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Rajeev Chaudhary Vs. State

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Court : Delhi

Decided On : May-26-2000

Reported in : 2001CriLJ2023; 86(2000)DLT203; 2000(54)DRJ722

Judge : Cyriac Joseph, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 167(2)

Appeal No. : Crl. M. (M) No. 2532 of 1999

Appellant : Rajeev Chaudhary

Respondent : State

Advocate for Def. : Pawan Behl, A.P.P.

Advocate for Pet/Ap. : Ashok Gurnani, Adv

Disposition : Petition dismissed

Judgement :

Cyriac Joseph, J.

1. An important question regarding interpretation of Clause (i) of proviso (a) to Sub-section (2) of Section 167 of the Code of Criminal Procedure, 1973 arises in this case.

2. The petitioner was arrested in connection with a case registered at Police Station, Malviya Nagar in pursuance of an FIR No. 1069 dated 30th October, 1998 under Sections 386, 506 and 120B of the Indian Penal Code, 1860. He was produced before the Court of Metropolitan Magistrate, New Delhi on 31st October, 1998 and was remanded to police custody up to 1st November, 1998. He was remanded to judicial custody on 1st November, 1998. Later, he was released on bail pursuant to an order dated 2nd January, 1999 passed by the learned Metropolitan Magistrate, New Delhi. The said order dated 2nd January, 1999 was passed by the learned Metropolitan Magistrate on an application filed by the petitioner under Section 167(2) of the Code of Criminal Procedure for grant of bail on the ground that the police had not filed any report under Section 173 of the Cr.P.C, and that since he had already remained in custody for a period of 60 days he was entitled to bail as of right in view of Clause (ii) of Proviso (a) to Sub-section (2) of the Section 167. The application was opposed by the Additional Public Prosecutor pointing out that the petitioner was accused of an offence punishable under Section 386, IPC with imprisonment of either description for a term which may extend to ten years and fine. The Additional Public Prosecutor contended that the investigation in the case of the petitioner related to an offence punishable with imprisonment for a term of not less than ten years and hence a period of 90 days was available to the police for completing the investigation as per Clause (i) of proviso (a) to Section 167(2) of the Cr.P.C. However, Counsel for the petitioner contended that since the investigaion did not relate to an offence punishable with imprisonment for a minimum term of ten years and since the petitioner had already remained in custody for a period of 60 days he was entitled to be released on bail in view of Clause (ii) of proviso (a) to Section 167(2). The learned Metropolitan Magistrate accepted the contention of the Counsel for the petitioner and held that Clause (i) of proviso (a) to Section 167(2) would apply only when the investigation related to an offence punishable with death or imprisonment for life or imprisonment for a minimum term of ten years. For taking such a view the learned Metropolitan Magistrate relied on a judgment of the Allahabad High Court in Sohan Lal v. State reported in 1991 All CR 383 and a judgment of the Punjab & Haryana High Court in Om Prakash Gabbar v. State of Punjab, reported in . Thus by an order dated 2nd January, 1999, the learned Metropolitan Magistrate granted bail to

the petitioner under the proviso to Sub-section (2) of Section 167 of the Cr.P.C.

3. Against the order dated 2nd January, 1999 of the learned Metropolitan Magistrate the State filed a Revision Petition (Crl. Revn. No. 22/99) which was allowed by the learned Additional Sessions judge setting aside the impugned order and directing the petitioner to surrender before the Trial Court. The learned Additional Sessions Judge relied on the judgment of a Division Bench of this Court in Amrik Lal v. State, Crl. M. (M) No. 438/86, and accepted the contention of the Additional Public Prosecutor that since the offence under Section 386, IPC was punishable with imprisonment for a term of ten years, Clause (ii) of proviso (a) to Section 167(2) did not apply and consequently the petitioner was not entitled to be released on bail on expiry of a period of 60 days in custody. Aggrieved by the said order dated 18th August, 1999 of the learned Additional Sessions Judge, New Delhi, the petitioner has filed this petition.

4. I have heard the learned Counsel for the parties and have considered the contentions raised by them. In order to appreciate the rival contentions, the statutory provision has to be correctly understood. For convenience, Subsections (1) and (2) of Section 167 of the Criminal Procedure Code are extracted hereunder:

'167. Procedure when investigation cannot be completed in twenty four hours--(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 hereinafter 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 cases, 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 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 authorise 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 so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him;

(c) no Magistrate of the Second Class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

Explanation I.--For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.

Explanation II.--If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorising detention.'

