
(2005) 09 JH CK 0048
In the Jharkhand High Court
Case No : Criminal M.P. No. 173 of 2005

Ratan Mandal

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 21-09-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167(2)
Penal Code, 1860 (IPC) — Section 34, 366A, 386

Citation : (2006) CriLJ 781 : (2006) 1 RCR(Criminal) 492 : (2006) 1 JCR 149 :
(2006) 1 CurCriR 450 : (2005) 4 JLJR 626 : (2005) 4 EastCriC 385 : (2005) 3
BLJRR 2360 : (2005) AIR Jhar HCR 2550

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : Gautam Kumar, S.D. Munda and P. Mukhopadhyay, for the Appellant;
APP, for the Respondent

Final Decision : Allowed

Judgement

Amareshwar Sahay, J.—This application has been filed for quashing of the order dated 29.11.2004 passed by the Sessions Judge, Sahebganj, dismissing the revision application filed by the petitioner on the ground that refusing to release an accused on bail u/s 167(2), Cr PC was not a final order rather was an interlocutory order therefore, the revision filed by the petitioner was not maintainable.

2. The facts in short are that the informant Nimai Ghosh lodged a first information report on 26.6.2004 alleging inter alia that on 17.6.2004, his minor sister Mamuni Ghosh aged about 13 years was enticed away by the petitioner and others in order to marry her and she was taken towards Farakka in a car. The informant came to know about the said fact from his wife when he returned home. He further alleged that he made hectic search for his sister but she could not be traced out.

On the basis of this information the FIR was registered u/s 366-A/34 of the

Indian Penal Code. The petitioner was arrested in connection with the said case on 22.7.2004 and since then he is in custody.

3. A petition was filed by the petitioner before the ACJM, Rajmahal for releasing him on bail under the provisions of Section 167(2), Cr PC on the ground that till 22.9.2004, i.e. before the expiry of the period of 60 days no charge sheet was submitted by the police against him and, therefore, he is entitled to be released on bail. The learned ACJM by order dated 22.9.2004 rejected such prayer of the petitioner on the ground that the benefit of bail u/s 167(2), Cr PC will accrue after 90 days of detention and, not after 60 days as claimed by the petitioner.

4. Being aggrieved by the said order the petitioner filed a revision application before the Sessions Judge, which has been dismissed by the Sessions Judge holding it to be not maintainable treating the order of the ACJM to be an interlocutory order.

5. Therefore, in the present case two questions arise. Firstly, as to whether the benefit of bail to an accused u/s 167(2), Cr PC for the offence punishable u/s 366-A would accrue after 90 days or 60 days of the detention?

Secondly, as to whether the order refusing to release the petitioner u/s 167(2), Cr PC is an interlocutory order or a final order and whether a revision is maintainable against the said order or not?

6. The learned Counsel for the petitioner has submitted that if an accused is in custody in connection with an offence in which punishment provided is 10 years or less, the police does not submit charge sheet and the accused completes his detention for a period of 60 days then he would be entitled to be released on bail u/s 167(2)(a)(i) of the Cr PC. In the present case since the petitioner has been detained in custody in connection with an offence u/s 366-A, IPC which is punishable for imprisonment of 10 years or less and since the petitioner has already completed his detention in custody for a period of 60 days and till the expiry of the period of 60 days the police did not submit charge sheet, the petitioner is entitled to be released on bail u/s 167(2)(a)(i) of the Cr PC.

He further submitted that the learned ACJM wrongly held that the benefit of bail u/s 167(2), Cr PC for the offence punishable u/s 366-A/34, IPC would accrue after 90 days of detention and not after 60 days.

7. Section 366-A of the Indian Penal Code provides as under :--

366-A Procurement of minor girl.--Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she; will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.

8. From the aforementioned provisions it is clear that for the offence u/s 366-A, IPC the punishment provides the imprisonment for a period of 10 years or less.

Whereas Section 167(2)(a)(i) provides that the Magistrate can authorize the detention of an accused person in custody for a total period of not more than 90 days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term not less than 10 years and u/s 167(2)(a)(ii) 60 days, whether the investigation relates to any other offence.

9. Since u/s 366-A, IPC the maximum punishment of imprisonment has been provided to be 10 years, the offence u/s 366-A, IPC would be governed by Section 167(2)(a)(ii) and not u/s 167(2)(a)(i) which provides detention of 90 days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term not less than 10 years.

10. The Supreme Court in the case of Rajeev Chaudhary Vs. State (N.C.T.) of Delhi, while dealing with a case of an offence u/s 386, IPC held that since u/s 386, IPC punishment provided is imprisonment of either description for a term which may extend to 10 years and also fine, the accused can be detained up to a period of 60 days and not 90 days. It was further held that the expression "not less than" would mean imprisonment should be 10 years or more and would cover only those offences for which punishment could be imprisonment for a clear period of 10 years or more.

11. Section 366-A, IPC also provides similar to that of Section 386, IPC that the imprisonment may extend to 10 years and also fine. Therefore, the right u/s 167(2), Cr PC would accrue to an accused after his detention for period of 60 days and not 90 days.

12. Now the question is to be considered as to whether the order refusing to release on bail u/s 167(2), Cr PC is a final order or an interlocutory order.

13. The interlocutory order has not been defined in the Code. Hence, this question frequently crops up as to what is and what is not an interlocutory order. The meaning of two words "final" and "interlocutory" has to be considered separately in relation to the particular purpose for which it is required. To constitute a final order it is not sufficient merely to decide an important or even a vital issue in the case but the decision must not keep the matter alive.

14. The expression "interlocutory order" has been interpreted in the case of Amar Nath and Others Vs. State of Haryana and Another, wherein it has been laid down that the interlocutory order denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order, which substantially affects the rights of the accused, or decide certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision against that order.

15. Section 167(2), Cr PC gives an indefeasible right to the accused to be released on bail on certain conditions and if that indefeasible right of the accused is taken away by any order then in my view it substantially affects the rights of the accused and it also decides right of the accused to be released on bail and,

therefore, in my view an order refusing to release the accused on bail under the provisions of Section 167(2), Cr PC is a final order and not an interlocutory order as has been held by the learned Sessions Judge in the impugned order.

16. Therefore, in my view, the learned Sessions Judge was not correct in holding that the revision application was not maintainable as it arose against the order refusing to release the petitioner on bail u/s 167(2), Cr PC being an interlocutory order.

17. Accordingly, this application is allowed. The impugned order dated 29.11.2004 passed by the Sessions Judge, Sahebganj as well as the order passed by the ACJM, Rajmahal refusing to release the petitioner on bail u/s 167(2), Cr PC are hereby set aside and the matter is remitted back to the learned ACJM, Rajmahal for passing an appropriate order afresh in accordance with law, on the petition filed by the petitioner for his release u/s 167(2), Cr PC within a period of one week from the date of receipt/production of a copy of this order.