

Bhole Alias Bholesh Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Jul-15-1992

Reported in : 1993CriLJ2821

Judge : K.M. Pandey, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 57, 154, 161(3), 164, 167, 167(2), 173, 173(1), 173(2), 173(4), 173(5), 173(6), 173(7), 207, 207A(3) and 537; ;Code of Criminal Procedure (CrPC) , 1955 - Sections 173(4), 207A, 207A(3) and 207A(4); Indian Penal Code (IPC) - Sections 34, 302 and 394

Appeal No. : C.M.C. No. 275 of 1992

Appellant : Bhole Alias Bholesh

Respondent : The State of Madhya Pradesh

Disposition : Application dismissed

Judgement :

ORDER

K.M. Pandey, J.

1. The applicant in this case prays for bail on the ground that he was not supplied copies of the charge-sheet and other papers in accordance with the provisions of Section 167(2) of the Cr. P. C. within 90 days with the result that he is entitled to

bail and he has relied on 1988 Jab LJ 444 : (1989 Cri LJ 1553) for it.

2. The brief facts of the case are that the applicant is involved in a case Under Section 302, 394/34, I.P.C. along with co-accused, namely, Ram Avtar and Chhidda. He was taken in custody on 2-8-91 and copy of the charge-sheet was not supplied to the applicant in accordance with the provisions contained in Section 167(2) of the Cr. P. C. No doubt in this case challan was filed within 95 days but the copies of the challan were supplied after two days of the expiry of the 90 days.

3. The applicant contended before the Sessions Judge that since the period of 90 days expired and the applicant has not been supplied with copies of the charge-sheet, therefore, he was entitled to bail on this very ground. The learned Sessions Judge rejected the application on the ground that non-supply of papers within 90 days was not fatal. Thus, the short point for consideration in this case is whether the non-supply of papers within 90 days was a complete ground for grant of bail of the accused.

4. For a clear understanding of the case it will be better to consider the provisions of Sections 167(2), 207 and 173 of the Cr. P. C. Section 167(2) reads as below:

'167(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 so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) No Magistrate shall authorise detention in any custody under this section unless. the accused is produced before him;

(c) No Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

Explanation I.-- For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.

Explanation II.-- If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorising detention.'

It was argued before me by the petitioner's Counsel that Section 167, Cr. P. C. says that investigation had to be completed within 24 hours and according to Section 57 a person arrested cannot be detained for more than 24 hours. According to the proviso to Section 167(2), Cr. P. C. 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 for a total period not exceeding 90 days where the investigation relates to an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years; 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 so released under the provisions of Chapter XXXIII for the purposes of that Chapter.

5. In the present case the accused is involved in a case Under Section 302, 394/34, I.P.C. and investigation should have been completed within 90 days. So far as it relates, in the present case the applicant was taken into custody on 2-8-1991 and it is undisputed that the copies of the charge-sheet were not supplied to the applicant in accordance with the provisions contained in Section 167(2), Cr. P. C. Copies of the challan were supplied after 2 days on the expiry of 90 days. It was argued before me that since the period of 90 days expired and the applicant has not been supplied with copies of the charge-sheet, consequently he is entitled to bail. Heavy reliance was placed on the reported decision of 1988 Jab LJ 444 : (1989 Cri LJ 1553).

6. It is significant to note that Section 167(2) does not say anything regarding furnishing of copies of the charge-sheet and other relevant papers to the accused within a period of 90 days. All that Section 167(2) says is that investigation should be completed within 90 days if the offence is punishable with death or imprisonment for life or imprisonment for a term of not less than ten years.

7. Reliance was also placed by the petitioner on Section 207, Cr. P. C. which reads as below:

'In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following documents mentioned therein.'

The expression 'without delay' means 'without reasonable delay'. The provisions of Section 173 Cr. P. C. will also help in deciding the point in controversy. Section 173(1) reads: Every investigation under this Chapter shall be completed without unnecessary delay. Sub-section (2) says that as soon as it is completed. The officer-in-charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report. A report in the form prescribed

by the State Government. Sub-section (7) of Section 173 says where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in Sub-section (5). This sub-section also, therefore, does not support the contention of the petitioner that the papers be supplied forthwith. The sub-section has used the words 'finds it convenient so to do'. It is also significant to note that the occasion for providing papers does not arise till the stage of Section 167, Cr. P. C. It prescribes only the period of investigation. The provision for supply of papers is contained in Section 173. If the investigation is not completed within a period of 90 days then the detention becomes illegal. This is not a case wherein papers have not been provided within a period of 90 days. Section 207, Cr. P. C. also helps us in arriving at a correct decision. It says in any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of costs, a copy of each of the following:

(i) the police report;

(ii) the first information report recorded Under Section 154;

(iii) the statements, recorded under Sub-section (3) of Section 161 of all persons whom the prosecution proposes to examine as its witnesses excluding therefrom any part in regard to which a request for such exclusion, has been made by the police officer under Sub-section (6) of Section 173;

(iv) the confessions and statements, if any, recorded Under Section 164;

(v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under Sub-section (5) of Section 173.

