

Heeraman Vs. State of U.P.

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Court : Allahabad

Decided On : Mar-13-1975

Reported in : 1975CriLJ1508

Judge : S. Malik, J.

Appellant : Heeraman

Respondent : State of U.P.

Judgement :

ORDER

S. Malik, J.

1. This application was moved by Heeraman on the 6th of January, 1975, and it was rejected by the Application Court on the 24th of January, 1975. Later Hon'ble K. N. Seth, J., who had rejected the bail application, recalled the order by his order dated 7-2-1975 and directed that the bail application be placed before another Judge for orders. Under the orders of the Hon'ble the Chief Justice this has come up before me.

2. No case for bail was made out on merits. The only contention put forward was that in view of Section 167 of the Code of Criminal Procedure (Act No. 2 of 1974 and hereinafter referred to as the Code), the applicant is entitled to bail as of right because the charge-sheet was not submitted by the police within sixty days from

the date on which the applicant surrendered before the court concerned. In support of this contention the attention of the Court was drawn to the provisions of Section 167(2)(a) of the Code and also to Annexure 'C' of the application.

It may be mentioned that it is not in dispute that the applicant surrendered in the court of the Magistrate concerned on the 13th of September, 1974. While according to the applicant, the charge-sheet was submitted by the police on the 10th of December, 1974, i.e., after the expiry of sixty days, according to the learned Counsel for the State, the charge-sheet was submitted by the police within sixty days from the date of surrender of the applicant. As a matter of fact, the learned Sessions Judge made contradictory observations in his two orders filed as Annexures 'C' and 'D'. In Annexure 'C' while granting bail to a co-accused, namely, Birendra Singh the learned Sessions Judge observed that the charge-sheet was submitted on 10-12-1974 after the expiry of sixty days, but in his order dated 17-12-1974 (Annexure 'D') while rejecting the bail application of Heeraman he observed that the charge-sheet had been received in court on 11-11-1974 i.e., within sixty days. In view of these contradictory observations, a report was called for from the Magistrate concerned i.e., the Chief Judicial Magistrate about the exact date of submission of charge-sheet in his court. His report dated March 1, 1975, clearly shows that actually the charge-sheet was submitted by the police on 11-11-1974 i.e., before the expiry of sixty day's from the date of the surrender of the applicant and the same was received by an official of the court viz., the Court Moharrir on that date and thereafter it was sent to the Copying Department and from the Copying Department the charge-sheet was received back on the 16th of December, 1974, when, it appears, it was for the first time entered in the order-sheet. It is true that the fact that the charge-sheet was received in the court of the Magistrate concerned on 11-11-1974, should have been noted in the order sheet on that very date, but omission to do so was the fault of the officials of the court and not of the investigating agency who apparently submitted the charge-sheet on 11-11-1974 when it was received on behalf of the court by the Court Moharrir.

3. Before parting with this case it may be observed that the interpretation of Section 167(2)(a) of the Code by the learned Counsel for the applicant does not appear to me to be correct. The section, if I may say so, has not been properly

worded and a casual reading of the relevant provision gives the idea that a Magistrate cannot authorise detention of an accused person during investigation beyond a total period exceeding sixty days and that detention of an accused during investigation beyond that period is illegal. The relevant portion of the section is as follows:.. But no magistrate shall authorise the detention of the accused person in custody under this section for a total period exceeding sixty days, and on the expiry of the said period of sixty days, the accused person shall be released on bail if he is prepared to and does furnish bail...

The whole portion quoted has to be read together. It is apparent from the portion quoted that an accused is not to be allowed to just walk out of the place of detention or of the jail after the expiry of sixty days automatically if no charge-sheet has been submitted within that period. If no charge-sheet has been submitted within sixty days, the section only empowers an accused to claim bail as of right. But the detention of an accused does not automatically become illegal if no charge-sheet has been submitted by the police within sixty days even though the accused does not apply for bail. It may be repeated that he is not to be allowed to walk out of jail and his detention will continue to be legal till he actually applies for bail or in other words he 'is prepared to and does furnish bail.' In other words, the Magistrate shall not authorise detention of the accused-person in custody for a total period exceeding 60 days provided the accused person applies for bail on the expiry of the said period of 60 days or offers to and does furnish bail.

4. In my view, even if it is found that no charge-sheet was submitted within sixty days but charge-sheet was submitted before the accused applied for bail, it will not be open to the accused to claim that he is entitled to bail as of right by invoking Section 167(2)(a) of the Code because as soon as the charge-sheet was submitted, the period of remand pending investigation came to an end and provisions of Section 167(2)(a) would cease to apply to such a case and in such a case bail can be granted only on merits under the provisions of Chapter XXXIII of the Code.

5. In this case, however, as the report of the learned Magistrate shows that the charge-sheet was submitted within sixty days, this application has no force and is

hereby rejected.

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