

Kailash Chandra Agarwala Vs. State

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Court : Orissa

Decided On : Sep-14-1995

Reported in : 1995(II)OLR470

Judge : A. Pasayat, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 167(5)

Appeal No. : Criminal Revision No. 513 of 1994

Appellant : Kailash Chandra Agarwala

Respondent : State

Advocate for Def. : Addl. Standing Counsel

Advocate for Pet/Ap. : P. Mohanty, R.P. Ray, R. Mohanty, C.H. Patnaik and A.K. Dalei

Judgement :

A. Pasayat, J.

1. Validity of order dated 15-7-1994 passed by the learned Special Judge, Sundargarh permitting continuance of investigation in terms of Section 167(5) of the Code of Criminal Procedure 1973 (in short, the Code') is the subject-matter of challenge.

2. Briefly stated the factual background, which is almost undisputed, is as follows :

Petitioner is arrayed as an accused in a case under Section 7(1)(a) of the Essential Commodities Act, 1955 (in short, 'the Act') for alleged violation of Clauses 6 and 7 of the Orissa Rice and Paddy Control Order, 1965 (in short, 'the Control Order') and Clause 3 of the Orissa Declaration of Stocks and Prices of Essential Commodities Order, 1973 (in short, 'the Declaration Order'). The proceeding was registered as Vig. G. R. Case No. 18 of 1993 in the Court of Special Judge-cum-Sessions Judge, Sundargarh. Petitioner was arrested on 21-9-1993 and was produced before the learned Subdivisional Judicial Magistrate, Panposh (in short, 'the SDJM') and subsequently was produced before the learned Special Judge and was released on bail. On 8-4-1994 an application was filed by the petitioner purported to be in terms of Section 167(5) of the Code to stop further investigation, on the ground that it was not completed within six months from the date of arrest of the petitioner. Prayer was accepted by the learned Special Judge by order dated 8-4-1994, by directing to stop investigation. On 4-7-1994 an application was filed on behalf of the prosecution, purported to be one under Section 167(5) of the Code to revoke the earlier order, by order dated 15-7-1994, which is the impugned order in this application, learned Special Judge accepted the prayer. It was observed that the investigation was completed on 31-3-1994, i.e., within the stipulated time, and when further investigation was necessary the prayer for continuance of investigation was to be accepted.

3. The stand of the petitioner is two fold. Firstly, it is submitted that after having accepted that investigation was not completed within six months, it was not open to the prosecution to urge that investigation was completed by 31-3-1994. The stand that the charge-sheet was submitted before the SDJM by mistake and was subsequently transmitted to the Special Judge on 20-5-1994 is a travesty of truth because the endorsement in the charge-sheet clearly shows that name was not filed on 31-3-1994, and was actually filed on 25-5-1994. Secondly it is submitted that the prayer to continue investigation should not have been accepted because no person has been indicated as to why investigation was not completed earlier. It is also submitted that after having passed order on 8-4-1994 to stop further investigation, the learned Special Judge had become functus officio and therefore,

had no power to direct further continuance of investigation.

4. Learned counsel for State on the other hand supported the order and submitted that technicalities should not stand on the way of justice and even if it is accepted that investigation was not completed within the stipulated period of six months, it was open to the prosecution to seek for permission of Court to continue further investigation, which was done and has been rightly accepted by the learned Special Judge.

5. Since the controversy revolves round the scope and submit of Section 167 (5) and (6), of the Code, it is desirable to quote them which read as follows :

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

(1) to (4) xxx xxx xxx (5) If any case triable by a Magistrate as summons case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.

(6) Where any order stopping further investigation into an offence has been made under Sub-section (5), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify.'

The aforesaid two sub-sections have been introduced with a view to see that there is no unnecessary delay in investigation. The outer limit of six months can, only in exceptional cases, on the satisfaction of the Magistrate or the Sessions Judge, be extended. When in a summons case, an investigation is continued beyond six months and no attempt is made by the Investigating Officer to satisfy the Magistrate as required by Sub-section (5), such investigation is illegal and the Magistrate is under an obligation to stop the same and if he allows it to continue, he acts without jurisdiction. The limitation prescribed under Sub-section (5) of Section 167 does not bar the filing of the charge-sheet beyond the period of six

months. The Magistrate cannot refuse to take cognisance of the case, on the basis of charge-sheet duly filed as per Section 468 merely on the ground that the investigation was not complete within the period of six months.

6. For application of Section 167(5) of the Code; (i) the case should be one triable by the Magistrate as a summons case and (ii) the investigation was not concluded within a period of six months. If these two requirements are satisfied, then the Magistrate can proceed to stop further investigation into the offence. However, the Magistrate can permit further investigation if the officer making the investigation satisfied the Magistrate that for special reasons and in the interest of justice, the continuation of the investigation beyond the period of six months is necessary. Stopping further investigation is different from discharging the accused persons. At the worst if the Magistrate orders stoppage of further investigation, he can only order the release of the accused persons. The term 'discharge' in the Code has got a particular significance. 'Discharge' in Sections 251(a) and 253 and other similar provisions come into play only after the final submission of the report by the police. The mandate of legislature as contained in Sub-section (5) of Section 167 of the Code is clear and in cases triable under summons procedure, the investigating agency must complete the investigation within a period of six months from the date of arrest of the accused failing which the Magistrate is legally bound to stop further investigation. If the investigating agency wants to proceed beyond the period of six months it must make an application before the Court within the aforesaid period and the Court may allow after applying its judicial mind, continuance of investigation beyond the above period provided the Court is satisfied that there are special reasons and that for ends of justice such continuance of investigation is necessary. The provision places an over all limit over the investigation of a summons case. It is to be made clear, the expression 'six months' means six calendar months and not 180 days. The Calcutta High Court in *Ram Briksh Jadab v. State of West Bengal* : 1963 CrL LJ 39 (Cal) has held that cognisance taken by the Magistrate on a challan filed after 186 days from the commencement of investigation was bad. A contrary view, however has been taken by the Madras High Court, where it was held that the mere antecedent illegally or irregularly in the investigation will not vitiate the cognisance taken by the Magistrate and the further proceedings. (See *Jagannathan v. State* 1983 CrL

