

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Crl.R.C.No.366 of 2015

State represented by
the Deputy Superintendent of Police,
EOW-II, Cuddalore,
OD at EOW-II, Headquarters,
Anna Nagar, Chennai-40 ... Revision petitioner
(Crime No.5/2015)

Vs.

1.G.K.Muralikishna
2.Diwakarsai Yerra
3.V.Ramachandran ... Respondents

Revision has been filed under Section 397 r/w 410 of Cr.P.C.,
against the order dated 13.04.2015 passed in Crl.M.P.No.662/2015
passed by the learned Special Judge under TNPID Act, Chennai.

For revision petitioner : Mr.S.Shanmugha Velayutham
Public Prosecutor

For respondents : Mr.P.S.Raman, Senior Counsel
for M/s.Nithyaesh & Vaibhav

ORDER

This revision has been filed as against the order passed by the
Special Judge under TNPID Act in Crl.M.P.No.662 of 2015, dated
13.04.2015 , dismissing the petition filed by the
prosecution/Revision Petitioner under Section 167(2) of Cr.P.C., to
handover the respondents/accused, for police custody, for a period of
five days for the purpose of investigation in respect of Crime No.5
of 2015 pending on the file of the revision petitioner/police.

2.The brief facts, which are necessary for deciding this
revision, are as follows_

The 1st respondent herein/A2 is the Managing Director of the
Company viz., M/s.Helios and Matheson Information Technology Limited,
Chennai, which is arrayed as 1st accused in this case. The 2nd

respondent herein/A3 is a Director of the said Company. The 3rd respondent herein/A7 is the founder-cum-Director of the said Company. The 1st accused/company had received deposits from investors for the durations of 12, 24 and 36 months. The 1st accused-company engaged the services of some agencies for collecting the deposits from the public. M/s.Bajaj Capital Limited, Mylapore Branch has collected deposits from the public as an agent company of the 1st accused/company viz.,M/s.Helios and Matheson Information Technology Limited. The defacto-complainant Dr.Ranjit Chitturi had deposited five deposits totally to the tune of Rs.59,50,000/- with the 1st accused/company, through the said M/s.Bajaj Capital Limited, Mylapore Branch for the period of one year and three years. The defacto-complainant deposited the amount from 11.07.2011 to 16.12.2013. The rate of interest that was offered by the 1st accused/company is 12%. Out of five deposits, three deposits attained maturity on 14.05.2014, 12.06.2014 and 11.07.2014, for a total amount of Rs.36,50,000/-. But, the 1st accused/company defaulted in repayment of deposit amount as well as interest even after maturity to the defacto-complainant inspite of repeated demand made by him. Hence, the defacto-complainant lost his faith on the 1st accused-company about the repayment of deposited amount and preferred a report for retrieval of five deposit amounts totally to the tune of Rs.59,50,000/- against the company and the respondents herein/accused. Hence, he had lodged the complaint with the Police and the same was registered as Crime No.5 of 2015. Based on the complaint given by the said Dr.Ranjit Chitturi, the respondents herein/accused were arrested on 01.04.2015 at 12.00 noon at the Office of the E.O.W-II, Headquarters, Anna Nagar, Chennai and they were remanded to judicial custody on the same day and lodged at Puzhal Prison at Chennai. Thereafter, the revision petitioner/Prosecution has filed a petition on 08.04.2015 in CrI.M.P.No.662 of 2015 before the learned Special Judge under TNPID Act, Cehnnai, seeking custody of the respondents/accused 2, 3 & 7 for five days. The said petition was dismissed by the Court below on 13.04.2015 on a conclusion that no purpose would be served even if the custody of the accused persons are ordered to be handed over to the police for interrogation. Aggrieved over the denial of police custody by the Court below, the present Revision petition has been filed before this Court by the Police.

3.Since on the date of filing this Revision Petition, the first 15 days time from the date of remand has lapsed, the learned Public Prosecutor appearing for the revision petitioner, before making his submissions on merits, at the outset, made his submissions with regard to the entitlement of the Police to ask for the custody of the respondents/accused for the purpose of interrogation after lapse of 15 days time from the date of remand. The submission made by the learned Public Prosecutor is as follows_

