

Hari Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-17-1998

Reported in : 1998CriLJ4641; 1999WLC(Raj)UC665

Judge : S.C. Mital, J.

Acts : [General Clauses Act, 1897](#) - Sections 10; Indian Limitation Act, 1877; Code of Criminal Procedure (CrPC) , 1974 - Sections 167, 167(2), 309 and 439; Indian Penal Code (IPC) - Sections 304B, 323 and 498A

Appeal No. : Cri. Misc. Bail Petn. No. 1151 of 1998

Appellant : Hari Singh

Respondent : State of Rajasthan

Advocate for Def. : S.K. Vyas, P.P. and; H.M. Saraswat, Adv.

Advocate for Pet/Ap. : K.L. Thakur, Adv.

Disposition : Application allowed

Judgement :

ORDER

S.C. Mital, J.

1. The petitioner has moved this bail application under Section 439 read with 167(2) Cr. P.C. solely on legal ground. He moved an application before learned Sessions Judge, Jodhpur, who rejected the same on 2-5-98.

2. Brief facts may be summarised as under:--

The petitioner was arrested on 25-1-98 incase FIR No. 37/98, Police Station, Shastri Nagar, Jodhpur under Ss. 304B, 498A and 323, IPC. He was produced before the learned Magistrate on 26-1-1998 and the learned Magistrate remanded the petitioner in judicial custody. The charge-: sheet was produced on 27-4-1998 in the Court of Additional Chief Judicial Magistrate No. 1, Jodhpur. The petitioner also submitted an application to release him on bail under Section 167(2) Cr. P.C. The learned Additional Chief Judicial Magistrate passed the order on the charge-sheet on 28-4-98 to register the case under Sections 304B, 498A and 323, IPC and committed the case to the Court of Sessions Judge, Jodhpur. The application under Section 167(2) Cr. P.C. was rejected by the learned Additional Chief Judicial Magistrate on 29-4-98. The petitioner preferred an application under Section 439 read with Section 167(2), Cr. P.C. before the learned Sessions Judge, Jodhpur who also rejected the same taking the view that the charge-sheet was submitted on 27-4-1998 the same day when the application was filed by the petitioner and relying upon Hon'ble Supreme Court decision reported in 1996 Cri LJ 1652 : (AIR 1996 SC 2897), (Dr. Bipin Shantilal Panchal v. State of Gujarat that after filing the charge-sheet the accused is not entitled to be released on bail under Section 167(2) Cr. P.C. The learned Sessions Judge also relied upon 1996 Cr LR (SC) 56, State of M.P. v. Rustam, wherein it was held that it was erroneous to entertain the bail petition alter the challan was filed. The right to release on bail under Section 167(2) Cr. P.C. was not available to the accused as the challan stood filed in Court on the day when the High Court entertained the petition for bail. It may be mentioned here that while filing application for bail under Section 167(2), the petitioner also filed two applications to take the file in the Court for hearing and to decide the bail application on the same day i.e. 27-4-98.

3. I have heard the learned counsel for both the parties and the learned Public Prosecutor. It is vehemently argued on behalf of the petitioner that the charge-

sheet was filed in the Court on 27-4-1998 i.e. on 92nd day. The petitioner submitted the application under Section 167(2), Cr. P.C. to exercise his right of bail, but it was kept pending despite the applications filed to call for the record and decide the bail application. The application was kept pending and the police filed charge-sheet at 12-45 p.m. It is contended that the petitioner had already filed the aforesaid application before the submission of the charge-sheet, he was entitled to be released on bail. It is further submitted that the learned Sessions Judge has not correctly applied the law laid down by Hon'ble Supreme Court in State of M.P. v. Rustam and Bipin Shantilal Panchal v. State of Gujarat (supra). The learned counsel for the petitioner also sought support from 1986 Cr. L.J. 2081 (Delhi) (Powell Nawawa Ogechi v. The State (Delhi Administration)) for his contention that Section 10 of the General Clauses Act is not applicable in such a situation arising under Section 167(2), Cr. P.C. He further referred to 1984 RLR 474, Shishpal v. State of Rajasthan, 1982 Raj Cri C 315 : (1982 Cri LJ 2319) (Narayan & Co. v. The State of Rajasthan and 1998 (1) RCD 184 (Raj), Roop Chand v. State of Rajasthan to support his contention that the learned Additional Chief Judicial Magistrate even after filing the challan took cognizance on 28-4-98 and, therefore, the petitioner was entitled to be released on bail because the cognizance was taken after 90 days i.e. on 92nd day.

4. It is contended on behalf of the State and by the learned counsel for the complainant that one day i.e. the date of arrest or date of challan should be excluded from the computation of the period of 90 days as laid down in State of M.P. v. Rustam (supra). Hence the challan has been filed on 91st day i.e. only delay of one day. He has strenuously argued that 90 days completed on 26th April, 1998, a holiday due to Sunday and Courts were closed. Therefore, the challan was filed on Monday the next working day of the Court i.e. on 27-4-98. The challan should be deemed to have been filed within 90 days by applying Section 10 of the [General Clauses Act, 1897](#). He relied upon 1985 Cri LJ 939 (Orissa) (N. Sureya Reddy v. State of Orissa).

5. We should now examine the provision of Sub-section (2) of Section 167, Cr, P.C. which reads as under :--

Section 167(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 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.

