

**(2014) 09 AHC CK 0012**  
**In the Allahabad High Court**  
**Case No : Misc. Bench No. 1133 of 2014**

Suraj Kumar

APPELLANT

Vs

Senior Superintendent of Police and Others

RESPONDENT

**Date of Decision :** 24-09-2014

**Acts Referred:**

Constitution of India, 1950 — Article 21  
Criminal Procedure Code, 1973 (CrPC) — Section 167(2), 170(1), 173(2), 190, 207  
Penal Code, 1860 (IPC) — Section 174(a), 323, 329, 332, 353

**Citation :** (2015) 88 ALLCC 89

**Hon'ble Judges :** Vishnu Chandra Gupta, J; Ravindra Singh, J

**Bench :** Division Bench

**Advocate :** Anil K. Tripathi, Advocates for the Appellant; Rama Pati Shukla, Advocates for the Respondent

## Judgement

Vishnu Chandra Gupta, J.—Heard Shri Anil Kumar Tripathi, learned Counsel for the petitioner, Shri Rama Pati Shukla, learned Counsel for the complainant and Mrs. Suniti Sachan, learned Additional Advocate General appearing for the State. By means of the present writ petition, petitioner-Suraj Kumar (Suraj Chaprasi as alleged in FIR) has prayed for quashing the First Information Report (For short FIR) dated 17.12.2013 lodged by opposite party No. 3 at Case Crime No. 438 of 2013, under sections 323, 504, 506, 394, 332 I.P.C., Police Station P.G.I., District-Lucknow (Annexure No. 1 to this writ petition) and further prayed for issuing a writ in the nature of mandamus commanding the opposite parties No. 1 and 2 not to take any coercive methods against the petitioner on the basis of the impugned FIR.

2. In this case, another Bench of this Court granted an interim order on 12.2.2014 to the effect that in case the petitioner is not wanted in any case under section 376 IPC, the police will not take coercive measures in Case Crime No. 438 of 2013, under sections 323, 504, 506, 394, 332 I.P.C., Police Station P.G.I., District- Lucknow till the next date of hearing. This interim order was extended from time to time.

3. It is pertinent to mention here that co-accused Ranjeet Singh Dhawak, who is involved in Case Crime No. 438 of 2013, under sections 323, 504, 506, 394, 332, 353, 329 and 450 I.P.C., Police Station P.G.I, District- Lucknow was granted an interim order on 24.1.2014 by another Bench of this Court in Writ Petition No. 605 of 2014 (M/B) to the effect that in the meanwhile, there shall be stay of arrest of petitioner in the aforesaid case.

4. Learned Counsel for the opposite party No. 3 has filed counter-affidavit stating therein that investigation of this case is still going on and the petitioner has not come with clean hands rather he has concealed material facts to mislead this Court. It is also stated that co-accused Kashi Ram was arrested by the police and his bail application has been rejected by learned Sessions Judge.

5. Mrs. Suniti Sachan, learned Additional Advocate General informs this Court that in this case charge-sheet has been filed after completing the investigation, but the arrest of the petitioner could not be made effective due to interim order passed by this Court in the present writ petition. She further pointed out that a Division Bench of this Court at Allahabad in Criminal Misc. Writ Petition No. 62 of 2013, Anil Kumar Sharma v. State of U.P. and others on 5.2.2013 issued direction that while submitting report under section 173(2), Code of Criminal Procedure (For short "Cr.P.C.") by the police/investigating agency before Magistrate concerned must produce the accused in Court. Relevant portion of order delivered by this Court at Allahabad in the aforesaid writ petition on 5.2.2013 is extracted below:

