

Babu Singh @ Babri and ors Vs. State

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Court : Rajasthan Jodhpur

Decided On : Jan-08-2014

Appellant : Babu Singh @ Babri and ors

Respondent : State

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR
S.B.CRIMINAL REVISION PETITION No.944/2013 Babu Singh @ Babri &
ORS.versus State of Rajasthan Date of Order :: 08.01.2014 HONBLE
MS.JUSTICE NIRMALJIT KAUR Mr.Rajesh Choudhary, counsel for the
petitioners.Mr.Mahipal Bishnoi, Public Prosecutor.

Nirmaljit Kaur, J.

(Oral).This is the criminal revision petition under Section 397 read with 401
Cr.P.C.against the order dated 26.11.2013 passed by learned District and
Sessions Judge, Jaisalmer in Cr.

Misc.

Appl.589/2013 for the offence under Section 382, 365, 341, 342 and 323/34 IPC
whereby he has dismissed the application filed by the petitioners under Section
167(2) Cr.P.C.The facts in short are that the petitioners were arrested in FIR
No.62/2013 for the offences under Section 382, 365, 341, 342 and 323/34 IPC.

After the expiry of the statutory period of 60 days for filing the challan in the above-mentioned offences, the petitioners moved an application under Section 167(2) Cr.P.C. for releasing them on bail as the challan had not been filed within 60 days.

The said application was moved on 19.11.2013.

However, on the same day, an offence under Section 395 IPC was added by 2 the investigating agency for which the time limit for filing the challan is 90 days.

Accordingly, the application under Section 167 (2) Cr.P.C. was rejected and by the same order, time was extended for filing the challan to 90 days in view of the offence added under Section 395 IPC.

Learned counsel for the petitioners while praying for setting aside the impugned order and for releasing of the petitioners submitted that the said additional offence alleged to be committed by the petitioners under Section 395 IPC is itself against the law as no prior permission was obtained by the investigating agency.

Secondly, the petitioner had already filed the application under Section 167(2) Cr.P.C., as such, his application could not have been rejected on account of adding of the offence under Section 395 IPC for which, 90 days are required for filing of the challan.

Reliance was placed on the judgments rendered by the various Courts.

(1) Criminal Appeal Nos.1695-1697 @ S.L.P.(CRL) Nos.6965-6967 of 2012 titled as Sayed Mohd.

Ahmed Kazmi versus State GNCTD & ORS.(2) Ramesh Das versus State of Orissa (2000 Cri.

L.J.2473) (3) Singamala Sankara Nath versus State of A.P.(2007 Cri.

L.J.884). Heard.

Admittedly 60 days lapsed on 18.11.2013.

The petitioners immediately moved an application on 19.11.2013 itself.

However, on the same day, the prosecution brought to the notice of the court that the matter was still under investigation and section 382 IPC stood replaced by Section 395 IPC, for which 90 days are granted for filing of the challan.

Learned Single Bench of the Delhi High Court in the case of Dr.

Lalit K.

Bhanot versus CBI in Bail Application No.682/2011 decided on 5.7.2011 in somewhat similar circumstances was pleased to hold that the petitioner in the said case is not entitled for grant of bail in view of the alleged breach of Section 167(2) Cr.P.C.i.e.the charge sheet not having been filed within a statutory period of 60 days as the charges under Section 467 IPC were invoked for seeking extension of period of remand from 60 to 90 days.

In that case, the petitioner was arrested in an FIR for the offence under Section 420 read with 120-B IPC and Section 13(2) read with 13(1)(d) of the P.C.Act.

Charge-sheet was required to be filed within 60 days.

However, when the same was not filed within 60 days, the petitioner moved an application for bail after the expiry of the said period.

However, it was brought to the notice of the Court that Section 467 IPC stood added for which, the period of custody can be extended upto 90 days.

The Court while dismissing the petition observed in para 7 as under:- 7.

Thus, a perusal of Section 21(2) shows that to seek the benefit of the extended time period, the Special Public Prosecutor had to state reasons before the Special Court who would extend the period of ninety days to one hundred and eighty days after considering the report indicating the progress of Bail Appln.No.682/2011 Page 6 of 9 the investigation and the specific reasons for the detention beyond the said period of ninety days.

Thereafter, in order to overcome this hurdle, the learned Public Prosecutor in the said case took the plea that the period of 90 days would be 4 available from the

day MCOCA was invoked, which plea was turned down.

In the present case, the facts are totally different.

By invoking Section 467 IPC to the facts of the case and seeking extended period of remand from 60 to 90 days, the Public Prosecutor was not required to file a report indicating the progress of the investigation and specific reasons for the detention of the accused beyond the said period of ninety days.

The applications for remand as contemplated under the Cr.P.C.were only required to be filed.

This fact was duly brought to the notice of the Court at the time of the remand.

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The facts in the present case are almost same.

Section 395 IPC was added before the decision of the application under Section 167(2) and the matter was still under investigation.

Hence, no report seeking extension of time from 60 to 90 days for filing challan was required.

The judgments referred by the learned counsel for the petitioners do not help in the facts of the present case.

In neither of the cases referred by the learned counsel for the petitioners an offence requiring extension of the period of investigation was added.

In view of the above, no fault can be found in the order passed by the court below dismissing the application under Section 167(2) Cr.P.C.Accordingly, the revision petition is dismissed.

(NIRMALJIT KAUR).J.

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