

Dilip Kumar Das and ors. Vs. the State of West Bengal

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SooperKanoon Citation : sooperkanoon.com/877568

Court : Kolkata

Decided On : Jun-01-1992

Reported in : 1993CriLJ837

Judge : Gitesh Ranjan Bhattacharjee, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Section 167(5); ;West Bengal Code of Criminal Procedure (CrPC) (Amendment) Act, 1988; ;[Indian Penal Code \(IPC\), 1860](#)

Appeal No. : Criminal Revision 281 of 1992

Appellant : Dilip Kumar Das and ors.

Respondent : The State of West Bengal

Advocate for Def. : Manas Ranjan Chakravarty, Adv.

Advocate for Pet/Ap. : Amit Talukdar, Adv.

Disposition : Petition allowed

Judgement :

Gitesh Ranjan Bhattacharjee, J.

1. The petitioners herein are accused in Daspur Police Station Case No. 5 dated 17-8-88 (G.R. Case No. 159/1988) in respect of certain offences which fall in the

category mentioned in Section 167(5)(ii) of the Code of Criminal Procedure as it stands amended by the West Bengal Act 24 of 1988. Besides the present petitioners there are also other accused persons in the said case. During the pendency of the investigation the petitioners earlier moved this Court in its revisional jurisdiction assailing the continuation of the investigation. The revisional application was, however, disposed of by S.K. Guin, J. giving liberty to the petitioners to file application before the learned Sub-Divisional Judicial Magistrate, Ghatal under Section 167(5)(ii) of the Code of Criminal Procedure. Accordingly, the petitioners filed application before the learned Magistrate for stopping the investigation of the case under Section 167(5)(ii) of the Code and for discharging them. The learned Sub-Divisional Judicial Magistrate however by his order dated 4-2-92 permitted continuation of the investigation and refused to discharge the petitioners. Being aggrieved by the said order of rejection of the prayer for discharge under Section 167(5)(ii) the petitioners have now moved this Court by this revisional application.

2. Section 167(5) of the Cr.P.C. as it stands amended by the West Bengal Amendment Act runs thus:--

'If, in respect of--

(i) any case triable by a Magistrate as a summons case, the investigation is not concluded within a period of six months, or

(ii) any case exclusively triable by a Court of Session or a case under Chapter XVIII of the Indian Penal Code (45 of 1860), the investigation is not concluded within a period of three years, or

(iii) any case other than those mentioned in Cls. (i) and (ii), the investigation is not concluded within a period of two years,

from the date on which the accused was arrested or made his appearance, the Magistrate shall make an order stopping further investigation into the offence and shall discharge the accused unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the

continuation of the investigation beyond the periods mentioned in this Sub-section is necessary'.

3. It will thus be seen that in a case where Cl.(ii) of Sub-section (5) of Section 167, Cr.P.C. is attracted, as here, and where in such a case the investigation is not concluded within three years from the date of arrest or appearance of the accused, the Magistrate is required to make an order stopping further investigation into the offence and to discharge the accused unless the Investigating Officer satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of three years is necessary. In this connection it may be noted here that in this case three years had already elapsed from the date of arrest or appearance of each of the petitioners but the investigation was not yet concluded. However it is yet within three years from the date of arrest of the other two accused who were subsequently arrested in connection with this case. The learned Magistrate, it seems, is of the view that where there are more than one accused in a case the period of three years for the purpose of Section 167(5)(ii) shall be reckoned from the date of appearance or arrest of that accused who appeared or was arrested last in point of time.

4. The question that falls for consideration of this Court in this connection is what will be the effect and application of Section 167(5) where there are more accused than one in a case whose appearance or arrest took place on different dates. There is no difficulty in computing the period mentioned in the Sub-section (5) of Section 167 where there is only one accused and obviously in such a case the prescribed period as mentioned in the said sub-section shall start running from the date of arrest or appearance of the accused and the Magistrate is required to stop investigation if it could not be completed within the prescribed period commencing from the said date unless of course the Investigating Officer satisfies him that for special reasons and in the interest of justice the continuation of the investigation beyond the prescribed period is necessary. There is no doubt that the said provision for stopping the investigation and for discharge of the accused where the investigation could not be completed within the prescribed period has been enacted with , the wholesome object of putting pressure on the investigating agency for completing the investigation without undue prolongation and also for

protecting the accused from undue harassment of facing a lethargic investigation of indefinite duration. Of course, the legislature is fully aware that there may be complexities in a particular case or there may be peculiar facts and circumstances in a particular case which may render it desirable to continue the investigation beyond the prescribed period in the interests of justice and that is why the legislature has authorised the Magistrate not to apply the provision of Section 167(5) regarding stopping of investigation and rather to allow the continuation of investigation beyond the prescribed period where in view of the special features of a case such a course is considered necessary in the interests of justice.

