

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24-08-2015

Coram

THE HON'BLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 887 of 2015

1.Selvakumar
2.Dhinesh
3.Maruthu
4.Anbu
5.Thirumalai
6.Sarathy
7.Bhoopalan
8.Azad
9.Mani
10.Jansi
11.Kanimozhi
12.Roopavathi
13.Vanishree
14.Nivedhita
15.Marimuthu

... Petitioners

Versus

State represented by
Inspector of Police
G-7 Police Station
Chetpet
Chennai.

... Respondent

Criminal Revision Case filed under Section 397 read with 401 of Cr.P.C. against the order dated 17.08.2015 in M.P.No. 787 of 2015 in G.F.I.R.No.1844 of 2015 in G7.Cr.No.1181 of 2015 on the file of the XIV Metropolitan Magistrate, Egmore, Chennai.

For Petitioners : Mr.N.R.Elango
Senior Counsel
for Ms.V.Porkodi

For Respondent : Mr.Shanmugha Velayutham
Public Prosecutor

ORDER

According to the petitioners, they are students studying in various colleges and they are members of a student organisation Revolutionary Student Youth Front. On 03.08.2015, the petitioners were involved in propagating the evils of alcohol to the public in front of Pachiappa's College. The students assembled before the TASMACH shop and raised slogans. Suddenly, a scuffle broke out. The respondent police has lodged FIR against the petitioners in Cr.No.1181 of 2015 for the offences under Sections 147, 148, 448, 323, 324, 353, 506 (ii) IPC r/w. Section 3 of TNPPDL Act. The petitioners were produced on 17.08.2015 before the XIV Metropolitan Magistrate, Egmore and they were ordered remand and were detained in the prison. The petitioners have filed M.P.No. 787 of 2015 in G.F.I.R.No.1844 of 2015 in G7.Cr.No.1181 of 2015 on the file of the XIV Metropolitan Magistrate, Egmore, Chennai, seeking to release them on own bond. The learned Magistrate, by order dated 17.08.2015, has extended the remand. Aggrieved against the same, this Criminal Revision Case is filed.

2. Mr.N.R.Elango, learned Senior Counsel appearing for the petitioners would submit that the extension of remand was passed by the learned Magistrate, without application of mind. He would further add that mere dismissal of the bail petition on 06.08.2015, cannot be a reason for extension of remand and for extension of remand, the learned Magistrate ought to have applied his mind and on being satisfied, assigned proper reasons for extension of remand. He would further add that infact, accepting the contention of students, the Government has dropped action against two of the students viz., S.Bhoopalan and A.Anbu and they were already released from judicial custody. He would further point out that some of the petitioners are students and their address and the College, in which, they are studying is also appended to this revision has not been taken into consideration by the Lower Court and even the remand report seeking for extension does not contain any specific reason and the copy of the report was also not given to the petitioners and therefore, such summary extension of remand is not correct. He would further point out that the Lower Court, while ordering extension of remand, ought to have applied its mind in a proper perspective and assigned reasons for such extension of remand, when that has not been done, the impugned order, though, it is not a final order, is an illegal order and therefore, he prayed for setting aside the extension of remand passed by the Lower Court.

3. Mr.Shanmugha Velayutham, learned Public Prosecutor appearing for the respondent by relying on the decision of the Hon'ble Apex Court reported in (2004) 5 Supreme Court Cases 729, State vs. N.M.T.Joy Immaculate, mainly contended that the remand order, even if it is ex facie illegal or wrong, it cannot affect the progress of

the trial or its decision in any manner and therefore, the very revision is not maintainable. Objecting to the very maintainability of the revision, the learned Public Prosecutor brought to the notice of this Court that a proper remand report was filed before the Lower Court and having satisfied only the impugned order has been passed by the Lower Court. He would further submit that the address as given by the students is found to be false as per the report of the V.A.O. and since, the offence is a grave one and there is involvement of more than 50 people, the prosecution needed some more time for further investigation and only on that basis, the extension of remand was sought for before the Lower Court and accordingly, extension of remand was rightly ordered. He would further contend that the revision is not maintainable and hence, he prayed for the dismissal of the revision.

