

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 3-11-2015

CORAM:

THE HON'BLE MR. JUSTICE P.N.PRAKASH

Criminal Revision Case No.1127 of 2015

Kamalesh Kumar Sheth

..Petitioner

Vs.

The Inspector of Police,
Central Crime Branch-II,
EDF-III, Team No.IV,
Vepery,
Chennai - 600 007.

..Respondent/Complainant

Criminal Revision Case filed under Section 397 read with 401 and 482 of Code of Criminal Procedure with a prayer to set aside the order dated 19.10.2015 passed by the learned XI Metropolitan Magistrate, Saidapet, Chennai - 600 015 in CrI.M.P.No.4323 of 2015 in Crime No.304 of 2015 and to issue direction to release the petitioner/Accused No.4 on bail in Crime No.304 of 2015 dated 1.8.2015 on the file of Central Crime Branch-II, EDF-III, Greater Chennai, Vepery, Chennai-600 007, now confined in Central Prison, Puzhal, Chennai, in accordance with Section 167 (2) (a) (ii) of the Code of Criminal Procedure, 1908 pending disposal of this petition and during investigation and trial.

For Petitioner : Mr.Amit Prasad

For Respondent : Mr.C.Emalias,
Additional Public Prosecutor

For Defacto Complainant: Mr.A. Ramesh, SC
for Mr.V.S.Senthil Kumar

Reserved on	Pronounced on
29-10-2015	3-11-2015

O R D E R

A very interesting question of law has been raised by Mr.Amit Prasad, learned Counsel appearing for the petitioner, for determination by this Court in this Revision Case. For better appreciation, it may be apposite to state in brief the facts in this case.

2. (a) On a complaint lodged by one K.S.Kumar, the respondent Police registered a case in Cr.No.304 of 2015 on 1.8.2015 for the offences under Sections 406, 208, 420, 506(i) r/w 120B IPC against, (i) Muthunarayanan, (ii) Gopi @ Gopinath Sathasivam, (iii) Venkatramanan, and (iv) Kamalesh Kumar Sheth.

(b) Kamalesh Kumar Sheth (A-4) was arrested by the Police on 4.8.2015 and on the same day he was produced before the learned XI Metropolitan Magistrate, Saidapet, Chennai for remand. While he was being remanded periodically every 15 days, the Police filed an alteration report before the learned Magistrate on 23.9.2015 for including section 409 IPC on the ground that during investigation, the evidence relating to commission of an offence under Section 409 had surfaced.

(c) Reckoning from 4.8.2015, the date on which the accused was produced before the Magistrate, the expiry of the 60 days period and 90 days period will be 2.10.2015 and 2.11.2015 respectively. Admittedly, the alteration report was filed on 23.9.2015, well before the expiry of 60 days period, prescribed for default bail under Section 167 of Cr.P.C.

(d) The A-4/petitioner herein filed an application for default bail under the Proviso to Section 167 Cr.P.C. on 14.10.2015 before the learned Magistrate, which was dismissed on 19.10.2015 on the ground that the punishment prescribed under Section 409 IPC is "imprisonment for life, or with imprisonment of either description for a term, which may extend to ten years, and shall also be liable to fine." Aggrieved by the order passed by the Magistrate, Kamalesh Kumar Sheth (A-4) is before this Court in this revision case.

3. Mr.Amit Prasad, learned Counsel appearing for the accused submitted the following arguments:

(i) Learned Counsel placed strong reliance upon the decision of the Supreme Court in Sube Singh v. State of Haryana ((1989) 1 SCC 235) (paragraphs 6 to 10),

"6. In the Webster's Third New International Dictionary the following meaning has been given to

the word "punishable":

"Deserving of, or liable to, punishment:
capable of being punished by law or right."

7. Aiyar's The Law Lexicon (Reprint Edition 1987) gives the meaning of "punishable" thus:

"The word 'punishable' as used in statutes which declare that certain offences are punishable in a certain way, means liable to be punished in the way designated."

8. In Bouvier's Law Dictionary, the meaning of the word "punishable" has been given as "liable to punishment". In Words and Phrases – Permanent Edition, the following meaning has been given:

"The word 'punishable' in a statute stating that a crime is punishable by a designated penalty or term of years in the State prison limits the penalty or term of years to the amount or term of years stated in the statute."