As per the provisions quoted above, whenever an accused is arrested and produced before a Judicial Magistrate under Sub-section (1) of Section 167, the

Magistrate may authorise the detention of the accused in such custody as the Magistrate thinks fit, for a term not exceeding fifteen days in the whole. However, the Magistrate may authorise 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 authorise such detention of the accused person in custody for a total period exceeding 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 and no Magistrate shall authorise such detention of the accused person in custody for a total period exceeding sixty days where the investigation relates to any other offence. It means that if the investigation relates to an offence punishable with imprisonment for a term of 10 years, the Magistrate can authorise detention of the accused person in custody for a total period up to ninety days. The expression 'imprisonment for a term of not less than ten years' used in Clause (i) of Proviso (a) to Sub-section (2) of Section 167 includes imprisonment for a term of ten years as well as imprisonment f or-a term of more than ten years. In other words, Clause (i) of Proviso (a) to Sub-section (2) of Section 167 will be applicable where the investigation relates to an offence punishable with imprisonment for a term of ten years or more. The crucial test is whether the offence is one for which the punishment of imprisonment for a term of ten years or more can be awarded. It is immaterial that the Court may have also the discretion to award the punishment of imprisonment for a term of less than ten years. In the case of a particular offence, even though the Court may have discretion to award punishment of imprisonment for a term of less than ten years, the above mentioned Clause (i) will apply, if the accused can be punished with imprisonment for a term of ten years. Where the offence is punishable with 'imprisonment for a term which may extend to ten years', the Court has the discretion to sentence the accused to undergo imprisonment for a term of ten years or for a term of less than ten years. Hence the above mentioned Clause (i) will be applicable where the investigation relates to an offence punishable with 'imprisonment for a term which may extend to ten years'. It should be borne in mind that the expression used by the Legislature in Clause (i) of proviso (a) to Section 167(2) is not 'imprisonment for a minimum term of ten years'. If the Legislature intended to restrict the application of the said

Clause (i) to offence punishable with imprisonment for a minimum term of ten years, the Legislature could have used the expression 'offence punishable with death, imprisonment for life or imprisonment for a minimum term of ten years'. Significantly the legislature did not use such an expression.

5. Admittedly, the petitioner was accused of an offence punishable under Section 386 of the IPC which reads thus :

'386. Extortion by putting a person in fear of death or grievous hurt.--Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.'

It is clear from the above provision that whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, can be punished with imprisonment for a term of 10 years. thereforee, in the case of the petitioner, the Magistrate was competent to authorise his detention in custody for a total period up to ninety days and the petitioner was not entitled to be released on bail as of right on expiry of the period of sixty days on the ground that charge-sheet had not been filed in the case. The provision applicable in the petitioner's case was Clause (i) of Proviso (a) to Section 167(2) of the Cr.P.C. and not Clause (ii) of the said Proviso. Hence, the impugned order passed by the learned Additional Sessions Judge was correct and the order passed by the learned Metropolitan Magistrate was wrong.

6. According to the learned Counsel for the petitioner, in a matter belonging to the field of criminal justice involving the liberty of an individual, where two views are possible, the provision must be construed strictly in favor of individual liberty. According to me two views are not possible in this matter. The provisions contained in Proviso (a) to Section 167(2) of the Cr.P.C. permit only one interpretation and that has already been explained above. It is true that personal liberty of an individual is involved in the matter. But it does not mean that the Court should show such indulgence or leniency which will be detrimental to the cause of justice. Proper and effective investigation of the offence is an integral part of the criminal justice system and it is necessary for the common good and in the interest

of justice to facilitate such proper and effective investigation of the offences. Though the investigation must be carried out with utmost urgency and completed within the maximum period allowed by Proviso (a) to Section 167(2), it is not permissible to interpret the statutory provisions with a view to reduce the period allowed by the statute for completing the investigation. It is more so in our present social situation in which the number of crimes is on the increase and the nature of crimes is fast changing and the investigating agencies find it difficult to cope with the increase in the number of crimes and to keep pace with the changes in the nature of crimes. To strike a proper balance between the liberty of the individual and the good of the society, the court should refrain from attempting any interpretation which might deny to the investigating agency the time permitted by the Statute for completing investigation of the offences.