8. What is significant is that in this section also it is desired that the Magistrate shall without delay furnish to the accused copies of the documents. It may be pointed out that this section does not say that the documents have to be supplied within a period of 90 days, when expression 'without delay' means 'without reasonable delay.'

9. In the present case before me the papers were made available just after two days of the expiry of the statutory period of 90 days. In the case before Justice Gyani the accused was not produced before the Magistrate right from 10-11-1987 to 7-3-1988. The Magistrate continued to remand him to judicial custody on mere production of warrant in utter disregard of law. The Magistrate did not insist for production of the accused and there is no indication as to when he was produced. On 7-3-88 he was furnished copies of the order-sheet before passing the committal order. The accused was not furnished with copies of the charge-sheet filed on 22-2-1988 for about two months thereafter and in this background the learned Court said that such filing of challan would not arrest the operation of proviso to Section 167(2), Cr. P. C. which would entitle the accused to bail. Thus, the facts of that case were quite different from the present one.

10. Term 'without delay' in Section 207, Cr. P. C. does not mean either immediately or forthwith because these terms are quite distinct and distinguishable. Even the term 'forthwith' which is pre-emptory and carries much force, has been interpreted by Supreme Court as being done without avoidable and explicable delay. If the delay is explained then that is all AIR 1957 SC 28 : (1957 Cri LJ 10). Term 'without delay' naturally carries lesser speed than the term 'forthwith' and so has to, be understood accordingly. Duty is cast upon the Magistrate Under Section 207, Cr. P. C. to furnish copies of documents to the accused free of cost. The Magistrate has to ensure this before he proceeds to commit the accused to Sessions. If the copies are not supplied the Magistrate should adjourn the hearing, get the copies prepared and supplied. Naturally, the upper limit for supplying the copies of the documents to the accused is till before the Committal or before trial. (1983) 2 SCC 372 (SC), 1985 (1) Crimes 227 (MP). The word 'shall' occurring in Section 173 and Section 207, Cr. P. C. is not mandatory but only directory, AIR 1957 SC 737 : (1957 Cri LJ 1320). Therefore, non-compliance of these provisions has not the result of vitiating the trial.

11. In AIR 1957 SC 737 : (1957 Cri LJ 1320), in the case of Narayan Rao v. State of Andhra Pradesh, while interpreting Sections 173(4), 207A(3) and 537 of the Code of Criminal Procedure it has been held that the provisions of Section 173(4) and Section 207A(3) are not mandatory. It was held that at page 1323:--

'In order to simplify commitment proceedings preceding the trial of accused persons by a Court of Session, Section 207A was added by way of amendment of the Code in 1955. From Sub-sections (3) and (4) of that section it is clear that in cases exclusively triable by a Court of Session, it is the duty of the Magistrate while holding a preliminary inquiry, to satisfy himself that the documents referred in Section 173 have been furnished to the accused and if he found that the police officer concerned had not carried out his duty in that behalf, the Magistrate should see to it that it is done.'

'The provisions contained in Section 173(4) and Section 207A(3) have been introduced by the amending Act of 1955, in order to simplify the procedure in respect of inquiries leading up to a Sessions trial, and at the same time, to safeguard the interests of accused persons by enjoining upon police officers concerned and Magistrates before whom such proceedings are brought, to see that all the documents, necessary to give the accused persons all the informations for the proper conduct of their defence are furnished.'

'But non-compliance with those provisions has not the result of vitiating those proceedings and subsequent trial. The word 'shall' occurring both in Sub-section (4) of Section 173 and Sub-section (3) of Section 207A, is not mandatory but only directory, because an omission by a police officer to fully comply with the provisions of Section 173, should not be allowed to have such a far reaching effect as to render the proceedings including the trial before the Court of Session, wholly ineffective. However, if it is shown, in a particular case, on behalf of the accused persons that the omission on the part of police officers concerned or of the Magistrate before whom the committal proceedings had pended has caused prejudice to the accused in the interest of justice, the Court may re-open the proceedings by insisting upon full compliance with the provisions of the Code.'

12. In view of the aforesaid view I am of the opinion that non-supply of papers to the accused within a period of ninety days is not fatal and that supply of the copies of the documents two days after the filing of the charge-sheet by police in the Court has not caused any prejudice to the accused and it cannot be said to have been done after avoidable delay and it has no relevance in so far as his

entitlement for bail is concerned. The delay of two days in supply of papers to the accused is not fatal and the accused cannot claim bail simply on this ground. The application for bail is accordingly rejected.

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