9. The word "punishable" is ordinarily defined as deserving of or capable or liable to punishment, punishable within statute providing that defendant may have ten (sic) peremptory challenges if offences charged is "punishable" with death or by life imprisonment; means deserving of or liable to punishment; capable of being punished by law or right, may be punished, or liable to be punished, and not must be punished.

10. Corpus Juris Secundum gives the meaning as:

"Deserving of, or liable to, punishment; capable of being punished by law or right; said of persons or offences. The meaning of the term is not 'must be punished', but 'may be punished', or 'liable to be punished'."

In the absence of a definition of "punishable" we have referred to these for gathering the exact meaning of the word. In the sense given to the word, as above, there can be no doubt that the offence of murder is punishable with death even though the punishment awarded is not death but imprisonment for life."

and on Bhupinder Singh v. Jarnail Singh (AIR 2006 SC 2622 :

(2006) 6 SCC 277) paragraphs 12 to 15 (in SCC)

"12. In Bouvier's Law Dictionary meaning of the word "punishable" has been given as "liable to punishment". In Words and Phrases (Permanent Edn.) the following meaning is given:

"The word 'punishable' in a statute stating that a crime is punishable by a designated penalty or term of years in the State prison limits the penalty or term of years to the amount or term of years stated in the statute."

13. Corpus Juris Secundum gives the meaning as:

"Deserving of, or liable to, punishment; capable of being punished by law or right; said of persons or offences. The meaning of the term is not 'must be punished', but 'may be punished', or 'liable to be punished'."

14. While dealing with a case relating to the Punjab Borstal Act, 1926, this Court held that a person convicted under Section 302 IPC and sentenced to life imprisonment is not entitled to the benefit of Section 5 of the said Act as the offence of murder is punishable with death. (See Sube Singh v. State of Haryana.)

15. Where minimum and maximum sentences are prescribed, both are imposable depending on the facts of the cases. It is for the court, after recording conviction, to impose appropriate sentence. It cannot, therefore, be accepted that only the minimum sentence is imposable and not the maximum sentence. Merely because minimum sentence is provided that does not mean that the sentence imposable is only the minimum sentence. The High Court's view in the impugned order that permissible period of filing of challan is 90 days is the correct view. Contrary view expressed by the Jharkhand, the Delhi and the Karnataka High Courts is not correct. The Himachal Pradesh, the Rajasthan and the Punjab and Haryana High Courts taking the view that 90 days is the period, have expressed the correct view. Therefore, on that ground alone the appeal fails. But since another point urged for consideration which as noted above arises in many cases, we are

considering that matter. In *Tara Singh v. State* a four-Judge Bench of this Court inter alia had examined the effect of the supplementary report. The contents of the report as required to be given under Section 173(1)(a) of the Criminal Procedure Code, 1898 (in short "the old Code") were examined. In AIR para 14 it was noted as follows: (SCR pp. 733-34)

"When the police drew up their challan of 2-10-1949, and submitted it to the court on the 3rd, they had in fact completed their investigation except for the report of the imperial serologist and the drawing of a sketch map of the occurrence. It is always permissible for the Magistrate to take additional evidence not set out in the challan. Therefore the mere fact that a second challan was put in on 5th October would not necessarily vitiate the first. All that Section 173(1)(a) requires is that as soon as the police investigation under Chapter XIV of the Code is complete, there should be forwarded to the Magistrate a report in the prescribed form 'setting forth the names of the parties, the nature of the information and the names of the person who appear to be acquainted with the circumstances of the case'. All that appears to have been done in the report of 2nd October which the police called their incomplete challan. The witnesses named in the second challan of the 5th October were not witnesses who were 'acquainted with the circumstances of the case'. They were merely formal witnesses on other matters. So also in the supplementary challan of the 19th. The witnesses named are the 1st Class Magistrate, Amritsar, who recorded the dying declaration, and the Assistant Civil Surgeon. They are not witnesses who were 'acquainted with the circumstances of the case'. Accordingly, the challan which the police called an incomplete challan was in fact a completed report of the kind which Section 173(1)(a) of the Code contemplates. There is no force in this argument and we hold that the Magistrate took proper cognizance of the matter." "