3(1) The respondents/accused were arrested on 01.04.2015 and the petition in CrI.M.P.No.662 of 2015 seeking custody of the respondents/accused was filed before the learned Special Judge under TNPID Act on 08.04.2015. While so, on 09.04.2015, the respondents herein/accused filed a petition in CrI.O.P.No.8964 of 2015 before this Court seeking grant of bail. Since the bail petition was pending before this Court, the custody petition in CrI.M.P.No.663 of 2015 was not precipitated before the Court below as the order that was going to be passed in the bail petition would have bearing on the petition seeking custody of the respondent/accused pending before the Court below. Subsequently, the said bail petition was dismissed by this Court on 13.04.2015. Similarly, the custody petition was also dismissed by the Court below on the date on which the bail petition was dismissed by this Court i.e., on 13.04.2015. Though the custody petition was dismissed on 13.04.2015, the certified copy of the order was made ready only on 16.04.2015, by that time, 15 days time from the date of remand has lapsed. After obtaining certificate copy of the order dated 16.04.2015 necessary approval from the concerned authorities, was obtained and thereafter, the present revision petition was filed on 21.04.2015 and hence, absolutely there is no fault on the part of the prosecution with regard to the lapse of 15 days time from the date of remand in asking for the custody of the respondents/accused. The lapse of first 15 days time from the date of remand, on the date of filing the revision petition is only due to the act of the Court; therefore, the act of the Court should not prejudice the right of the Prosecution in seeking the custody of the accused for the purpose of interrogation. In this regard, the learned Public Prosecution has also relied upon the decision rendered by the Bombay High Court reported in CDJ 2010 BHC 1056 [State of Maharashtra Vs. Mitesh Manilal Lodhiya], wherein it has been held as follows—

"9. Coming to the reasons given by the learned revisional court, I find that those reasons are also factually and legally wrong. Merely because during the pendency of the matter, period of 15 days was over the revisional Court was not entitled to ignore the legality and validity of the order under challenge before him. He ought to have tested the validity of the order made by Chief Judicial Magistrate. Merely because of the wrong order made by Chief Judicial Magistrate period of 15 days had lapsed the State could not be put to prejudice since that was the act of the Court, *actus curiae neminem gravabit*. The decisions cited before me relate to the cases where the facts are totally different. In those cases the order of the trial Magistrate was not found to be illegal for any reason. In the instant case, however,

I find that the order of Chief Judicial Magistrate in refusing police custody remand is illegal and the validity of the same is under challenge before me. The cited cases are therefore distinguishable."

3(2) The learned Public Prosecutor has also relied upon the decision reported in (2013) 16 SCC 190 [Gulabrao Baburao Deokar Vs. State of Maharashtra and others], in support of his contention that when there is justification in asking custody of the accused, the Court has to consider the same.

4. Apart from the above submissions, on merits, the learned Public Prosecutor appearing for the Revision Petitioner/Prosecution submitted that custody of the respondents/accused are very much essential in this case to identify the properties of the 1st accused-Company and also the properties of the other accused for attachment of the same and also to ascertain the diversion of the deposited amount and to seize the relevant vital documents pertaining to this case. The learned Public Prosecutor would further submit that the 1st accused/company has received a sum of Rs.55,20,70,000/- as deposit from 6,541 depositors from all over India. From the investigation so far conducted prima facie it appears that the deposited amounts were diverted by the accused persons to their other concerns; therefore, the custody of the respondents/accused persons is absolutely essential in this case to ascertain the diversion of the deposited amount; but, the Court below without considering this aspect has come to the conclusion that the Police can obtain necessary particulars about the 1st accused-company from the Registrar of Companies. Assailing the said finding of the Court below, the learned Public Prosecutor submitted that the certain information which are in the knowledge of the respondent/accused persons cannot be obtained from the Registrar of Companies; therefore, the reasons assigned by the Court below for denying the custody of the respondent/accused persons to the Police is not correct.

5. Countering the submissions made by the learned Public Prosecutor, the learned Senior Counsel appearing for the respondents/accused, by relying upon the judgment delivered by the learned Single Judge of this Court reported in 2014 (2) MWN (Cr.) 175 [G.Priyadarshini Vs. State, by the Assistant Commissioner of Police], submitted that in the said judgment, the learned Single Judge of this Court by relying upon various decisions of the Hon'ble Supreme Court has held that the Police custody cannot be granted under any circumstance beyond the first period of 15 days from the date of remand and the Court cannot overstep the mandate prescribed in Section 167(2) of Cr.P.C; Thus, the learned senior counsel appearing for the respondents/accused submitted that in the instant case also, since the first period of 15 days has already expired, the custody of

the accused cannot be given to the Police.

