
(2019) 03 CHH CK 0002

In the Chhattisgarh High Court

Case No : Criminal Miscellaneous Petition No. 2551 Of 2018, 225 Of 2019

Shalini Verma And Ors

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision : 13-03-2019

Acts Referred:

Constitution Of India, 1950 — Article 21

Indian Penal Code, 1860 — Section 34, 167, 167(2), 167(2)(a), 167(2)(a)(i), 167(2)(i)(a), 167(2)(i)(b), 173(8), 420, 467

General Clauses Act, 1897 — Section 9, 10

Citation : (2019) 03 CHH CK 0002

Hon'ble Judges : Goutam Bhaduri, J

Bench : Single Bench

Advocate : S.P. Verma, Chandresh Shrivastava, Supriya Upasane

Final Decision : Allowed

Judgement

1. Cr.M.P. No.2551 of 2018 is against the order dated 15.11.2018 passed in criminal revision no. 472/2018 and Cr.M.P. No.225 of 2019 is against the order dated 19.11.2018 passed in Cr.R.No. 477 of 2018 whereby the Revisional Court i.e., Court of Sessions, Raipur has affirmed the order of JMFC Raipur dated 22.10.2018 whereby the default bail as claimed was dismissed u/s 167(2) of Cr.P.C.

2. The brief facts of the case are that the petitioners were arrested on 22.08.2018 in connection with Crime No.182 of 2018. The case was initially registered u/s 420 read with section 34 of IPC. They were produced for remand from time to time and it was contended that on 61st day they were entitled for the default bail. However when the application was filed, it was dismissed on the ground that the police has subsequently added section 467 of IPC., therefore 60 days time limit would not apply.

3. Learned counsel Shri Satya Prakash Verma appearing for the petitioner in Cr.M.P. 2551/2018 and Mrs. Supriya Upasane, appearing in Cr.M.P. No. No.225 of

2019 would submit that the first remand was taken by the police on 04.09.2018 which lasted uptill 17.09.2018. Subsequently remand was taken from 17.09.2018 uptill 28.09.2018 and on 28.9.2018 again remand was obtained uptill 10.10.2018. Thereafter on 10.10.2018, remand was further extended uptill 17.10.2018 and lastly from 17.10.2018 the remand was obtained uptill 22.10.2018. It is stated that on 22.10.2018 the petitioners who were arrested u/s 420 read with section 34 of IPC were entitled for bail as 60 days had expired by that date. It is stated that on 22.10.2018 when the application for default bail was moved, it was refused for the reason that the Police has subsequently added section 467 of IPC in the charge sheet.

4. Learned counsels would submit that on 22nd Oct.2018 the police did not have any right to extend the remand. He would further submit that the challan should have been filed u/s 173(8) and thereafter section 467 could have been added with the permission of the Court, which cannot be simplicitor. He placed reliance on a decision of the Supreme Court in 2018 SAR (Criminal) 1178 (Achpal @ Ramswaroop Vs. State of Rajasthan) and 2015 (2) CGLJ 215 : 2015 CrLJ 1731 (Hitesh Choubey v/s. State of Chhattisgarh and would further submit that since the rights accrued after 60 days in favour of the accused, the default bail was moved on 22nd October as 21st October was Sunday.

5. Per contra, learned State Counsel opposes the same.

6. I have gone through the material available on record and the case diary as well.

7. It is not in dispute that the petitioners were arrested on 22.08.2018 for the offence u/s 420 read with section 34 of IPC and on the same day sent to judicial remand and the custody was subsequently extended from time to time under the orders of the Court. The records show that on 17.10.2018, the prosecution has again prayed for judicial remand of the petitioners for the same offence i.e., u/s 420 r/w 34 of IPC which was granted upto 22.10.2018. In order to reckon the period the principle as laid down by the Supreme Court in the matter of Chaganti Satyanarayana Vs. State of A.P., (1986) 3 SCC 141 would be relevant which is quoted below:

"25. Thus in any view of the matter i.e. construing proviso (a) either in conjunction with sub-section (2) of Section 167 or as an independent paragraph, we find that the total period of 90 days under clause (i) and the total period of 60 days under clause (ii) has to be calculated only from the date of remand and not from the date of arrest."

