

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2016

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Crl.R.C.Nos.1222 of 2015 and 19 of 2016 and M.P.1 of 2015 and
Crl Mp 121 of 2016

Crl.R.C.No.1222 of 2015

1.Ganapathi
S/o.Palanisamy

2.Selvaraj
S/o.Aaran

3.Kannan
S/o.Sankaran

... Petitioners/Accused
vs.

The Deputy Superintendent of Police,
Valparai,
Coimbatore District.
Crime No.145 of 2014

... Respondent/Complainant

Criminal Revision filed under section 397 & 401 of the Code
of Criminal Procedure, against the order of learned Principal
District and Sessions Judge, Coimbatore, passed in
Cr.M.P.No.2579 of 2015 on 09.09.2015 and set aside the same.

Crl.R.C.No.19 of 2016

1.Ganapathi
S/o.Palanisamy

2.Selvaraj
S/o.Aaran

... Petitioners/Accused
vs.

The Deputy Superintendent of Police,
Valparai Sub Division.
Aliyar Police Station
Crime No.145 of 2014

... Respondent/Complainant

Criminal Revision filed under section 397 & 401 of the Code of Criminal Procedure, against the order of learned Principal District and Sessions Judge, Coimbatore, passed in Cr.M.P.No.2629 of 2015 on 29.09.2015 and set aside the same.

For Petitioners: Mr.R.Sankarasubbu
For Respondent : Mr.S.Shanmugavelayutham
Public Prosecutor

C O M M O N O R D E R

Crl.R.C.No.1222 of 2015 has been moved towards setting aside of the order of learned Principal District and Sessions Judge, Coimbatore, passed in Crl.M.P.No.2579 of 2015 on 09.09.2015 extending the period of detention of the accused in the case for a further period of 90 days from 10.09.2015. Crl.R.C.No.19 of 2016 has been moved challenging the denial of relief u/s.167(2) Cr.P.C.

2. A case in Crime No.145 of 2014 on the file of Aliyar Police Station was registered on information that a person had gone missing. Thereafter, the same was altered to one u/s.13(2), 18-B, 39 of Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as "Act"). Petitioners and one another were arrested on 12.06.2015 and remanded to judicial custody on the same day. Contending that the final report had not been filed within 90 days of the arrest which period stood completed on 10.09.2015, petitioners sought relief u/s.167(2) Cr.P.C. Amidst other reasons, the Court below in dismissing such petition under orders in Crl.M.P.No.2629 of 2015 dated 29.09.2015 informed that Section 43-D(2)(b) of the Act permits extension of detention of the accused, pending filing of a charge sheet, upto to 180 days and that such extension had been granted by it in the case.

3. Heard learned counsel for petitioners and learned Public Prosecutor.

4. Learned counsel for petitioners submitted that an order u/s.43-D(2)(b) of the Act could not be passed in a mechanical manner. A petition moved by the prosecution seeking extension of time for completion of investigation should be accompanied with a report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the need of detention of the accused beyond 90 days and upto 180 days and such report should be to the satisfaction of the Court.

5. Learned counsel for petitioners placed reliance on the decision in Hitendra Vishnu Thakur v. State of Maharashtra [1994

SCC (4) 602], wherein in dealing with pari materia provision under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA), it had been observed thus:

"23. We may at this stage, also on a plain reading of clause (bb) of sub-section (4) of Section 20, point out that the Legislature has provided for seeking extension of time for completion of investigation on a report of the public prosecutor. The Legislature did not purposely leave it to an investigating officer to make an application for seeking extension of time from the court. This provision is in tune with the legislative intent to have the investigations completed expeditiously and not to allow an accused to be kept in continued detention during unnecessary prolonged investigation at the whims of the police. The Legislature expects that the investigation must be completed with utmost promptitude but where it becomes necessary to seek some more time for completion of the investigation, the investigating agency must submit itself to the scrutiny of the public prosecutor in the first instance and satisfy him about the progress of the investigation and furnish reasons for seeking further custody of an accused. A public prosecutor is an important officer of the State Government and is appointed by the State under the Code of Criminal Procedure. He is not a part of the investigating agency. He is an independent statutory authority. The public prosecutor is expected to independently apply his mind to the request of the investigating agency before submitting a report to the court for extension of time with a view to enable the investigating agency to complete the investigation. He is not merely a post office or a forwarding agency. A public prosecutor may or may not agree with the reasons given by the investigating officer for seeking extension of time and may find that the investigation had not progressed in the proper manner or that there has been unnecessary, deliberate or avoidable delay in completing the investigation. In that event, he may not submit any report to the court under clause (bb) to seek extension of time. Thus, for seeking extension of time under clause (bb), the public prosecutor after an independent application of his mind to the request of the investigating agency is required to make a report to the Designated Court indicating therein the progress of the