5. It may be noticed that Section 167(5) does not admit of any individualised approach. Its application, where it applies, is rather total and composite. What it provides for is stopping of investigation not in respect of any particular accused but in respect of the offence itself, the benefit of which enures to all the accused whether in custody or on bail, whether recently arrested or arrested long back, whether identified or unidentified, whether known or unknown yet, whether apprehended or absconding. It is not that under Section 167(5) investigation can be stopped in respect of the particular accused from the date of whose appearance or arrest, as the case may be, the prescribed period has already elapsed and at the same time allow the investigation to continue in respect of the other accused from the date of whose appearance or arrest the prescribed period has not yet elapsed. If the investigation is stopped under Section 167(5), the whole of the investigation is brought to a grinding halt not only in respect of all accused but also in respect of the offence or offences which was or were the subject-matter of the investigation.

6. A case may be visualized where the investigation could not be completed within the period prescribed by the said sub-section due to negligence or callous inaction on the part of the Investigating Officer in view of which it may not be possible for the Investigating Officer to make out special reasons for the satisfaction of the learned Magistrate to allow continuation of further investigation beyond the prescribed period. Now if the said sub-section is so interpreted as to hold that the period prescribed therein will have to be reckoned from the date of arrest or appearance of that accused who appeared or was arrested last in point of time

where there are more accused than one, in that case the very purpose of enacting the provision of the said sub-section can be successfully frustrated by the Investigating Officer by making subsequent indiscreet arrest of non-wanted person at a late stage on the pretended plea of complicity only for the purpose of shifting forward the starting of the computation of the period prescribed by the said sub-section. Such an interpretation will to a large extent, if not wholly, frustrate the very purpose of enacting the said sub-section, namely, to ensure speedy investigation and to protect the accused persons from harassment by unduly prolonged investigation. Therefore such an interpretation cannot be accepted which is prone to defeat the purpose of enacting the concerned provision. The provision of Section 167(5) has been enacted for the purpose of redressing the mischief of unduly prolonged investigation. The provision is rather remedial in nature and therefore it will have to be interpreted in such a manner as can suppress the mischief and advance the remedy and not the other way round.

7. The matter can also be looked at from another angle of view. There is no reason why Section 167(5) should not be allowed to operate on its own terms. As soon as an accused in any case appears or is arrested in course of an investigation, time starts running under Sub-section (5) of Section 167. So long there is no arrest or appearance of any accused the provision of the said Sub-section remains dormant. The said Sub-section becomes effective, active and operative, as soon as an accused appears or is arrested in connection with the investigation of an offence. Once the said Sub-section is thus activated and brought into operation, thereafter it will operate and continue to operate following the terms of its own provision and the operation of the same cannot be stopped or annulled in a manner not provided for in the said Sub-section, as for example, by the subsequent arrest or appearance of another accused which fact has no role to play on the operation of the provision of the said sub-section once that Sub-section has started operating by reason of the first arrest or appearance of an accused in that case.

8. The learned Magistrate was therefore, wrong in thinking that the period prescribed under Section 167(5) will be computed from the date of subsequent arrest, or appearance of a co-accused thereby annulling the previous operation of

the provision of the said subsection which had commenced with the earlier arrest or appearance of an accused in that case. The operation of the provision of the said Sub-section (5) starts as soon as an accused appears or is arrested and the period mentioned in the said Sub-section will be computed from that date. The subsequent arrest or appearance of any accused will have no bearing on the continuing operation of the provision of the said Sub-section. It may be noticed that when the period prescribed in the said Sub-section in reference to any particular offence expires on the basis of computation from the date of appearance or arrest of an accused, that is, the accused who was arrested or who appeared first in point of time, the Magistrate is required to stop 'further investigation into the offence' which means there will not be any further investigation not only in respect of the offence but also in respect of any accused in connection with that offence unless, of course, there are special reasons for allowing the continuation of the investigation beyond the prescribed period.

