

The State Vs. Sankar Das Banerjee

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Court : Kolkata

Decided On : Jan-30-1992

Reported in : (1992)1CALLT226(HC)

Judge : Jyotirindra Nath Hore, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 167(5) and 461

Appeal No. : Cr. Rev. No. 790 of 1989

Appellant : The State

Respondent : Sankar Das Banerjee

Advocate for Def. : Balai Chandra Roy, ;Mukti Prasanna Mukherjee and ;Manjula Dhar Chowdhury, Advs.

Advocate for Pet/Ap. : Chaitanya Chandra Mukherjee, Adv.

Disposition : Application rejected

Judgement :

Jyotirindra Nath Hore, J.

1. The State of West Bengal has preferred this, revision against the order dated 11.1.89 passed by the learned Chief Metropolitan Magistrate, Calcutta, discharging the accused for non-completion of the investigation within the time

fixed Under Section 167(5) of the Code of Criminal procedure.

2. The accused opposite party was arrested on 11.5.88. As this was a summons case, the investigation ought to have been completed within six months from that date, that is to say, 11.11.88. But the investigation was not completed within that time and it was completed on 28.12.88 and charge-sheet was submitted on 29.12.88. As the investigation was not completed within the statutory period, the learned Magistrate refused to take cognizance and discharged the accused.

3. It is well settled that non-compliance of Section 167(5) of the Code of Criminal Procedure is not a more irregularity which can be cured Under Section 461 of the said Code. In case the police continues investigation without permission of the Magistrate concerned, it would be a breach of the mandatory provisions of Section 167(5) of the said Code and the Magistrate cannot take cognizance on the report submitted on such investigation and has to discharge the accused (*Utpalendu Mahato v. The State of West Bengal and Anr.*, 94 CWN 981). Where a case is registered by the police against the accused triable by a Magistrate as a summons case and the investigation is not completed within six months from that date, Section 167(5) of the Code gives a mandate to the Magistrate to make an order stopping further investigation into the offence unless the officer can satisfy the Magistrate that continuation of investigation beyond the period of six months is necessary for special reasons and in the interest of justice- The power given to the Magistrate has to be exercised before the expiry of six months. As held in *Ram Bikash Jadav v. The State of West Bengal and Ors.*, 1983 Cr. LJ 39, the wording of Sub-section (5) of Section 167 of the Code makes it clear that the investigating officer has to apply before the learned Magistrate giving special reasons why he could not complete the investigation within the period of six months and the learned Magistrate after applying his mind to the special reasons so given, can permit continuation of the investigation beyond the period of six months in the interest of justice without stopping the investigation- In this case there was no prayer for extension of time after the statutory period of six months for any special reasons by the investigating officer. On 19.9.88 the investigating officer submitted a forwarding report praying for time till 9-11-88 which is within six months. The learned Magistrate fixed 29.12.88 for challan, if any. It has been

contended on behalf of the State that this order amounts to extension of time beyond six months by the learned Magistrate. At any rate, the investigating officer was misled into the belief that charge-sheet could be submitted on the date fixed, namely, 19-9.88, and in such a situation, the order of discharge as passed by the learned Magistrate should be set aside. I am unable to accept this contention. There is no question of extension of time by the learned Magistrate beyond the statutory period of six months inasmuch as the investigating officer did not ask for it. He merely asked for time till 9.11.88 which is within the statutory limit of six months. He never prayed for extension of time beyond six months. As the time asked for by the investigating officer did not exceed the statutory limit of six months, he did not give any special reasons. The order of the learned Magistrate does not also show that he was really extending the time beyond the statutory limit of six months. He merely fixed a date within which the challan, if any, was to be filed. This does not amount to extension of time of investigation beyond the statutory limit. It is true that the learned Magistrate ought to have been more careful in passing the order dated 19.9.88. He ought to have calculated that the period of six months would expire on 11.11.88 and he ought not to have fixed the date beyond that date, It is not unlikely that the order might have created some confusion in the mind of the investigating officer who might have been under the impression that he could complete the investigation and file charge-sheet by 29.12.88- As already stated before, it is only when the investigating officer prays for extension of time beyond the statutory limit before the expiry of the said period giving special reasons and the learned Magistrate applying his mind is satisfied that there are special reasons and in the interest of justice the investigation should be continued beyond the statutory limit, that the learned Magistrate may extend the time. The order of the learned Magistrate must be a speaking order revealing the satisfaction of the learned Magistrate as to the existence of special reasons and that in the interest of justice continuation of the investigation was necessary. The order dated 19.9.88 does not contain anything like that. As observed before, this order does not really purport to extend time beyond the statutory limit inasmuch as the investigating officer did not ask for it at all. So the mere fixing of a date of the case beyond the statutory limit does not amount to extension of time within the meaning of Section 167(5) of the Code. As the investigation in this case

was not completed within the statutory period of six months, the learned Magistrate could not take cognizance on the basis of the charge sheet filed on 29.12.88. The learned Magistrate has, therefore, rightly refused to take cognizance on the report submitted by the police and discharged the accused.

4. The revisional application is, therefore, rejected-Application rejected. S.L.H.

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