6. With regard to the merits of the case, the learned senior counsel appearing for the respondents/accused submitted that since January-2015, the respondents/accused appeared before the Police more than 20 times and their Passports were also seized by the Police and they have also produced more than 100 documents before the Investigating Officer and the particulars about their immovable properties have also been submitted in Form VIII to the Registrar of the Companies as per the Company General Rules and Regulations of 1956. Further, the respondents/accused are ready to co-operate with the investigation; therefore, absolutely there is no need for custodial interrogation of the respondents/accused in this case.

7. Heard the submissions made on either side and perused the materials available on record.

8. In view of the above submissions made on either side, the question that falls for consideration in this revision is as to whether the Police is entitled to have the custody of the accused since first 15 days time from the date of remand has already lapsed?

9. It is the submission of the learned Public Prosecutor that the respondents/accused were arrested and remanded on 01.04.2015; the custody petition under Section 167(2) of Cr.P.C., was filed on 08.04.2015; while so, on 09.04.2015 the respondents herein/accused filed bail petition before this Court; since the bail petition was pending before this Court, the custody petition was not precipitated before the Court below. But after the dismissal of the bail petition by this Court, immediately on the same date i.e., 13.04.2015, the custody petition was dismissed by the Court below. Thereafter, certificate copy of the order passed by the Court below in the custody petition was obtained only on 16.04.2015; but, in the meanwhile, 15 days time from the date of remand to seek the custody of the accused expired on 15.04.2015. Thereafter, necessary approval was obtained from the concerned authorities and the present revision petition has been filed on 21.04.2015. Hence, only due to the furnishing of the certified copy of the dismissal order by the Court below on 16.04.2015, the revision petition could not be filed within first 15 days time from the date of remand. Hence, due to the act of the Court, the prosecution was not in a position to file the revision petition within first 15 days from the date of remand. Hence, according to the learned Public Prosecutor, the delay in obtaining the certificate copy of the order passed by the Court below has to be excluded for computing 15 days time.

10. But, in my considered opinion, the said submission of the learned Public Prosecutor cannot hold good, because as per Section

167(2) of Cr.P.C. as well as as per various decisions of the Hon'ble Supreme Court, the police custody cannot be granted under any circumstance beyond the first period of 15 days. In fact, the judgment delivered by the learned Single Judge of this Court in the case of G.Priyadarshini Vs. State, by the Assistant Commissioner of Police reported in 2014 (2) MWN (Cr.) 175, which was relied upon by the learned senior counsel for the respondents/accused, gives a fitting answer to this issue. The relevant portions in the said judgment are as follows_

"48.The learned Senior Counsel for A1 submitted that once the said outer limit of 15 days is over, no Court can grant Police Custody. It is a valuable safety, safeguard provided to the accused under Section 167(2), Cr.P.C. Going beyond the said 15 days will militate against the Constitutional guarantee contained in Article 21, Constitution of India.

49.But, the learned Counsel for the Revision Petitioner as well as the learned Public Prosecutor would submit that the Revision has been filed well before the expiry of first 15 days of remand, all these days, the revision is pending in this Court and thus the matter is subjudiced. By the act of Court, a party should not suffer. In such circumstances, expiry of 15 days' period for grant of Police Custody prescribed in Section 167(2), Cr.P.c., will not apply.

50.In reply, the learned Senior Counsel for A1 submitted that for any reason whatsoever, a Court cannot extend the period prescribed in Section 167(2), Cr.P.C. It is the look out of the Revision Petition to see that the matter has been taken up before the expiry of the first 15 days of remand. She should have taken necessary steps. She cannot blame the Court. She cannot ask the Court to break the law. There cannot be judicial legislation. Justice should be administered only as provided, prescribed in the statute.

51.In CBI, New Delhi Vs. Anupam J.Kulkarni, 1992 (3) SCC 141, the Hon'ble Supreme Court in clear cu terms declared the law relating to Section 167(2), Cr.P.C. specifically with reference to the period within which the Court can grant Police Remand, namely, before the expiry of the first 15 days of remand. Thereafter, with reference to the same offence, the learned Magistrate has no power to grant Police Custody. This will be the law applicable to all the Courts.

