

Roop Chand Vs. State

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Court : Delhi

Decided On : Oct-06-1987

Reported in : 1988CriLJ1655

Judge : D.P. Wadhwa, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 439

Appeal No. : Criminal Miscellaneous (Main) Appeal Nos. 1227 and 1288 of 1987

Appellant : Roop Chand

Respondent : State

Advocate for Pet/Ap. : P.S. Sharma,; S.T. Singh and; B.G. Singh, Advs

Judgement :

D.P. Wadhwa, J.

(1) By this order I will dispose of two petitions one filed by Roop Chand (Cr. M. (M) 1228/87] and the other by Kalu Ram [Cr. M. (M) 1287187] both filed under S. 439 of the Code of Criminal Procedure (for short the Code) seeking their release on bail. Both the petitioners are brothers. They Along with 19 or 20 other accused are facing trial for offences under Ss. 147/148/149/341/427/329/307/302/120B, Indian Penal Code . All the co-accused except the petitioners have been released on bail. Teja, one of the co-accused, is presently on interim bail. A cross-case has also

been registered against the complainant party which consists of 19 accused. They are also facing trial for similar offences except S. 302 Indian Penal Code . All of them have been released on bail.

(2) These are third or fourth applications of the petitioners, their last applications having been dismissed 10th August, 1987. Challan in the case has already been filed and I am told that first date of hearing was 1-5-1987. The incident on account of which these cross-cases have been registered is stated to have happened on 2-11-1986. Earlier petitions for release on bail of the present two petitioners as well as Teja were dismissed principally on the ground that they were the assailants named in the first information report as having caused injuries to Bisram who succumbed to his injuries.

(3) In support of his contention about the maintainability of the successive bail petitions, Mr. P.S. Sharma, learned counsel for the petitioners, referred to a decision of the Supreme Court in Babu Singh v. State of U.P. : 1978 CriLJ651 . In this the Supreme Court held that an order refusing an application for bail did not necessarily preclude another, on a later occasion, giving more materials, further developments and. different considerations. Mr. Sharma said that he had a legal submission to put forward for the release of the petitioners on bail. He stated that the provisions of Ss. 157 and 158 of the Code are mandatory in character and since these provisions had been violated in the present case, the petitioners were entitled to be released on bail. Under sub-s. (1) of S. 157 the officer in charge of a police station has to 'forthwith' send a report of the commission of a cognizable offence to the magistrate empowered to take cognizance of such an offence upon a police report and then to proceed to the, spot where the offence is said to have been committed or deposes another officer of the rank prescribed for the purpose. S. 158 prescribes as to how the report under S. 157 is to be submitted. In support of his contention Mr. Sharma referred to a decision of the Allahabad High Court in Ahmad Nabi & anr. v. State of U.P. 1987 (1) Cri 85 . In this the court did observe that the provisions of Ss. 157 and 158 of the Code were mandatory and as prima-facie there was non-compliance with these provisions and so also with the provisions of S. 173 the accused in that case were entitled to be released on bail. Then, Mr. Sharma referred to a decision of the Supreme Court in Marudanal

August v. State of Kerala 1980 Scc (Cri) 985 In this, the Supreme Court observed that the delay of as many as 29 hours in the receipt of the F.I.P. by the magistrate concerned coupled with other circumstances cast serious doubts on the 'prosecution case and, therefore, set aside the conviction of the accused persons. Reference was also made to a Bench decision of the Punjab and Haryana High Court in Kamalit Singh v. State of Punjab where there was no Explanation for the delay of about 10 hours in sending the F.I.R. to the court of the magistrate and the court observed that file delay provided legitimate basis for the suspicion that the F.I.R. was recorded much later than the stated date and hour affording sufficient time to the prosecution to introduce improvements and embellishment and set up distorted version. of the occurrence..

(4) In the present case, Mr. Sharma said that the F.I.R. though registered on 2-11-1986 at 10.50 p.m., it was not sent to the magistrate concerned 'forthwith' and that there was endorsement of the magistrate dated 4-11-1986 for having seen the F.I.R. He said the statement of constable Rajbir Singh was recorded on 22-4-1987 during the course of investigation, wherein he had stated that it was on 2-11-1986 in the evening when he was on duty on motorcycle that the duty officer had sent through him the special report of the present case to the magistrate concerned and to other officers and that he had delivered the same and then went on his duty. Mr. Sharma said that this statement was an interpolation and that name of constable Rajbir Singh was inserted as a witness afterwards. He placed on record photo-copies of the F.I.R., statement of Rajbir Singh and the list of witnesses. On the ratio of the decisions above mentioned Mr. Sharma pleaded that the petitioners be released on bail.