(ii) Learned Counsel referred to Section 26 of Cr.P.C. read with the Entry relating to Section 409 IPC in Schedule-I of the Code, which is as follows:

"26. Courts by which offences are triable.-
Subject to the other provisions of this Code,-

(a) any offence under the Indian Penal Code (45 of 1860) may be tried by-

(i) the High Court, or

(ii) the Court of Session, or

(iii) any other Court by which such offence is shown in the First Schedule to be triable"

"Schedule I-Classification of offences

Section : 409

Offence : Criminal breach of trust by public servant or by banker, merchant or agent, etc.

Punishment: Imprisonment for life or imprisonment for 10 years and fine.

Cognizable or: Cognizable
Non-cognizable

Bailable or : Non-bailable
Non-bailable

By what Court: Magistrate of First Class"
triable

(iii) Learned Counsel next referred to Section 29 Sub-Section (1) & (2) of Cr.P.C. and Section 325 of Cr.P.C. and submitted that the learned XI Metropolitan Magistrate, Saidapet, Chennai, can only impose a maximum sentence of 3 years imprisonment, and if he feels that the accused deserves severe punishment, he can, at the most, submit a proceedings to the Chief Judicial Magistrate or Chief Metropolitan Magistrate, as the case may be under Section 325 Cr.P.C., and that he cannot impose a sentence of imprisonment of more than seven years.

(iv) Therefore, it is Mr.Amit Prasad's submission that, since the accused cannot be inflicted with punishment of more than seven years in a trial by a Magistrate, the case would fall under Section 167(2)(a)(ii) Cr.P.C., and perforce, the accused will be entitled to be released on bail on the expiry of the 60th day, on the failure of the prosecution to complete the

investigation and file the Final Report within such time.

(v) The summum bonum of Mr.Amit Prasad's submission is that as on 14.10.2014, when the application for default bail was filed before the Magistrate, albeit inclusion of Section 409 IPC, the Magistrate has no power to impose a sentence exceeding three years (at the most 7 years by CMM under Section 325), and an indefeasible right accrued to the accused for being released on default bail for the failure of the prosecution to complete investigation and file final report. Mr.Amit Prasad stressed on the incapability of the Magistrate to impose a sentence exceeding 3/7 years as on the date, on which the accused exercised his presumed right for default bail, and not the possibility of sessions offences being added after 14.10.2015. The position of law is, subject to other provisions of law, the High Court or the Sessions Court derive power to try any offence under IPC by virtue of Section 26(a)(i) and (ii) of the Code, whereas, the Magistrate derives power to try such offence only by virtue of the Schedule to the Code.

4. The power to award life imprisonment for an offence under Section 409 of IPC is available to a Sessions Court, when the accused is charged under Section 409 IPC along with an offence triable by the Sessions Court. For example, while trying a case under Section 302 IPC, if a charge under Section 409 IPC is also framed, it is well within the power of the Sessions Court to award life imprisonment for the offence under Section 409 IPC. There is no pale of doubt on this aspect. The submission of Mr.Amit Prasad is, as on 14.10.2015, when the application for default bail was filed, there was no material to show that the accused could be tried by a Sessions Court, and therefore, the Magistrate could not have remanded the accused beyond 60 days.

5. This Court posed to Mr.Amit Prasad the Judgment of the Bombay High Court in State of Maharashtra v. Ketan Sheth (2003 (1) Mh.L.J. 885) and the judgment of the Gujarat High Court in State of Gujarat v. Laxmansinh Chandrasinh Padhiyar (2008 Cr.L.J. 3843), where these issues were substantially raised, but were negated by the said Courts holding that a Magistrate has the power to remand an accused for a period of 90 days, where there are materials to show that he is involved in an offence under Section 409 IPC. In response to this Mr.Amit Prasad contended that in both the judgments there is no reference to Section 29 and 325 of Cr.P.C., as urged by him before this Court.

6. This Court is of the view that to meet the aforesaid argument of Mr.Amit Prasad, it may be necessary to briefly state the evolution of the "Law of Remand".

