

Sundar Vs. State of M.P.

Sundar Vs. State of M.P.

SooperKanoon Citation : sooperkanoon.com/497765

Court : Madhya Pradesh

Decided On : Jan-07-2010

Reported in : 2010(1)MPHT426

Judge : R.C. Mishra, J.

Appellant : Sundar

Respondent : State of M.P.

Judgement :

ORDER

R.C. Mishra, J.

1. Arguments heard.

This is an application under proviso to Sub-section (2) of Section 167 (for short 'the Proviso') read with Section 439 of the Code of Criminal Procedure (for brevity 'the Code').

2. The applicant was arrested on 28-8-2009 in connection with Crime No. 25/2009 registered at P.S. Mohangarh, Distt. Tikamgarh, initially, in respect of the offence punishable under Section 392 of the IPC.

3. Allegations against the applicant, in short, are that on 28-8-2009 at 9 a.m., he and his brother Sunder were conjointly involved in a robbery, in the course of

which, after putting complainant Rambihari under a fear of death by placing a katta on his chest, they had relieved him of a cash amount of Rs. 7,000/-and a gold chain.

4. After expiry of 60 days, the applicant claimed compulsive release on bail under the Proviso by filing an application on 29-10-2009. However, the application was rejected by Judicial Magistrate First Class vide order dated 30-10-2009 on the ground that charge-sheet reflecting commission of the offences under Sections 392 and 397 read with Section 34 of the IPC, could be filed within the prescribed period of 90 days as Section 397 has to be read with Section 394 that carries life imprisonment. His application moved an application under Section 439 of the Code for grant of bail was rejected by learned Sessions Judge on 5-11-2009 for the reason that the applicant has a consistent criminal record to his credit. However, while doing so, he also approved the view taken by learned JMFC that the applicant was not entitled to release on bail under the Proviso.

5. In the light of pronouncement of the Supreme Court in Uday Mohanlal Acharya v. State of Maharashtra : (2001) 5 SCC 453, the scope and effect of the Proviso has already been discussed by this Court in Mahesh v. State of M.P. : 2008 (3) M.P.H.T. 47.

6. The short question that arises for consideration is as to whether the case of the applicant was covered by the Proviso.

7. For a ready reference, provision of Sub-section (2) of Section 167 of the Code may be reproduced as under:

167. Procedure when investigation cannot be completed in twenty-four hours.--

(1) *** ***(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having

such jurisdiction:

Provided that--

(a) 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) ninety 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) sixty days, where the investigation relates to any other offence,

and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be released under the provisions of the Chapter XXXIII for the purposes of that Chapter;(b) *** **

8. At the outset, it may be observed that since no injury was caused to the complainant, Section 394 of the IPC had no application to the facts of the case. Admittedly, the charge- sheet for the offences under Sections 392 and 397 read with Section 34 of the IPC was submitted on 30-10-2009, i.e., after expiry of period of 60 days from the date of the order of remand of the applicant to custody. The offence under Section 392 of the IPC, if robbery is not committed on the high-way between sunset and sunrise, is punishable with Rigorous Imprisonment for a term, which may extend to 10 years and Section 397 does not create any offence but only prescribes minimum custodial sentence for aggravated forms of robbery and dacoity.

9. As explained by the Apex Court in *Rajeev Chaudhary v. State (NCT) of Delhi* : AIR 2001 SC 2369, expression 'offence punishable with imprisonment for a term of not less than 10 years' in clause (i) of Proviso (a) to Section 167 (2) connotes the offence for which imprisonment is for clear period of 10 years or more.

10. Accordingly, learned Magistrate committed a serious illegality in declining to release the applicant under the Proviso on the ground that the maximum period of detention prescribed for was 90 days. The Sessions Judge has also completely misdirected himself while concurring with the reasoning assigned by the Magistrate. He ought to have directed release of the applicant in terms of the mandate of the Proviso.

11. Taking into consideration the nature of allegations and other facts and circumstances of the case including his antecedents, I am of the view the applicant deserves to be enlarged on bail on comparatively stringent conditions.

12. It is, therefore, directed that applicant Sundar shall be released on furnishing a personal bond in the sum of Rs. 40,000/- with two solvent and local sureties of Rs. 20,000/- each to the satisfaction of CJM, Tikamgarh for his appearance during committal proceedings as well as during trial.

13. Copy of this order be forwarded to S.P. Tikamgarh for initiating necessary departmental action against the officer responsible for delay in filing the charge-sheet leading to compulsive release of the applicant, who has a chequered history to his credit, on bail, of course, after giving him opportunity of being heard.

C.C. as per rules.