"Specifically by the earlier two orders dated 7.1.2013 and 17.1.2013, we had directed the State for issuance of the circular at the level of the police for ensuring that the accused is present when the police submit a report under section 173(2) Cr.P.C. for complying with the mandate of sections 170(1), 173(2), 41 and 470(4)(b) Cr.P.C. in letter and spirit and also for ensuring that the accused appear before the Trial Court at the time when the report under section 173(2) Cr.P.C. is submitted against them so that the trial may commence against them without hindrance. In case the accused has been directed to appear before the Magistrate on the date when the report under section 173(2) Cr.P.C. is to be submitted and he fails to appear, then it is expected that the police and also the concerned Magistrate will take all coercive steps for the arrest of the accused by initiating proceedings under sections 82 and 83 Cr.P.C. and taking all the necessary and consequential coercive steps for arresting the accused. It is expected that different directions would be needed if the accused have never been arrested and no order staying their arrest is operative, if the accused have already allowed bail, or if an order staying their arrest till submission of charge-sheet is operative.

As we have been finding that a very significant part of the delay in trial takes place after the reports under section 173(2) Cr.P.C. are filed in the Magistrate's Court without producing the accused or directing the accused to appear before the Court concerned on the date the charge-sheet is submitted. Thereafter, the

police disassociate themselves from the matter and the case goes into the back burner either because of routine or systemic delays or because of the wily connivance of the accused with the officials, who prevent the report under section 173(2) Cr.P.C. being placed before the Magistrate concerned for long periods of times, which in some cases extends to one or two years.

Issuance of a circular by the DGP for meeting the aforesaid contingency was, therefore, directed by the previous order. The learned Government Advocate and AGA pointed out that such a circular is under preparation by the police authorities and they have sought some further time for issuance of the same.

We, therefore, want the Director General of Police to get a comprehensive circular issued by the next listing for ensuring that either the accused are arrested or they are given notice to appear before the Magistrate concerned on the date fixed for submitting the report under section 173(2) Cr.P.C. as per the requirement in different situations alluded to above."

6. Another order dated 24.5.2013 was passed by the same Bench in the aforesaid writ petition which was virtually in continuation of the earlier order dated 5.2.2013. The relevant portion of the order dated 24.5.2013 is also reproduced hereinbelow:--

"DGP's circular dated 7.3.2013 directing police officers to produce the accused in Court on the date of submission of the report under section 173(2) Cr.P.C.

We are pleased to note that a circular dated 7.3.2013 has been issued by the Director General of Police pursuant to the High Court's orders dated 7.1.2013, 17.1.2013 and 5.2.2013 in the present writ petition for ensuring the appearance of the accused persons in the Court on the date when the report under section 173(2) Cr.P.C. is to be filed, which inter alia provides that where the accused was arrested prior to submission of charge-sheet and where he has got himself bailed out, or in those cases where the provisions of sections 41(1)(a) and 41(1)(b) Cr.P.C. apply or where there was a stay order restraining the arrest of the accused till submission of the charge-sheet under section 173(2) Cr.P.C. or an unconditional stay of arrest order, in all those eventualities, the accused may be directed to appear before the Court concerned on the date fixed. If the accused was in jail and has not been bailed out, then the Jailer should be directed to produce him on the date fixed, when the report under section 173(2) Cr.P.C. is to be submitted. If the accused is absconding and his arrest was not possible, then action may be taken against the accused persons under section 174(a), IPC. A proforma directing the accused to appear on the date that the charge-sheet is filed has also been prepared and is appended to the DGP's circular. The steps taken in this regard are to be noted by the I.O. in his case diary. The Supervising Officer must also ensure compliance of the aforesaid directions. Any negligence in ensuring compliance with this circular will invite stringent action against the I.O. and his supervising officer. We also direct strict compliance of the DGP's circular, and a submission of a compliance report on the next listing as to the

extent that the DGP's circular on the directions issued is being followed."

