

Than Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Oct-23-2008

Reported in : RLW2009(2)Raj1154

Judge : G.S. Sarraf, J.

Appellant : Than Singh

Respondent : State of Rajasthan

Disposition : Application dismissed

Judgement :

G.S. Sarraf, J.

1. Interpretation of Sub-section (2) of Section 167 Cr.P.C. falls for consideration of this Court in this misc. petition which arises out of a judgment dated 28.8.2008 passed by Additional Sessions Judge No. 2, Bayana, district Bharatpur whereby the revision filed by the petitioner against the order dated 6.8.2008 of Judicial Magistrate, First Class, Weir district Bharatpur rejecting the application of the petitioner filed under Section 167 Cr.P.C. has been dismissed.

2. It appears that the petitioner was arrested on 7.5.2008 in the F.I.R. No. 99/2008 of the police station Bhusawar district Bharatpur under Sections 302, 354, 328 IPC. After necessary investigation a challan was Tiled against the petitioner and

another person under Sections 302, 328, 354, 201, 120-B IPC in the Court of Judicial Magistrate, First Class, Weir, on 5.8.2008, i.e. the 90th day from the date of arrest of the petitioner. The Court, however, returned the challan due to certain administrative reasons and then the challan was resubmitted on the next day i.e. 6.8.2008. On 6.8.2008, the petitioner filed an application under Section 167 Cr.P.C. which was dismissed by learned Magistrate on the same day. It has been stated in the* above order that the petitioner filed the application under Section 167 Cr.P.C. after filing of the challan. The petitioner preferred a revision which was dismissed by judgment dated 28.8.2008 passed by Additional Sessions Judge No. 2, Bayana, Aggrieved, the petitioner has filed this misc. petition.

3. Heard learned Counsel for the petitioner, learned public prosecutor and learned Counsel for the complainant.

4. Learned Counsel for the petitioner contends that since the charge sheet has not been filed within the stipulated period of 90 days, therefore, the petitioner is entitled for bail under Section 167(2) Cr.P.C.

5. Controverting the said contention learned public prosecutor argues that the challan was filed on the 90th day and when it was returned due to certain administrative reasons then it was resubmitted on the next day and, therefore, it cannot be said that the challan was filed beyond the period prescribed under Section 167(2) Cr.P.C. He further argues that if the petitioner has not filed the application within the period prescribed under Section 167(2) Cr.P.C. then the right of the petitioner extinguishes as soon as the challan is filed against him. He says that in this case application under Section 167 Cr.P.C. has been filed after filing of the challan and, therefore, the petitioner cannot get the benefit of Section 167(2) Cr.P.C.

6. It is not disputed that the challan was filed within 90 days. The challan was, however, returned for certain administrative reasons and thereafter the challan was resubmitted on the next day. If the challan was returned for certain administrative reasons or for removing any defect then it cannot be said that the challan was not presented on that day. In this case even though the challan was returned on 5.8.2008 and it was resubmitted on the next day i.e. 6.8.2008 but that

fact cannot be allowed to be taken advantage of for getting bail under Section 167(2) Cr.P.C In support I cite a S.B. Judgment of Madras High Court reported in .

7. Secondly in this case as is apparent from the order of learned Magistrate the application under Section 167(2) Cr.P.C. has been filed after filing of the challan. The question is that whether the accused who is entitled to be released on bail under proviso to Sub-section (2) of Section 167 Cr.P.C., not having made an application when such right had accrued, can exercise that right at a later stage of the proceeding when the challan has already been filed against him. I am of the opinion that if an accused person falls to exercise his right to be released on bail for the failure of the prosecution to file the charge sheet within the maximum time allowed by law he cannot contend that he had an indefeasible right to exercise it at any time notwithstanding the fact that in the meantime the charge sheet has been filed. If challan has been filed before filing the application under Section 167 Cr.P.C. then the remedy of bail made available to the accused under that Section extinguishes and it does not survive after filing of the challan. I find support from a judgment of the Apex Court reported in : 1996 CriLJ1652 .

8. For the reasons stated above, I am of the opinion that this petition is without any merit.

9. Consequently, the petition stands dismissed.

10. Record be sent back immediately.

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