

Shailesh and Another Vs. the State of Karnataka [Through Grameen Police Station], Rep. by Addl. Public Prosecutor

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Court : Karnataka Gulbarga

Decided On : Mar-15-2012

Judge : A.S. Pachhapure

Appeal No. : Criminal Petition No. 15400 of 2011

Appellant : Shailesh and Another

Respondent : The State of Karnataka [Through Grameen Police Station], Rep. by Addl. Public Prosecutor

Judgement :

(Prayer: This CrI.P. is filed U/Section 482 Cr.P.C. praying to set aside the Order dated 28.04.2011, passed in Crime No.76/2011 of Grameen Police Station, Gulbarga and release the petitioners on bail.)

1. The petitioners have challenged the Order dated 28,04.2011 passed by the learned Magistrate and confirmed in the revision by the learned Addl. Sessions Judge, Gulbarga.

2. The facts relevant for the purpose of this petition are as under:

The petitioners are involved in Crime No.76/2011, Rural Police Station, Gulbarga, registered for the offence punishable under Sections 143, 147, 148, 323, 324, 302

r/w. 149 IPC. The incident took place on 15.04.2011 in the noon hours and on 16.04.2011 the petitioners were arrested and produced before the Court on the same day. The learned Magistrate remanded the petitioners to the judicial custody till 28.04.2011. When the petitioners were produced before the Court from the judicial custody on 28.04.2011, the learned counsel for the petitioners filed vakalat. The investigating officer had not filed any application for remand of the petitioners to the judicial custody. Anyhow, the Assistant Public Prosecutor submitted before the learned Magistrate that the remand application is not filed and the Court can remand the accused even in the absence of an application. It is under these circumstances that the learned Magistrate extended detention in the judicial custody till 12.05.2011. This Order was challenged by the petitioners unsuccessfully in Criminal Revision Petition No.37/2011 before the learned Addl. Sessions Judge. Against the dismissal of the revision, the present petition has been filed, challenging the orders of the Courts below.

3. I have heard the learned counsel for the petitioners and also the learned Addl. State Public Prosecutor.

4. It is the submission of the learned counsel for the petitioner that the extension of remand by the learned Magistrate is without any request or an application either by the Police or by the investigating authority and therefore extension of detention order in judicial custody is illegal and therefore, he submits that the petitioners ought to have been released on bail by the learned Magistrate.

Per contra, the learned Addl. State Public Prosecutor submits that neither a request nor an application is necessary for extension of remand and therefore, she contends that the Order passed by the learned Magistrate is in accordance with law.

5. The question of remand or its extension arises for consideration by the learned Magistrate when the investigation by the Police is in progress. Under the provisions of Section 167 Cr.P.C, if the Investigation cannot be completed within 24 hours and there are grounds to believe that the accusation is well-founded, the Officer in-charge of the Police Station or the Police Officer, who is making the investigation has to transmit the accused to the nearest Magistrate along with the

copy of the entries in the diary and when the accused is produced before the Magistrate, what is to be done is provided under this provision. For the purpose of convenience, the relevant provision i.e., Section 167 Cr.P.C. is extracted hereunder:

"Procedure when investigation cannot be completed in twenty-four hours. - (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction;

Provided that,-

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, [emphasis provided] but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding.-

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the

accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this subsection shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused [emphasis provided] either in person or through the medium of electronic video linkage;"

Under the aforesaid provision, the Magistrate has an authority either to pass orders relating to entrustment of the accused to the custody of the Police or the jail and sub-Clause (a) of Clause (2) of Section 167 Cr.P.C. provides in case if the remand otherwise than in the custody of the Police is beyond the period of fifteen days, it is necessary for the learned Magistrate that he is satisfied about adequate grounds existing, may pass entrustment of the accused to the judicial custody for the period exceeding fifteen days. Therefore, under this provision, it is necessary for the learned Magistrate to satisfy himself about the grounds made out and to indicate his satisfaction and he has to pass an order assigning reasons and the grounds to authorize the detention beyond the period of fifteen days. Further under sub-Clause (b) of Clause 2 of Section 167 of the provision, the Magistrate has the authority to permit the detention of the accused in the judicial custody on production of the accused and subsequently on every occasion, he may extend further detention in the judicial custody on further production of the accused either in person or through the medium of electronic video linkage.

