126 of 2017**

Parshuram S/o Bajirao Dongre

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

**Date of Decision :** 11-09-2017

**Acts Referred:**

[Code of Criminal Procedure, 1973](#), [Section 57](#), [Section 167](#) - Person arrested not to be detained more than twenty-four hours - Procedure when investigation cannot be completed In twenty-four hour

**Citation :** (2017) 09 BOM CK 0097

**Hon'ble Judges :** V. M. Deshpande

**Bench :** SINGLE BENCH

**Advocate :** S. G. Karmarkar, T. A. Mirza, Indranil Damle

## **Judgement**

1. Rule. Rule is made returnable forthwith. Heard finally by consent of the learned counsel for the parties.

2. The present revision is directed against the judgment and order dated 16/8/2017, passed by Additional Sessions Judge, Gadchiroli in Criminal Revision No.29/2017. By the impugned judgment and order, the learned revisional Court allowed the revision filed on behalf of the non applicant State. By allowing the revision filed by the State, the learned revisional Court set aside the order passed by learned Magistrate and granted Police Custody Remand (hereinafter referred to as the "P.C.R" for the sake of brevity) of the applicant for 5 days to investigating officer.

3. According to learned counsel for the applicant, the order passed in revision is unjust, inasmuch as according to the the learned counsel, the learned revisional Court has exceeded its jurisdiction and has substituted its view in place of the view of the learned Magistrate. He submitted that the grounds those were put forth before the learned Magistrate on 31/7/2017 for obtaining P.C.R. are nothing but repetition of the reasons on which the investigating officer was successful in

obtaining the P.C.R till 31/7/2017 by remand application dated 28/7/2017. He also submitted that the applicant was not produced before the learned revisional Court while granting P.C.R. and therefore there is a breach of the mandate of Section 167 of the Code of Criminal Procedure. In support of his submissions, the learned counsel for the applicant relied on following reported cases: I) Satyajit Ballubhai Desai and others Vs. State of Gujrat, (2014)14SCC434.

II) Johar and others Vs. Mangal Prasad and another, 2008 Cri.L.J.1627.

(III) Pathumma and another Vs. Muhammad, AIR 1986 SC 1436.

(IV) Dilip S/o Ramchandra Umare Vs. State of Maharashtra, 1996 Cri.L.J.72,

(V) Master Leonard Mark Hillario Vs. Shri Seby Hillario, 2007 ALL MR(Cri)1649.

4. Per contra, it is the submission on behalf of the learned A.P.P. that the learned revisional Court has correctly stepped inasmuch as the learned revisional Court noticed that the order passed by the learned Magistrate refusing the P.C.R. cannot stand to the scrutiny of the law since learned Magistrate failed to consider the ground for which P.C.R. was demanded. He also submitted that none of the grounds were discussed by the learned Magistrate while rejecting the prayer for P.C.R. It is also submission of learned A.P.P. that the offence is serious in nature and therefore the investigating officer has to be given ample opportunity to investigate into the matter and the investigation cannot be shunted at the primary stage by giving insufficient reasons. He therefore, submitted that the revision is required to be dismissed.

5. In order to appreciate the rival contentions, in my view it would be useful to have a cursory glance to the facts giving rise to the registration of the crime itself in which the applicant is arrested.

6. An order was passed by the competent authority by which bank account no.34067507476 standing in the name of Ankit Traders and another account no.34048552783 standing in the name of the present applicant with State Bank of India were frozen immediately with prior notice to the concerned individual. The said order was addressed to the Chief General Manager, Department of Banking Regulation, RBI, Mumbai. In the said order itself it is mentioned that the individual or the entity can make representation and they may move an application by giving requisite evidence in writing to the concerned branch of the bank. The Reserve Bank of India has also communicated the said order to the Chairman of State Bank of India. It is not in dispute that applicant Parshuram S/o Bajirao Dongre is the proprietor of Ankit Traders.