7. In the Madras Province, the Madras District Police Act, 1859, empowered the Police to arrest a person, and if bail is not taken before the Police, the Police were required to produce the arrestee before the Magistrate within 24 hours (Section XXIII). It may be interesting to extract Section XXVII of the Act, which reads as follows:

"If from the absence of witnesses, or from any other reasonable cause, it shall become necessary or advisable to defer the examination of any case, or the further examination of any witnesses, it shall be lawful for any Magistrate from time to time by his warrant to remand the accused to the custody of any Police Officer, for such time as he shall deem necessary and reasonable, not exceeding eight clear days, to be secured in any Station House or jail or to be otherwise detained in custody as to the said Magistrate shall appear expedient: provided always that any such Magistrate may order such accused party to be brought before him at any time or place before the expiration of the time for which such accused party shall have been remanded; or may discharge such accused party on his recognizances, with or without sureties, conditioned for his appearance at the time and place appointed for such further examination."

8. On 1st January, 1862, the Governor General of India in Council brought into operation the Indian Penal Code (Act XLV of 1860) and the Code of Criminal Procedure (Act XXV of 1861). Sections 109 and 152 of the 1861 Code, which dealt with the action to be taken by the Police, after a person is arrested read as follows:

"109. A Police Officer having made an arrest under this Chapter, shall take or send the person arrested without unnecessary delay before the Magistrate who has jurisdiction in the case, or before the Officer in charge of a Police Station."

"152. No Police Officer shall, without the special order of a Magistrate, detain an accused person in custody for a longer period than, under all the circumstances of the case, is reasonable: such period in no case to exceed twenty-four hours. If the enquiry has not been completed within twenty-four hours, the Officer in charge of the Police Station shall nevertheless, forward the accused to the Magistrate with a short

despatch stating the offence for which the accused has been arrested, if there are grounds for believing that the accusation is well founded."

The 1861 Code contemplated grant of bail to the arrested person and only when the accused was not able to furnish sureties, he was kept in gaol.

9. The provisions in the Madras District Police Act relating to arrest and production before the Police, which have been cited above were repealed by Act XVII of 1862, passed by the Governor General of India in Council, since these provisions were incorporated into the 1861 Code. The 1861 Code was replaced by the Code of Indian Criminal Procedure 1872 (Act X of 1872), passed by the Governor General of India in Council on 24.8.1872. Section 124 and 194 of the 1872 Code read as follows:

"124. Accused not to be detained by Police more than twenty-four hours without special authority.- No Police Officer shall detain an accused person in custody for a longer period than, under all the circumstances of the case, is reasonable; and such period shall not, in the absence of the special order of a Magistrate, whether having jurisdiction to inquire into or try the case or not, exceed twenty-four hours, exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

If the investigation has not been completed within twenty-four hours and no such special order has been passed, and if there are grounds for believing that the accusation is well founded, the officer incharge of the police-station shall forward the accused person to the Magistrate having jurisdiction, with a statement of the offence for which he has been arrested.

A Magistrate authorizing detention under this section shall record his reasons for so doing.

If such order be given by a Magistrate other than the Magistrate of the District or of a Division of the District, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is subordinate.

194. Adjournment of inquiry and remand.- If, from the absence of a witness or from any other reasonable cause, it becomes necessary or advisable to defer the examination, or further examination, of witnesses, the Magistrate may, by a written order, from time to time adjourn the inquiry and remand the accused person for such time as is deemed reasonable, not exceeding fifteen days.

Instead of detaining the accused person in custody during the period for which he is so remanded, the Magistrate may release him, upon his entering into a recognizance, with or without a surety or sureties, at the discretion of such Magistrate, conditioned for his appearance before such Magistrate at the time and place appointed for the continuance of such examination.

EXPLANATION.- After commencing the inquiry, if sufficient evidence has been obtained to raise a suspicion that the person accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable ground for a remand."

10. It should be remembered that under the 1861 Code as well as the 1872 Code, there was no clear separation of executive from judiciary. After arrest by the Police, statements of witnesses were recorded by the Magistrate. This is obvious from Section 123 of the 1872 Code, which reads thus,

"123. Investigation by Police.- If the person arrested appears, from the information obtained, to have committed the offence charged, and the offence is not bailable, the officer in charge of the Police-station shall forward him under custody to the Magistrate having jurisdiction, and shall bind over the complainants, if any, and so many of the persons who appear to be acquainted with the circumstances of the case as may be necessary, to appear on a fixed day before such Magistrate, and to remain in attendance till otherwise directed.