6. The provision aforesaid does not contemplate any application or a request either by the Investigating Officer or by the prosecuting agency to seek the extension of further detention in judicial custody. When the law does not contemplate any application or request, it appears not proper to compel either the investigating or prosecuting agency to submit an application or make a request to extend further detention in the judicial custody.

7. It is relevant at this stage to refer to Clause 3 of Section 167 of the provision and it reads;

"A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing."

So, under the aforesaid provision, there is a mandate to the Magistrate to record his reasons in case if he is to permit the detention of the accused in the custody of the Police. So, the overall scrutiny of the provisions of Section 167 though provide for a reasoned Order in case if it is to authorize the detention of the accused to judicial custody beyond fifteen days, or to the Police custody, do not contemplate such order to extend detention in judicial custody. Thereby, it impliedly indicate that the learned Magistrate need not depend on the investigating agency or the prosecuting agency for a request or for an application to extend further detention in the judicial custody.

8. The learned counsel for the petitioners placed reliance on the decision of the High Court of Andhra Pradesh, reported in 2002 Cri.L.J. 2997 [G.Shraavan Kumar and etc. Versus State of A.P.], the High Court held;

[S.167(2) Proviso (a) - Extension of remand - No request seeking extension of remand either by police or any jail authority - In such a situation if Magistrate finds that there are no sufficient grounds for extension of remand, he is bound to inform accused that they can be released provided they furnish bail - Magistrate extending remand in routine manner - There is non-application of mind."

As could be seen from the facts of the decision referred to supra, there were orders of extension of remand passed by the learned Magistrate without any request or application by the investigating agency and the High Court held that a mechanical order of extension of remand is illegal and that it is incumbent upon the investigating agency to seek further extension of the remand of the accused to the judicial custody. But, for the detailed reasons recorded above and with the deepest respect, it is not possible to subscribe to such a view expressed in the aforesaid decision and therefore, I have to record a clear dissent therefrom.

9. A similar question came up for consideration before the High Court of Patna and the matter was referred to the Full Bench which took into consideration the plain language of Section 167 Clause 2 and Section 309 clause 2 of Cr.P.C. and in the decision reported in 1987 Cri.L.J. 1489 [Ramesh Kumar Ravi alias Ram Prasad and etc. Versus State of Bihar and others etc.], wherein it is held;

"The whole spirit of the Code is that the custody and liberty of the accused is entirely governed by the authority and sanction of a Court of law beyond the initial period of twenty four hours betwixt the first arrest and production before the Magistrate thereafter. By no twisted interpretation can this power in actual fact and practice be passed on into the mere discretion of the investigating agency, whether to ask for remand or not. Once an accused person is produced before a Magistrate, he is in a legal sense in custodia legis and it is the Court's responsibility and power whether he is to be remanded to further custody or granted bail or released altogether. By no stretch of imagination can this power of the Court be whittled down and be indeed passed on to the mere discretion of the investigating agency alone."

Further in the aforesaid decision, the High Court observed;

"It is manifest from the plain language of the aforequoted two provisions that they do not expressly mandate any formal application for remand by the prosecution, nor does it appear to be so by any necessary implication. The power is conferred and vested in the Magistrate without any such pre-condition. To my mind, it would be doing violence to the plain language of Ss. 167(2) and 309(2) of the Code by reading into them a requirement of a formal application for remand or, in any case, an insistent request therefor."

The Honourable Court in its Full Bench Judgment referred to supra has taken into consideration the plain reading of provisions of Section 167 of Cr.P.C. and held that there is no necessity of a request or application by the investigating agency to seek further detention to judicial custody and I fully agree with the view expressed by the Full Bench in the said decision.

10. Now, as could be seen from the facts on hand, the petitioners were arrested for serious charges aforesaid and when they were produced before the Court on 28.04.2011, they were represented by the learned counsel, they did not move any application for bail on the ground that there is no material against them for the offence registered and it is under these circumstances though no application is filed by the investigating officer it considered it proper to extend detention of the accused to judicial custody till 12.05.2011. The only thing that the learned Magistrate is bound to do is to objectively satisfy himself that there are some grounds to further extend the detention in the judicial custody and there is no necessity for him to pass a speaking order assigning reasons to extend the detention in the judicial custody. In that view of the matter, this Court is of the opinion that there is no error or illegality in the order passed by the learned Magistrate remanding the petitioners to the judicial custody and also the order passed by the learned Addl. Sessions Judge by dismissing the revision petition.

In the result, there is no merit in this petition and it is dismissed accordingly.

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