
(2013) 04 MAD CK 0012
In the Madras High Court
Case No : Criminal R.C. No. 318 of 2013

State	Vs	APPELLANT
R. Vaithyananthan and Others		RESPONDENT

Date of Decision : 18-04-2013

Acts Referred:

Citation : (2013) CriLJ 4368

Hon'ble Judges : S. Palanivelu, J

Bench : Single Bench

Advocate : T. Murugesane and Public Prosecutor assisted by V. Balamurgane, app, for the Appellant; Anantha Narayanan and M.K. Raja, for the Respondent

Judgement

S. Palanivelu, J.—This Criminal Revision Case has been filed to call for the records pertaining to CrI. M.P. No. 712/2013 in Cr. No.

08/2013 dated 5-2-2013 pending on the file of the Judicial Magistrate No. II, Karaikal and set aside the same and consequently allow the petition

filed u/s 167(3) of Cr.P.C. to take custody of the accused for five days. The FIR came to be registered on 11-1-2013 on the file of the Karaikal

Police Station under Sections 147, 148, 302, 307, 324 r/w 149, IPC in Crime No. 8 of 2013 against six unknown persons. On 22-1-2013,

Accused Nos. 1 to 3 who are the respondents herein surrendered before the learned Judicial Magistrate, Pabanasam and were remanded to

Judicial custody by the said Magistrate. Afterwards they were produced before the jurisdictional Magistrate, namely Judicial Magistrate No. II,

Karaikal on 2-2-2013. The petitioner, Inspector of Police filed an application before the said Court with a prayer to hand over the accused for

police custody for five days.

2. The learned Judicial Magistrate No. II, Karaikal, after hearing, passed an order rejecting the request of the petitioner by observing that within

the 1st 15 days, police custody has to be taken and the petition was filed at the verge of 14th day is dismissed as not maintainable.

3. Mr. T. Murugesane, learned Public Prosecutor (Pondicherry) appearing for the petitioner would contend that inasmuch as the first remand made

by the Pabanasam Judicial Magistrate u/s 57 of Cr.P.C. need not be taken into account for the purpose but only the date of remand by the

jurisdictional Magistrate namely Judicial Magistrate No. II, Karaikal has to be considered and the period of 15 days has to be computed from 2-

2-2013 and if so, the request of the petitioner for grant of judicial custody of the accused is within the time frame and that there would be no

impediment for the Court to pass orders allowing police custody for five days.

4. The Hon'ble Supreme Court, earlier has dealt with this point, namely considering the scope of remand under Sections 57 and 167 of Cr.P.C. in

Central Bureau of Investigation, Special Investigation Cell-I, New Delhi Vs. Anupam J. Kulkarni, their Lordships have held thus--

8. Having regard to the words "'in such custody as such Magistrate thinks fit for a term not exceeding fifteen days in the whole occurring in sub-

section (2) of Section 167 now the question is whether it can be construed that the police custody, if any, should be within this period of first fifteen

days and not later or alternatively in a case if such remand had not been obtained or the number of days of police custody in the first fifteen days

are less whether the police can ask subsequently for police custody for full period of fifteen days not availed earlier or for the remaining days during

the rest of the periods of ninety days or sixty days covered by the proviso. The decisions mentioned above do not deal with this question precisely

except the judgment of the Delhi High Court in Dharam Pal case (1982 Cri LJ 1103). Taking the plain language into consideration particularly the

words "'otherwise than in the custody of the police beyond the period of fifteen days"' in the proviso it has to be held that the custody after the

expiry of the first fifteen days can only be judicial custody during the rest of the period of ninety days or sixty days and that police custody if found

necessary can be ordered only during the first period of fifteen days. To this extent the view taken in Dharam Pal case is correct.

5. Their Lordships have taken into consideration the period of custody during the first remand of fifteen days and the rest of the statutory period

prescribed in Section 167(2) of the section and made a distinction that the police custody for the accused is only within first fifteen days from the

date of production by the Magistrate and the remaining period would be only judicial custody. Eventually, their Lordships have reached a

conclusion that police custody, if found necessary can be ordered only during the first period of fifteen days.

