

Uma Shanker Vs. State

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SooperKanoon Citation : sooperkanoon.com/689014

Court : Delhi

Decided On : Jan-27-1989

Reported in : ILR1989Delhi89

Judge : P.K. Bahri, J.

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

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 1614 of 1988

Appellant : Uma Shanker

Respondent : State

Advocate for Pet/Ap. : P.P. Grover and; S.T. Singh, Advs

Judgement :

P.K. Bahri, J.

(1) The petitioner, who is facing trial for an offence punishable under Section 302 read with Section 34 of the Indian Penal Code, has sought bail. The learned counsel for the petitioner, Mr. P. P. Grover, has urged that the investigation in the case was not complete when the challan was filed and during the course of the trial the investigation had continued and thus, the petitioner has become entitled to be released on bail in view of the provisions of Section 167 of the Code of Criminal Procedure. Under Section 167(2)(a)(i) of the Code of Criminal Procedure, if the

investigation is not complete within 90 days and report under Section 173 of the said Code is not filed by the police, the accused becomes entitled to bail.

(2) Facts of the case, in brief, are that one Subhash is stated to have been administered cyanide poison by at first making him intoxicated by giving him some tablets and thereafter making him drink from a glass, some liquid containing the poison. There is an eye witness of the occurrence in whose presence the petitioner and his co-accused Sham Sunder had administered poison to the deceased. Subhash had died instantaneously at the spot. The police had taken into possession the viscera, sample blood and one bottle containing liver, spleen and kidney after the post-mortem and also took into possession the steel glass, two plastic bottles, one packet/strip of belladenalin tablets from the spot. The two plastic bottles were allegedly brought by the accused to the room where the witness was being kept as mistress of the deceased and these bottles were stated to contain the liquid Chemical meant for washing and cleaning the silver ornaments and were kept there under the impression that silver paizeb of the lady were to be cleaned. The strip of tablets of belladenalin is the same from which some tablets were given to the deceased to make him intoxicated. The learned counsel for the petitioner has argued that at the time the challan was filed, it was not disclosed that the said two plastic bottles and steel glass and the strip of belladenalin tablets had been sent to the Central Forensic Science Laboratory (for short 'CFSL'). So, it is argued that the case property was not sent before the filing of the challan and it must be held that the investigation was not complete because it is only the analysis of the contents of the said case property which could have linked the accused with the commission of the crime in question. I may mention that the Cfsi report which was initially received, did show that the viscera etc. taken from the deceased during post-mortem gave positive test turn presence of cyanide. However, no mention was made in respect of the case property which was taken into possession from the spot. So, during the course of the trial the Investigating Officer finding that no opinion had been given with regard to the said case property had required the Cfsi Expert to give opinion on the said case property as well and it is during the course of trial that the opinion had been given by the Expert that the steel glass and the two plastic bottles also gave positive test for presence of cyanide and while the strip of belladenalin show that the tablets

were containing intoxicant material.

(3) Under Section 2(h) of the Code of Criminal Procedure 'investigation' includes all the proceedings under this Code for the collection of evidence conducted by a police officer and 'police report' as defined in clause (r) means a report forwarded by a police officer to a Magistrate under sub-section (2) of Section 173. Under sub-section (2) of Section 173 of the Code of Criminal Procedure different details of facts, which have to be shown in the police report, are given. If the provisions of Section 173(2) are kept in view the police report filed in the present case cannot be considered incomplete because at that time all necessary material had been collected and statements of the witnesses had been recorded which connected the accused with the commission of the offence. What happened in the present case is that the case property seized from the spot was also sent to the Cfsi before the challan was filed but unfortunately the Expert of Cfsi failed to give any opinion on the said case property. The whole of the case property was sent vide letter dated December 9, 1987. a copy of the said letter has been seen by me in the police file. It is not the case where some case property was kept back by the police and has been sent only during the course of trial for an opinion of the expert. At any rate, it has been held in *Taj Singh v. State (Delhi Admn.)*, : 33(1987)DLT3A ,(I) that if the report of the Cfsi is not received by the time the challan is filed does not mean that investigation of the case is not complete. I agree with the proposition of law laid down in this judgment. The investigation was complete as soon as the case property had been seized and placed in the malkhana and sent to the Cfsi and Section 173(8) also entitles the Investigating Officer to hold further investigation even after filing of the report under Section 173(2) and acting under the said provision the Investigating Officer had collected the Cfsi report in respect of the remaining case property. The mere fact that the remaining case property was returned unexamined by the Expert of Cfsi earlier and was re-sent to the Cfsi during the course of trial does not make any difference as far as the completion of the investigation and the filing of complete challan is concerned.

(4) The learned counsel for the petitioner has made reference to *H. N. Rishbud & Another v. State of Delhi*, : 1955 CriLJ526 wherein it has been laid down that under the Code of Criminal Procedure the investigation consists generally of the

following steps: (1) proceedings to the spot; (2) ascertainment of the facts and circumstances of the case ; (3) discovery and arrest of the suspected offender; (4) collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the 'reduction of their statements into writing if the officer thinks fit, (b) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial; and (5) formation of the opinion as to whether on the material collected there is a case to place the accused before the Magistrate for trial and then taking necessary steps for filing the charge-sheet under Section 173.

(5) It cannot be said that the aforesaid ingredients which constitute the investigation do not stand fulfilled in the present case on the mere ground that the Expert of Cfsi had failed to give his report with regard to some of the case property sent to him. Reference is also made to *T. V. Sarma v. Smt. Turgakamala Devi & Others* .(3) This case is distinguishable because the report filed under Section 173(2) itself mentioned that the investigation is not yet complete. Hence, it was held that resort could not be had to provisions of Section 309 of the Code of Criminal Procedure by denying the bail to the accused under Section 167. The case is clearly distinguishable on facts. In the present case the challan was not incomplete when it was filed. Reference is also made to *Hari Chand & Another v. The State*, .(4) In the said case, an incomplete challan on the face of it was filed and it was held that the right of the accused to be released on bail under Section 167(2) cannot be denied taking resort to the provisions of Section 173(8). But in the present case, as held by me above, the challan was complete when it was filed and the principles laid down in the case of *Taj Singh (supra)* clearly apply to the facts of the present case. So, I hold that the petitioner has not become entitled to bail because in the present case after completion of the investigation a complete report under Section 173(2) was filed within the stipulated period. On merits the petitioner does not deserve bail.