

Rupesh Kumar and anr. Vs. State of Jharkhand and anr.

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Court : Jharkhand

Decided On : Nov-02-2004

Reported in : 2005(1)BLJR389; 2005CriLJ1802; I(2005)DMC268

Judge : Amareshwar Sahay, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 304B and 328; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 167(2)

Appeal No. : W.P. (Cr.) 297 of 2004

Appellant : Rupesh Kumar and anr.

Respondent : State of Jharkhand and anr.

Advocate for Def. : Manoj Kumar, JC. to GP-II

Advocate for Pet/Ap. : Apresh Kr. Singh, Adv.

Disposition : Application dismissed

Judgement :

Amareshwar Sahay, J.

1. Heard the parties.

2. By filing this application the petitioners have prayed for quashing of the order dated 14.7.2004, passed by the Additional Chief Judicial Magistrate, Bermo at Tenughat, in G.R. Case No. 301 of 2004, whereby the learned A.C.J.M. rejected the petition of the petitioners for releasing them on bail which was filed under the provisions of Section 167(2) of the Code of Criminal Procedure, on the ground that the police did not submit charge-sheet in the said case within the statutory period of 60 days and, therefore, the accused petitioner were entitled to be released on bail.

3. The facts in brief giving rise to this application are that a First Information Report being Petarwar P.S. Case No. 42/2004, was registered on 7.5.2004 for commission of the offences under Sections 304B, 328/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act against the petitioners and others.

4. It is stated that the petitioner No. 1 Rupesh Kumar was taken into judicial custody on 7.5.2004 and petitioner No. 2 Subhadra Devi was taken into judicial custody on 8.5.2004 and since then they continued in custody. On 13.7.2004 a petition was filed on behalf of the petitioners praying for their release on bail on the ground that 60 days has already been expired from the date of their detention in custody and since the police has not submitted charge-sheet against them by completing investigation and, therefore, they are entitled to be released on bail under the provisions of Section 167(2), Cr.P.C.

5. It is not disputed that the police submitted-charge sheet on 13.7.2004 itself but subsequent to the filing of the petition under Section 167(2), Cr.P.C. for bail.

6. The learned Counsel for the petitioners Mr. Apresh Kumar Singh has submitted that Section 304B of the I.P.C. under which the FIR was registered against the petitioners, the minimum punishment provided is 7 years and, therefore, in view of Section 167(2)(a)(ii) of the Cr.P.C. the Magistrate was authorized to detain the petitioners in custody not beyond the period of 60 days during the pendency of the investigation and since admittedly till the filing of the petition under Section 167(2) of the Cr.P.C. no charge-sheet was submitted by the police and, therefore, the petitioners were entitled to be released on bail.

7. In support of his submissions the learned Counsel for the petitioners has relied on a decision of this Court in the case of Sunil Kumar v. State of Jharkhand and Ors., reported in, 2002 (1) Eastern Criminal Cases, 458 (Jhr).

8. On the other hand the learned Counsel for the State, by controverting the argument advanced on behalf of the petitioners, has submitted that in view of punishment provided for commission of the offences under Section 304B of the I.P.C. which envisages that if found guilty for commission of the offences under Section 304B of the I.P.C. an accused can be sentenced to life imprisonment and the minimum sentence provided is 7 years, therefore, Section 167(2)(a)(i), Cr.P.C. would apply and not Section 167(2)(a)(ii), Cr.P.C. Under Section 167(2)(a)(i) the period of detention can be up to 90 days and, therefore, when the charge sheet has already been submitted within that period there is no question of releasing the petitioners on bail under the provisions of Section 167(2) of the Cr.P.C.

9. In support of his submissions the learned Counsel for the State has relied on the two Division Bench decisions of Patna High Court firstly, in the case of Raju @ Rajaram Mandal v. State of Bihar and Ors., reported in 1994 (2) PLJR 849 and secondly 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.

10. The facts relating to lodging of the F.I.R. on 7.5.2004 detention of the petitioners from 7.5.2004 and 8.5.2004 and the submission of the charge-sheet on 13.7.2004 are not in dispute.