".....In this connection it may be noted that by the order dated 5.2.13 we had also asked details from the State Government and the High Court registry through the District Judges as to the number of cases where the accused have not appeared in the Courts after the submission of the report under section 173(2) Cr.P.C. for periods up to 3 months, 6 months, 9 months, 12 months or 2 years or more. In the meeting headed by the Home Secretary dated 5.3.2013 three months further time was sought for furnishing these details. However we are pleased to note that the registry has taken our direction very seriously and on the basis of the information furnished by the District Judges from 71 districts it has prepared a tabular chart which shows that in as many as 6,20,104 (six lakh, twenty thousand, one hundred and four cases) the accused have not been arrested after submission of the reports under section 173(2) Cr.P.C. Out of which in 10371 cases the accused have not appeared for a period of up to 3 months, in 95385 cases for a period up to 6 months, in 97948 cases for a period up to 9 months, in 96155 cases for a period up to 12 months, in 164313 cases for a period up to 2 years, in 62602 cases for a period of more than two years. These figures shock the conscience of the Court. We must record our strongest disapproval against the attitude of unwillingness to assume responsibility and the policy of shifting the burden adopted by the Home Secretary's committee in its 5.3.2013 meeting, where instead of taking on this grave problem of delay in bringing accused to justice head on, once the charge-sheet is submitted by ensuring that the accused are produced/appear before the Court on the first date when the charge-sheet is submitted, (as has been directed by the DGP's circular dated 7.3.2013), by immediately ensuring that the 207 Cr.P.C. papers are ready and duly handed over to the accused through the Magistrates concerned....."

Direction to DGP and Principals Secretary (Home) to ensure appearance of accused in 62014 cases where they have not appeared despite submission of reports under section 173(2) Cr.P.C.

We also direct the DGP and the Principal Secretary (Home), U.P. and Director (Prosecutions) to ensure that in all the aforementioned 620104 cases, the accused must be produced before the Courts concerned where the reports under section 173(2) Cr.P.C. have been submitted within a period of 3 months. They will not be required to first obtain warrants/summons from the Courts concerned in each case for production of the accused in all such cases where the accused have not yet been produced or appeared before the Court even though reports under section 173(2) Cr.P.C. have been submitted, and that the copies of the papers mentioned under section 207 Cr.P.C. be available for handing over to the accused on their first appearance.

"Courts directed not to accept reports under section 173(2) Cr.P.C. unless accused produced.

The Courts concerned are directed not to accept the reports under section 173(2)

Cr.P.C. unless the accused are produced in custody or appear before the Court at the time of submission of the report. The only exception to this direction could be when the production of an accused who is in custody cannot be avoided due to illness or other genuine reason, and the 60 or 90 days period for completion of investigation by submission of the charge-sheet mandated under section 167(2) Cr.P.C., is about to expire.

The Magistrate could then pass appropriate orders for custody or bail and immediately issue other directions such as for taking cognizance and for committing the case to the Court of Sessions Judge and directing the accused to appear before the Court concerned on the dates fixed."

7. After the aforesaid orders passed by this Court at Allahabad in the aforesaid writ petition, there remains no confusion in regard to production of the accused at the time of submission of police report under section 173(2) Cr.P.C.

8. It is also important to mention here that catena of judgments are there; wherein it has been emphasized that arrest is not necessary in all the cases after lodging the FIR in regard to cognizable and non-bailable offence. A recent judgment has been delivered in this regard by the Apex Court on 2.7.2014 in Crl. Appeal No. 1277 of 2014, *Arnesh Kumar v. State of Bihar and others*. The statute provides that unless credible material against accused is collected" during investigation, the arrest of the accused is not necessary. Due to the interim orders passed by this Court in regard to stay of arrest of accused during investigation, he/they used to take advantage of the same and prolong the investigation by not extending cooperation to the investigating agency.