7. The applicant for himself and for entity as a proprietor has filed a representation. The applicant thereafter has also given representations to the various banks in which he was having bank accounts. According to applicant, since representation was not decided and his accounts were frozen, he approached before this Court by filing Writ Petition No.552/2017 on 19/6/2017 praying for the following reliefs.

i) Issue appropriate writ, order or direction thereby directing the respondent no.1 viz. Union of India, Ministry of Home Affairs, through its Secretary, Sansad Bhawan, North Block New Delhi to defreeze the accounts of the petitioner as mentioned in para 3 of the petition and the petitioner may be permitted to operate the said accounts; thereby quash and set aside the communication/order dated 8/2/2017 i.e. AnnexureA.

ii) Issue appropriate writ, order or direction interim thereby directing the respondents to defreeze the accounts of the petitioner as mentioned in para 3 of the petition so that the petitioner may be able to pay labour charges to the labourers as per notice of the Gram Panchayat and to carry out his business smoothly;

(iii) Grant any other suitable relief as maybe deemed fit and proper in the facts and circumstances of the case."

8. Thereafter, a crime was registered with Police Station, Aheri vide Crime No.85/2017, for the offence punishable under Sections 420,467,468,471 of the Indian Penal Code. The applicant was arrested in connection with the said crime on 23/7/2017 at 22.24 hrs. The applicant was produced before the learned Magistrate at Aheri, District Gadchiroli on 24/7/2017. At the time of his production before the learned Magistrate the investigating officer prayed for grant of P.C.R. from 24/7/2017 till 31/7/2017. The learned Magistrate considered the remand papers and passed the order on the said day thereby remanding the applicant to P.C.R. till 28/7/2017. On 28/7/2017, the P.C.R. was to expire hence the applicant was again produced before the learned Magistrate with a renewed prayer for extension of the P.C.R. from 28/7/2017 till 7/8/2017. The learned Magistrate passed order on 28/7/2017 and extended P.C.R. of the applicant till 31/7/2017.

Again on 31/7/2017 when the applicant was produced before the learned Magistrate and when there was a fresh prayer from the investigating officer for granting further P.C.R., the learned Magistrate by order dated 31/7/2017 disallowed the prayer made by the investigating officer and took the applicant in Magisterial Custody Remand.

9. The State feeling aggrieved by the said order immediately moved before the learned revisional Court by filing Criminal Revision No.29/2017. The notice of the said revision was given to the applicant. A reply duly sworn by the wife of the applicant was filed before the learned revisional Court opposing the revision. The learned revisional Court after hearing learned A.P.P. for the State and learned counsel for the present applicant allowed the revision and granted P.C.R. for five days.

10. Section 57 of the Code of Criminal Procedure 1973 mandates that a person arrested not to be detained more than twentyfour hours. As per the scheme of the Code no police officer can detain in custody a person arrested without warrant for a longer period in absence of order of a Magistrate. Thus, before

expiry of initial twentyfour hours the investigating officer is required to produce a person detained by him without warrant before the nearest Magistrate if the said investigating officer wishes to have the custody of the person who is detained beyond twenty four hours. While; calculating twenty four hours the period of journey has to be excluded. If the investigating officer fails to obtain necessary orders from the Magistrate after expiry of initial twenty four hours then in that even custody of the person so detained by the investigating officer shall be illegal detention at the hands of the investigating officer.

