
(2008) 02 CAL CK 0032
In the Calcutta High Court
Case No : C.R.R. No. 179 of 2008

State of West Bengal

APPELLANT

Vs

Aftab @ Aftab Ansari and Another

RESPONDENT

Date of Decision : 22-02-2008

Acts Referred:

Arms Act, 1959 — Section 25(1B), 27
Criminal Procedure Code, 1973 (CrPC) — Section 167, 167(1), 167(2)
Penal Code, 1860 (IPC) — Section 395, 397

Citation : (2008) 3 CHN 127

Hon'ble Judges : Ashim Kumar Roy, J

Bench : Single Bench

Advocate : Swapan Kumar Mullick, for the Appellant; Debabrata Roy, for O.P. No. 2 and Kallol Mondal, for O.P. No. 1, for the Respondent

Final Decision : Allowed

Judgement

Ashim Kumar Roy, J.—Aggrieved by an order passed by the learned Metropolitan Magistrate, 13th Court, Calcutta rejecting the prayer of the investigating agency for police remand of the opposite party Nos. 1 and 2 in connection with G.R. 634/07 arising out of S. D/2 (Posta) Police Station Case No. 53 dated June 2, 2007 u/s 395/397 of the Indian Penal Code and Section 25(1B)/27 of the Arms Act, the State preferred the instant criminal revisional application.

2. The facts of the case in nutshell is as follows:

Posta Police Station Case No. 53 dated June 2, 2007, u/s 395/397 of the Indian Penal Code and Section 25(1B)/27 of the Arms Act was registered following the incident of a dacoity took place at a broad day light in a busy business area of Calcutta on June 2, 2007 at about 3.00 hours. When at the point of firearms a group of dacoits looted away a cash of Rs. 3.17 lakhs and mobile phones from a wholesale saree shop, Rathie Fancy Saree situated at Kalakar Street, Calcutta-700 048.

During the investigation of the aforesaid case as the complicity of the accused/ opposite parties were transpired the Investigating Officer of the case made a prayer before the learned Metropolitan Magistrate, 13th Court, Calcutta for issuance of production warrant against the said two accused persons, who at that time were detained at District Correctional Home at Giridhi and District Correctional Home at Chatra respectively. When by an order dated September 18, 2007 the learned Magistrate was pleased to issue production warrant against them.

On the strength of such production warrant the aforesaid two accused persons were brought to Calcutta on November 3, 2007 and were lodged at Presidency Correctional Home at Alipore.

Thereafter the Investigating Officer of the case made a prayer before the learned Court below for direction upon the Superintendent, Presidency Correctional Home for forwarding the said two accused persons in Court and made a further prayer for giving them to police custody for the purpose of investigation. On 23.11.07 the aforesaid accused persons were first produced before the learned Metropolitan Magistrate, 13th Court, Calcutta, in connection with the aforesaid case and on the self-same day the Investigating Officer of this case also made a prayer for their police remand for 14 days. When the learned Magistrate took both of them into custody and remanded them to jail custody till November 28, 2007. However, the prayer for police custody made on behalf of the Investigating Officer of the case has not been disposed of and was kept pending for hearing till the next day i.e. on November 29, 2007.

Subsequently by his order dated November 29, 2007 the learned Magistrate rejected the prayer of police remand.

3. I have carefully perused the impugned order and it appears that the learned Magistrate rejected the prayer for police remand on the following grounds:

(a) The period of 15 days starts running immediately after the accused is produced before the Magistrate in accordance with the provisions of Sub-section (1) of Section 167 of the Code of Criminal Procedure.

(b) From a conjoint reading of the main part of the Sub-section with proviso (a) it emerges that police custody cannot be granted after the lapse of first 15 days may be petition was filed within the time.

(c) In view of the provisions of Section 167(2) of the Code of Criminal Procedure no police remand can be granted at that stage.

4. It is well-settled that in terms of Section 167(2) of the Code of Criminal Procedure, that police custody of an accused can be given during the initial period of first 15 days and there cannot be any remand to the police custody beyond the same. However, within the said period of 15 days there can be more than one order changing the nature of such custody from police to judicial or vice-versa. After the expiry of first period of 15 days the further remand during the

period of investigation can only be in judicial custody. The period of first 15 days has to be computed from the date of the making of order of first remand by the Magistrate upon production of the accused in Court and not from the date of arrest by the police. In this connection it would be enough to rely on the decision of the Hon''ble Apex Court in the case of Central Bureau of Investigation, Special Investigation Cell-I, New Delhi Vs. Anupam J. Kulkarni, , subsequently endorsed and reaffirmed by a three Judges Bench of the Apex Court in the case of Budh Singh Vs. State of Punjab, .

5. I have carefully perused the impugned order and found that while the learned Magistrate was absolutely correct in interpreting Section 167 of the Code of Criminal Procedure but his order rejecting the prayer for police remand is absolutely against the materials on record and wholly erroneous. In the instant case, the accused/opposite parties were produced before the learned Magistrate for the first time on November 23, 2007 and on that day itself the learned Magistrate made the first order of remand. It is an admitted position on the self-same day i.e. on the date the accuseds were produced for the first time in Court and an order of first remand was made, the investigating agency also made a prayer for police remand and the learned Court without disposing the same kept the application pending. In any event, on November 28, 2007 when the learned Magistrate rejected the prayer for police remand not on merit but on the ground that after the expiry of the initial period of first 15 days of remand no accused can be remanded to police custody, only six days have been expired out of the initial period of first 15 days of remand. Thus, on the ground the learned Magistrate rejected the prayer of the police remand is wholly illegal and erroneous, which same cannot be sustained in law. Besides above the investigating agency having made a prayer for police remand on the very first day of the production of the accused in Court, although such prayer has not been considered by the Court and no order has been passed thereupon, the investigating agency cannot be deprived of an opportunity as available in law.

6. In such view of the matter the impugned order rejecting police remand is set aside and the matter is remanded back to the learned Court below for a decision on merits as regards to the question of police remand of the accused. I make it clear it would be the sole discretion of the learned Magistrate to decide judicially on the basis of the materials on record whether or not the accused to be remanded to the police custody. I direct the learned Magistrate to dispose of the prayer of the police remand after giving reasonable opportunity of hearing to the accused persons within 3 days from communication of this order. This application stands allowed.

Urgent xerox certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible.