

High Court of Madhya Pradesh At Jabalpur

M.Cr.C. No. 1395/2016

Khalid Ahmed (deleted since deceased) & four others

Vs.

The State of M.P.

Shri Pathan Tahiwar Khan with Shri Naim Khan, learned counsel for the petitioners.

Shri Brahmatt Singh, learned G.A for the respondent/State.

Present: Hon'ble Shri Justice Sushil Kumar Palo

(Order)
11/09/2017

This petition under Section 482 Cr.P.C has been preferred to exercise the extraordinary jurisdiction of this Court and to set aside the order dated 09.07.2015 passed by 16th A.S.J, Bhopal in Criminal Revision Nos. 518/2014, 519/2014, 520/2014, 521/304, 522/204 and 527/2014, 528/2014 and 529/2014 wherein by an analogous order, the revisional Court has affirmed the orders passed by the learned C.J.M, Bhopal on 05.05.2014 wherein the application under Section 167 (2) of the Cr.P.C filed by the petitioners have been disallowed.

2. The facts requisite for disposal of this petition are in brief that ATS/STF, Bhopal has registered Crime No. 22/13 against the petitioners for offence under Sections 307, 34, 467, 468, 481, 120-B, 201 of I.P.C, Sections 25, 27 of the Indian Arms Act, Sections 3, 10, 13, 15, 18, 19, 20, 23, 38, 39 of the

Unlawful Activities (Prevention) Act, 1967. Judicial remands were obtained from the Court of C.J.M, Bhopal. Subsequently, when 90 days' period was about to be over, the application was filed stating that 90 days' period is about to be over yet investigation could not be completed, therefore, learned C.J.M extended the period of detention to 180 days. The petitioners/accused persons filed application for statutory bail under Section 167 (2) Cr.P.C stating that the period of detention has been more than 90 days and the charge sheet has not been filed.

3. The learned C.J.M, Bhopal vide order dated 05.05.2014 and other dates dismissed the applications filed by the petitioners under Section 167 (2) of the Cr.P.C stating that the provision of Section 43 (D) of the Unlawful Activities (Prevention) Act, 1967 provides 180 days for completion of investigation. The said order was assailed before the revisional Court. Learned 16th A.S.J, Bhopal vide impugned order, has disallowed the same holding that order passed by the learned C.J.M has not exceeded its jurisdiction.

4. In the present case, the arguments basically advanced on behalf of the petitioners are that the provisions of the Unlawful Assembly (Prevention) Act, 1967, provides extension of the period of investigation subjected to the satisfaction of the Court on the report of the public prosecutor indicating the progress of the investigation and specific reason for detention of the accused beyond the said period of 180 days.

5. It is vehemently contended that the "Court" indicated in the proviso of sub Section 2 of Section 43 (D) means Criminal Court having jurisdiction under the Code constituted under Section 22 (wrongly mentioned as 21) of the National Investigation Agency, Act 2008. Which means the Special Court established under Section 22 of the National Investigation Agency, Act, 2008 is only empowered to extend the period of detention from 90 days to 180 days. It would be appropriate to mention here that Section 21 of the N.I.A Act, 2008 provides for appeals. Therefore, it actually refer to Section 22 which is the provision for establishment of Special Courts for trials of offences under any or all the enactments specified in the schedule.

6. Further it is argued that the Court of C.J.M, Bhopal is not a Court established under the N.I.A Act, nor it is a Court of Sessions under whose division the offence has been committed or the jurisdiction conferred as a Special Court under this Act. Therefore, further extension of time by the learned C.J.M, Bhopal is bad in the eyes of law and it deserves to be quashed. Subsequently, the order of the revisional Court dated 09.07.2015 passed by the 16th A.S.J, Bhopal is liable to be set aside and the petitioners are entitled for "statutory bail."

7. Learned G.A for the respondent/State appearing on behalf of the respondent/State vehemently opposed the contentions and submitted that the learned Revisional Court after

appreciating the legal aspects has passed the order impugned which do not call for any interference. It is claimed that the petitioners applied for the statutory bail whereas special Court has been established at Bhopal and the Court at Bhopal has the jurisdiction to try the offence.

8. Referring to Section 43 (D) the learned counsel appearing for the respondent/State submits that after the modification of the provisions of Section 167 (2), the period of 90 days stipulated for completion of investigation and filing of charge sheet has been modified by virtue of the amended provision of 43 (D). The learned C.J.M extended the period of investigation from 90 days to 120 days on the basis of the report filed by the prosecution. The object behind the enactment of the 167 of the Code was that the detention of an accused persons should not be permitted in custody pending investigation for act unreasonably longer period. If it is not possible to complete the investigation in the given period, it could be extended to 180 days. If the prosecution failed to put up chalan against the accused on completion of the period of 180 days then the question of statutory bail arises. After allowing the period for extension from 90 days to 180 days, the application for statutory bail was dismissed.

9. Counsel for the petitioners appeared before the C.J.M and participated in the proceeding. Therefore, accused persons had knowledge about the extension of the period of investigation, hence, no notice was required to be issued before passing the order of extension of time. Hence, the

ground that the detenu was not produced before the Court at the time of submission of the report for extension of period of investigation, therefore, is not valid.

10. It is the duty of the Court to find out legislative intent and purpose of the enactment sought to be achieved. Construction of the provision cannot be strict, it depends upon the nature of the provision and also the intention of the legislature and the mischief sought to be remedied under the enactment. The Court has to look into the matter, what would be true construction of the statute.

11. Counsel for the petitioners, during the course of arguments, has restricted his arguments to the point that the Court of C.J.M, Bhopal had no jurisdiction to extend the period of investigation from 90 days to 180 days. He placed reliance on **(i) Hitendra Vishnu Thakur and Others Vs. State of Maharashtra and Others, (1994) 4 SCC 602, (ii) Redaul Hussain Khan Vs. National Investigation Agency, (2010) 1 SCC 521, (iii) Thangaraj Vs. State by The Deputy Superintendent of Police, Q- Branch CID, Madras, (2014) SCC OnLine Mad 6459, (iv) Prakashan Vs. State of Kerala, decided on 18.12.2014 in Criminal Appeal No. 1084/2014, MANU/KE/2287/2014, (v) Ashruff Vs. State of Kerala, decided on 26.10.2010 in B.A. No. 5134/2010, MANU/KE/2329/2010, (vi) Saraswati Rai Vs. Union of India, 2011 SCC OnLine Cal 1227 (vii) Abdul Ismail Vs. The Deputy Superintendent of Police, CBCID, decided on 23.09.2016 in Cri. R.C. No.**

958/2016, MANU/TN/2356/2016.

12. *Per contra*, learned counsel appearing for the respondent/State has placed reliance on **(i) Kurra Dasaratha Ramaiah and Others Vs. State of Andhra Pradesh, 1992 SCC OnLine AP 25, (ii) Rahul Gupta Vs. State of M.P., 1995 SCC OnLine MP 282, (iii) Sheetal Vs. State of Tamil Nadu, 2007 (2) MWN (Cr.) 283 (DB), (iv) Bahadur Kora and Others Vs. State of Bihar, 2015 (2) MWN (Cr.) 305 (FB) (Pat.), (v) The State of Tamil Nadu Vs. S. Tharvees Maideen and Others, 2015-5-L.W. 597 and (vi) Mohd. Maroof @ Ibrahim & Others Vs. State, 2015 SCC OnLine Del 9509.**

13. On perusal of the provisions, it is found that the scheduled of offences ought to be dealt with by a Sessions Court from the beginning i.e. from the date of registration and charge sheet is also required to be filed before such a Court. In a similar case of **Thangraj Vs. State by The Deputy Superintendent of Police, Q- Branch CID, Madras** (supra), the Single Bench of Madras High Court has held that:-

Magistrate has no power to extend custody beyond 90 days in exercising the power conferred on the Court under the proviso of sub Section 2 (b) of Section 43 (B) of the Unlawful Activities (Prevention) Act, 1967 as it was not the Court having jurisdiction to try the offences alleged, therefore, allowed the revision and setting aside the remand order granted by the Magistrate, directed to release the

accused/petitioner.~^~^~^

14. No specific decision cited before this Court decided by the M.P. High Court or the Hon'ble Apex Court in this regard. The Division Bench of Allahabad High Court in the case of **Umakant Yadav Vs. Suptdt. Dist. Jail, Azamgarh, 1995 CrLJ 906**, need mention; wherein it is held that:-

~^~^~^Any illegality if any committed by the Court in passing the remand order stands cured if subsequently a legal remand order is passed. The custody of the accused is not illegal.~^~^~^

15. This view has been approved by the Division Bench of Rajasthan High Court in the case of **Taju Khan Vs. State of Rajasthan, 1983 CrLJ 1518 (Raj-DB)**. In an another case namely **Noorul Huda alias Nanka Vs. Superintendent Central, Naini, 1984 (2) Crimes 44**, the Division Bench of Allahabad High court has held that:-

~^~^~^When a valid order of remand is passed all previous irregularities or illegalities stand cured.~^~^~^

16. Similarly, a Division Bench of the Patna High Court in the case of **Sunil Singh Vs. State of Bihar, 2001 CrLJ 3681** needs special mention in this context. Wherein it has been held that:-

~^~^~^when an earlier detention was invalid the subsequent valid detention order does not suffer from illegality, bail may be granted on the basis of merits and not on the ground of illegality of the previous order.~^~^~^

17. It also needs special mention that a Full Bench of

Rajasthan High Court in the case of **Mahesh Chand Vs. State of Rajasthan, 1985 CrLJ 301 (Raj-FB)**, has held that:-

The accused is not entitled to be released on bail merely because the order remanding him to custody under the provision or Sections 167 or 309 (2) Cr.P.C is illegal.

18. In the opinion of this Court, the view adopted by the Single Bench in **Thangraj Vs. State by The Deputy Superintendent of Police, Q- Branch CID, Madras** (supra), therefore, cannot be followed when there is a adverse view of the Full Bench and the Division Bench is available. It is not the case of the petitioners that the extension of the period of investigation has resulted into failure of justice.

19. The irregularities if have been done by granting the extension of period for investigation caused erroneously and in good faith. Though it is not expressly stated in the Section but as statute provides for extension of the period of investigation from 90 days to 180 days and the same has not occasioned failure of justice, therefore, at the most it can be said that it is an irregularity only.

20. The petitioners failed to demonstrate that the order has occasioned failure of justice. Thus, this Court does not deem it fit to allow the petition. Therefore, the same is dismissed.

(SUSHIL KUMAR PALO)
JUDGE

awinash