52. In *Budh Singh Vs. State of Punjab*, 2000 (9) SCC 266, Accused surrendered before the learned Magistrate on 20.01.1999 and on 2.1.2000, Police Custody of the accused was sought for. He was remanded. On 4.1.2000, the Investigation Officer asked for further Police Remand. The learned Magistrate rejected it. Because by that time, the first 15 days of remand period was over. The State filed Revision as against the refusal to grant Police Custody. It was dismissed on 17.01.2000 by the learned Sessions Judge, Ludhiana. However, a learned Judge of the Punjab & Haryana High Court set aside the Order of Dismissal passed by the learned Sessions Judge and directed the Magistrate to grant 7 days' Police Custody. This was challenged by the accused before the Hon'ble Supreme Court. The Hon'ble Apex Court set aside the High Court's Order as under;

"5. In the face of facts, as noticed above, the order of the learned Judicial Magistrate, dated 04.01.2000, in our opinion, did not require any interference. The mandate of Section 167, Criminal Procedure Code, 1973 postulates that there cannot be any detention in Police Custody, after the expiry of the first 15 days, so far as an Accused is concerned. That period of 15 days had in this case admittedly expired on 4.1.2000. The impugned Order of the High Court violates the statutory provisions contained in Section 167, Cr.P.C. Since it authorised Police remand for a period of seven days after the expiry of the first fifteen days period. In *C.B.I. Special Investigation Cell-I, New Delhi Vs. Anupam J. Kulkarni*, 1992(2) SCC 141, this Court considered the ambit and scope of Section 167 Cr.P.C. and held that there cannot be any detention in Police Custody after the expiry of the first 15 days even in a case where some more offences, either serious or otherwise committed by an Accused in the same transaction come to light at a later stage. The Bench, however clarified that the bar did not apply if the same arrested Accused was involved in some other or different case arising out of a different transaction, in which event the period of

remand needs to be considered in respect of each of such cases. The impugned Order of the High Court under the circumstances, cannot be sustained. The direction to grant Police remand for a period of seven days by the High Court is, accordingly, set aside. The Appeal, therefore, succeeds and is allowed to the extent indicated above."

53. In *Devender Kumar and another Vs. State of Haryana and others*, 2010 (6) SCC 753, the Accused was produced before the learned Judicial Magistrate, Palwal on 08.10.2008. The Application for Police Custody filed by the Assistant Sub-Inspector was rejected on 08.10.2008 as it was not filed by the S.I. of Police and the Accused was remanded to judicial custody till 22.10.2008. On 09.10.2008, Police Custody Petition filed by the Station House Officer, Hodal was dismissed on 10.10.2008 and the Accused was granted bail on the same day. The defacto complainant filed petition in the High Court of Punjab & Haryana for cancellation of the bail and also quash the Order dated 10.10.2008 whereunder the request of Police Remand has been rejected. On 19.3.2010, the High Court set aside the Order of the Magistrate and also granted Police Custody. The Accused aggrieved by the said Order, appealed to the Hon'ble Supreme Court. It was argued before the Hon'ble Supreme Court that the order of the High Court is against the provisions of Section 167(1), Cr.P.C. The Hon'ble Apex Court accepted the arguments and held as under:

"15. With regard to the second point which was urged by Mr. Luthra, the same was considered in depth and was settled in *Anupam J. Kulkarni case*, 1992(3) SCC 141, referred to hereinabove. What is clear is the fact that the Police Remand can only be made during the first period of remand after arrest and production before the Magistrate, but not after the expiry of the said period."

54. In *Inspector of Police, Town Police Station, Karaikkal Vs. R. Vaithyanathan Iyappan Govindaraj*, 2013 (3) MWN (Cr.) 473, it was held that Police Custody cannot be granted under any circumstances beyond the first remand period of 15 days.

55.It is incumbent upon the party approaching this Court by taking necessary steps for the disposal of the Revision before the expiry of the first 15 days period of remand. This has not been done in this case. On account of that the Court cannot overstep the mandate prescribed in Section 167 (2), Cr.P.C.

56.It has been contended by the learned Counsel for the petitioner that in the interest of investigation as and when required, custodial interrogation could be considered and for doing justice Section 167(2), Cr.P.c. cannot stand in the way.

57.In the presence of Article 21, Constitution of India guaranteeing personal freedom and deprivation of a person's personal liberty only by a procedure established by law, namely, Section 167(2), Cr.P.C. prescribing first 15 days' period this argument of the learned counsel for the Revision Petitioner cannot be accepted and it will also be an affront to Constitutional mandate, statutory prohibition and human right of the accused.

58.Now, in this case, A1 as surrendered before the learned XI Metropolitan Magistrate, Saidapet, Chennai on 28.04.2014. The Police Custody Petition was filed on the same day. It was dismissed by the learned Magistrate on 29.04.2014. Thereafter, Revision has been filed before this Court on 30.04.2014. The 15 days' initial period prescribed in Section 167(2), Cr.P.C., was already over. In the circumstances, question of granting Police Custody will not arise. In such view of the matter, consideration of the merit aspect as to whether Police Custody could be granted has become unnecessary."