11. From the scheme of the Section 57 of the Code of Criminal Procedure the investigating officer has to complete his investigation qua the person so detained in connection with a cognizable offence within twenty four hours. However, if the instigating officer is unable to complete the investigation within a period of twenty four hours and if investigation reveals that for further effective investigation the custody of the person so arrested is necessary then it is open for the investigating officer to approach to the Magistrate and the Code takes care of such a situation as found in Section 167 of the Code of Criminal Procedure. At the time of production of person so arrested before the learned Magistrate by the investigating officer for seeking further detention in the P.C.R. it is the duty on the part of the investigating officer to point out to the learned Magistrate the grounds for which the custody is required. At the same time, it is a duty of the learned Magistrate that he should be satisfied that adequate ground exists for granting further police custody remand beyond initial period of 24 hours. If the said ground exists then learned Magistrate can authorise further detention of the person so arrested however, in any case, such a detention cannot exceed 15 days in whole. After expiry of 15 days if such period is granted and if the chargesheet is not filed then in that event the learned Magistrate is empowered to take him in Magisterial Custody Remand for a period of 60 days or 90 days as the case may. If the final report is not filed within sixty or ninety days as the case may be, the accused is entitled to be released on bail which is commonly known as "default bail" if he is ready to furnish the bail.

12. In the present case, the F.I.R. was lodged on 23/7/2017. The F.I.R. was lodged by Shri Kiran Vitthal Bagate, P.S.I., Police Station, Aheri. As per the F.I.R. he received a secret information that the applicant who is resident of MouzaBurgi, Tahsil Etapalli, presently residing at Alapalli, DistrictGadchiroli is running a business in the name and style as "Ankit Traders". According to F.I.R. since last 45 years he is active in Bhamragad, Etapalli and Aheri areas and he collects extortion money from the Tendupatta contractors, big shop owners, builders, etc. The same is extorted for Naxalites and thereafter he hands over such extortion money to the Naxalites. It is also stated in the F.I.R. that on 8/11/2016, the Government of India formed a policy which is commonly known as Demonetization Policy thereby circulation of currency notes of Rs.500/and Rs.1000/was barred and prohibited. It is stated in the F.I.R. that certain period was given by the Reserve Bank of India to deposit the old currency notes and taking advantage of the same, it was suspected that there is a possibility of

depositing of large amounts in the bank accounts by persons and therefore the police officers were given instructions to keep vigil eye on the same. The F.I.R. shows that an information was received that in the bank accounts of the applicant and Ankit Traders, about Rs.1,20,00,000/were found to be deposited. The information about the same was given to the Income Tax Department and Income Tax Department conducted inquiry into the same and recorded statements of various persons who flatly denied that at any point of time they had any transaction either with the applicant or with Ankit Traders. With this the offence was registered.

13. Though initially, the applicant was charged under the Indian Penal Code, on 27/7/2017 after custodial interrogation of the applicant, it was found by the investigating officer that the applicant is also guilty of committing the offence under Sections 17, 18, 21 and 40 of the Unlawful Activities(Prevention) Act, 1967 and accordingly, the concerned Magistrate was also informed.

14. During the course of hearing of the present revision today, the learned counsel for the applicant submitted that the writ petition filed by the applicant i.e. Writ Petition No.552/2017 is dismissed by Division Bench of this Court. Be that as it may, the question before this Court is whether the revisional Court exceeded its jurisdiction vested in it as canvassed by learned counsel for applicant. The reported cases at serial nos. 2 to 4 as cited (supra) in my view are hardly applicable and useful for the applicant or for this Court for deciding the issue in question as all those cases are concerned with the reappraisal of evidence at the hands of the revisional Court. The facts in all those cases show that the revisions were filed after the final decisions of the cases in which either accused were acquitted or the maintenance amount was granted.

15. According to learned counsel for the applicant, the reasons for P.C.R. as put forth by the investigating officer before the learned Magistrate on 31/7/2017 are identical to that of the reasons for P.C.R. on 28/7/2017. Even the learned Magistrate in the order dated 31/7/2017 has observed as under:

" Now, grounds put forth for extension of the P.C.R. are identical to earlier grounds for which sufficient P.C.R. is already granted."

The first ground for P.C.R. on 28/7/2017 reads as under:

" As per the statement of the accused dated 27/7/2017 the 17 chits which were kept in locker no.41 of Bank of India, Aalapalli containing the materials such as hardware, tools, nut bolts, tailoring materials, machinery, stationary goods , electronics, electrical medicines, drill machine, screw driver, nutbolt, wire, generator, battery, bulb, cutter etc. are produced by the applicant and these articles are supplied to the naxalites."