11. The only question to be decided in this case is as to whether in the present case Section 167(2)(a)(i) of the Cr.P.C. would apply or Section 167(2)(a)(ii) of the Cr.P.C. will apply considering the quantum of sentence provided under Section 304B of the Indian Penal Code.

12. Section 167(2) of the Cr.P.C. lays down thus:

'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 and does furnish bail, and every person released on bail under this sub-section shall be deemed to be released under the provisions of Chapter XXXIII for the purposes of that Chapter;]

13. In the case *Rajeev Chaudhary* (supra) the Apex Court, while dealing with the law on the subject, was considering a case, under Sections 380, 506 and 120B of the Indian Penal Code. After noticing the punishment provided under Section 386, I.P.C., which provided the maximum punishment up to 10 years only, it was held by the Supreme Court that where the offence is punishable with imprisonment for 10 years or more, the accused could be detained up to a period of 90 days. The expression 'not less than' in Section 167(2) proviso would mean, in the context of Section 386, I.P.C. that the imprisonment should be 10 years or more. The punishment of imprisonment for a term 'which may extend to 10 years' means imprisonment for a period of 10 years or less. Hence, it could not be said that the minimum sentence would be 10 years or more and, accordingly, such case would fall under Section 167(2)(a)(ii) of the Cr.P.C.

14. In the case of Raju @ Rajaram Mandal (supra) the Division Bench of Patna High Court while dealing with the law on the subject in connection with a case, which was punishable under Section 395, I.P.C., in which the punishment provided under the Indian Penal Code is imprisonment for life or up to 10 years, it was held in the said decision by the Division Bench that if the investigation relates to an offence which is punishable with death or imprisonment for life or for imprisonment for a term not less than 10 years, the maximum period of detention during investigation would be 90 days and in other cases it would be 60 days. It was further held that if the offence is punishable with 10 years or more, Proviso (a)(i) will apply. The minimum sentence prescribed for a particular offence is not at all relevant for deciding the question whether Proviso (a)(i) or (a)(ii) to Section 167(2) of the Code will apply.

15. In the case of Upendra Singh @ Pappu Singh (supra) the other Division Bench decision of Patna High Court, it appears that a case relating to commission of the offence under Section 396, I.P.C. was being considered. Section 396, I.P.C. provided three alternative punishments--(a) death, (b) imprisonment for life and (c) rigorous imprisonment up to 10 years and fine and it was held that the rule of 90 days as provided under Section 167(2)(a)(i) would apply.

16. Relying on the aforesaid two Division Bench decisions of Patna High Court, I also endorse the same view that for deciding as to whether Section 167(2)(a)(i), Cr.P.C. or 167(2)(a)(ii), Cr.P.C. would apply, the maximum punishment provided under the particular offence under the I.P.C. has to be taken into consideration and not the minimum period of sentence provided there under.

17. As noticed above, the Supreme Court also in the case of Rajeev Chaudhary (supra) has held that where the offence is punishable with imprisonment for 10 years or more, the accused could be detained up to a period of 90 days.

18. Regarding the decision of the learned Single Judge of this Court in the case of Sunil Kumar (supra) as it appears that the decision of the Supreme Court in the case of Rajeev Chaudhary reported in (2001) 5 SCC 4, was not brought to the notice of that Court.

19. Therefore, relying on the decision of the Supreme Court in the case of Rajeev Chaudhary (supra) and also the two Division Bench decisions of Patna High Court, as discussed above, I hold that the present case in which the offence alleged is under Section 304B of the Indian Penal Code and the punishment provided there under is life imprisonment of imprisonment for not less than 7 years and as such the rule of 90 days as envisaged under Section 167(2)(a)(i), Cr.P.C. would apply and not Section 167(2)(a)(ii) of the Cr.P.C.

20. Accordingly, for the reasons stated above, I find that the petitioners are not entitled to be released on bail under the provisions of Section 167(2) of the Cr.P.C. Hence, this application is dismissed.

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