When any subordinate Police officer has made any investigation under this chapter, he shall, if so required by the officer in charge of the Police-station, submit a report of such investigation to him; or he may do so without such requisition; and the officer in charge of the Police-station shall then proceed as if he

had made the investigation himself."

11. Thus, the word "enquiry" used in Section 194 of 1872 Code is slightly different from the meaning attached to it by the 1973 Code. Prior to the separation of judiciary from executive, the Magistrates were a part and parcel of the investigation process, and that is why under Section 194 of the 1872 Code, Magistrates were empowered to remand the person for a maximum period of 15 days for examining witnesses, and for the purpose of completing the investigation.

12. The term 'Magistrate' as defined in Sections 14 and 15 of the 1861 Code is as under:

"14. The words "Magistrates of the District" shall mean the chief officer charged with the executive administration of a district in criminal matters by whatever designation such officer is called.

15. The word "Magistrate" shall include all persons exercising all or any of the powers of a Magistrate."

In fact, the Commissioner of Police in the Madras City functioned as a Magistrate under the old Codes by virtue of section 7 of the Madras City Police Act, 1888 and he also had the power to remand and grant bail.

"7. Commissioner's powers as Magistrate:-
The Commissioner shall by virtue of his office being a Presidency Magistrate, but shall exercise his powers as Magistrate subject to such orders as may from time to time be issued by the State Government:

Provided that he shall not exercise any powers under chapters XVIII, XX or XXI of the Code of Criminal Procedure, 1882."

13. The 1872 Code was repealed by the 1882 Code, and the precursor of the present Section 167 Cr.P.C. was Section 167 of the 1882 Code, which reads as under:

"167. Whenever it appears that any investigation under this chapter cannot be completed within the period of twenty-four hours fixed by Section 61, and there are grounds for believing that the accusation is well-founded, the officer in charge of the Police-station shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

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 authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days. 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.

A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

If such order be given by a Magistrate other than the District Magistrate or Subdivisional Magistrate, he shall forward a copy of his order, with his reasons for making it to the Magistrate to whom he is immediately subordinate."

14. The provision relating to remand was retained as Section 167 in the Code of Criminal Procedure, 1898, which is as follows:

"167. (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police-station or the police-officer making the investigation if he is not below the rank of sub-inspector shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has no jurisdiction to try the case from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole."

15. Thus, it can be seen that the time period of 15 days remand was envisaged for the purpose of completing the investigation by the Police. While dealing with Section 561-A of Criminal Procedure Code 1898, in the celebrated case of King Emperor v. Khwaja Nazir Ahmad (AIR 1945 PC 18) the Privy Council observed that the functions of the judiciary and police are

complementary and not overlapping. In the post Constitutional set up, it was imperative for the State to bring about the separation of the Judiciary and the Executive in letter and in spirit. This is seen from the Directive Principle incorporated in Article 50 of the Constitution.

16. The Law Commission in its 41st Report has referred to Khwaja Nazir Ahmed's case and has observed thus,

"14.2 A noticeable feature of the scheme as outlined above is that a Magistrate is kept in the picture at all stages of the police investigation, but he is not authorized to interfere with the actual investigation or to direct the police how that investigation is to be conducted. This demarcation of functions between the police and the magistracy at the investigation stage has been clearly laid down by the Privy Council in Khwaja Nazir Ahmed's case (AIR 1945 PC 18). It would appear that the power to "direct an investigation" under section 159 should be resorted to by a Magistrate only when he found that the police had desisted from investigation on insufficient grounds and felt that further investigation was likely to produce results. Following the decision of the Privy Council just cited, it has been held by the Supreme Court (Abhinandan Jha v. Dinesh Mishra, 1967 (3) SCR 668-678) "that the formation of the opinion as to whether or not there is a case to place the accused for trial is that of the officer-in-charge of the police station and that opinion determines whether the report (on completion of investigation) is to be under section 170, being a 'charge-sheet' or under section 169, a 'final report'." This arrangement seems to us to be basically sound and we do not think there is anything to be gained by giving the Magistrate further powers of supervision and control over the police during investigation."

