

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.4.2015

Date of verdict : 06.05.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Crl.O.P.Nos.1977 and 6974 of 2015

Crl.O.P.No.1977 of 2015:

Ms.Kokila ... Petitioner / de facto complainant

Vs

1.Ms.Kalpana ... 1st respondent / 1st accused

2.The Inspector of Police,
Korattur Police Station,
Thiruvallur District. ... 2nd respondent / complainant

Crl.O.P.No.6974 of 2015:

Shree Kalpana Petitioner / accused

vs.

The State rep. by
Inspector of Police,
Korattur Police Station,
Chennai.

... Respondent / complainant.

The petition in Crl.O.P.No.1977 of 2015 has been filed by the de facto complainant to cancel the bail granted to the first accused in Crl.M.P.No.389 of 2015 by the learned Judicial Magistrate, Ambathur, Chennai and thereby set aside the order passed by him.

The petition in Crl.O.P.No.6974 of 2015 to modify the

condition imposed in the bail order dated 19.1.2015 in Crl.M.P.No.389 of 2015 on the file of the learned Judicial Magistrate, Ambattur, Thiruvallur District and permit her to furnish sureties or pay cash sureties to the satisfaction of some other learned Magistrate, as fixed by this Court.

For accused : Mr.N.Vanaraj (Crl.O.P.No.6974/2015)

For de facto

complainant :Mr.R.C.Paul Kanagaraj
(Crl.O.P.No.1977/2015)

For respondent : Mr.M.Mohamed Riyaz,
Govt. Advocate (Crl.Side)

COMMON ORDER

The petition in Crl.O.P.No.1977 of 2015 has been filed by the de facto complainant to cancel the bail granted to the first accused in Crl.M.P.No.389 of 2015 by the learned Judicial Magistrate, Ambathur, Chennai, whereas, the first accused in Crl.M.P.No.389 of 2015 has filed Crl.O.P.No.6974 of 2015 to modify the condition imposed in the bail order dated 19.1.2015 on the file of the learned Judicial Magistrate, Ambattur, Thiruvallur District and permit her to furnish sureties or pay cash sureties to the satisfaction of some other learned Magistrate, as fixed by this Court instead of learned Judicial Magistrate, Ambattur, Chennai.

2. Since the decision that is going to be taken in one petition will have a bearing on the another petition, both the petitions are disposed of by this common order.

3. For the sake of convenience, the parties will be referred to as de facto complainant and the petitioner / accused.

4. The de facto complainant-Kokila is the Junior Advocate of the deceased-Kamaraj. The deceased was a practising Advocate. The accused-Kalpana is the client of the deceased.

5. It is the case of the prosecution that the deceased was a practising Advocate. On 28.8.2014, the petitioner / accused called the deceased to her house regarding the settlement of money which the accused owes to the deceased. When the deceased went to the house of the accused, dispute arose between the accused and the deceased. Pursuant to the same, the accused along with two others strangulated the deceased and caused his death. Initially, the First Information Report was registered under Section 174 Cr.P.C. and subsequently, the

same was altered into one under Section 302 I.P.C. The accused surrendered before the learned Metropolitan Magistrate, Egmore, Chennai and she was remanded to judicial custody on 30.8.2014. Thereafter, the accused has filed a bail petition in CrI.M.P.No.389 of 2014 before the learned Judicial Magistrate, Ambattur, Chennai. The investigating Officer, on completion of investigation, submitted the final report before the learned Judicial Magistrate, Ambattur, Chennai on 24.11.2014. But, the said final report was returned by the learned Magistrate on 26.11.2014 with a direction to the investigating officer to resubmit the final report along with the chemical report. Thereafter, after obtaining chemical report, final report was resubmitted only on 3.3.2015 and the same was accepted and it was taken on file as P.R.C.No.1 of 2015. In the meantime, on 19.1.2015, the learned Judicial Magistrate, Ambattur, Chennai, has granted bail to the accused under Section 167(2) Cr.P.C. on the ground that the final report was not filed within the statutory period of 90 days. The order passed by the learned Magistrate is as follows:-

" This petition filed under Section 167(2) Cr.P.C.

