SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Pandi and ors. Vs. State

Pandi and ors. Vs. State

SooperKanoon Citation : sooperkanoon.com/821076

Court : Chennai

Decided On : Nov-14-1979

Reported in : 1979CriLJ1503

Judge : Maheswaran, J.

Appellant : Pandi and ors.

Respondent : State

Judgement :
ORDER

Maheswaran, J.

1. This Criminal Miscellaneous Petition is to set aside the order of the learned Judicial Second Class Magistrate, Nilakottai, refusing to release the petitioners on bail.

2. From the short order, it is seen that the offences alleged to have been committed by the petitioners are under Section 302 I.P.C. The petitioners filed an application on 9th October, 1979, before the Judicial Second Class Magistrate, Nilakottai, in Crl. M.P. No. 1448 of 1979, praying for bail under Section 167(2)(a) Cri. P.C., as the petitioners were in custody for over a period of ninety days and the charge-sheet has not been laid. The court ordered notice to the respondent Inspector of Police, Sholavandan and fixed the hearing on 10th October, 1979.

But, in the meanwhile, on 9th October, 1979, itself, the charge-sheet was filed. The learned Magistrate dismissed the application on 10th October, 1979 on the ground that as the charge sheet has been filed, there was no reason to invoke the provisions of Section 167(2). It is against that order that the petitioners have filed this application invoking the inherent jurisdiction of this Court under Section 482, Cr.P.C.

3. Section 167(2), Cr. P.C. is a section that is newly introduced and which is not found in the earlier Code. What is contended for the petitioners by their learned Counsel is that the detention of the applicants was illegal in view of the provisions contained in Section 167 Cr. P.C. and that when they filed the application for bail under Section 167(2), the Magistrate ought to have at once released the petitioners on bail instead of issuing a notice to the Inspector of Police, the respondent. It is not clear from the records that are available on what dates the petitioners were produced before the Magistrate and whether orders of remand were passed by the learned Magistrate. But the question is whether the detention, which is said to be illegal, would entitle the petitioners to be released on bail, I am unable to locate any provision in Section 167(2) which entitles the petitioners to bail merely because the detention of the applicants at the stage of Section 167 Cr. P.C. was illegal. In this case, it should be noted that the application for bail under Section 167(2) was filed on 9th October, 1979. The learned Magistrate gave notice to the respondent-Police, who, obviously on receipt of that notice, has filed the charge-sheet on the same evening. The petition which was posted on the next day i.e., 10th October, 1979, was dismissed, as the charge sheet was filed and as the Magistrate could no longer exercise the rights under Section 167 Cr. P.C. It is pointed out by Mr. Arunachalam that where investigation is not over even after 60 or 90 days, as the case may be, the accused would be entitled to be released on bail and though such a law may be a 'paradise for the criminals', the courts are bound to obey it 'under the command of the legislature'. The question is whether the Magistrate can act under Section 167(2), Cr. P.C. when a charge-sheet is filed. There can be no illegality or irregularity in the Magistrate ordering notice in an application filed under Section 167(2) though such a notice may not be contemplated by the Code. The respondent-Police filed the charge sheet on the very same evening, and the Magistrate dismissed the petition on the next day to

which date the hearing of the petition was adjourned. In Umedsinh v. State : AIR1977 Guj11 a Division Bench of Gujarat High Court in dealing with such a situation as the one before us, observed thus -

Therefore, if an application is made under Section 167 for bail by an accused person who is detained in custody pending investigation for a period exceeding 60 days, he is entitled to bail. But if pending such an application for bail a charge sheet is filed in the court, the investigation comes to an end and so also the power of the Magistrate granting bail to the accused under the provisions of Section 167(2). The Magistrate then can exercise power of granting bail only under Section 437. The Magistrate to whom an application for bail under Section 167(2) is made has to take the subsequent event into consideration - the subsequent event being the filing of the charge-sheet.

4. I adopt these observations with respect and hold that the moment the charge-sheet is filed, the proviso to Section 167(2), Cr. P.C. will cease to operate. The Magistrate therefore was correct in dismissing the application. This criminal miscellaneous petition is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com