

**Erappa Vs. Swamy**

**Erappa Vs. Swamy**

**SooperKanoon Citation :** [sooperkanoon.com/379831](http://sooperkanoon.com/379831)

**Court :** Karnataka

**Decided On :** Jun-14-1994

**Reported in :** ILR1994KAR2124

**Judge :** Venkataraman, J.

**Acts :** [Karnataka Forest Act, 1963](#) - Sections 104D; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 167(2)

**Appeal No. :** Crl. Petn. No. 550 of 1994

**Appellant :** Erappa

**Respondent :** Swamy

**Advocate for Def. :** Y.R. Jagadeesh, HCGP

**Advocate for Pet/Ap. :** G.B. Shastry, Adv.

**Disposition :** Petition allowed

**Judgement :**

ORDER

**Venkataraman, J.**

1. Heard

2. The petitioners are in Judicial custody from 16.7.93. They were arrested in connection with the offences punishable under Sections 86 and 87 of the Karnataka Forest Act. As the charge sheet was not filed within 60 days from the date of their remand to judicial custody the petitioners sought for bail under Section 167(2) Cr.P.C. The learned Magistrate relying on Section 104-D of the Karnataka Forest Act has declined to release them on bail on the ground that that provision overrides Section 167(2) Cr.P.C.

3. It is no doubt true that Section 104-D of the Forest Act stipulates that no person accused of the forest offence punishable under Sections 86, 87 or 104-A or in respect of ivory shall be released on bail, if the prosecution opposes the application and if the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence. It is also true that this is a special provision and this provision is applicable notwithstanding anything contained in the Criminal Procedure Code to the contrary with regard to the grant of bail. This provision is applicable only with regard to the question of granting bail and it does not deal with the power of the Magistrate to remand the accused to custody. Even for forest offences the only provision under which the Magistrate could grant Judicial custody is under Section 167 Cr.P.C. Section 167 specifically stipulates that the Magistrate can authorise detention of the accused for a term not exceeding 15 days at a time and a total period of 90 days, where the investigation relates to offence punishable with death or imprisonment for life or a term not less than 10 years and 60 days where the investigation relates to any other offence. Under this provision the power of the Magistrate to detain the accused comes to an end after the expiry of 90 days or 60 days as the case may be. It is only if a charge sheet is filed within that period and if the Magistrate takes cognizance then he can remand the accused under Section 309 Cr.P.C. The learned Magistrate has not at all taken this aspect into consideration. When once the charge sheet is not filed within the period of 60 days or 90 days the accused is entitled to be released on bail by virtue of Section 167(2) Cr.P.C. and this provision is not in any way affected by Section 104-D of the Forest Act.

4. In RAJNIKANT JIVANLAL PATEL AND ANR. v. INTELLIGENCE OFFICER, NARCOTIC CONTROL BUREAU, NEW DELHI : 1990 CriLJ62 the accused had

been arrested for offences under N.D.P.S. act which also contains provisions most stringent than Section 104-D of the Forest Act. The Supreme Court in that case has held that an order for release on bail under Section 167(2)(a) is release on bail for default of the prosecution in filing charge sheet within the prescribed period and this right is absolute. The Supreme Court has further held that in such a case the Magistrate has to pass an order for bail and communicate the same to the accused to furnish requisite bail bonds.

5. In the present case, as it is undisputed that the charge sheet was not filed within 60 days from the date of the remand of the accused the accused petitioners have become entitled to bail and the order of the Magistrate declining to release on bail cannot be sustained.

6. For the reasons stated above this Petition is allowed and the petitioners are ordered to be released on their executing self-bond for Rs. 10,000/- each with one surety in likes us to the satisfaction of the lower Court.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**