Heard. The learned counsel for the petitioner / accused submit that the charge sheet was returned on 26.11.2014 was not resubmitted, and the accused is in judicial custody from 30.8.2014 onwards, hence she is entitled for statutory bail as per the judgment reported in 2004(2) LS (CrI) page 545, and submits accused is ready to abide for any conditions. The concern staff of this Court has put up note stating that charge sheet not filed.

The petitioner / accused is in judicial custody from 30.7.2014 onwards and the charge sheet which was returned on 26.11.2014 not resubmitted till this date after complying return. Therefore as per the judgment in Nagarajan v. Suresh & 12 others and Suresh & 12 others v. State of Tamil Nadu reported in 2004(2) LW (CrI) page 545, in paragraph No.17 and particularly in para No.17(9) in this Cr.No. So far complete charge sheet not filed, hence this Court as per the above judgment of the Hon'ble High Court, Madras, inclined to enlarge the petitioner / accused on bail on the following conditions:-

1. The petitioner / accused should execute a own bond Rs.5,000/- with two sureties for like sum by each to the satisfaction of this Court.

2. The petitioner / accused should appear before SHO at 10.30 a.m., and 5.00 p.m. until further orders. "

6. Now, it is the contention of the petitioner / accused that though bail was granted on 19.1.2015, the accused was not in a position to furnish sureties before the learned Judicial Magistrate, Ambattur, since the sureties were threatened and abused and assaulted by some of the local Advocates, since the deceased being an Advocate in this case. In fact, on 7.3.2015, when the sureties went to the Court to furnish surety for the fourth time, some persons claiming themselves as local Advocates came into the Court Hall and abused them and threatened them and created ruck-us. Therefore, the sureties were not able to furnish the surety. Hence, the accused was not able to come out on bail, though bail was granted on 19.1.2015. The accused is inside the prison for more than eight months. Hence, she has filed the petition in CrI.O.P.No.6974 of 2015 to modify the conditions imposed in the bail order dated 19.1.2015 and permit her to furnish sureties to the satisfaction of some other learned Magistrate, since the sureties are not in a position to go to the Judicial Magistrate Court, Ambattur.

7. The de facto complainant has filed the petition in CrI.O.P.No.1977 of 2015 to cancel the bail granted by the learned Judicial Magistrate, Ambattur, Chennai in CrI.M.P.No.389 of 2015 dated 19.1.2015 stating that the learned Magistrate has erred in granting statutory bail under Section 167(2) Cr.P.C. It is also the contention of the de facto complainant that the final report was filed by the investigating officer on 24.11.2014 i.e., on the 84th day from the date of remand of the accused. But, the said final report was returned by the learned Magistrate only for the purpose of resubmitting the same along with chemical report. But for the chemical report, in all other aspects, the entire investigation was completed and final report has been filed within the statutory period of 90 days i.e., on 24.11.2014. Hence, the bail granted by the learned Magistrate under Section 167(2) Cr.P.C. is liable to be cancelled.

8. I have heard the submissions made by the learned counsel appearing for the de facto complainant, learned counsel appearing for the accused and the learned Government Advocate (CrI. Side) and perused the entire materials available on record.