9. There is difference in between the arrest made of the accused in connection with crime seeking his presence during trial and procuring attendance of the accused for interrogation or other steps in connection with investigation. Short detention of the accused by the Investigating Officer for the purpose of investigation does not fall within the ambit of arrest of accused under section 41, Cr.P.C. Therefore, it is clear that even if the Court passed an order staying the arrest of the accused during investigation or till submission of police report or till the conclusion of investigation then it does not mean that absolute authority has been given to accused not to appear before Investigating Officer as and when his presence is required during investigation conducted by the investigating agency. If the Court has passed the interim order of stay of arrest of accused, it does not mean that investigation of the case is stopped or suspended. It was mandatory on the part of an accused of cognizable offence to extend all sought of co-operation in the investigation, even if arrest of accused was stayed by the order of the Court.

10. The filing of the police report is indicative of the fact that the investigation in the matter has come to an end. The submission of police report under section 173(2), Cr.P.C. before Court amounts the closure of investigation by the investigating agency. It may be in the form of the final/closure report or charge-

sheet. When the police report under section 173(2) Cr.P.C. is filed, the roll of investigating agency comes to end and the Court's work starts.

11. In judgments rendered by the Apex Court in Babubhai Bhimabhai Bokhiria and Another Vs. State of Gujarat and Others, , it has been observed that speedy and fair trial is fundamental right and included in right to life under Article 21 of Constitution of India and is the need of the day and the Courts are under statutory obligation to conclude the trial of an accused as early as possible. Several provisions were incorporated in the procedural law to achieve the aforesaid directive. The Code of Criminal Procedure provides that a criminal trial could not be conducted/proceeded in absence of an accused. Therefore, for speedy trial, presence of the accused is necessary and the Courts are under constitutional and statutory obligation are bound to curtail all the delays in trial. It is necessary to keep in mind that while passing the order at interlocutory stage or final stage, the Courts should be vigilant that their orders should not be misused by any one.

12. It is not in dispute that thousands of cases are waiting for their start, but due to absence of the accused, the trials could not be started. The statistical data shows that thousands of cases are pending trial due to non-production of accused and interim order staying their arrest.

13. It seems that there is confusion in the mind of the investigating agencies as well as in the mind of lower judiciary that once the arrest of the accused has been stayed by the High Court, the accused cannot be arrested nor compelled to appear before the Court.

14. Circular letters issued by the DGP office in this regard, in the opinion of the Court is sufficient to remove all the doubts in the mind of the investigating agency and the investigators.

15. It is clear that if there are no orders of stay of arrest till submission of the charge-sheet in Court, the Investigating Officer may conclude the investigation by way of charge-sheet against the accused. He may issue notice requiring the attendance of the accused during the pendency of order of arrest of stay to appear on the particular date before investigating agency and take an undertaking that they shall remain present in the concerned Court where the charge-sheet ought to have been filed fixing particular date. If it is done so, the charge-sheet may be filed along with the accused in Court inspite of interim order passed staying the arrest of the accused.

16. The difficulty arises when an interim order has been passed to the effect that arrest of the accused is stayed till the submission of charge-sheet in Court, then in that situation, the investigating agency may make endorsement in column No. 3 of charge-sheet that Court has stayed the arrest of the accused till submission of charge-sheet. Simultaneously the Investigating Officer is under obligation to intimate the accused that investigation is ended by filing of the charge-sheet in the Court and shall also intimate the date to the accused persons, on which date

the charge-sheet has to be filed in Court.

17. In the aforesaid situation, the charge-sheet alongwith notices issued to the accused may be filed in Court. In case the accused is not present on the date in concerned Court when the charge-sheet is filed, the Court may proceed to procure the attendance of the accused person in Court by coercive methods provided under the law.

18. Having considered all the situations as mentioned hereinabove summarising the order in the form of following directions:--

#### "DIRECTIONS

(A) Where arrest of the accused is stayed during investigation by the Court till filing of the police report before the Court of competent Court/Magistrate.

1. After the conclusion of investigation and approval of submission of the charge-sheet from higher authorities, if any, the same shall be filed in the Court after making endorsement in column No. 3 of the charge-sheet indicating therein the details of the case, in which arrest is stayed of the accused.