(5) Mr. Bawa, who appeared for the complainant, stated that the provisions of Ss. 157 and 158 of the Code had been complied with and in any case the provisions were not mandatory as was held by the Allahabad High Court. He stated that if reference was made to the first information reports in the proceedings recorded of the date 2-11-1986, it would be seen that constable Rajbir Singh was entrusted to deliver the first information report to the magistrate concerned. Mr. Bawa said that the report was received by the magistrate on 2-11-1986. He said that 3-11-1986 was a holiday and perhaps the magistrate saw the report only on 4-11-1986

though received by him earlier. But, in any case, he said it was a matter of evidence and even otherwise delay in sending the F.I.R. was not fatal. Reference was made to a decision of the Supreme Court in *Pala Singh v. State of Punjab* : 1973 CriLJ59 . This judgment was rendered under S. 157 of the Code of Criminal Procedure, 1898 which section is same as S. 157 of the Code of 1973. The argument before the Supreme Court was that the report contemplated by S. 157 was sent to the magistrate very late and, therefore, the prosecution case must be looked at with great suspicion. The court did not find this argument acceptable. It observed as under:-

'No doubt, the report reached the magistrate at about 6 p.m. S. 157 Criminal Procedure Code . requires such report to be sent forthwith by the police officer concerned to a magistrate empowered to take cognizance of such offence. This is really designed to keep the magistrate informed of the investigation of such cognizable offence so as to be able to control the investigation and if necessary to give appropriate direction under S. 159. But when we find in this case that the F.I.R. was actually recorded without delay and the investigation started on the basis of that F.I.R. and there is no other infirmity brought to our notice, then, however, improper or objectionable the delayed receipt of the report by the magistrate concerned it cannot by itself justify the conclusion that the investigation was tainted and the prosecution insupportable. It is not the appellants' case that they have been prejudiced by this delay.

The judgment has been followed in a series of cases by the Supreme Court thereafter and in this connection reference may be made to *Sarwan Singh v. State of Punjab* : 1976 CriLJ1757 ; *Ishwar Singh v. State of U .P.* : 1976 CriLJ1883 and *State of U.P. v. Gokaran* : 1985 CriLJ511 . It would thus be seen that what is delay in sending the report commonly called 'occurrence report' under S. 157 of the Code to the magistrate concerned will depend upon the facts of each case and so also the effect of the delay on the version of the prosecution. If the report is not sent 'forthwith' as required under S. 157 of the Code, it cannot be said that circumstance would be fatal to the whole prosecution. In common parlance, the word 'forthwith' will mean, immediately, without loss of time, or without delay. Now what is delay will depend on the facts and circumstances of each case. Delay can

be caused by a variety of reasons. Frankly speaking, and I say so with utmost respect, I am unable to understand the significance of the observation of the Allahabad High Court that the provisions of Ss. 157 and 158 of the Code are mandatory. Does it mean that any infraction of these provisions would result in quashing of the prosecution or would merely entitle the accused person to be released on bails As will be seen from the report, in fact the default in sending the report to the magistrate concerned was not in itself a ground for the release of the accused on bail in that case, and various other factors were also taken into account by the court. I am unable to hold that these provisions of Ss. 157 and 158 of the Code are mandatory in character entitling the petitioners to bail in the cases before me.

(6) During the course of writing this judgment, it came to my notice that there is a Bench decision of this court in Mahabir Singh v. State in which It was held that sending of a report under S. 157 of the Code was directory and not mandatory This judgment was not cited at the bar. The court in this case referred to the provisions of the Punjab Police Rules issued under Ss. 7 and 12 of the Punjab Police Act (Act No. V of 1861) which Rules applied to Delhi. These Rules provide how the first information report register is to be maintained and how the report is to be sent to the magistrate empowered to take cognizance of the offence as required under S. 157 of the Code. Reference in this connection may also be made to Chapter Xi of the High Court Rules and Orders, Vol. III. The court discussed in detail the possible effect of delay in sending the first information report on the prosecution version. The relevant observations of the court may be reproduced is under :

'The intendment of the legislature or that of the makers of the Rules is clear. No doubt the non-compliance of Sections 154 and 157 of the Code or that of the Rules does not constitute a ground to throw away a prosecution case but it does emerge as a factor to be seriously reckoned with while appreciating the entire evidence. Its non-observance is bound to cast some shadow on the case, obviously to its detriment, because of the adverse inference. Its degree depends upon the facts of a particular case.

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Some other points were also urged on merits by Mr. Sharma but these were also urged in earlier bail petitions which were rejected and these could not be considered by me all over again. No other new circumstance has been brought to my notice and I would, therefore, dismiss these petitions.

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