

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No. 846 of 2015**

Vijay Mongare S/o Diwali Mongare Aged About 37 Years R/o Hemu Nagar Bandhwapara, Old Power House, P.S. Torva, Civil & Revenue Distt. Bilaspur Chhattisgarh

---- **Petitioner**

Versus

State Of Chhattisgarh Through The District Magistrate Bilaspur, Distt. Bilaspur Chhattisgarh

---- **Respondent**

For Petitioner:

Mr. Sunil Sahu, Advocate

For State:

Mr. Satish Gupta, G.A.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

08.01.2016

1. The present Petition under Section 482 of Criminal Procedure Code has been filed challenging the order dated 08.09.2015 passed by the Fifth Additional Session Judge, Bilaspur in Criminal Revision No. 170/2015. By the said impugned order the Session Judge has rejected the Revision Petition preferred by the Petitioner challenging the order dated 19.08.2015 passed by the JMFC Bilaspur in Criminal Case No. 8327/2015 by which the application preferred by the petitioner under Section 167(2) of Cr.P.C. was dismissed.
2. The facts in the present case are that the petitioner is an accused in a case under Sections 302 and 201/34 of IPC and 25/27 of Arms Act. Originally when the charge sheet was filed on 26.12.2010, there were four accused persons of which three were arrested and the present petitioner was absconding all along. Therefore the charge sheet was filed showing the Applicant to be an absconder. Later on, permanent warrant of arrest was also issued by the trial Court on 22.03.2011

against the petitioner. Ultimately, the petitioner could be arrested after about five years on 20.05.2015 and on the same day he was presented before the trial Court which later on directed the prosecution to file a supplementary charge sheet vide order dated 20.07.2015.

3. On 19.08.2015 the petitioner moved an application under Section 167(2) of Cr.P.C. for grant of bail since the charge sheet could not be filed within 90 days from the date of arrest i.e. 20.05.2015.
4. The trial Court vide order dated 19.08.2015 rejecting the application under Section 167(2) held that since the trial Court had granted permission to the prosecution to file supplementary charge sheet on 20.07.2015, the period of 90 days for filing the charge sheet would start from 20.07.2015 and therefore the application filed by the petitioner on 19.08.2015 is even before completion of 90 days from 20.07.2015 and therefore the same is not maintainable.
5. This order dated 19.08.2015 was put to challenge in a revision petition before the fifth Additional Sessions Judge who also confirming the order of the JMFC rejected the revision petition vide impugned order dated 08.09.2015.
6. It is this order 08.09.2015 which is under challenge in the present Cr.M.P. under Section 482 of Cr.P.C.
7. According to the counsel for the petitioner, the finding of the two Courts below is totally contrary to the statutory provision which states that if the charge sheet is not filed within 90 days from the date of arrest of the accused person, he is entitled for the benefit under Section 167 (2) of Cr.P.C. According to the counsel for the petitioner, the statute does not in any of the provisions mentions that the period of 90 days would start from the date of the order of the trial Court to file supplementary charge sheet. Thus, prayed for setting aside of the two orders passed by the Courts below and granting the benefit under

Section 167 (2) of Cr.P.C. to the present petitioner.

8. State counsel however opposing the petition submitted that in the instant case the admitted position is that the petitioner was shown to be an absconder while the charge sheet at the first instance was filed on 26.12.2010, therefore, in the given facts and circumstances of the case, only because the present petitioner had been arrested and the supplementary charge sheet was not filed within 90 days from 20.05.2015 would not entitle the Petitioner for the benefit under Section 167(2) Cr.P.C. He further submitted that the finding of the two Courts below does not suffer from any illegality or infirmity calling for any judicial interference invoking the extraordinary powers conferred upon this Court under Section 482 of Cr.P.C.
9. Considering the rival contentions put forth by the counsel appearing on either side and on perusal of the record what is an admitted position is that against all the accused persons charge sheet was filed by the Police at the first instance on 26.12.2010 showing the petitioner to be an absconder. The petitioner could be arrested only on 20.05.2015 and after his arrest to complete the formalities, the prosecution sought for filing of the supplementary charge sheet for which permission was granted on 20.07.2015. Subsequently the supplementary charge sheet was also filed within 90 days from 20.07.2015. Therefore now the petitioner in the present case would not be entitled for the benefit under Section 167 (2) of Cr.P.C. In fact, it is a case where the charge sheet has been filed by the prosecution and it is not a case where there is no charge sheet at all filed by the prosecution. The only material change in the facts is that when the original charge sheet was filed, the applicant was shown to be an absconder and now after his arrest a supplementary charge sheet to show the subsequent developments was required to be filed. Hence for all the above reasons the Petitioner would not be entitled for the benefit under Section 167 (2) of Cr.P.C.

10. In the given facts and circumstance of the case, this Court does not find any infirmity or illegality committed by the Courts below while rejecting the application under Section 167(2) of Cr.P.C by the JMFC and the criminal Revision by the fifth Additional Sessions Judge affirming the order of the JMFC.
11. The present Cr.M.P. is accordingly being devoid of merits is dismissed.

Sd/-
(P. Sam Koshy)
JUDGE

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