investigation and disclosing justification for keeping the accused in further custody to enable the investigating agency to complete the investigation. The public prosecutor may attach the request of the investigating officer along with his request or application and report, but his report, as envisaged under clause (bb), must disclose on the face of it that he has applied his mind and was satisfied with the progress of the investigation and considered grant of further time to complete the investigation necessary. The use of the expression "on the report of the public prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period" as occurring in clause (bb) in sub-section (2) of Section 167 as amended by Section 20(4) are important and indicative of the legislative intent not to keep an accused in custody unreasonably and to grant extension only on the report of the public prosecutor. The report of the public prosecutor, therefore, is not merely a formality but a very vital report, because the consequence of its acceptance affects the liberty of an accused and it must, therefore, strictly comply with the requirements as contained in clause (bb). The request of an investigating officer for extension of time is no substitute for the report of the public prosecutor. Where either no report as is envisaged by clause (bb) is filed or the report filed by the public prosecutor is not accepted by the Designated Court, since the grant of extension of time under clause (bb) is neither a formality nor automatic, the necessary corollary would be that an accused would be entitled to seek bail and the court 'shall' release him on bail if he furnishes bail as required by the Designated Court. It is not merely the question of form in which the request for extension under clause (bb) is made but one of substance. The contents of the report to be submitted by the public prosecutor, after proper application of his mind, are designed to assist the Designated Court to independently decide whether or not extension should be granted in a given case. Keeping in view the consequences of the grant of extension i.e. keeping an accused in further custody, the Designated Court must be satisfied for the justification, from the report of the public prosecutor, to grant extension of time to complete the investigation. Where the

Designated Court declines to grant such an extension, the right to be released on bail on account of the 'default' of the prosecution becomes infeasible and cannot be defeated by reasons other than those contemplated by sub-section (4) of Section 20 as discussed in the earlier part of this judgment. We are unable to agree with Mr Madhava Reddy or the Additional Solicitor General Mr Tulsi that even if the public prosecutor 'presents' the request of the investigating officer to the court or 'forwards' the request of the investigating officer to the court, it should be construed to be the report of the public prosecutor. There is no scope for such a construction when we are dealing with the liberty of a citizen. The courts are expected to zealously safeguard his liberty. Clause (bb) has to be read and interpreted on its plain language without addition or substitution of any expression in it. We have already dealt with the importance of the report of the public prosecutor and emphasised that he is neither a 'post office' of the investigating agency nor its 'forwarding agency' but is charged with a statutory duty. He must apply his mind to the facts and circumstances of the case and his report must disclose on the face of it that he had applied his mind to the twin conditions contained in clause (bb) of sub-section (4) of Section 20. Since the law requires him to submit the report as envisaged by the section, he must act in the manner as provided by the section and in no other manner. A Designated Court which overlooks and ignores the requirements of a valid report falls in the performance of one of its essential duties and renders its order under clause (bb) vulnerable. Whether the public prosecutor labels his report as a report or as an application for extension, would not be of much consequence so long as it demonstrates on the face of it that he has applied his mind and is satisfied with the progress of the investigation and the genuineness of the reasons for grant of extension to keep an accused in further custody as envisaged by clause (bb) (supra). Even the mere reproduction of the application or request of the investigating officer by the public prosecutor in his report, without demonstration of the application of his mind and recording his own satisfaction, would not render his report as the one envisaged by clause (bb) and it would not be a proper report

to seek extension of time. In the absence of an appropriate report the Designated Court would have no jurisdiction to deny to an accused his Indefeasible right to be released on bail on account of the default of the prosecution to file the challan within the prescribed time if an accused seeks and is prepared to furnish the bail bonds as directed by the court. Moreover, no extension can be granted to keep an accused in custody beyond the prescribed period except to enable the investigation to be completed and as already stated before any extension is granted under clause (bb), the accused must be put on notice and permitted to have his say so as to be able to object to the grant of extension. 43 of 1993 (Amendment Act) (sic) would apply to the pending cases i.e. the cases which were pending investigation on the date when the amendment came into force and in which the charge-sheet or challan had not been filed till 22-5-1993."

6. Learned counsel for petitioners contended that having received a petition seeking extension on 04.09.2015, a most mechanical order to the following effect has been passed on 09.09.2015:

"The PP prays to grant further period of 90 days from 10.09.2015 as per Sec.43(D)(2)(b) of Unlawful Activities Act for extension of period of detention of accused.

Yes, permitted."

Learned counsel submitted that the requirement in Hitendra Vishnu Thakur's case of putting petitioners/accused on notice and permitting them to have their say towards objecting to the grant of extension, had not been complied with. It is the contention that when the order of extension itself was bad in law, the right of petitioners/accused to be released on the failure of the investigating officer to file the charge sheet within 90 days of their arrest, subsisted and hence, this Court would make available to them relief u/s.167(2) Cr.P.C.