LJ 1748). High Courts of Karnataka, Delhi, Kerala, Andhra Pradesh, Rajasthan and Bombay have also taken a similar view. It was held that illegal investigation has no bearing on the competence of the Court to take cognisance and the evidence collected after the period of six months from the time of arrest of the accused is to be ignored. (See S. Kumar v. State of Karnataka : 1965(1) CrLJ 1347 (Ker.), State v. Jai Bhagwan : 1985 CrLJ 932 (Delhi). C. Shehidnaran Nair v. State of Kerala : 1987 CrLJ 170 (Ker), Public Prosecutor, High Court of A.P. v. Naran Pratap Reddy: 1988 CrLJ 1057, Subhkaran v. State of Rajasthan : 1986 RLW 134 and State of Maharashtra v. Tativili : 1986 CrLJ 332 respectively.

I am in agreement with the view expressed by majority of the High Courts not merely because of brute majority, but because of the logic in conclusions. In case of a charge-sheet submitted after six months Court has to consider materials collected during investigation up to end of the prescribed period.

7. The Essential Commodities (Special Provisions) Article 1981 has made inroads not only in sentencing powers of the Special Judge in imposing sentence of imprisonment not exceeding two years, but also the procedure to be followed in trial of all such cases under the Act. As provided under Section 12AA(f) of the Act, the offences being triable summarily, following the procedure applicable to the trial of summons case, and empowering to sentence not exceeding two years as in summons case, the provisions of Section 167 of the Code having been made applicable to such cases, the Special Judge, by whatever name he is called, being the Court of original jurisdiction exercising the power of Magistrate, has the jurisdiction to stop the investigation under Section 167(5) of the Code. The Court of Session, while acting under Sub-section (6), is acting as a Court of original jurisdiction. Though there is no period of limitation to move the Court of Session under Sub-section (6), it should not entertain an application filed after long delay, unless reasons for the delay are given and the Court is satisfied about them. The power to permit continuance of investigation has to be exercised by the Magistrate in terms of Section 167(5) of the Code.

8. It is to be noticed that the apex Court in Hussainara Khatoon v. Home Secretary : 1979 CrLJ 1036 has observed that if in any case triable by a Magistrate as a

Summons case the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence, unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interest of justice the continuation of investigation beyond the period of six months is necessary. The investigation of a case concludes at a stage prior to forwarding the police report to the Magistrate, because the investigating officer has to forward the report as soon as the investigation is complete. The filing of the charge-sheet in the Court is not a part of investigation for the purpose of Section 167(5) of the Code. (See *Ponam Rom v. State* : 1985 Cri LJ 546 (Cal.). As observed by the apex Court in *Hussainara Khatoon's case* (supra). the Magistrate has jurisdiction to permit the investigation beyond a period of six months even if an application for the said purpose is moved by the prosecution after expiry of the period.

9. According to learned counsel for State the impugned order dated 15-7-1994 was passed by the learned Special Judge who is a Sessions Judge and not by a Magistrate to attract application of Section 167(5). The plea is clearly untenable in view of provisions of the Essential Commodities (Special Provisions) Act, 1981, and more particularly under Section 12AA(f) of the said Act.

10. In the facts of the case, the consideration is to be restricted to materials collected up to the end of prescribed period. The learned counsel for petitioner states that the permission to continue investigation was granted even though no specific reason as to why it was felt necessary has been indicated or highlighted by the petitioner. The legislature has obliged the officer making investigation to satisfy the Magistrate that 'for special reasons and in the interest of justice' permission for continuance of investigation beyond the prescribed period is necessary. Permission is not to be granted as a matter of course. It has to be shown by the Investigating Officer that special reasons existed, and interest of justice necessitated continuance of the investigation.

11. There appears to be lot of confusion because at one stage the Public Prosecutor stated that investigation was not completed, when the matter was taken up on 8-4-1994, but subsequently it was stated that the charge-sheet was by

mistake submitted before the learned SDJM on 31-3-1994 and was subsequently transmitted to the Special Judge on 25-5-1994. The affidavit filed in that regard is absolutely vague. No reason, much less special reason, has been indicated as to why it was felt necessary that further investigation would be appropriate.

In the case at hand the application filed did not contain any reason. The Special Judge can act on the materials collected up to the expiry of the prescribed period. It is stated by the learned counsel for the accused-petitioner that the material has not been so collected and there has been antedating. I find no substance in the plea. An official act is presumed to be correct. The confession of the Public Prosecutor earlier made to the effect that investigation had not been completed within the prescribed period cannot lead to the conclusion that no material was collected during the prescribed period. It is, however, open to the prosecution if it is so advised, to move for permission to continue investigation by indicating special reasons and desirability for such continuance in the interest of justice. If such a motion is made, the learned Special Judge shall deal with the same in accordance with law keeping in view the requirements of Section 167(5) of the Code. While therefore, setting aside the order dated 15-7-1994, I do not express any opinion on the question of desirability for continuance of the investigation.

The revision application is accordingly disposed of.

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