

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 743 of 2016**

- Ravindranath Singh S/o Late Jagannath Singh Aged About 52 Years
R/o Utter Ring Road Bouripara, Police Station Sadar Ambikapur,
District Surguja Chhattisgarh

---- Applicant**Versus**

- State Of Chhattisgarh Through - Inspector Anticorruption Bureau
Raipur, District - Raipur Chhattisgarh

---- Non-applicant

For Applicant

Mr. T.K. Jha, Advocate

For Non-applicant/State

Mr. Ashish Shukla, Government Advocate

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****13.12.2016**

1. The present Revision Petition has been preferred against the judgment dated 27.07.2016 passed by the Special Judge (PC Act), Ambikapur, District -Surguja in B.A. No. 659/2016.
2. Vide the said judgment application under Section 167(2) of the Cr.P.C. was rejected by the Court below taking into consideration the law laid down by the Supreme Court in the case of **Pragyna Singh Thakur vs. State of Maharashtra** [2011 (10 SCC 445)].
3. A brief fact of the case is that the present Applicant was in custody in Crime No. 09/2015 for the offence under Sections 13(1)(e) and 13(2) of the P.C. Act and 109, 120B of the IPC. Subsequently, the Applicant was implicated in another case by the Economic Offence

Wing of Anti Corruption Bureau at Ambikapur in Crime No. 13/2015 for the offence punishable under Sections 3(1)(e) and 13(2) of the P.C. Act and 109, 120B of the IPC. In this case he was formally arrested on 20.05.2016. However, in the instant case since his arrest he has never been produced before the Magistrate at all and remand proceeding has also not been drawn against the present Applicant. Subsequently, the charge-sheet also was not filed within the stipulated period of 60 days as per the provisions of Section 167 of the Cr.P.C. before the competent court of law. The Applicant therefore moved an application under Section 167(2) of the Cr.P.C. on 22.07.2016. Thereafter, charge-sheet was filed on 27.07.2016 which is beyond the period of 60 days from the date of arrest. However, the Court below vide the impugned order dated 27.07.2016 rejected the application in the light of law laid down by the Hon'ble Supreme Court in case of Pragyna Singh Thakur (Supra) on the ground that since the application which was filed under Section 167(2) of the Cr.P.C. was not decided by the time of filing of charge-sheet, as it was duly permissible as per the law laid down in the case of Pragyna Singh Thakur (Supra).

4. Learned Counsel for the Applicant at this juncture submits that the said position of law enunciated by the Court below is not proper as the said judgment of Pragyna Singh Thakur (Supra) has subsequently been held to be not a good law based on the decision of the Supreme Court in the case of **Sayed Mohd. Ahmad Kazmi v. State (Government of NCT of Delhi) & Others** [2012 (12) SCC 1] in a recent decision of the Supreme Court in the case of **Union of**

India through C.B.I. v. Nirala Yadav [AIR 2014 SC 3036].

5. Learned Counsel for the Applicant further submits that it is a case where the fundamental right of the Applicant himself is violated by the Respondent in as much as firstly he was formally arrested on 20.05.2016 and the mandatory provision of producing him before the Magistrate was not complied with, and further the remand proceedings were also not drawn by the Respondent therefore for all practical purpose the Applicant deserves to be released on bail invoking provisions of Section 167 (2) of the Cr.P.C.
6. Learned State Counsel however opposing the application submits that there is no illegality or infirmity on part of the Court below in as much as the order is a reasoned order and also is based on the decision of the Supreme Court in case of Pragyna Singh Thakur (Supra).
7. Having considered the rival contention put forth by the Counsel for the parties and perusal of the record what is relevant at this juncture to take note of is the fact that the Judgment of the Supreme Court in case of **Manoj v. State of M.P.** [1993 (3) SCC 715] in the some what similar circumstances the preposition of law under Section 167(2) of the Cr.P.C. has been dealt with by the Supreme Court in Paragraph 13 and 15 which for ready reference is reproduced as under :-

“13. When the State of Madhya Pradesh, whose police made the arrest of the appellant in connection with the M.P. case on 7-8-1998, admitted that after the arrest he was not produced before the nearest Magistrate within 24 hours, its

inevitable corollary is that detention made as a sequel to the arrest would become unlawful beyond the said period of 24 hours.

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15. We therefore make it clear that as soon as the appellant executes the bond to the satisfaction of the Special, Magistrate , Kota, in pursuance of the order of the High Court of Rajasthan dated 16.10.1998 he shall be released forthwith unless his detention is lawfully required in any other case. We make it clear that nothing stated in this judgment shall prejudice the powers of the police to arrest the appellant in accordance with law, in connection with any case.”

8. Based upon the aforesaid judicial pronouncement if we look in to the order passed by the Hon'ble Supreme Court in a recent decision in the case of **Union of India through C.B.I. v. Nirala Yadav** [AIR 2014 SC 3036] the Supreme Court has authoritatively held the preposition of law in paragraph 41 which for ready reference is as below:

“41In the instant case, the day the accused filed the application for benefit of the default provision as engrafted under proviso to sub-section (2) of the Section 167 Cr.P.C. the Court required the accused to file a rejoinder affidavit by the time the initial period provided under the Statute had expired. There was no question of any contest as if the application for extension had been filed prior to the expiry of time. The adjournment by the learned Magistrate was misconceived.....A Court cannot act to extinguish the right of an accused if

the law so confers on him. Law has to prevail. The prosecution cannot avail such subterfuges to frustrate or destroy the legal right of the accused. Such an act is not permissible. If we permit ourselves to say so, the prosecution exhibited sheer negligence in not filing the application within the time which it was entitled to do so in law but made all adroit attempts to redeem the cause by its conduct.”

9. The judgment of the Supreme Court in case of Union of India through C.B.I. (Supra) also deals with the situation in case application under Section 167(2) has been filed before the charge-sheet is filed before the concerned Court below. Hon'ble Supreme Court has very authoritatively held that a Court cannot act to extinguish the right of an accused if the law so confers on him. Law has to prevail. The prosecution cannot avail such subterfuges to frustrate or destroy the legal right of the accused.

10. Considering the aforesaid two decisions of the Supreme Court and taking into consideration the factual matrix of the present case where though he was formally arrested on 20.05.2016, he was never produced before the Magistrate or for that matter no remand proceedings were initiated, this Court is of the opinion that the present is a fit case where the Applicant is entitled for benefit of provisions under Section 167(2) of the Cr.P.C. and the present Revision Petition deserves to be allowed.

11. Accordingly, the Criminal Revision stands allowed.

12. It is directed that the applicant shall be released on bail on

furnishing a personal bond in the sum of Rs.25,000/- with two sureties in the like sum to the satisfaction of the concerned Court for his appearance as and when directed.

Sd/-

(P. Sam Koshy)
JUDGE

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