

**Babu and Another Vs. State of Karnataka**

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**SooperKanoon Citation :** [sooperkanoon.com/375268](http://sooperkanoon.com/375268)

**Court :** Karnataka

**Decided On :** Jun-17-1997

**Reported in :** 1998CriLJ16; 1997(4)KarLJ238

**Judge :** M.P. Chinnappa, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 306 and 498-A; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 167(2)

**Appeal No. :** Cr. P. No. 1086 of 1997

**Appellant :** Babu and Another

**Respondent :** State of Karnataka

**Advocate for Def. :** M.H. Ibrahim, Government Pleader

**Advocate for Pet/Ap. :** Basavaraj Kareddy, Adv.

**Judgement :**

ORDER

1. Being aggrieved by the order of the Principal Sessions Judge, Gulbarga, dt. 20-3-97 in CrI.R.P. No. 6/96 setting aside the order of the PrI. J.M.F.C., Gulbarga, D/-12-12-95 in Crime No. 205/95 of Brahampur Police Station, cancelling the bail granted in favour of the petitioner, he has filed this petition under section 482, Cr.P.C.

2. The brief facts of the case are : On the complaint of one Nagamma, the Brahampur Police registered a case in Cr. No. 205/95 for the alleged offence under Ss. 498-A and 306, IPC. The petitioner was remanded to custody on 9-10-95. As the charge-sheet was not filed within 60 days from 9-10-95 on the application of the petitioner, under Section 167 Cr.P.C. the learned Magistrate was pleased to release him on 12-12-95 and the charge-sheet came to be filed on 13-12-95. This order was questioned before the learned Sessions Judge by the State. The learned Sessions Judge by his order dt. 20-3-97 set aside the order and directed the Magistrate to take the petitioner into custody. This order is questioned by the accused/petitioner in this Court.

3. Heard the learned Counsel for the petitioner and the learned H.C.G.P. for the State.

4. The learned Counsel for the petitioners at the very outset submitted that the offence u/S. 306 is punishable with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. The other offence under S. 498-A is only punishable with imprisonment for a term which may extend to three years and also fine. Therefore, the learned Magistrate was pleased to release the petitioner under S. 167(2), Cr.P.C. which was valid but the learned Sessions Judge has committed an error in holding that the charge-sheet should be filed within 90 days and not 60 days as held by the learned Magistrate. It is an undisputed fact that the petitioner was arrested for the alleged offence under Ss. 498-A and 306, IPC. He was in custody for more than 60 days. He was released by the learned Magistrate relying on the decision rendered by the Allahabad High Court reported in 1991 All Cri R 383 Sohan Lal v. State of U.P. In that case, the single Judge of the Allahabad High Court has considered the meaning of the term 'up to 10 years' and 'imprisonment for a term of not less than 10 years and a term which may extend to 10 years.' As indicated above, the offence punishable under S. 306 is punishable with a term which may extend to ten years and in case of S. 167(2)(a), Cr.P.C. the term used is :

'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, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding, -

(i) 90 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) 60 days, where the investigation relates to any other offence.'

The question is whether the case on hand would come under clause (i) or (ii) of sub-sec. (2) of S. 167. The punishment prescribed for the offence u/S. 306, IPC is up to 10 years. That means the maximum punishment be imposed by the Court if the offence is proved, is up to 10 years and not beyond. The language used in sub-clause (ii) of sub-sec.(2) of S. 167 is not less than ten years but the minimum punishment prescribed is 10 years. In the circumstances, the learned Magistrate has correctly applied the principles of law to direct the release of the petitioner from custody. However, the learned Sessions Judge has not understood the implication of the term 'not less than 10 years'. Therefore, it is clear where the maximum punishment prescribed is up to 10 years, the charge-sheet ought to be filed within 60 days from the date of the arrest. In other words, where the minimum punishment is 10 years or the offences punishable with death or imprisonment for life S. 167(1) prescribes the charge shall be filed within 90 days.

5. In this case as indicated above, the maximum punishment prescribed is 10 years. Therefore, the charge-sheet ought to be filed within 60 days and not 90 days as held by the learned Sessions Judge. Therefore, the order of the learned Sessions Judge which is impugned is liable to be set aside restoring the order of the learned Magistrate releasing the petitioner in this case.

5-A. In the result therefore, I proceed to pass the following :

The petition is allowed. The order of the Prl. Sessions Judge, Gulbarga, in Cr.R.P. 6/96 is quashed confirming the order of the learned JMFC, Gulbarga, dt. 12-12-1995 in Cr. No. 205/95 of Brahampur Police Station.

6. Petition allowed.

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