9. According to the prosecution case, the accused along with other accused has murdered the deceased on 28.8.2014 by strangulating him. But, according to the accused, she has been falsely implicated

in this case. In fact, the deceased fainted from the fourth floor of her house and sustained injuries on his face and she only took the deceased along with her servant to the hospital. However, as a law abiding citizen, she surrendered before the Metropolitan Magistrate, Egmore, Chennai and she was remanded to judicial custody on 30.8.2014 and for the past eight months she is inside the prison. The investigating officer, on completion of investigation, has filed the final report on 24.11.2014. But, the same was returned by the learned Judicial Magistrate, Ambattur, Chennai on 26.11.2014 for want of chemical report. Though the final report was returned on 26.11.2014, the same was resubmitted along with chemical report only on 3.3.2015 i.e., beyond 90 days period from the date of remand. In the meantime, since the statutory period of 90 days was over, the learned Magistrate has granted bail to the accused under Section 167 (2) Cr.P.C. on 19.1.2015. Though bail was granted to the accused, she was not in a position to furnish sureties before the learned Magistrate since some of the local Advocates threatened the sureties when they went to the Court to furnish surety, since the deceased being an Advocate. Hence, she has filed the petition in CrI.O.P.No.6974 of 2015 to modify the conditions by permitting her to furnish her sureties before some other Magistrate Court as fixed by this Court, whereas according to the de facto complainant, the reason assigned by the learned Magistrate for granting bail to the accused under Section 167(2) Cr.P.C. itself is not legally sustainable. According to the learned counsel appearing for the de facto complainant, originally, the final report was filed on 24.11.2014 i.e., on the 84th day from the date of remand. But, the final report was returned by the learned Magistrate to resubmit the same along with chemical report. Since the final report was filed on 24.11.2014 itself, i.e., on the 84th day, the subsequent returning of the final report for want of chemical report cannot be taken into consideration to compute the statutory period. Therefore, the order of bail granted by the learned Magistrate under Section 167(2) Cr.P.C. is not legally sustainable.

10. Per contra, learned counsel appearing for the accused submitted that on the date of grant of bail, no final report is pending before the learned Magistrate because the final report was already returned to comply with certain defects. Therefore, the defective final report filed by the investigating officer on 24.11.2014 would not amount to filing of final report. The final report was resubmitted along with chemical report only on 3.3.2015. In the meantime, the statutory period of 90 days had expired. Hence, the learned Magistrate has granted bail on 19.1.2015. Therefore, no infirmity could be found in the order passed by the learned Magistrate. In support of his contention, learned counsel appearing

for the accused has relied upon the judgment reported in 2004-2-L.W. (Crl.) 545 - Nagarajan, etc. & others v. State of Tamil Nadu, wherein it has been held that filing of a defective charge sheet and returning the same to rectify the defect, amounts to non-filing of charge sheet and will not defeat the right of the accused to be released on bail after expiry of 90 days. For the same proposition, learned counsel appearing for the accused has also relied upon another judgment reported in 2006 (2) MNW (Cr.) 414 - K.S.J.Kumar v. State, represented by Inspector of Police, Eppothumvandran Police Station, Tuticorin District.

11. On the other hand, learned Government Advocate (Crl.Side) submitted that the final report filed by the investigating officer on 24.11.2014 was returned only for the purpose of obtaining chemical report and therefore, it cannot be said that it is a defective final report. Hence, granting bail under Section 167(2) Cr.P.C. does not arise in this case. In support of his contention, learned Government Advocate (Crl.Side) has relied upon the decisions reported in (2006) 6 Supreme Court Cases 277 - Bhupinder Singh and others v. Jarnail Singh and another and CDJ 2015 SC 040 - Narendra Kumar Amin v. CBI & others.

12. In view of the above submissions made by the learned counsel appearing for the accused and the learned counsel appearing for the de facto complainant and the learned Government Advocate (Crl. Side), the question that falls for consideration is, whether the bail granted by the learned Judicial Magistrate, Ambattur, Chennai under Section 167(2) Cr.P.C. is legally sustainable or not ?