17. While specifically dealing with Section 167, the Law Commission observed that a practice was prevalent in some States, where the Police filed a Preliminary Final Report on the expiry of 15 days remand, in order to keep the accused under further custody. This was not appreciated by the Law Commission as could be seen from paragraph 55 in "Chapter XXXIV - Investigation by Police", of the report, which reads thus,

"55. It seems to us that considering the scheme of these provisions, there is no warrant for the continued detention of a person beyond a

period of fifteen days under section 167. Nor would section 344 be applicable, till a police report in the prescribed form has been filed and the court has taken cognizance of the case. The solution of the difficulty lies in the Legislature providing specifically for the contingency of a remand after the expiry of fifteen days by an appropriate provision which, while meeting the needs of a full and proper investigation in cases of serious crime, will still safeguard the liberty of the person of the individual.

No doubt serious offences require a much longer time for investigation; but no one can contemplate an accused person being kept in custody for months awaiting the completion of the investigation and the filing of the police report. We would not have dealt with this matter at such length but for the fact brought to our notice that in some of the northern States, accused persons were being kept under remand for long periods extending over several months without any police report being filed in the courts. If section 344 is to be utilised in such cases, it would mean in effect, giving an unrestricted licence to the police and the direction of the magistrate could seldom be effectively exercised.

In view of the conflict of judicial opinion on the question, it is desirable that the law should be clarified by providing in section 167, that if investigation is not completed within 15 days and the police are therefore unable to file the report under section 173, the Magistrate may in suitable cases remand the accused to custody for a term not exceeding fifteen days at a time. The law must, however, fix a maximum time-limit beyond which an accused person cannot be detained without a police report being filed before a magistrate competent to take cognizance of the offence.

.....
.....
We would therefore, recommend that the period during which a person can be remanded to custody at the stage of investigation should under no circumstances exceed sixty days."

This was accepted by the Parliament, and in the 1973 Code (Act II of 1974), a total period of 60 days was fixed initially in Section 167 Cr.P.C, which is as follows:

"(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, authorize 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 authorize detention of the accused person, otherwise than in 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 authorize the detention of the accused person in custody under this Section for a total period exceeding sixty days, and on the expiry of the said period of sixty days, 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 section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;"

18. Section 167 of the 1973 Code was amended by the Code of Criminal Procedure Amendment Act, 1978 whereby the present avatar of Section 167 prescribing 60/90 days came into force. Section 167(2) (a) (i) & (ii) are as follows:

"(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;"

19. Section 167 falls under Chapter XII - Information to Police and their Powers to Investigate. Though there is separation of Executive from the Judiciary under the 1973 Code,

yet certain instances of Magistrates acting in aid of investigation of the offences is still retained, and thus provisions have been fitted into Chapter XII. Even in the post Constitutional set up, functions of Magistracy and the Police are complementary. That is why, at the request of the Police, Magistrates record Dying Declaration; conduct Test Identification parade; record Confessions and Statements under Section 164 Cr.P.C.; grant Police Custody under Section 167; and keep the accused in judicial custody for 60/90 days to enable the Police to investigate the case without the interference of the accused; sends various material objects for getting Expert's opinion; etc.

20. The submission of Mr.Amit Prasad that the expression "punishable" used in Section 167(a)(i) should be given the meaning assigned to it in Sube Singh's case ((1981) 1 SCC 234) is only a cry in despair.

21. Sube Singh's case (supra) was decided under Borstal Schools Act, 1925 after the accused was convicted and sentence was imposed upon him. In that context the Supreme Court interpreted the word "punishable" to mean impossible punishment. That interpretation cannot be transposed into Section 167 of Cr.P.C., because the word 'punishable' used here is not vis-a-vis the power of the Magistrate to impose a punishment, but relates to an offence that is under investigation by the Police. In other words, the quantum of punishment that determines the period of 60/90 days is relatable to the offence under investigation, and not the offence under trial. It is an irresistible conclusion that the word "investigation" assumes primacy in Section 167(2)(a)(i) and not the word "punishable".