7. Learned Public Prosecutor, placing reliance on the counter filed by the respondent, submitted that it was incorrect to inform that the accused were not put on notice regards the application in CrI.M.P.No.2579 of 2015 moved u/s.167(2) Cr.P.C. r/w Section 43-D(2)(b) of the Unlawful Activities (Prevention) Act, 1967. The accused had been produced before the District Judge, Coimbatore, on 10.09.2015 and only then their remand period was extended upto 08.12.2015 and the same amounts to compliance with the requirement of issue of notice to

petitioners/accused.

8. Learned Public Prosecutor relied on the decision of the Constitution Bench in *Sanjay Dutt v. State through C.B.I., Bombay (II)* [1994 (5) SCC 410] and the following therein:

"(2)(a) Section 20(4)(bb) of the TADA Act only requires production of the accused before the court in accordance with Section 167(1) of the Code of Criminal Procedure and this is how the requirement of notice to the accused before granting extension beyond the prescribed period of 180 days in accordance with the further proviso to clause (bb) of sub-section (4) of Section 20 of the TADA Act has to be understood in the Judgment of the Division Bench of this Court in *Hitendra Vishnu Thakur*. The requirement of such notice to the accused before granting the extension for completing the investigation is not a written notice to the accused giving reasons therein. Production of the accused at that time in the court informing him that the question of extension of the period for completing the investigation is being considered, is alone sufficient for the purpose.

(2)(b) The 'indefeasible right' of the accused to be released on bail in accordance with Section 20(4)(bb) of the TADA Act read with Section 167(2) of the Code of Criminal Procedure in default of completion of the investigation and filing of the challan within the time allowed, as held in *Hitendra Vishnu Thakur* is a right which ensures to, and is enforceable by the accused only from the time of default till the filing of the challan and it does not survive or remain enforceable on the challan being filed. If the accused applies for bail under this provision on expiry of the period of 180 days or the extended period, as the case may be, then he has to be released on bail forthwith. The accused, so released on bail may be arrested and committed to custody according to the provisions of the Code of Criminal Procedure. The right of the accused to be released on bail after filing on the challan, notwithstanding the default in filing it within the time allowed, as governed from the time of filing of the challan only by the provisions relating to the grant of bail applicable at the stage.

(3) In view of the decision of the Constitution Bench in *Kartar Singh* on the meaning

and scope of sub-section (8) of Section 20 of the TADA Act as extracted earlier, this question does not require any further elucidation by us."

9. Learned Public Prosecutor submitted that the notice contemplated to the accused is not a written notice and as these petitioners/accused had been produced before the Court for remand purposes on 10.09.2015, it would have to be construed that they were aware that extension of period for completing investigation was being considered. Such would suffice. The infeasible right u/s.167(2) Cr.P.C. was enforceable only from the time of default till the filing of charge sheet and did not survive thereafter. In the instant case, the investigation stood completed and charge sheet had been filed on 06.12.2015 within the extended period and as such, petitioners/accused are not entitled to any relief.

10. This Court has considered the rival submissions.

11. This Court has called for and perused the records. This Court finds that the order extending the period of detention was passed on 09.09.2015. Therefore, the contention on behalf of the State that petitioners/accused as also other accused were produced before Court on 10.09.2015 for the purpose of extension of remand and hence, it was to be construed that they had notice of the petition seeking extension of period for completion of investigation being considered, totally is misplaced. This Court has reproduced hereinabove the order of the Court below dated 09.09.2015. Records do not inform that notice was issued to petitioners/accused or that they were before it when the order of 09.09.2015 came to be passed. Under a communication dated 04.09.2015, the respondent has addressed the Public Prosecutor of the District Sessions Court, Coimbatore, on the issue of need for extending the period of detention of the accused. Based thereupon, the Public Prosecutor has moved the petition in Crl.M.P.No.2579 of 2015 u/s.167(2) Cr.P.C. r/w Section 43-D(2) (b) of the Unlawful Activities (Prevention) Act, 1967. A comparative reading of the petition in Crl.M.P.No.2579 of 2015 and the communication of the respondent to the Public Prosecutor dated 04.09.2015 reveals that except for the opening paragraph informing basic particulars of the case, Crl.M.P.No.2579 of 2015 is a verbatim reproduction of the communication of the respondent dated 04.09.2015. Therefore, the requirement placed upon the Public Prosecutor to independently apply his mind in moving a petition seeking extension of the detention of the accused has not been met.