9. In this case three years have already elapsed from the date of first arrest of an accused and that being so in view of the position of law as discussed above, the continuation of investigation into the case is required to be stopped under Section 167(5)(ii) of the Cr.P.C. within the period of the said three years the Investigation Officer of the case admittedly did not make any prayer before the learned Magistrate for permission to continue the investigation beyond the prescribed period for 'any special reasons' and 'in the interests of justice'. That being so in view of the catena of decisions of this Court the continuation of the investigation into the case is liable to be stopped under the said section. It may be mentioned here that the provision of Sub-section (5) of Section 167, as it stood before the advent of the West Bengal Amendment Act of 1988, was that if the investigation in a summons case could not be concluded within the period of six months, that is, 180 days from the date of arrest of the accused, then the Magistrate would make order stopping further investigation into the offence unless the Investigating Officer could satisfy him that for special reasons and in the interest of justice the continuation of the investigation beyond the said period was necessary. In connection with the said provision it was held by a Single Bench of this Court in 1979 (1) CHN 210, AH Hossain v. The State, that if the investigation in a summons case could not be completed within six months it was the incumbent

duty of the Investigating Officer under Section 167(5), Cr.P.C. to apply before the Magistrate before the expiry of the said period for extension of the time. Another Single Bench of this Court also in a decision reported in 1983 Cri LJ 39, Rambriksh v. The State observed thus (at page 40):--

'...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 reason 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 interests of justice without stopping the investigation'.

In AIR 1982 Cri LJ 744, Jay Sankar Jha v. The State, a Division Bench of this Court made the following observations (at page 744):--

'In view of Section 167(5), Cr.P.C. the investigation beyond the period of six months can be continued only if the officer making the investigation satisfies the Magistrate that for 'special reasons' and in the 'interests of justice' the continuation of the investigation beyond the period of six months is necessary. This satisfaction of the Magistrate must take place before the expiry of the period of six months'.

It was further observed in the said decision as follows:--

'Before the expiry of the period of six months no prayer in any of the applications filed by the Investigating Officer was made that for special reasons and in the interests of justice the continuation of the investigation beyond six months was necessary. The routine prayer of the Investigating Officer made in the application that the Investigation of the case was in progress and the accused may be remanded to a certain date for further investigation of the case is wholly insufficient to meet the statutory requirements for continuation of the investigation beyond the period of six months'.

The same Division Bench in an earlier decision reported in 1981 Cri LJ 1288, Ramkumar v. The State, made the following observations which are also relevant

for the present purpose (at page 1290):--

'...in such a case, Section 167(5) by its plain language, 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 interests of justice. The power that has been given to the Magistrate to permit continuation of the investigation beyond the period of six months clearly envisages that it has to be exercised before the expiry of six months. That on the expiry of the said period the Magistrate cannot entertain any prayer to extend the period of investigation will be evident from....

'Then again, to record a satisfaction that the investigation 'beyond the period of six, months is necessary' the Magistrate necessarily has to obtain the satisfaction before the expiry. It must therefore be held that any direction for continuation of the investigation given under Section 167(5) after the statutory period will be without jurisdiction'.

10. The law, therefore, is well-settled by the decisions of Division Bench of this Court that any prayer for extension of time for completing investigation beyond the prescribed period under Section 167(5), Cr.P.C. must be made by the Investigating Officer before the expiry of such period and any direction for continuation of the investigation given under Section 167(5) after the statutory period will be without jurisdiction. A still later Division Bench of this Court has also in a decision reported in 1985 (1) CHN 1 : (1985 Cri LJ 546), Pappa Rao v. The State, accepted the said proposition of law in the following language (at page 547):--

'Though it is somewhat debatable as to whether every breach of the provision would render the subsequent proceeding void or not, it has now been held by this Court that leave to continue the investigation beyond 180 days from the date of arrest in summons case should be taken before the expiry of the said period'.

In view of the settled position of law the continuation of the investigation in this case beyond the prescribed period of three years is not permissible under Section

167(5)(ii) inasmuch as admittedly no prayer for extension of time for continuing the investigation for special reasons or for any reason whatsoever was made by the Investigating Officer before the expiry of the said period. The further investigation therefore must be stopped and the accused persons are entitled to be discharged under the provision of the said Section 167(5)(ii).

11. The learned Advocate for the State relied upon the decision reported 1985 (1) CHN 1 : (1985 Cri LJ 5461) (supra) and submitted that as a matter of fact the investigation has already been completed and only the report of the Forensic Science Laboratory is awaited. This argument is not plainly tenable. In the said decision the charge-sheet had been drawn up within 180 days from the date of arrest but there was some delay in the matter of filing the charge-sheet before the Magistrate and in that background it was held in the said decision that the investigation had already been completed. But here in the present case, the charge-sheet has not yet been drawn up and even if it is accepted that the Investigating Officer is awaiting report of the Forensic Science Laboratory it cannot be held that the investigation has already been completed in this case, because the Investigating Officer has yet to apply his mind to the materials collected and yet to be collected and to decide as to whether the same is sufficient for drawing up any charge-sheet in the case. In the circumstances, the continuation of the investigation is hit by Section 167(5) of the Cr.P.C. The proceeding pending in the Court below is therefore quashed. The investigation is stopped and the accused persons including the petitioners stand discharged under

Section 167(5)(ii) of the Code of Criminal Procedure.