

Kamla Devi Vs. State of Jharkhand

Kamla Devi Vs. State of Jharkhand

SooperKanoon Citation : sooperkanoon.com/522238

Court : Jharkhand

Decided On : Nov-24-2004

Reported in : 2005CriLJ3063; I(2005)DMC877; [2005(1)JCR389(Jhr)]

Judge : Hari Shankar Prasad, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 167(2); [Indian Penal Code \(IPC\), 1860](#) - Sections 304B; [Dowry Prohibition Act, 1961](#) - Sections 3 and 4

Appeal No. : W.P. (Cri.) No. 419 of 2004

Appellant : Kamla Devi

Respondent : State of Jharkhand

Advocate for Def. : R.R. Mishra, Adv.

Advocate for Pet/Ap. : Sunil Kumar Sinha, Adv.

Disposition : Application dismissed

Judgement :

ORDER

Hari Shankar Prasad, J.

1. This writ application under Article 226 of the Constitution of India has been filed for quashing the order dated 29.10.2004 passed in G.R. No. 605 of 2004 arising

out of Adityapur (R.I.T.) P.S. Case No. 184 of 2004 whereby the learned Chief Judicial Magistrate, Seraikella refused to enlarge the petitioner on bail under Section 167(2)(a)(ii) of the Code of Criminal Procedure on the ground that the police has not submitted charge-sheet within statutory period of 60 days from the date of arrest.

2. The case of the petitioner-accused is that first information report was lodged with the Adityapur police station being Adityapur (R.I.T.) P.S. Case No. 184 of 2004 under Section 304B of the Indian Penal Code and under Sections 3 and 4 of the Dowry Prohibition Act.

3. It is submitted that the petitioner Kamla Devi was taken into custody on 23.8.2004 but charge-sheet was not submitted even after expiry of statutory period of 60 days and, therefore, the petitioner is entitled to be released on bail. It is further submitted that a bail petition for release of the petitioner was filed on 29.10.2004, as statutory period of 60 days has expired on 21.10.2004 as the petitioner was actually arrested on 22.8.2004 and remanded to judicial custody on 23.8.2004. But even after filing of the bail petition on 29.10.2004 under Section 167(2)(a)(ii), Cr PC, she was not released on bail. It is further submitted that since statutory period of 60 days had already expired on 21.10.2004 from the date of her detention in custody and since police failed to submit charge-sheet against her by completing investigation therefore, she is entitled to be released on bail as per provision of Section 167(2)(a)(ii), Cr PC.

4. Learned counsel appearing for the petitioner submitted that minimum punishment prescribed under Section 304B, IPC is seven years under which FIR was registered against the petitioner and in view of provisions of Section 167(2)(a)(ii), Cr PC, learned C.J.M. was empowered to detain the petitioner in custody not beyond the period of 60 days during the pendency of investigation. Admittedly, till the date of filing of bail petition under Section 167(2)(a)(ii), Cr PC on 29.10.2004, no charge-sheet was submitted by the police, therefore, the petitioner was entitled to be released on bail under Section 167(2)(a)(ii), Cr PC. But unfortunately when bail petition was moved on 29.10.2004, the learned C.J.M. after hearing the bail petition rejected the same on the ground that in this case,

statutory period of filing charge-sheet is 90 days and not 60 days from the date of detention.

5. The learned counsel further submitted that the learned C.J.M. committed an error of law in holding that the statutory period of filing charge-sheet in a case under Section 304B, IPC is 90 days and not 60 days and in support of his contention, he placed reliance upon a decision reported in *Sunil Kumar v. State of Jharkhand and Ors.*, 2002 (1) East Cr C 458 (Jhr) wherein it has been held that in a case under Section 304B where minimum sentence prescribed is seven years and as such, statutory period of filing charge-sheet will be 60 days and, not 90 days. In this connection, learned counsel drew my attention towards Para-16 which is quoted herein-below :-

'16, Now considering three views it appears to mean, that the preceding view i.e. the, third view in the circumstances of the situation, brings the offences under Section 304B, IPC out of mischief of Section 167(2)(a)(i), Cr PC and lands it under Section 167(2)(a)(ii), Cr PC. Thus, the result in this case is that in the cases under Section 304B, IPC investigation has to be completed within 60 days from the, date of arrest/surrender of the accused and if the charge-sheet is not submitted then the , accused becomes entitled to statutory bail under Section 167(2)(a)(ii), Cr PC if, he was ready and furnishes bail bonds This statutory right that had accrued to him cannot be defeated. The majority view of the Apex Court in the judgment reported in *Uday Mohanlal Acharya v. State of Maharashtra*, 2001(1) JLJR 890 (SC) is relied upon for this purpose.'

6. On the other hand, learned counsel for the State was of the view that the statutory period of filing charge-sheet is 90 days and not 60 days as stated by the learned counsel for the petitioner, and he referred to Section 304B, IPC- and submitted that minimum punishment provided under this Section is not seven years, rather minimum sentence that is to be awarded is seven years, not less than seven years. In this connection, he referred to Section 304B, IPC which is quoted herein-below :-

'304-B, Dowry death.-(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven

years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called 'dowry death', and such husband or relative shall be deemed to have caused her death.

Explanation.-For the purpose of this sub-section, 'dowry' shall have the same meaning as in Section 2, of the [Dowry Prohibition Act, 1961](#) (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.'

7. From perusal of Section it will appear that, maximum punishment under Section 304B, IPC is up to life imprisonment. But while awarding sentence to a convict the Court has to impose sentence not less than seven years i.e. not the minimum punishment, the punishment is up to life imprisonment. But while considering the fact, the Court in any view of the matter will not impose punishment not less than seven years and in such a case maximum punishment is to be considered. The learned counsel further submitted that in such a situation, provision of Section 167(2)(a)(i), Cr PC would apply under which period of detention can be up to 90 days and therefore, charge-sheet can be submitted upto 90 days from the date of detention but the learned counsel moved bail application before expiry of 90 days from the date of detention and, therefore, before expiry of statutory period of 90 days, a bail petition was filed and the learned C.J.M. was justified in rejecting the prayer for bail.

8. Learned counsel for the State in support of his contention placed reliance upon a number of decisions such as Raju @ Rajaram Mandal v. State of Bihar and Ors., reported in 1994(2) PLJR 849 and in the case of Upendra Singh @ Pappu Singh v. State of Bihar and Ors. reported in 2003(2) PLJR 327 and also the decision of the Supreme Court in the case of Rajeev Chaudhary v. State (NCT) of Delhi, reported in (2001) 5 SCC 34. Learned counsel further referred to Section. 167(2), Cr PC which is quoted herein 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, authorize the detention of the accused in such custody as such Magistrate thinks fit, 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 authorize 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, authorize 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 an does furnish bail, and every person released on bail under this sub-section shall be deemed to be to released under the provisions of Chapter XXXIII for the purposes of that Chapter.'

9. From perusal of provisions of Section 167(2)(a)(i), it is clear that where punishment provided is death or up to life imprisonment, the statutory period for submission of charge-sheet from the date of detention is 90 days and not 60 days. In that view of the matter, the decisions upon which the learned counsel for the State has placed reliance which clearly show that where punishment provided is death or up to life imprisonment, then in that case statutory period for submission of charge- sheet from the date of detention will be 90 days and not 60 days.

10. After considering the facts and circumstances of the case and after considering the points advanced from both the sides. I am of the view that in the instant case, statutory period of submission of charge-sheet from the date of detention will be, 90 days and not 60 days. In that view of the matter, there is not merit in this application, which is accordingly dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com