7. A Division Bench of this Court consisting of R.N. Aggarwal, J. and G.C. Jain, J. had occasion to consider an identical question in Crl. M. (M) 396/86, Basant Kumar v. State; Crl. M. (M) 426/86, K.K. Malhotra v. State; and Crl. M.(M) 438/86, Amrik Lal v. State, which were disposed of through common orders passed on 10th October, 1986. Those three applications were filed under Section 439 of the Cr.P.C. for release of the applicants on bail. The applicants therein were arrested for offences under Sections 3, 5 and 9 of the Official Secrets Act, 1923 and Section 12013 of the Indian Penal Code. Out of these offences the highest punishment was for the offence under Section 3(1) First Part of the Official Secrets Act. It was punishable with imprisonment for a term which may extend to 14 years. When the applications came up before a learned Single Judge the applicants contended that Clause (i) of Proviso (a) to Sub-section (2) of Section 167, Cr.P.C. was applicable only to offences which were punishable with death or imprisonment for life or imprisonment for a minimum period of ten years. According to the applicants, offences for which they had been arrested were not so punishable and consequently, since the report under Section 173, Cr.P.C. had not been filed within sixty days of their arrest, they were entitled to be released on bail as of right. On behalf of the State, it was argued that an offence punishable with imprisonment which may extend to 14 years would fall under Clause (i) of Proviso (a) to Sub-section (2) of Section 167, Cr.P.C. It was also contended that the charge sheet had been filed within ninety days and thereforee, the applicants were not entitled

to bail as of right. The learned Single Judge prima facie found merit in the contention of the applicants and observed that 'term of not less than ten years' meant minimum sentence of ten years. However, in the interest of justice and since the matter was likely to arise in many cases, the learned Single Judge referred the matter to a larger Bench. Accordingly, the applications came up for consideration before the Division Bench consisting of R.N. Aggarwal, J. and G.C. Jain, J. In his judgment dated 10th October, 1986, G.C. Jain, J. stated that the question which fell for decision was whether Clause (i) of Proviso (a) to Sub-section (2) of Section 162, Cr.P.C. applied only to an offence punishable with death, imprisonment for life or minimum imprisonment of ten years. The learned Counsel appearing for the applicants urged that Clause (i) of Proviso (a) would apply only to the offences punishable with a minimum sentence of death or a minimum sentence of imprisonment for life or a minimum sentence of imprisonment for a period of ten years or more. In other words, the contention was that the said clause would apply to offences for which the Court was bound to award sentence of death or imprisonment for life or imprisonment for ten years or more and had no discretion in the matter. It was also contended that the expression 'for a term of not less than ten years' meant a minimum sentence of ten years. After discussing the relevant aspects, G.C. Jain, J. came to the conclusion that offence under Section 3(1), First Part of the Official Secrets Act, 1923, being punishable with imprisonment which may extend to 14 years, was covered by Clause (i) of Proviso (a) to Sub-section (2) of Section 167, Cr.P.C. and consequently, the applicants were not entitled to bail as of right since the report under Section 173, Cr.P.C. had been filed within ninety days of their arrest. Before reaching the said conclusion, the learned Judge held that Clause (i) of Proviso (a) to Sub-section (2) of Section 167, Cr.P.C. would apply to an offence for which the maximum punishment was death or imprisonment for life or imprisonment for clear ten years or more. The relevant portion of the judgment of G.C. Jain, J. is extracted hereunder:

'Clause (i) of Proviso (a) applies to an offence 'punishable with death, imprisonment for life, or imprisonment for a term of not less than ten years'. The key word used in this clause, in my opinion, is 'punishable'. It governs all the three punishments referred to in Clause (i). According to Black's Law Dictionary Fifth

Edition, 'punishable' means 'deserving of or capable or liable to punishment'. The word 'punishable' thus, denotes maximum punishment. The expression 'an offence punishable with death or imprisonment for life', without any doubt, means an offence for which sentence of death or imprisonment for life can be imposed and not must be imposed. The third category of sentence namely, imprisonment for ten years, is qualified by the words 'term of not less than'. The word 'term', according to Black's Law Dictionary, Fifth Edition means a fixed period; period of determined or prescribed duration. The words 'not less than', according to the said Dictionary 'signify in the smallest or lowest degree; at the lowest estimate; at least'. With these meanings the expressions 'an offence punishable with imprisonment for a term of not less than ten years' would mean an offence capable or liable to punishment with imprisonment for a specified period which period would not be smaller than ten years or in other words would be at least ten years. The words 'not less than' only qualify the period. These words put emphasis on the period of ten years and mean period must be clear ten years. These words do not signify or indicate determinate sentence a sentence which the Court was bound to award. Such an interpretation is ruled out by the use of word 'punishable' which signifies indeterminate punishment - a punishment which the Court in its discretion may award subject to a maximum. Clause (i) thereforee, would apply to an offence for which the maximum punishment is death or imprisonment for life or imprisonment for clear ten years or more.'

