

Rakesh Kumar Vs. the State of Bihar

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Court : Patna

Decided On : Jun-30-2005

Judge : I.P. Singh, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 41(1), 164(5), 167(2), 389, 438, 439 and 482; Code of Civil Procedure (CPC) - Sections 151; Indian Penal Code (IPC) - Sections 34 and 366(A)

Appeal No. : Cri. Misc. No. 15295 of 2005

Appellant : Rakesh Kumar

Respondent : The State of Bihar

Disposition : Application dismissed

Judgement :

I.P. Singh, J.

1. This is an application under Section 482 of the Code of Criminal Procedure, 1973 (in short the Code). It is directed against the order dated 17.2.2005 passed by the learned Chief Judicial Magistrate, Begusarai in Town P.S. Case No. 278 of 2004 by which he had rejected the bail petition filed under Section 167(2) of the Code by the petitioner. The petitioner has further prayed for quashing the order dated 14.3.2005 passed by the learned 5th Additional Sessions Judge, Begusarai

in B.A. No. 352 of 2005 by which he had rejected the prayer for bail of the petitioner and confirmed the order passed by the learned Chief Judicial Magistrate on 17.2.2005.

2. From the facts of this case it appears that the informant Surendra Poddar gave a written information to the Officer Incharge, Town Police Station, Begusarai on 12.9.2004 stating therein that on 11.9.2004 at 6 p.m. his daughter Suchitra Kumari aged about 17 years alongwith another girl Kirtika Kiran aged about 16 years had gone to the medicine shop at Bunka at about 7 p.m. When they did not return a search was started and the informant was told that his daughters were seen at about 6 p.m. in a white Ambassador Car which was going towards western side. The petitioner was also sitting in the said Ambassador Car. On the following morning the FIR was lodged against the petitioner and others.

3. From the photo copy of the arrest memo dated 16.11.2004 (Annexure-2 series) it would appear that this petitioner was arrested by the Delhi Police in reference to D.D. No. 55-B dated 16.11.2004 under Section 41(1) of the Code and he was produced on the same day before Shri Raj Kapoor, Metropolitan Magistrate, Tis Hazari Court, Delhi. Thereafter the petitioner was remanded in connection with Begusarai (T) P.S. Case No. 278 of 2004 under Section 366A/34 of the Indian Penal Code and he was sent to the judicial custody in Tihar Jail by the learned Metropolitan Magistrate, Delhi. The Senior Superintendent of Police, Begusarai was informed who filed a petition on 15.12.2004 before the learned Chief Judicial Magistrate, Begusarai for issuance of a production warrant and accordingly the petitioner was produced before the learned Chief Judicial Magistrate, Begusarai on 23.12.2004 and subsequently the two girls were medically examined and their statements under Section 164(5) of the Code were recorded.

4. From the order sheet of the case it would appear that the petitioner was remanded to the judicial custody by the learned Chief Judicial Magistrate, Begusarai on 23.12.2004. Thereafter the bail application on his behalf was filed and rejected. The learned Sessions Judge, Begusarai also rejected the same by his order dated 3.2.2005. From the aforesaid it would appear that the period of 90 days had expired on 17.2.2005 from the date of remand of the petitioner by the

learned Metropolitan Magistrate, Tis Hazari Court, Delhi and till this date no charge-sheet was filed. Obviously, therefore, the petitioner is entitled to bail under the provisions of Section 167(2) of the Code. The learned Additional Sessions Judge who also heard the prayer for bail of the petitioner by his order dated 14.3.2005 the similar view and rejected the prayer for bail of the petitioner.

5. From Annexure-3 it would appear that charge-sheet in this case was filed on 12.2.2005 and since the petitioner in custody from 16.11.2004 he was entitled to be released on bail as per Section 167(2) of the Code. On these grounds it has been contended that both the impugned orders dated 17.2.2005 passed by the learned Chief Judicial Magistrate, Begusarai as also order dated 14.3.2005 passed by the learned 5th Additional Sessions Judge, Begusarai be set aside and the petitioner be released on bail.

6. Learned counsel appearing on behalf of the State has opposed the prayer for bail on the ground that under the facts and circumstances of the case 90 days have not expired after remand of the petitioner in the present case and the date on which the charge-sheet was submitted.

7. The parties have been heard in detail with respect to these submissions. At the outset the learned counsel for the State-opposite party has submitted that the present application filed under Section 482 of the Code is not maintainable in as much as the provisions with respect to bail are covered under Chapter XXXIII of the Code and it was open to the petitioner to invoke the jurisdiction of this Court under the provision of this Chapter and not to invoke the inherent jurisdiction of this Court under Section 482 of the Code.