22. The question of impossibility of punishment arises only during trial. That stage will be reached only after investigation is completed, Final Report is filed, cognizance is taken, process is issued, charges are framed, and witnesses are examined.

23. A word that is employed in a statute has to be interpreted in the context in which it is used. Just because that word has been interpreted by the superior Court while dealing with another statute, the same interpretation cannot be applied, mutatis mutandis in a totally different context.

24. The following passage from the Principles of Statutory Interpretation by Justice G.P.Singh (6th Edition, Reprinted in 1997) at page 197 is worth quoting:

"However, it is not a sound principle of construction to interpret expressions used in

one Act with reference to their use in another Act, and decisions rendered with reference to construction of one Act cannot be applied with reference to the provisions of another Act, when the two Acts are not in pari materia (Nippon Yusen Kisha v. Ramjiban Serowgee, AIR 1938 PC 152)."

25. In Shri Kumar Padma Prasad v. Union of India (AIR 1992 SC 1213) it was held that the meaning of the word "judicial office" with reference to Section 7(3) of the Industrial Disputes Act, 1947 as construed in Statesman (Private) Ltd. v. H.R. Deb, AIR 1968 SC 1495 cannot be used for construing the same expression under Article 217(2)(a) of the Constitution of India, for the two are not in pari materia.. The provisions of Borstal Schools Act, 1925 are not in pari materia with Section 167 Cr.P.C. and therefore, the interpretation of the word "punishable" in Sube Singh's case (supra) cannot be of any assistance while construing the same word in Section 167. As Lord Macmillan pithily remarked "a word is judged by the company it keeps" (Noscitur a Sociis) (See: Lord Macmillan, "Law and Other Things", Cambridge University Press, 1937, p.166).

26. Mr. Amit Prasad relied upon the definition of 'punishable' as found in Corpus Juris Secundum-

Deserving of, or liable to, punishment;
capable of being punished by law or right;
said of persons or offences. The meaning of
the term is not 'must be punished', but 'may
be punished', or 'liable to be punished'.

and submitted that by law the Magistrate cannot impose punishment beyond seven years. In the opinion of this Court the expression "law" used therein refers to the substantive penal law that defines the offence and prescribes punishment for it, and not the procedural law that gives various Courts different punishing powers. That is why even in the said definition the expression used is "said of persons or offences" and not "of Courts".

27. The last argument of Mr. Amit Prasad was that the alteration report filed by the Police adding Section 409 IPC is a mala fide exercise of the power and therefore the accused will be entitled to be released on bail.

28. As stated above, the alteration report was filed on 23.9.2015 even before the expiry of the sixty days period, and the Police also produced materials before the Magistrate to substantiate their assertion that the investigation done so far revealed the commission of an offence under section 409 IPC.

Allegations of mala fide cannot be easily inferred by this Court, especially in the teeth of the presumption under Section 114(e) of the Evidence Act, 1872 that the judicial and official acts are presumed to have been regularly performed.

29. In fine, it is not in the capacity of the Magistrate to impose the sentence prescribed for an offence by the statute that determines the maximum period of remand (60/90 days) contemplated under section 167 Cr.P.C. It is prima facie the material collected by the Police during investigation, and consequently produced before the Magistrate for his satisfaction, that determines whether the case of the accused falls under sub-clauses (i) or (ii) of Section 167(2)(a) Cr.P.C., authorizing remand for 90 days/60 days, as the case may be.

This Criminal Revision Case is devoid of merits and consequently the same is dismissed. Dismissal of this Criminal Revision Case shall not have any bearing for deciding the petition for default bail by the Magistrate, if any, filed by the petitioner.

sd/

ASSISTANT REGISTRAR (CS-VII)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

vr

To

1. The Inspector of Police, Central Crime Branch-II, EDF-III, Team No.IV, Vepery, Chennai - 600 007.
2. The Superintendent of Prisons, Central Prison, Puzhal, Chennai.
3. The Public Prosecutor, High Court, Madras.

+2 CC to MR.Amit Prasad Advocate. SR.NO. 60232

Pre-Delivery Order in
Crl.R.C.No.1127 of 2015

CO-

JD 03/11/2015