8. The said proposition has been relied upon in CBI vs. Anupam J. Kulkarni (1992) 3 SCC 141 with full rigor. However, the Hon'ble Supreme Court, without taking note of what has been held in the matter of "Chaganti Satyanarayana (Supra)" and "Anupam J. Kulkarni (Supra)" has held in State of M.P. Vs Rustam,, 1995 (3) SCC 221 has held as under:

"3. We find that the High Court was in error, both in the matter of computation of the period of 90 days prescribed as also in applying the principle of compulsive bail on entertaining a petition after the challan was filed as the so-called "indefeasible right" of the accused, in our view stood defeated by efflux of time. The prescribed period of 90 days, in our view, would instantly commence either from 4-9-1993 (excluding from it 3-9-1993) or 3-12-1993 (including in it 2-12-1993). Clear 90 days have to expire before the right begins. Plainly put, one of the days on either side has to be excluded in computing the prescribed period of 90 days. Sections 9 and 10 of the General Clauses Act warrant such an interpretation in computing the prescribed period of 90 days."

9. It is trite that if two different propositions of law exerted by similar strength of bench of the hon'ble Supreme Court, the earlier view shall be binding over the Courts. As such, the view expressed in "Chaganti Satyanarayana (Supra)" and affirmed in "Anupam J. Kulkarni (Supra)" that the computation of total period of detention of the accused person in custody has to be calculated only from the date of remand and not from the date of arrest holds the field.

10. Apart from that, the language of words employed in Section 167(2)(a) that "no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding ninety days" or "sixty days" as the case may be, manifestly denotes that the "period of detention" can not be beyond "ninety days" or "sixty days" as the case may be and it is also trite that once computation of period starts, it will run till ninety days or sixty days, as the case may be. As held in "Chaganti Satyanarayana (Supra)" case, computation of period of detention of the accused person in custody under Section 167 (2) of CrPC will start from the date of remand, therefore, the computation of period of detention, in case in hand, will start from 22/08/2010 itself as remand was granted on that very date even though the petitioners were arrested on the same day.

11. On 17-10-2018, the prosecution has moved application for grant of judicial remand of the petitioners till 22-10-2018 for the offence punishable u/S 420 r/w 34 of IPC for which period of detention of the accused person in custody cannot be exceeded from 60 days as per Section 167(2)(i)(b). As such computing period of detention from the first order of remand i.e. 22-08-2018, 60th day would be 20-10-2018 and therefore the order dated 17-10-2018 granting remand till 22-10-2018 would be without jurisdiction and illegal in view of the case reported in (2001) 5 SCC 453 - Uday Mohanlal Acharya Vs State of Maharashtra wherein the Supreme Court held thus :

"13.....When the law provides that the Magistrate could authorise the detention of the accused in custody up to a maximum period as indicated in the proviso to sub-section (2) of Section 167, any further detention beyond the period without filing of a challan by the investigating agency would be a subterfuge and would not be in accordance with law and in conformity with the provisions of the Criminal Procedure Code, and as such, could be violative of

Article 21 of the Constitution....."

12. The petitioners moved application u/s 167(2) of CrPC on 22/10/2018 which has been rejected on the ground that the prosecution has added a new Section 467 of IPC for which period of detention of the accused person in custody is 90 days u/s 167(2)(a)(i) of CrPC. Case Diary reveals that on 18/10/2018 it was found that address mentioned in the envelope of appointment order of one complainant namely Manoj Sahu is false and therefore offence u/s 467 of IPC has been added.

