

The State Vs. Nagaraj

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Court : Karnataka

Decided On : Mar-22-1996

Reported in : 1996(2)ALT(Cri)33; 1996CriLJ3361; ILR1996KAR1611; 1996(2)KarLJ178

Judge : C.N. Aswathanarayana Rao, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 167, 167(5), 173(8) and 258

Appeal No. : Criminal Appeal No. 68 of 1990

Appellant : The State

Respondent : Nagaraj

Advocate for Def. : Khaleemulla Sheriff and ;N.Y. Guruprakash, Advs.

Advocate for Pet/Ap. : B.H. Satish, Govt. Pleader

Judgement :

1. This is a State Appeal against an order passed by the learned Special Judge, Metropolitan Area, Bangalore in C.C. No. 27/89 on the file of his Court on 10-8-1989 stopping the further proceedings in that case under S. 258, Cr.P.C.

2. The respondent-accused in that case is alleged to have contravened R. 2 clause 3 of Kerosene (Restriction on Use) Order, 1966 which is an offence

punishable under S. 3 read with S. 7 of Essential Commodities Act. It is alleged on 21-3-1988 in front of Basavangudi Police Station the accused who was the driver of an autorickshaw bearing No. MEV 8330 was found using kerosene by mixing with petrol as a fuel for his vehicle which is in contravention of the abovesaid order.

3. Before the learned Special Judge the accused contended that he was arrested on 23-3-1988 and charge sheet has been filed on 3-3-1989 nearly one year after his arrest and therefore the investigation is hit by S. 167(5) Cr.P.C. and consequently the further proceedings have to be stopped and the accused has to be discharged under S. 258, Cr.P.C.

4. Section 167(5) Cr.P.C. reads as follows :-

'If in any case triable by a Magistrate as a summons-case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.'

5. The learned Public Prosecutor did not dispute the fact that the investigation was not completed within six months from the date of arrest. He contended that the major portion of the investigation had been completed within six months and only the receipt of the report of the Forensic Science Laboratory was awaited and hence the delay in filing the charge-sheet. The Investigating Officer namely the Sub-Inspector of Police, Basavanagudi Police Station, also filed at application with an affidavit to that effect and sought for permission of the Court to continue the investigation. The application was filed along with the final report.

6. After hearing the learned Counsel for the accused and the Public Prosecutor on the point raised, the learned Special Judge rejected the application filed by Investigating Officer on the ground that it was not filed within the period of six months prescribed under S. 167(5), Cr.P.C. and therefore it is not maintainable. Consequently finding that the investigation had gone on beyond the period of six

months provided under S. 167(5) Cr.P.C. and without obtaining the necessary permission of the Court to continue the investigation beyond six months, the learned Special Judge stopped the proceedings under S. 258, Cr.P.C. Being aggrieved by that order the State has come up with this appeal.

7. I have heard the learned High Court Government Pleader for the appellant. Respondent's Counsel is not present. There is no merit in the contention of the appellant that the learned Special Judge erred in rejecting the application of the Investigating Officer. As has been rightly observed in the impugned order, the said application ought to have been filed within six months from the date of arrest as provided under S. 167(5), Cr.P.C. It was incumbent upon the Investigating Officer to have filed such an application and obtained the order of the Court to continue the investigation within six months from the date of arrest. When that is not done and the application itself is filed beyond six months (in the case on hand it was filed nearly after one year along with the final report), the statutory bar under S. 167(5), Cr.P.C. automatically comes into operation. When the application is filed beyond six months from the date of arrest, the Court does not have any powers to grant such an application. Therefore the learned Special Judge was right in rejecting the application filed by the Investigating Officer.

8. The learned High Court Government Pleader then contended that under law, the investigation done by the Investigating Officer within six months under S. 167(5), Cr.P.C. holds good and at the worst, that portion of the investigation which has extended beyond the period of six months from the date of arrest has to be excluded. The learned High Court Government Pleader argued that if the investigation done within six months from the date of arrest disclosed a prima facie case against the accused, and the prosecution can rely upon the investigation done within that period for basing a prayer for conviction, then further proceedings cannot be stopped under S. 258, Cr.P.C.

9. At this stage, the learned High Court Government Pleader has prayed for time till tomorrow to submit a decision in support of this argument. Hence, the matter is adjourned till tomorrow.

CNARJ :

22-3-1996 :

(continued)

10. The learned High Court Government Pleader, in support of his submissions made yesterday, relied upon a decision in State of Karnataka v. M. Raju, : ILR 1994 KAR3244 . Examining the very same question arising under S. 167(5), Cr.P.C., the Supreme Court held in that case as follows :-

'The material collected upto six months from the date of arrest of the accused would be taken into account for the purpose of prosecution. It is of no consequence which way it ends up. Criminal cases which come within the ambit of sub-section (5) of S. 167 of the Code of Criminal Procedure cannot be permitted to die down in Police Stations but have to meet their fate in Criminal Courts one way or the other. Such like prosecutions cannot be swallowed by the walls of the Police Station.'

11. This decision fully supports the arguments of the learned Counsel for the High Court Government Pleader and goes to show that simply because the investigation has exceeded the period of six months, the proceedings cannot be stopped under S. 258, Cr.P.C., as has been done by the learned Special Judge in this case. The proper course for the Special Judge is to rely upon that portion of the investigation which is done within six months from the date of arrest and ignore the investigation which has been done subsequently.

12. The learned High Court Government Pleader further submitted that with regard to the Chemical Examiner's report and such other reports, there is a specific provision under S. 173(8), Cr.P.C., which permit the Investigating Agency to file it into the Court even after the investigation has been completed and the charge-sheet has been filed. Section 173(8), Cr.P.C. reads as follows :-

'Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, whereupon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the

Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).'

In view of this clear position under the law, in the case on hand, even submitting the Chemical Examiner's report subsequently into the Court is in accordance with law and there was no need for the Investigating Officer to have filed an application for that purpose.

13. The learned Counsel Sri N. Srinivas for Sri Khaleemulla Sheriff for the respondent is present now and submits that he has nothing to add. In view of this clear position under the law, the impugned order cannot be sustained and has to be set aside and the matter has to be remanded for further proceedings.

14. For the reasons aforesaid, the appeal is allowed and the impugned order is hereby set aside. The learned Special Judge, Metropolitan Area, Bangalore City is directed to take the case on file and dispose of the same in accordance with law bearing in mind the observations made above. Both the parties are directed to appear in the Trial Court for further proceedings on 15-4-1996.

15. Appeal allowed.