13. On a perusal of the materials available on record, I find that on completion of investigation, the investigating officer has filed final report on 24.11.2014 i.e., on the 84th day from the date of remand. But, the said final report was returned by the learned Magistrate with a direction to the investigating officer to resubmit the same along with chemical report. Though the final report was returned on 26.11.2014, it was resubmitted only on 3.3.2015. In the meantime, the statutory period of 90 days was over. Hence, the learned Magistrate granted bail to the accused solely on the ground available under Section 167(2) Cr.P.C. But, in my considered opinion, as contended by the learned Government Advocate (Crl. Side), only if the final report was defective in nature and if it is returned to the investigating officer with a direction to resubmit the same after complying with the defects, then it can be said that it would amount to non-filing of final report. But, in the instant case, the final report was filed in a complete form, but, without obtaining the chemical report. So far as the chemical report is

concerned, it is only an additional piece of evidence which can be produced even at the later point of time and the learned Magistrate can take cognizance of the final report even without the chemical report. Therefore, the final report filed on 24.11.2014 cannot be said to be a defective final report. When that being the position, the returning of the final report by the learned Magistrate with a direction to the investigating officer to resubmit the same along with the chemical report has no significance in computing the statutory period of 90 days from the date of remand. In this regard, a reference could be placed in the judgment reported in (2006) 6 Supreme Court Cases 277 - Bhupinder Singh and others v. Jarnail Singh and another, wherein the Hon'ble Supreme Court has held as follows:-

" 6. In reply to this stand about the defective challan, the learned counsel for the respondents submitted that the challan was in fact filed, some documents were filed later on, and that did not make the challan, filed within 60 days, incomplete.

15. In Tara Singh Vs. 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 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 that Magistrate took proper cognizance of the matter."

16. Section 173 Cr.P.C. deals with the report of police officer on completion of investigation. The said provision so far as relevant reads as follows:

173. Report of police officer on completion of investigation.

(1) Every investigation under this Chapter shall be completed without unnecessary delay.

2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating-

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under Section 170.

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under Section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which Section 170 applies, the police officer shall forward to the Magistrate along with the report-

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under Section 161 of all the persons whom the prosecution proposes to examine as its witness.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate exclude that part from the copies to be granted to the accused and stating his reasons for making such

request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5)."

18. In *Satya Narain Musadi Vs. State of Bihar* dealing with Section 11 of the Essential Commodities Act, 1955 held as follows: (SCC pp.156-59, paras 7 & 10-11)

" 7. Section 11 of the Act precludes a court from taking cognizance of the offence punishable under the Act except upon a report in writing of the facts constituting such offence made by a person who is a public servant as defined in Section 21 of the Penal Code. The question is, if such police officer investigating into an offence which the Act has declared as cognizable submits a report in writing under Section 173(2) disclosing an offence under the Act and requesting for proceeding further into the matter, would it satisfy the requirements of Section 11 for taking cognizance of the offence so disclosed. Undoubtedly the police officer submitting the report would be a public servant within the meaning of Section 21 IPC and his report has to be in writing as required by Section 173(2). It must disclose an offence of which cognizance can be taken by the Magistrate

10. Section 173(2) thus provides what the report in the prescribed form should contain. In this case, the report did contain the name of the accused and the nature of the offence. In fact, Section 170 provides that if upon an investigation under Chapter XII it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground to proceed against the accused such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report, etc. If the accused is on bail that fact will be notified in the final report submitted under Section 173(2). Therefore, the statutory requirement of the report under Section 173(2) would be

complied with if the various details therein prescribed are included in the report. This report is an intimation to the Magistrate that upon investigation into a cognizable offence the investigating officer has been able to procure sufficient evidence for the court to inquire into the offence and the necessary information is being sent to the court. In fact, the report under Section 173(2) purports to be an opinion of the investigating officer that as far as he is concerned he has been able to procure sufficient evidence for the trial of the accused by the court and when he states in the report not only the names of the accused, but names of the witnesses, the nature of the offence and a request that the case be tried, there is compliance with Section 173(2). The report as envisaged by Section 173(2) has to be accompanied as required by sub-section (5) by all the documents and statements of the witnesses therein mentioned. One cannot divorce the details which the report must contain as required by sub-section (5) from its accompaniments which are required to be submitted under sub-section (5). The whole of it is submitted as a report to the court. But even if a narrow construction is adopted that the police report can only be what is prescribed in Section 173(2) there would be sufficient compliance if what is required to be mentioned by the statute has been set down in the report. To say that all the details of the offence must be set out in the report under Section 173(2) submitted by the police officer would be expecting him to do something more than what Parliament has expected him to set out therein. If the report with sufficient particularity and clarity specifies the contravention of the law which is the alleged offence, it would be sufficient compliance with Section 11. The details which would be necessary to be proved to bring home the guilt to the accused would emerge at a later stage, when after notice to the accused a charge is framed against him and further in the course of the trial. They would all be matters of evidence and Section 11 does not require the report to be or to contain the evidence in support of the charge, its function being merely to afford a basis for enabling the Magistrate to take cognizance of the case (see *Bhagwati Saran v. State of U.P.*) ..