12. In conclusion,

- (i) The order of learned Principal District and Sessions Judge, Coimbatore, passed in Crl.M.P.No.2579 of 2015 on 09.09.2015 extending the period of detention is set aside both on the

ground of failure to issue notice to petitioners/accused thereupon as also on the ground that in moving such petition, the Public Prosecutor has not independently applied his mind.

(ii) The reasoning of the Court below in dismissing the petition in M.P.No.2629 of 2015 whereunder relief u/s.167(2) Cr.P.C. was sought is that the period of detention stood extended upto 180 days from the date of arrest in keeping with Section 43-D (2) (b) of the Act. Such act of extension itself is found to be wrong in law. M.P.No.2629 of 2015 has been moved much before the filing of the charge sheet. As petitioners/accused have exercised their indefeasible right before filing of the charge sheet, they would be entitled to relief u/s.167(2) Cr.P.C. The order of learned Principal District and Sessions Judge, Coimbatore, passed in Cr.M.P.No.2629 of 2015 on 29.09.2015, is set aside.

(iii) This Court, however, takes note of the submission of learned Public Prosecutor that petitioners/accused are involved in offences against the State and their being set at liberty could result in their fleeing from justice. Accordingly, this Court while directing the release of petitioners on bail in the event of their custody being required not in any other case, requires each of the petitioners/accused to execute a bond in a sum of Rs.10,000/- with two sureties in a like sum to the satisfaction of learned Principal District and Sessions Judge, Coimbatore and to appear before the respondent police daily at 10.30 a.m. and 05.30 p.m until further orders. Petitioners/accused may seek relaxation of conditions after two months.

These Criminal Revisions are allowed on the above terms. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CCC)

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सत्यमेव जयते

Sub Assistant Registrar

To

1.The Principal District and Sessions Judge,
Coimbatore.

2.The Deputy Superintendent of Police,
Valparai,
Coimbatore District.

WEB COPY

3.The Deputy Superintendent of Police,
Valparai Sub Division,
Aliyar Police Station.

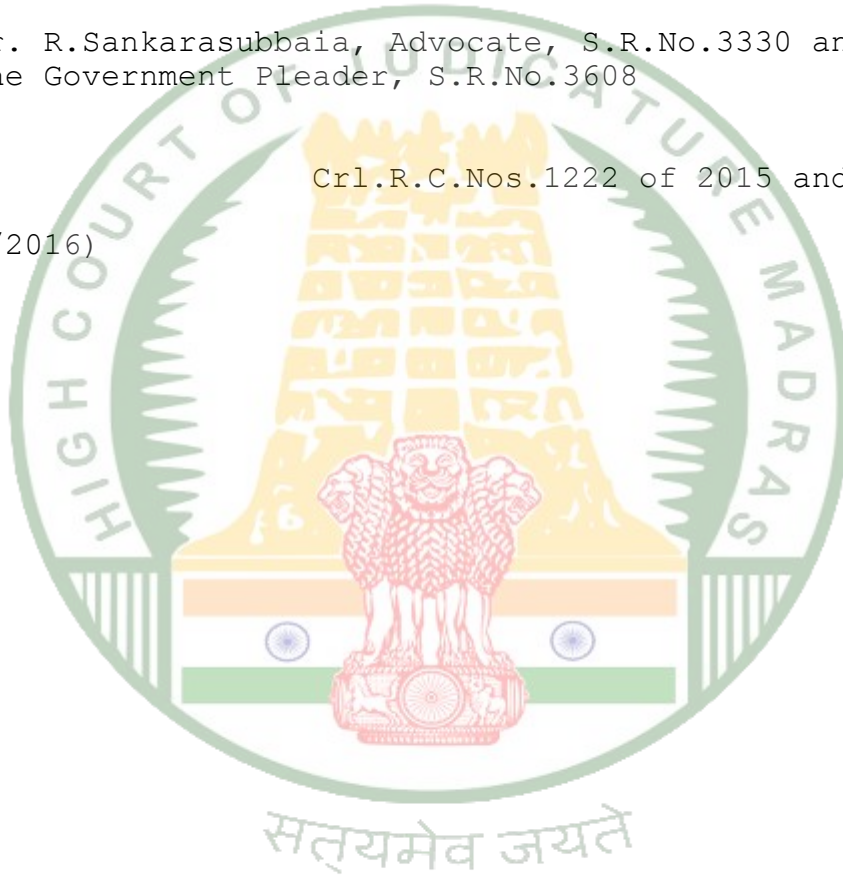
4.The Public Prosecutor,
High Court, Madras.

5.The Superintendent,
Central Prison,
Coimbatore.

+2cc to Mr. R.Sankarasubbaia, Advocate, S.R.No.3330 and 3331
+1cc to the Government Pleader, S.R.No.3608

CrI.R.C.Nos.1222 of 2015 and 19 of 2016

srg(27/01/2016)



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