2. Before filing of the charge-sheet in the Court, the Investigating Officer shall intimate the accused about the date on which he is intending to file a charge-sheet in the Court by issuing a notice under section 41 of the Code.

3. If the accused do not appear in the Court on the date so fixed before filing of the charge-sheet, the competent Court/Magistrate to take cognizance, may enter the charge-sheet in the relevant register kept in the Court.

4. The Magistrate after registering the case after taking cognizance in view of section 190 of Cr.P.C. will proceed to procure the attendance of the accused. In case of default, the competent Court/Magistrate may take coercive steps to secure the attendance of the accused.

(B) Where the arrest of the accused is stayed by the Court during pendency of the investigation till credible material is found against him.

1. If the Investigating Officer/police officer is satisfied that credible information has been received that accused has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years or with fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence, may arrest the accused.

2. In case where the accused has committed a cognizable offence punishable with imprisonment of less than seven years and the Investigating Officer/police officer is satisfied that arrest of the accused is necessary to prevent such person from committing any further offence; or for proper investigation of the offence; or to prevent such person from causing the evidence of the offence to disappear or tempering with such evidence in any manner; or to prevent such person from

making any inducement, threat or compromise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to police officer; or unless such person is arrested or; his presence in the Court whenever required cannot be ensured, shall after recording such reasons for making such arrest in writing in the diary, may arrest the accused.

3. If the Investigating Officer after collecting the material against the accused feels necessary that arrest of the accused is necessary during the investigation, he may issue notice under section 41 of Cr.P.C. fixing the date to appear on a given time and place mentioned in the notice.

4. In case the accused do not appear in response to the notice or fails to appear in pursuance of the notice issued, he may be arrested by the Investigating Officer during investigation.

5. Where the police officer during continuance of the order passed by this Court is of view that arrest of the accused is not necessary, may issue a notice directing him to appear before him or at such other place specified in the notice for the purpose of investigation and if the accused fails to comply with the terms of the notice, may proceed to procure his attendance by arresting him for the reasons to be recorded in the police diary.

6. In case, the Investigating Officer is of the view that without making arrest of the accused, the investigation may be concluded, then in that event after taking approval of Senior Officer the charge-sheet may be filed in the competent Court with an endorsement to the effect that arrest is not necessary, but at the same time, the Investigating Officer by issuing a notice under section 41-A shall inform the accused of the date on which the Investigating Officer/police officer is going to file a charge-sheet against him. While filing of the charge-sheet, the competent Court/Magistrate with intend to secure the attendance of the accused, may proceed in accordance with law, if necessary by adopting coercive method.

7. Where the Investigating Officer/police officer as mentioned above intends to arrest of the accused after recording the reasons in writing, may issue a notice of appearance before him or at such other place as specified in the notice. In case of default, the accused may be arrested and after conclusion of the investigation will submit the charge-sheet in the Court after mentioning the fact that accused has already been arrested or in the judicial custody.

(C) Where during the continuance of the order of arrest issued by the Court the accused got him bailed out during the investigation under which arrest has been stayed.

The police officer/Investigating Officer after concluding the investigation may file a charge-sheet in the Court after mentioning this fact therein that accused has already been bailed out.

(D) Where accused is absconding.



In case the accused do not appear in pursuance of the notice issued by the police officer/Investigating Officer and has absconded, the chargesheet may be filed in the competent Court/Magistrate against the accused is absconder after taking due course under the law.

19. In view of the above, the writ petition is disposed of finally with direction to the Investigating Officer as mentioned hereinabove. The interim order granted earlier is hereby vacated."

The registry of this Court is directed to circulate this order for compliance and necessary action to all the District Judges of State of U.P. Copy of this order be also communicated to all the SP/SSP of all the Districts in Uttar Pradesh for compliance of this order in letter and spirit.