8. By a separate judgment dated 10th October, 1996, R.N. Aggarwal, J. agreed with the conclusion of G.C. Jain, J. and held that on a plain reading of Clause (i) of Proviso (a) to Sub-section (2) of Section 167, Cr.P.C. there seemed to be no doubt that offences punishable with death, imprisonment for life or imprisonment for a term of ten years or more would fall under Clause (i) and offences which are punishable with imprisonment for less than ten years would fall under Clause (ii). The learned Judge rejected the contention of the applicants that since the offence was not punishable with a minimum of ten years' imprisonment, it would fall under Clause (ii) and not under Clause (i). According to the learned Judge/ a fair construction to be placed on the expression not less than in Clause(i) of Proviso(a) to Section 167(2) would be that it takes within its fold all the offences which are punishable with a sentence of death, imprisonment for life or imprisonment for a

term of ten years or more. In support of his conclusion that learned Judge pointed out the following reasons also :

'There is another reason which supports my above conclusion. On the date when the amendment in Section 167 was brought about (Act No. 45 of 1978) there was no offence in the Indian Penal Code which was punishable with imprisonment for a minimum term of ten years. Clause (i) of Proviso (a) to Section 167(2) has to be interpreted keeping in mind the above fact. We know for certainty the object behind the amendment of Section 167, Cr.P.C. in 1978. The object was to remove difficulties which had been actually experienced in the investigations of the offences of serious nature. The legislature also must be assumed to be in full know of the various offences and the punishments provided for them in the Indian Penal Code and other Special Acts. The difficulty faced must be where the line should be drawn. The touchstone hit upon was the severity of the sentence. The dividing line, if appears, decided upon was that offence punishable with death, imprisonment for life, or with imprisonment for a term of ten years or more should be regarded as serious, and placed in Clause (i). Looked from this angle it is obvious that while using the expression not less than ten years' the legislature only thought of offences which were punishable with imprisonment for ten years or more. One could think of placing the interpretation asked for by the petitioners if there was any offence in the Indian Penal Code which was punishable with imprisonment for a minimum period of ten years. There are, of course, now some Special Acts, for instance, Sections 15, 16, 17, 18 and 19 of the Narcotic Drugs and Psychotropic Substances Act, 1985 which provide a sentence of not less than ten years and extending to twenty years. There are some other sections also in the said Act which provide a minimum punishment of ten years extending to twenty years. Section 31A of the same Act provides a sentence of imprisonment of not less than fifteen years and which may extend to thirty years. Section 4 of the Anti-Hijacking Act, 1982 provides a minimum term of imprisonment for life. The important fact to notice is that in 1978 when the amendment in question was introduced there was no offence in the Indian Penal Code or in any other special Acts which provided a minimum sentence of ten years and this circumstance is strongly suggestive that the legislature in using the words not less than ten years' had not intended to mean a minimum sentence of ten years' imprisonment but it

intended that the offence should be punishable with imprisonment of ten years or more. Mr. Lekhi contended that the amendment was introduced keeping in mind the laws that the legislature intended to enact in future. I do not agree in this contention. The amendments in the procedural laws are usually made to meet lacunae and the difficulties which are being faced and the legislature wants to overcome. The expression not less than ten years' has raised a doubt and the best course for the legislature would be to clear its intention by use of appropriate words.'

9. The above mentioned views of the Division Bench consisting of R.N. Aggarwal, J. and G.C. Jain, J. strongly support and strengthen the view taken by me in relation to the interpretation of Clause (i) of Proviso (a) to Sub-section (2) of Section 167, Cr.P.C. Moreover I am bound by the views of the Division Bench of this Court.

10. Learned Counsel for the petitioner tried to persuade me to follow the judgment of a Division Bench of the Allahabad High Court in Sohan Lal v. State, reported in 1991 All. C.R. 383, and the judgment of a Division Bench of the Punjab and Haryana High Court in Om Prakash Gabbar v. State of Punjab, reported in , and also a judgment of the Single Bench of the Karnataka High Court in Babu and Anr. v. State of Karnataka, reported in : 1997(4)KarLJ238 . In those judgments the learned Judges have apparently taken a view which supports the stand of the petitioner in this case. I have carefully read those judgments but I find it difficult to agree with the views expressed therein.

11. Even though the petitioner has challenged the order of the learned Additional Sessions Judge on the ground that it is against the principles laid down by the Supreme Court in Aslam Babalal Desai v. State of Maharashtra, : 1992 CriLJ3712 , learned Counsel for the petitioner fairly submitted that the judgment of the Supreme Court had no application to the facts of this case. What was challenged before the learned Additional Sessions Judge in this case was the correctness and validity of the order of the learned Metropolitan Magistrate granting bail to the petitioner whereas in the case before the Supreme Court cancellation of all bail was sought on the ground of subsequent filing of the charge-sheet.

12. In the light of the discussion above, there is no merit in this petition and it is accordingly dismissed and the order dated 18th August, 1999 of the learned Additional Sessions Judge, New Delhi in Crl. R. No. 22/99 is upheld.

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