

(1999) 05 DEL CK 0105
In the Delhi High Court
Case No : Criminal M (M) 312 of 1999

Saira Bano

APPELLANT

Vs

State (Govt. of NCT) Delhi

RESPONDENT

Date of Decision : 01-05-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167(2)

Citation : (1999) 79 DLT 637

Hon'ble Judges : S.N. Kapoor, J

Bench : Single Bench

Advocate : Ajay Burman, for the Appellant; Raman Sawhney, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Kapoor, J.—The learned Counsel for the petitioner submits that the petitioner has been deprived of his right of bail under Sub-section (2) of Section 167, Cr.P.C. by not releasing her on bail. It is claimed that the petitioner was arrested on , 21.5.1999 for allegedly she was found in possession of 50 gms. of smack. During the pendency of investigation without obtaining the report of the CFSL, charge-sheet was filed by the police before the Court on 29.8.1998 while the sample of the case property was lying with the police as the sample could not be deposited with any Forensic Laboratory for examination. It is submitted that investigation was incomplete.

2. There is no dispute about the fact that till 15th December, 1998 the sample was not delivered to and accepted by any C.F.S.L. According to the prosecution and as is evident the entries in Malkhana Register (photocopies thereof have been kept on record) it was sent to CFSL, Chandigarh on 10.6.1998, they refused to take it. On 10th July, 1998 it was sent to CFSL, Lodhi Colony. They also did not accept it. On 25th October, 1998 it was sent to CFSL, Calcutta, they also refused to accept there because of their inability to cope with heavy load of work.

3. Since the report of the CFSL has not been filed within 90 days, it is contended

that Mr. Ajay Barman, learned Counsel for the petitioner that the petitioner was entitled to bail. In this connection, he relies upon Hari Chand etc Vs. State, . In this case a Single Judge of this High Court took a view that the police report as defined in Section 2(r) of the Code can only be filed as soon as the investigation was completed. If it was not complete, no such report could be filed. When it was not forwarded as required by the Code or an "incomplete challan" or " incomplete report" was filed, the Magistrate could not take cognizance. The filing of "incomplete challan" could not circumvent the provisions of Section 173(2). HARI Chand (supra) also indicates that in case such incomplete challan was filed and the investigation was not completed within 60 days the accused would be entitled to grant of bail. It is contended by the learned Counsel for the petitioner on the basis of this authority that in absence of the report of CFSL, it could not be said that any contraband or any narcotic drug or psychotropic substance prohibited by the NDPS Act was recovered. Consequently, the challan filed without the report of the CFSL was incomplete and the accused was entitled to bail u/s 167(2), Cr.P.C.

4. Learned Counsel Mr. Ajay Burman also relies upon a judgment of Bombay High Court in Sharadchandra Vinayak Dongre and others etc. Vs. V. State of Maharashtra, , where it was observed that on incomplete charge-sheet Magistrate could neither take cognizance and issue process nor in this fashion could enable the prosecution to collect additional evidence.

5. I might have accepted the submission of the learned Counsel for the petitioner in view of serious implications but a Division Bench of this Court in Taj Singh v. State 1967 C.C. Cases 569 has taken the view that submission of challan without submitting report of CFSL Along with challan did not make the challan incomplete and being a simple Judge, I am bound by it. In this regard para 7 of the judgment is noteworthy:

7. Even if the Investigating Officer has not received the report of the CFSL, so far as his job of collecting the evidence is concerned, that is over the moment he collects the material exhibits and despatches the same for the opinion of the CFSL and this position remains unaltered even though he relies upon the CFSL report in his own report. In this view of the matter it will not be correct to say that the police report which did not include the CFSL report, would not be a complete police report as envisaged in Sub-section (2) of Section 173 of the Code which is prepared and forwarded to the Magistrate only after the conclusion of the investigation.

6. In this regard Full Bench decision of Punjab & Haryana High Court, 1978 Punjab & Haryana P. 341, State of Haryana v. Mehal Singh was also referred to in Taj Singh (supra).

7. Mr. Ajay Burman also refers to a subsequent judgment of a Single Judge of this Court in Matloob Vs. State (Delhi Administration), . It has been held in the said case that articles which were required to be sent for the opinion of the

Chemical Examiner should be forwarded without unreasonable delay in view of Delhi High Court Rules and Orders Part III, Chapter 18B. In considering the compliance of the rule, delay, if any, could be explained by the prosecution. Samples to C.F.S.L. in that case were dispatched one month after the substance was seized and no Explanation was forthcoming.

8. It is very well known that the C.F.S.Ls. are having much more work load than they could dispose of. From the perusal of Malkhana report (photocopy kept on record) sent it appears to have been sent four times as was mentioned above. Obviously it is not the prosecution which could be blamed for not sending the sample. Thus there is sufficient Explanation to satisfy the observations in *Matloob v. State*, (Supra).

9. Since in terms of the judgment of the Division Bench of this Court in *Taj Singh* (supra), it could not be said that the report was incomplete police report and there is appropriate Explanation for delay in getting C.F.S.L. report, it is not possible to say that the applicant was entitled to bail u/s 167(2), Cr.P.C.

No other point has been argued by the learned Counsel for the accused before this Court. Consequently I do not find any force in this petition.