In the said judgment, the learned Single Judge of this Court by relying upon various decisions of the Hon'ble Supreme Court has held that the Court cannot overstep the mandate prescribed in Section 167 (2) of Cr.P.C. In fact, the factual aspects of that case would show that though the revision petition was filed within the 15 days from the date of remand, at the time of hearing the revision petition, 15 days time from the date of remand had expired in that case. The learned Single Judge, by considering various decisions of the Hon'ble Supreme Court has held that since initial period of 15 days has

already lapsed, question of granting custody of the accused to the Police cannot be considered.

11. In the present case, the respondents/accused were arrested and remanded on 01.04.2015 and 15 days period expired on 15.04.2015. Even on the date of dismissal of the custody petition by the Court below ie., on 13.04.2015, 2 more days' time was available for the expiry of 15 days time from the date of remand; whereas on perusal of the record, I find that copy application itself was filed by the Prosecution only on 15.04.2015 and on the next day ie., on 16.04.2015 certified copy was furnished by the Court below to the prosecutor. Even thereafter, the revision petitioner took five days time to file the present revision. Therefore, in my considered opinion, the submission made by the learned Public Prosecutor that for the act of the Court, the right of the prosecution in seeking the custody of the accused should not be prejudiced, does not hold good in this case. Therefore, the decisions relied upon by the learned Public Prosecutor cannot be made applicable to the present case. Since the 15 days time from the date of remand has already lapsed, now at this juncture, the present revision petition cannot be entertained and the same is liable to be dismissed on this ground alone.

12. In view of the above, there is no need to deal with the other submissions made on either side on merits of the case.

In fine, the criminal revision petition is dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Special Judge,
Special Court under TNPID Act,
Chennai.

2. The Deputy Superintendent of Police,
EOW-II, Cuddalore,
OD at EOW-II, Headquarters,
Anna Nagar, Chennai-40.

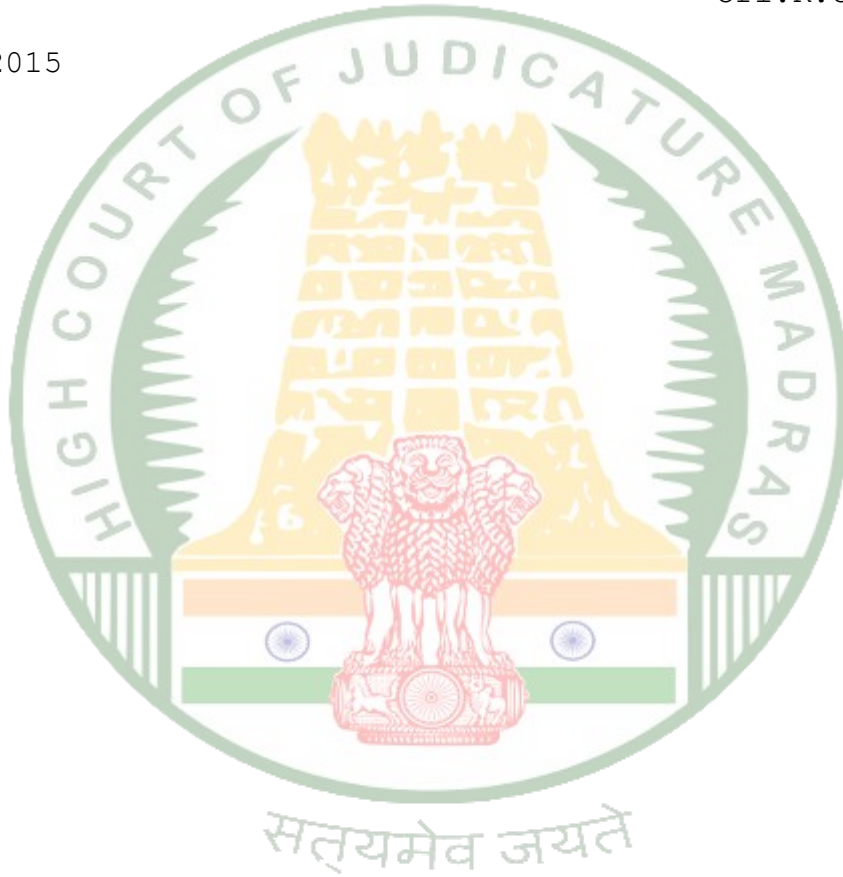
3.The Central Prison, Puzhal II,
Chennai.

1 cc to Mr. M/s.Nithyaesh Natraj,Advocate, SR.No.23166

1 cc The Public Prosecutor,
High Court, Madras.23217

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