6. Subsequently, the above said proposition has been referred by the Hon''ble Supreme Court in later judgment in Dinesh Dalmia Vs. C.B.I.,

wherein their Lordships quoting the above said case have observed as follows--

34. In Central Bureau of Investigation, Special Investigation Cell-I, New Delhi Vs. Anupam J. Kulkarni, the question whether inter alia arose for

consideration of this Court was as to whether the period of remand ordered by an Executive Magistrate in terms of Section 57 of the Code should

be computed for the purpose of subsection (2) of Section 167 thereof; This Court, keeping in view the provisions; of Clause (2) of Article 22 of

the Constitution of India, answered the question in the affirmative. It was held that a total period of remand during investigation is fifteen days.

7. In the above said two decisions, the Apex Court emphasizes reiterating and restating a view that only during the first remand period of 15 days

the police custody of the accused can be prayed for further investigation. The above said legal position has been further clarified by the Hon''ble

Supreme Court in a subsequent and latest decision relied upon by the learned counselor the respondents.

8. The above stated judgment in Dinesh Dalmia Vs. C.B.I., case is also be relied upon for another important proposition of law that the remand

order passed by the jurisdictional Magistrate is the first remand for the purpose of praying for police custody. The operative portions of the

judgment are as follows:

In the present case, the accused was not arrested by the police nor was he in the police custody before 13-3-2006. The accused was very well

aware that there were two cases registered against him in Calcutta for which he was required by the police, so he voluntarily surrendered before

the Additional Chief Metropolitan Magistrate, Chennai on 27-2-2006 when he was

already in custody in relation to the CBI case. The voluntary surrender cannot be conceived to be detention under a case registered at Calcutta. Such notional surrender cannot be treated as police custody for counting the required period. A notorious criminal may have number of cases pending in various police stations in a city or outside the city. So if notional surrender in pending case for another FIR outside the city or of another police station in the same city is counted then the police will not get the opportunity to get custodial investigation. The period of detention before a Magistrate cannot be treated as a device to avoid physical custody of the police and claim the benefit of proviso to sub-section (2). The condition is that the accused must be in the custody of the police and so-called deemed surrender in another criminal case cannot be taken as starting point for counting 15 days" police remand or 90 days or 60 days as the case may be. (Paras 16 and 14)

Therefore, so-called notional surrender of the accused in Chennai cannot be deemed to be a custody of the police for investigation for a case registered against the accused at Calcutta. The police custody will be treated from 13-3-2006 and not from 27-2-2006. (Paras 14 and 21)

9. In *Devender Kumar and Another etc. Vs. State of Haryana and Others etc.*, . Their Lordships have besides referring to the earlier decision in

Central Bureau of Investigation, Special Investigation Cell-I, New Delhi Vs. Anupam J. Kulkarni, , further explained the legal position as follows:--

12. As to the second branch of Mr. Luthra's submissions that a second application for police remand was not maintainable after the dismissal of

the first, reference was made to a decision of this Court in *Central Bureau of Investigation, Special Investigation Cell-I, New Delhi Vs. Anupam J.*

Kulkarni, wherein the provisions of Section 167, Cr.P.C. were gone into in some detail and the very question which is now before us was also

considered and it was held that within the first 15 days" period of remand, the Magistrate could direct police custody other than judicial custody,

but if the investigation was not completed within the first 15 days" period of remand, no further police remand could be made. It was emphasised

that police remand would only be made during the first 15 days after arrest and production before the Magistrate and not otherwise, although,

judicial remand could extend to 60 days from the date of arrest and in special

cases, to within 90 days.

15. With regard to the second point which was urged by Mr. Luthra, the same was considered in depth and was settled in Central Bureau of

Investigation, Special Investigation Cell-I, New Delhi Vs. Anupam J. Kulkarni, referred to hereinabove. What is clear is the fact that police remand

can only be made during the first period of remand after arrest and production before the Magistrate, but not after the expiry of the said period.

16. Of course, we do not agree with the submissions made by Mr. Luthra that the second application for police remand is not maintainable even if

made during the first 15 days" period after arrest. The said point has also been considered and decided in the above case. Within the first 15 days

of arrest the Magistrate may remand the accused either to judicial custody or police custody for a given number of days, but once the period of 15

days expires, the Magistrate cannot pass orders for police remand.

10. In the above said case, the accused was remanded by the Judicial Magistrate on 8-10-2008 till 22-10-2008. On the same day, Assistant Sub-

Inspector of Police filed an application for police custody, which was rejected on the same day for the reason that the said application can be filed

only by an officer who is not below the rank of Sub-Inspector of Police. On 9-10-2008 the application for police custody was filed by the

concerned SHO praying for 3 days police custody. On 10-10-2008, the said application was dismissed by the Magistrate who granted bail to the

appellant No. 1 by another order on the same date.