8. It is well known that Section 482 of the Code does not confer any new power on the High Court. It saves the inherent powers already possessed by the High Court. It corresponds to Section 151 of the Code of Civil Procedure and proceeds on the same principle. In this connection a reference may be made to the case of P.P. Kapur v. State of Punjab, : 1960 CriLJ1239 . In this decision it has been held that this section saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. There is no

doubt that this inherent power cannot be exercised in regard to matters specifically covered by the other provisions of the Code. To seek interference under this section three conditions are to be fulfilled, namely,

(i) the injustice which comes to the light should be of a grave, and not of a trivial character;

(ii) it should be palpable and clear and not doubtful; and

(iii) there exists no other provision of law by which the party aggrieved could have sought relief.

It is an age-old and well-established principle that every Court has inherent power to act *ex debito justitiae* to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the Court. If the ends of justice would not be otherwise secured then the High Court ' can and must exercise its inherent power under Section 482 of the Code. This power is to be exercised sparingly as held in the case of *Madhu Limaye v. State of Maharashtra*, : AIR 1987 SC47 . It has been held that this power cannot be resorted to if there is specific provision in the Code for the redress of any grievance of the aggrieved party. It would be exercised very sparingly to prevent abuse or process of any Court or otherwise to secure the ends of justice and it should not be exercised as against expressed bar of law. The similar view has been earlier taken in the case of *R.P. Kapur (supra)*.

9. In the present case it appears that the prayer for bail of the petitioner was rejected by two Courts mentioned above. A perusal of Chapter XXXIII of the Code will show that it was still open to the petitioner to invoke its provisions as contained in Sections 438 and 439 of the Code before this Court under the facts and circumstances of a particular case. Hence it can not be said that in respect of this matter there is no specific provision in the Code by which the party could have sought the relief. Obviously there are provisions in Chapter XXXIII of the Code with respect to bail and this Court is also authorised to pass necessary orders in this regard for the grant of bail or its refusal as will appear from Section 439 of the Code. From this it would appear that obviously there is a provision in law for the

relief as sought for in the present application filed under Section 482 of the Code. Under this circumstance it has been contended that this application under Section 482 is not maintainable. I feel inclined to agree to this submission of the learned counsel for the opposite party. I, accordingly, hold that this petition filed under Section 482 of the Code is not maintainable.

10. There is no denying the facts that Chapter XXXIII of the Code and Section 389 were intended to contain a complete and exhaustive statement of the powers of a High Court in India to grant bail and excludes the existence of any additional inherent power in a High Court relating to the subject of bail Section 482 of the Code confers no such power.

11. However, certain points have been raised with respect to grant of bail and correct interpretation of Section 167(2) of the Code. Its proviso authorises the Magistrate to order the detention of the accused person otherwise than in the custody of the police for period of 90 days or 60 days as the case may be when the investigation is not completed within this period. It is important to notice here that in this proviso the word 'remand has not been used'. The word used is 'detention' and not remand. Earlier there was lot of confusion as to since when this period of 60 days or 90 days has to be calculated, either from the date of arrest or from the date of remand. The law on this point has now been settled by the Hon'ble Supreme Court in the case of Chaganti Satyanarayana and Ors. v. State of Andhra Pradesh, AIR 1986 SC 2130 in which it has been held that the total period of 90/60 days has to be calculated from the date of remand and not from the date of arrest. In the present case it appears that firstly the petitioner was arrested in Delhi under Section 41(1) of the Code on 16.11.2004. Annexure-2/2 shows that the message to this effect was sent to Begusarai Police about this arrest. Annexure-2/3 dated 15.12.2004 shows that Begusarai Police requested the Chief Judicial Magistrate, Begusarai to issue production warrant for this accused as he was wanted in Begusarai (T) P.S. Case No. 278 of 2004 also. It further appears that finally the present petitioner was produced in this case before the learned Chief Judicial Magistrate on 23.12.2004 and accordingly he was remanded to custody by the learned Chief Judicial Magistrate. Hence obviously the period of 90 days will start running from this date notwithstanding the fact that

earlier he was arrested under Section 41(1) of the Code on 16.11.2004. As a matter of fact the date of remand or authorisation of the detention of the accused in connection with the present case is the important date from which the period of 90 days has to be calculated. This date is 23.12.2004 the date on which he was remanded to custody by the learned Chief Judicial Magistrate, Begusarai. Hence the period of 90 days will start running from this date. It further appears that the charge-sheet in this case was filed on 12.2.2005 will within the period of 90 days from the date of his remand. This charge-sheet was placed before the learned Chief Judicial Magistrate on 24.2.2005. Thus it was within the period of 90 days from the date of remand which is 23.12.2004.

12. Hence under the facts and circumstances of the case the provisions of proviso to Section 167(2) of the Code do not appear to be attracted.

13. From the discussions made above it would become clear that this application is not maintainable. Hence it is rejected.

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