4. I have heard the learned counsel appearing on either side and I have also perused the entire materials available on record. At the set set, I have to point out that as per the judgment of the Hon'ble Apex Court reported in (2004) 5 Supreme Court Cases 729, State vs. N.M.T.Joy Immaculate, one thing is crystal clear that the revision is not maintainable as against the remand order. It is pertinent to refer to the decision cited supra, wherein, the Hon'ble Apex Court in paragraph No.13 has held as follows:-

"13. Section 167 Cr.P.C. empowers a Judicial Magistrate to authorise the detention of an accused in the custody of police. Section 209 Cr.P.C. confers power upon a Magistrate to remand an accused to custody until the case has been committed to the Court of Session and also until the conclusion of the trial. Section 309 Cr.P.C. confers power upon a court to remand an accused to custody after taking cognisance of an offence or during commencement of trial when it finds it necessary to adjourn the enquiry or trial. The order of remand has no bearing on the proceedings of the trial itself nor can it have any effect on the ultimate decision of the case. If an order of remand is found to be illegal, it cannot result in acquittal of the accused or in termination of proceedings. A remand order cannot affect the progress of the trial or its decision in any manner. Therefore, applying the test laid down in Madhu Limaye vs. State of Maharashtra, (1977) 4 SCC 551, it cannot be categorised even as an "intermediate order". The order is, therefore, a pure and simple interlocutory order and in view of the bar created by sub-section (2) of Section 397 Cr.P.C., a revision against the said order is not maintainable. The High Court, therefore, erred in entertaining the revision against the order dated 6.11.2001 of the Metropolitan Magistrate granting police custody of the accused Joy Immaculate for one day.

Following the decision cited supra, since, the impugned order of remand extension is also pure and simple an interlocutory order and in view of the bar created by sub-section (2) of Section 397 Cr.P.C., a revision against the said order is not maintainable.

5. At the same time, this Court is inclined to make certain observations regarding extension of remand. While ordering extension of remand, it should not be a cryptic order, which practice is deprecated by this Court as well as the Honourable Supreme Court. The Court below need not write elaborate judgment meeting out all the relevant or irrelevant pleadings raised by the both sides, but the Court below is expected to adduce some reason for its logical conclusion after analysing the pleadings and other evidences let in by both sides. In this connection, it is relevant to refer to the decision of the Hon'ble Supreme Court reported in (Secretary and Curator, Victoria Memorial Hall vs. Howrah Ganatantrik Nagrik Samity and others) (2010) 3 SCC 732 wherein in para No. 41, it was held as follows:-

"41. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, it becomes lifeless. Reasons substitute subjectivity by objectivity. Absence of reasons renders the order indefensible/ unsustainable particularly when the order is subject to further challenge before a higher forum (vide Raj Kishore Jha vs. State of Bihar, SCC p.527, para 19; Vishnu Dev Sharma vs. State of UP; SAIL v. STO, State of Uttanchal vs. Sunil Kumar Singh Negi, U.P. SRTC vs. Jagdish Prasad Gupta, Ram Phal vs. State of Haryana, Mohd Yusuf vs. Faij Mohammad and State of H.P. vs. Sada Ram)

Thus, it is evident that the recording of reasons is a principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected may know, as to why his application has been rejected."

6. It is evident from the decision of the Hon'ble Supreme Court that every judicial order must be supported by reasons, recorded in writing, because such reasons recorded in writing should ensure transparency and fairness in decision making. In this background, when the impugned order is looked into, of course, the learned Magistrate has observed as follows:-

"Accused present and argued that they are student and their remand should not be extended and they have to be released on own bond. On enquiry it reveals that the

bail petition is already dismissed. 06.08.2015.

Already bail petition dismissed. Petitioner has also not take any step to file for appeal etc., Hence, for Investigation purpose and the reason stated above the requesting is not accepted".

Thereafter, automatically, the extension of remand was ordered. No doubt, the learned Magistrate has given a reason and such a reasoning given by the Lower Court for arriving at the subjective satisfaction need not be an elaborate one, but, every judicial order must be supported by reasons recorded in writing. Fortunately, in this case, the reason has been given, but, it was given by the learned Magistrate in a different and simple form.

7. For the foregoing discussions held, this Criminal Revision Case is not entertained on the ground that the revision is not maintainable and hence, this Criminal Revision Case is dismissed as not maintainable. It is made clear that the prosecution should file proper papers before the Court in respect of the investigation. It is alleged that some of the petitioners, who are arrayed as accused, are students and their residential address and the College, in which, they are studying is also appended to this revision and a copy of which is given to Public Prosecutor. The respondent police is directed to verify the address of the petitioners and if they are genuine students, further course has to be taken against them by taking into consideration of the fact that they are students and for others, the matter is left open to be decided on merits and in accordance with law.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

paa

To

1. The Inspector of Police
G-7 Police Station
Chetpet
Chennai.
2. The XIV Metropolitan Magistrate,
Egmore, Chennai.

+2cc's to M/s.V.Porkodi, Advocate, S.R.No.44673

+1cc to the Public Prosecutor, S.R.No.44763

Cr1.R.C. No. 887 of 2015

TS (CO)

CA(22/09/2015)