10.(a) The de-facto complainant preferred two petitions before the High Court of Punjab and Haryana, praying for cancellation of bail and

quashing the Orders dated 8-10-2008 and 10-10-2008. On 19-3-2010 the High Court allowed the petitions and quashed the orders dated 8-10-

2008 and 10-10-2008. Aggrieved by the said order the accused preferred further appeal to the Supreme Court. After hearing the parties and

referring to the earlier consistent view of the Supreme Court it was observed as above as found in Para Nos. 12, 15 and 16.

11. The learned Public Prosecutor (Pondicherry) appearing for the petitioner would contend though the application for police custody was filed by

the petitioner before the jurisdictional Magistrate's Court much earlier to the expiry of 15 days, the Judicial Magistrate out of ignorance of law

dismissed the application by observing that the petition was filed at the verge of 14th day, that even as per the view of the said Magistrate, one full

day was remaining for the completion of the first remand period of 15 days, that in fact the remand order made by the jurisdictional Magistrate

alone is the first remand as envisaged u/s. 167(2) Cr.P.C. and as prayed by the petitioner, the jurisdictional Magistrate should have granted 5 days

police custody in favour of the petitioner for which there was no legal embargo, since first remand period of 15 days would have completed by 16-

2-2013 and that by means of the erroneous order, the rights of the petitioner have been prejudiced.

12. As stated earlier, it is the contention of the petitioner that they have filed to application for police custody within the first remand period of 15

days ordered by the jurisdictional Magistrate and dismissal of the same by the Judicial Magistrate is injustice to the petitioner. Just like in the

present case on hand, in the case of Devender Kumar and Another etc. Vs. State of Haryana and Others etc., the police filed petition for police

custody before the Judicial Magistrate on 8-10-2008. The accused was remanded by the jurisdictional Magistrate on 8-10-2008 and on the same

day the Magistrate dismissed the application. The matter was carried before the Punjab and Haryana High Court and the High Court allowed the

application entertaining the plea of the de-facto complainant. On further appeal to the Supreme Court by the accused, the Hon"ble Supreme Court

allowed the appeal by turning down the request for police custody on the ground that police remand can only be made during the first period of

remand after arrest and production before the Magistrate, but not after the expiry of the said period. It is further reiterated in the another portion of

the judgment in paragraph 16 that within the first 15 days of arrest the Magistrate may remand the accused either to judicial custody or police

custody for a given number of days, but once the period of 15 days expires, the Magistrate cannot pass order for police custody. Even though the

petitioner were filed petition for police custody on the first remand dates itself i.e. on 8-10-2012, the Supreme Court declined to order public

custody since the first 15 days was already over. In the present case on hand also, first 15 days I was already over. There can be no order for

police custody.

13. The remand order passed by the jurisdiction Magistrate alone has to be legally considered as first remand for all the practical purposes. The

earlier remand by the Magistrate who is not exercising the jurisdiction is not first remand for the calculation to file application for police custody.

Even as per the contention of the petitioner, reflecting current position of law, the first remand period should have been upto 16-2-2003 from 2-2-

2013. The application filed by the petitioner was dismissed on 5-2-2013. The petitioner should have acted promptly for getting the copy of the

order for further proceedings before the higher forum. But only after the lapse of 15 days on 18-2-2013 the petitioner applied for copy of the

order and the copy of the Order was delivered on 20-2-2013. When the principle laid down in the case of Devender Kumar and Another etc. Vs.

State of Haryana and Others etc., is applied, the filing of copy application by the petitioner was out of time. Had the petitioner acted in such a way

to get the copy of the order earlier for preferring further proceedings before the higher forum, the orders of the higher forum might have been

favourable to the petitioner. The petitioner police have to blame themselves for the lapse occurred in this regard. In this context, the contention that

the petitioner's right have been prejudiced could not be countenanced.

14. The jurisdictional Judicial Magistrate has erroneously dismissed the application without application of mind.

15. In the light of the observations which were obtained after following the principles laid down by the Supreme Court, this Court is of the firm

view that the police custody cannot be ordered in any circumstances beyond the first remand period of 15 days. In such view of the matter, even

though this Court did not confirm the order challenged before the Court since it finds that no relief could be accorded to the petitioner, the revision

has to face dismissal. In fine, the Criminal Revision Case is dismissed.