

Tarsem Kumar Vs. the State

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Court : Delhi

Decided On : Apr-21-1975

Reported in : 1975CriLJ1303

Judge : Vyas Dev Misra, J.

Appellant : Tarsem Kumar

Respondent : The State

Advocate for Pet/Ap. : Mr. S. L. Chaudhry

Judgement :

ORDER

Vyas Dev Misra, J.

1. Tarsem Kumar has been charged with an offence under Section 302, Indian Penal Code. He prays for bail on the short ground that the challan was put in by the police beyond a period of sixty days of his arrest and so the Magistrate should have ordered his release on bail on the sixtieth day in terms of Section 167 of the Code of Criminal Procedure, 1973.

2. The petitioner was arrested on October 19, 1974, and the report under Section 173 of the Code was received by the Court on December 18, 1974, when the Court took cognizance of the offence.

3. Mr. S. L. Chaudhry, learned Counsel for the petitioner, contends that sixty days referred to in Section 167 of the Code are to be calculated from the date of the arrest of an accused. The relevant portion of Section 167 of the Code is in the following terms:

167. (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 57 and there are grounds for believing that the accusation or information is well founded the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of 'sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary herein after prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(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 detention of the accused person, otherwise than in 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 section for a total period exceeding sixty days, and on the expiry of the said period of sixty days, 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 section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter :

4. Under Section 57 of the Code a police officer cannot detain any person in custody for a period more than twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court. If the Police Officer cannot complete the investigation within the period of twenty-four hours, he

is required to forward the accused to the nearest Judicial Magistrate along with a copy of the entries in the police diary (sub-section (1) of Section 167). Under Sub-section (2) of Section 167 a Magistrate may 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. Mr. Chaudhry contends that the words 'in the whole' show that the period of fifteen days is to include the period of first twenty-four hours during which a police officer can detain under Section 57 of the Code.

5. In my opinion, Sub-section (2) deals with the period of detention which can be authorised by the Magistrate and has no concern with the period for which the accused can be detained by a Police-Officer without the authority of a Magistrate. Under Section 57 a Police Officer can detain an accused for a period of twenty-four hours as well as for the time which may be necessary for the journey from the place of arrest to the Magistrate's court. This journey may in some cases, take a long time depending upon the circumstances. All this period of detention does not need any authorization by the Magistrate. It is only when the period for which a Police Officer can detain Under Section 57 of the Code expires that he needs authorization of a Magistrate for further detention. The total authorization, which can be made for police custody by the Magistrate, is not to exceed fifteen days. The words 'in the whole' -have been used with reference to the context that the Magistrate may 'from time to time' authorise the detention of the accused in police custody and they have no reference to the period of detention during which a police officer can detain the accused under Section 57 of the Code. Similarly when the proviso (a) to Sub-section (2) refers to 'a total period of sixty days', it relates to the period of detention authorized by the Magistrate in police custody as well as the custody other than police custody,

6. Thus, while computing the total period of sixty days, referred to in proviso (a) to Sub-section (2) of Section 167, the period of detention under Section 57 of the Code has to be excluded. Admittedly, December 18, 1974, was the sixtieth day of the authorized detention by the Magistrate when challan was filed and cognizance of the offence was taken by the Magistrate. Thereafter, the detention was under Section 309 of the Code.

7. The application is dismissed.

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