13. In the matter of *Rajeev Chaudhary Vs State (NCT) of Delhi*, (2001) 5 SCC 34, the Hon'ble Supreme Court has held that period of detention of the accused person in custody u/S 167(2)(i)(a) would be ninety days for the offences punishable with death, imprisonment for life and imprisonment for a term "not less than 10 years" and for rest of the offences, it would be of 60 days. Relevant para thereof reads thus:

"6. From the relevant part of the aforesaid sections, it is apparent that pending investigation relating to an offence punishable with imprisonment for a term "not less than 10 years", the Magistrate is empowered to authorise the detention of the accused in custody for not more than 90 days. For rest of the offences, the period prescribed is 60 days. Hence in cases where offence is punishable with imprisonment for 10 years or more, the accused could be detained up to a period of 90 days. In this context, 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....."

14. The above declaration of law has been affirmed by the majority in the matter of *Rakesh Kumar Paul Vs State of Assam*, (2017) 15 SCC 67 and contrary view expressed in *Bhupinder Singh Vs Jarnail Singh* - (2006) 6 SCC 277 has been overruled on this point. The relevant para(s) of *Rakesh Kumar Paul* (Supra) reads thus:

"25. While it is true that merely because a minimum sentence is provided for in the statute it does not mean that only the minimum sentence is imposable. Equally, there is also nothing to suggest that only the maximum sentence is imposable. Either punishment can be imposed and even something in between. Where does one strike a balance? It was held that it is eventually for the court to decide what sentence should be imposed given the range available. Undoubtedly, the legislature can bind the sentencing court by laying down the minimum sentence (not less than) and it can also lay down the maximum sentence. If the minimum is laid down, the sentencing Judge has no option but to give a sentence "not less than" that sentence provided for. Therefore, the words "not less than" occurring in clause (i) to proviso (a) of Section 167(2) CrPC (and in other provisions) must be given their natural and obvious meaning, which is to say, not below a minimum threshold and in the case of Section 167 CrPC these words

must relate to an offence punishable with a minimum of 10 years' imprisonment.

26. Of the two views expressed by this Court, we accept the view in *Rajeev Chaudhary* [*Rajeev Chaudhary v. State (NCT of Delhi)*, (2001) 5 SCC 34]."

15. Reverting to the facts of the case in hand, assuming offence punishable u/S 467 of IPC is prima-facie made out against the petitioners which reads thus:

"Section 467 - Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

From bare perusal of above section, it is clear that the punishment provided therein is imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, which shows that minimum sentence of imprisonment of 'not less than 10 years' is not there.

And therefore, as held by Hon'ble the Supreme Court in the case of '*Rajeev Chaudhary* (Supra)' and '*Rakesh Kumar Paul* (Supra)', since Section 467 of IPC is not an offence punishable with a minimum of 10 years imprisonment, the period of detention of the accused person in custody would be sixty (60) days instead of ninety (90) days.

16. As a conspectus of above discussion, it is quite clear that the learned Magistrate, vide order dated 17/10/2018, has committed jurisdictional error and illegality by extending judicial remand till 22/10/2018 i.e. beyond the period of detention provided under Section 167(2) of CrPC and further erred in rejecting application of the petitioners moved u/S 167(2) CrPC on the ground that period of detention of the accused person in custody for the offence punishable u/S 467 of IPC is ninety days. In the same breath, the learned Sessions Judge has also erred in dismissing the revision petition of the petitioners.

17. In view of the above, I have no hesitation to hold that the computation of period of detention of the accused person in custody under Section 167 (2) of CrPC will start from the date of remand and period of detention in custody for the offence punishable u/S 467 of IPC shall be governed by sub-clause (ii) of Section 167(2)(a) of CrPC and would be of sixty (60) days.

18. In the result, the impugned orders are liable to be and are hereby quashed since I am of the opinion that the petitioners have satisfied all the requirements of obtaining default bail on 22.10.2018 as they have been put more than 60 days in custody pending investigation for the alleged offences.

19. Accordingly, the petitions are allowed and the petitioners are directed to be released on default bail on each of them executing a personal bond in sum of Rs.25,000/-with one surety each in the like sum to the satisfaction of the trial Court. They are directed to appear before the trial Court on each and every date given by the said Court.