11. In this connection, Mr.Nag referred to *Rachpal Singh v. R.* - AIR 1949 Oudh 66, wherein after observing

that the failure to mention facts constituting the contravention of a rule means the absence in the report of the very first of the numerous steps in the course of the trial of something which is vital and goes to the very root of the case, a further contention on behalf of the State that the court may at that stage look into the first information report filed in the case was negatived. This very narrow view of the matter does not commend to us. In fact, on the introduction of Section 173 in its form in the Code of Criminal Procedure, 1973, the police officer investigating into a cognizable offence is under a statutory obligation to submit along with his report under Section 173(2) documents purporting to furnish evidence collected in the course of the investigation and the statements of the witnesses and the court before proceeding into the case is under a duty to inquire whether the accused has been furnished with copies of all relevant documents received under Section 173 by the Court, and the entire complexion of what should normally be styled as report submitted under Section 173(2) of the Code has undergone a change. Court can look at the report in prescribed form along with its accompaniments for taking cognizance of the offence".

19. Stand of the learned counsel for the appellants was that the mere filing of the defective challan was really of no consequence. This aspect has been dealt with in Tara Singh and Satya Narain cases in detail. Since all the relevant documents were before the court before the expiry of 90 days' period, grievance of the appellant is sans merit."

Keeping the dictum laid down in the above judgment and on a perusal of the materials, I find that in this case, all the necessary particulars as required under Section 173(2) of Cr.P.C. were furnished by the investigating officer on the date of filing of the final report on 24.11.2014, which would suffice to take cognizance by the learned Magistrate. Therefore, return of the final report for want of chemical report would not amount to non-filing of final report on 24.11.2014, i.e., the date on which the final report was filed without chemical report. Only if the final report was filed without the necessary particulars as required under Section 173(2) and (5) Cr.P.C., it can be said that it would not amount to filing of final report at all. In the instant case, even without the chemical report, the learned Magistrate can take cognizance of the final report. Therefore, the question of granting bail under Section 167

(2) Cr.P.C. on the ground that the final report was not filed within the statutory period of 90 days does not arise and the bail granted by the learned Magistrate on that ground is not legally sustainable. Therefore, I am of the opinion, the order of bail granted to the accused in Crl.M.P.No.389 of 2015 is liable to be cancelled.

14. In fine, the order of bail granted by the learned Judicial Magistrate, Ambattur, Chennai in Crl.M.P.No.389 of 2015 dated 19.1.2015 is cancelled and the petition in Crl.O.P.No.1977 of 2015 is allowed. Consequently, the petition for modification filed by the accused in Crl.O.P.No.6974 of 2015 is dismissed. However, the accused is at liberty to file fresh bail petition.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sbi

to

1.The Judicial Magistrate, Ambattur, Thiruvallur District.

2.The Inspector of Police, Korattur Police Station,
Thiruvallur District.

3.The Chief Judicial Magistrate, Tiruvallur.

1 cc to Mr.N.Vanaraj ,Advocate, SR.No.25052

Crl.O.P.Nos. 1977
and 6974 of 2015

JSV(CO)
PMK.14.5.2015

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