6. A bare perusal of the aforesaid provisions reveal that the Magistrate has been empowered to commit to custody the accused person up to 90 days or 60 days as the case may be during the course of investigation of a case. The Magistrate is not empowered to remand the accused to custody under this provision on the completion of the investigation and filing of the charge-sheet in the Court. It is laid down in this provision that the accused person gets a right to be released on bail on the expiry of the said period of 90 days or 60 days as the case may be, if he is prepared to furnish bail. The order passed for release on bail under this section is

deemed to be under the Chapter XXXIII subject to the provisions of Section 437(5) Cr. P.C. The right to the accused person under this provision is available to him from the day, 90 or 60 days as the case may be are complete and up to the filing of the challan. The accused person should file an application within the aforesaid period. If the application is not filed during the aforesaid period and remand to custody is ordered under Section 309, Cr. P.C. then the right accrued to him under Section 167(2), Cr. P.C. comes to an end because after filing of the charge-sheet and taking of the cognizance, the accused person stands remanded under Section 309, Cr. P.C. and not under Section 167(2), Cr. P.C.

7. In State of M.P. v. Rustam (supra) the accused filed application for bail Under Section 167(2), Cr.P.C. after the filing of the charge-sheet on 2-12-1993. The period of 90 days expired on 1-12-93. The accused was granted bail taking the view that the right to compulsive bail survived even after the challan was filed. It was held erroneous by Hon'ble Supreme Court holding that on the date the petition for bail was entertained, challan had been filed and right as such was not available to the accused.

8. In the instant case, the accused was remanded to judicial custody on 26-1-98 and the challan was filed on 27-4-98. We have to exclude one day either the day of first remand or the day on which the challan was filed in computing the prescribed period of 90 days as laid down in State of M.P. v. Rustam (supra). In view of this, we find that the charge-sheet has been filed on 91 st day. I agree with the learned counsel for the petitioner that the preposition of law laid down in State of M.P. v. Rustam is not applicable to the facts of this case because the bail petition has been filed on 90th day i.e. 27-4-98 before filing the challan and accused was not further remanded till then under Section 309, Cr. P.C. The application filed by the petitioner to call for the record and hear bail applications under Section 167(2), Cr. P.C. go to show that the bail application was filed prior to the filing of the challan on the same day. The preposition of law laid down in State of M.P. v. Rustam is not applicable to the facts of the case because the accused in this case filed bail petition before filing of the challan and his right under Section 167(2) Cr. P.C. cannot be defeated by keeping the application pending and on considering the same after filing of the challan.

9. The next question that arises for consideration in this petition is :--

Whether Section 10 of the General Clauses Act is applicable in such cases where charge-sheet is not filed within 90 days or 60 days as envisaged by Section 167(2) Cr. P.C.

10. Section 10 of the [General Clauses Act, 1897](#) reads as under :--

Where, by any Central Act or Regulation made after commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open :

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 (XVI of 1877) applies.

11. In AIR 1957 SC 271, Harinder Singh v. S. Karnail Singh, Hon'ble Supreme Court has held that the object of Section 10 is to enable a person to do on the next working day what he could have done on a holiday. Where a period is prescribed for performance of an act in an office or Court, and that period expires on a holiday, then according to Section 10 of the General Clauses Act, the Act should be considered to have been done within that period if it is done on the next day on which the Court or office is open. Section 10 of the General Clauses Act is applicable only when there is a period prescribed and it expires on a holiday.

12. A plain reading of Section 10 of the General Clauses Act reveals that the pre-requisite for the application of this provision is first there should be a period prescribed for performance of an act in a Court or office, secondly that period expires on a holiday and in that condition only a person can do or perform the act on the next day when the Court or office opens. All the aforesaid pre requisites are not fulfilled in (he provision of Sub- section (2) of Section 167, Cr. P.C. There is no prescribed period for the performance of the act in Sub-section (2) of Section 167 or in any other provision in Criminal Procedure Code i.e. for filing a challan in the

Court. If the challan is filed after 90 days, it cannot be treated as beyond limitation or any prescribed period. Challan can be filed even after 90 days and it cannot be refused to be entertained on the ground that it has been filed after 90 days. It is not necessary to file any application for extending the period or for condoning the delay. Section 167(2) Cr. P.C. empowers the Magistrate to commit an accused person to custody and there is a limitation of 90 days and 60 days as the case may be. This provision of the Code confers a statutory right upon the accused person to claim his release on bail if the challan is not produced in the Court in 90 days or 60 days as the case may be. In my view Section 167(2) Cr. P.C. does not envisage the performance of any act. by the police or an accused person within a prescribed period before a Court or office and, therefore, Section 10 of the General Clauses Act is not applicable in such a situation where the challan is produced in the Court after 60 or 90 days because the 60th or 90th day is a public holiday. I respectfully disagree with the proposition ruled in *N. Sureya Reddy v. State of Orissa* that by implication Section 167(2) prescribes a period of 60 or 90 days as the case may be for presentation of charge-sheet before a Court. I am inclined to agree with the view taken in *Powell Nawawa Ogechi v. The State (Delhi Administration)* (supra) and in *State of Maharashtra v. Sharan B. Sarada*, 1983 (2) Crimes 254 (Bombay) (SN), I hold that Section 10 of the General Clauses Act does not apply in the situation of the cases arising under Section 167(2) Cr. P.C. Therefore, the challan submitted on 91st day in this case cannot be considered to have been filed in 90 days.

13. In the instant case, the police produced a charge-sheet on 91st day and the petitioner had already applied for the bail, he is entitled to be enlarged on bail under Section 167(2) Cr. P.C. The bail application is hereby allowed. It is hereby ordered that petitioner Hari Singh be released on bail provided he furnishes a personal bond for a sum of Rs. 10,000/- (Rs. ten thousand) and one solvent surety in the like amount to the satisfaction of learned Additional Sessions Judge, Jodhpur for his appearance before that Court on all the dates of hearing and whenever called upon to do so till the completion of the trial.