Custody was further demanded on the said day on the ground that the applicant is not giving any information as to from where he has brought these articles and how those are supplied and to whom and therefore the P.C.R. was sought to be

extended. These grounds were found favour with the investigating officer and the P.C.R. was extended till 31/7/2017.

16. On 31/7/2017, the investigating officer amongst other sought extension of P.C.R. on following grounds:

"(i) As per the statement given by accused on 27/7/2017 under which he produced 17 chits kept in locker no.41 mentioning the articles provided to the naxalites and therefore when the investigation was done in that behalf he had stated that he has procured some articles from Nagpur and from Chandrapur. The P.C.R. was demanded by the investigating officer since the accused agreed to show the places from where he has procured those articles and therefore the P.C.R. was demanded to visit the said places along with the applicant. It would be useful to mention the reasons as put forth on 28/7/2017 and 31/7/2017 in Marathi."

Date: 28/7/2017

"VERNACULAR MATTER OMITTED"

Date:31/7/2017

"VERNACULAR MATTER OMITTED"

17. Thus, from the aforesaid it is crystal clear that the first grounds on which the P.C.R. was claimed by the investigating officer on 28/7/2017 and on 31/7/2017 are altogether different. So also, ground nos. 3, 4, 6 as submitted by the investigating officer for claiming the P.C.R. were raised for the first time on 31/7/2017.

18. True it is, that the revisional Court not being a Court of appeal, can not reappraise and substitute its view in exercise of the revisional jurisdiction. The revisional Court's jurisdiction is not only limited in scope but discretionary. The Court interferes in the revisional jurisdiction only in exceptional cases of flagrant miscarriage of justice is the trait of law. In my view, the learned Magistrate has not considered the grounds for claiming the P.C.R. on its own. It was expected from the learned Magistrate at least to record the cursory reason in respect of each and every grounds as sought to be pressed into service by the State for claiming P.C.R. By making general observations, in my view, the learned Magistrate has committed not only a mistake but it has resulted in to the miscarriage of justice. The learned Magistrate ought to have gauged the gravity of the offence. Gadchiroli district is highly infested with the outlawed organisations commonly known as "Naxalite Movement". These outlawed organisations frequently indulge into the activities of violence resulting into not only the death of civilians but also the personnel of the armed forces. It is also noticed by the higherups of the bank and by the Income Tax Department that an amount of Rs, 1,20,00,000/were found to be deposited in the account of the applicant and when the Income Tax Department inquired into the same nothing satisfactory was found infavour of the applicant. Not only that, even a writ

petition for defreezing of his account is also dismissed by Division Bench of this Court. The another submission of the learned counsel for the applicant that the applicant was not produced before the learned revisional Court in my view hardly require any deliberation. The applicant was produced before the learned Magistrate on 31/7/2017 at the time for extension of P.C.R. The said was rejected and on the very same day applicant was taken into Magestrial Custody Remand and was sent to Jail. The revision was filed before the revisional Court to test the correctness or otherwise of the order passed by the learned Magistrate.

19. In the facts and circumstances as enumerated above in my view, the learned revisional Court has not exceeded its jurisdiction in setting aside the order passed by the learned Magistrate. In my view, the learned revisional Court was right in upsetting the cryptic order of the learned Magistrate and has rightly granted P.C.R.

20. This Court on 18/8/2017 has granted interim order in favour of the applicant and that is also required to be vacated. Hence, following order.

#### ORDER

- (i) Criminal Revision Application No.126/2017 is dismissed.
- (ii) Judgment and order dated 16/8/2017, passed by Additional Sessions Judge, Gadchiroli in Criminal Revision No.29/2017 stands confirmed.
- (iii) The interim order passed by this Court on 18.08.2017 stands vacated.
- (iii) The investigating officer is directed to act in accordance with law.

Rule is discharged.