IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2016

CORAM

THE HONOURABLE MS.JUSTICE R. MALA

CRL.O.P.No.169 of 2016
and
Crl.M.P.Nos.91 and 92 of 2016

P.Karthikeyan .. Petitioner/Accused

.. Vs ..

State rep. by,
The Inspector of Police,
S-2, Airport Police Station,
Meenambakkam,
Chennai.
(Crime No.61 of 2008) .. Respondent/Complainant

Prayer:- Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to call for the records relating to C.C.No.51 of 2011 on the file of the learned Judicial Magistrate, Alandur and quash the same.

For Petitioner : Mr.V.Bharathidasan

For Respondent : Mr.C.Emalias,
Additional Public Prosecutor

ORDER

The petitioner has come forward with this petition seeking to quash the proceedings in C.C.No.51 of 2011 pending on the file of the learned Judicial Magistrate, Alandur, stating that he was charged for an offence punishable under Section 12(1)(b) of the Passport Act.

2. Learned counsel for the petitioner put forth two limbs of arguments. The first limb of argument is that since the alleged occurrence is said to have taken place at London, no sanction has been obtained by prosecuting the petitioner. The second limb of argument is that the punishment for the offence under Section 12(1)(b) of the Passport Act is, two years and it is a summons case. So, the charge sheet has to be filed within six months. But here, the case has been registered on 03.02.2008 and final report has been filed on 21.01.2011, i.e., after three years. The learned counsel for the petitioner has relied on a

decision of this Court reported in 2007-1-L.W. (CRl.) 325 [Azalea Veronica Vs. State], and submitted that as per Section 167(5) of Cr.P.C., charge sheet has to be filed within six months, but it was levied after lapse of six months and therefore, it is clear abuse of process of Court and hence, the learned counsel for the petitioner prays to quash the proceedings in C.C.No.51 of 2011 pending on the file of the learned Judicial Magistrate, Alandur.

3. Resisting the same, the learned Additional Public Prosecutor would submit that in respect of sanction is concerned, the Central Government has conferred powers to the State Government and at the time of filing the charge sheet, sanction has been accorded and that has been fairly conceded by the learned counsel for the petitioner. The second limb of argument is that even though the case has been registered on 03.02.2008, the punishment for the offence under Section 12(1)(b) of the Passport Act is only two years and it is a summons case. As per Section 167(5) of Cr.P.C., charge sheet has to be filed within six months. But it was filed on 21.01.2011. At this juncture, the learned Additional Public Prosecutor would submit that the case has been registered not only for an offence punishable under Section 12(1)(b) of the Passport Act but also for the offences punishable under Sections 420, 468 and 471 of IPC. In such circumstances, the period is not six months. So, there is no necessity to sought for extension of time to continue the investigation. So, the decision relied upon by the learned counsel for the petitioner is not applicable to the facts of the present case. In the decision relied upon by the learned counsel for the petitioner in 2007-1-L.W. (CRl.) 325 [Azalea Veronica Vs. State], the case has been registered for an offence punishable under Section 12(1)(b) of the Passport Act. Further, the petitioner in the said case has filed the petition to quash on 25.10.2006 and only during the pendency of the same, charge sheet was filed.

4. It is appropriate to incorporate the relevant paragraph Nos.11 and 12 of the judgment which read as follows:-

> "11.In view of the above said decision rendered by the Delhi High Court, the position of law is clear to the effect that quashing the first information report is maintainable in respect of filing the charge sheet during the pendency of the petition for quashing. In this case, the petitioner has come forward with this petition for quashing on 25.10.2006 itself and only during the pendency of the same, the charge sheet was filed on 04.01.2007.
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> 12.Justice Ratnavel Pandian (as he then was) in Jagannathan Vs. State (1983 LW (Crl.) 250), held as follows:

"7.In this context reference can be made to the decision of the Supreme Court in Hussanaira Khatoon Vs. Home Secretary (1980 S.C.C. (Crl.) 35 = (1980) 1 S.C.C. 93), wherein their Lordships, while examining the scope of the Code, have expressed their view as Section 468 follows:

"It is, therefore, to be seen that the under-trial prisoners against whom charge sheets have not been filed by the police within the period of limitation provided in Sub.S(2) of S.468, cannot be proceeded against at all and they would be entitled to be released forthwith as their further detention would be unlawful and in violation of their fundamental right under Art. 21."

Sub-Ss.(5) and (6) newly introduced in S.167 of the new Code are only in relation to a case triable as a summons case, that is a case relating to an offence punishable with imprisonment for a term not exceeding two years. Of the summons cases, some are non-cognizable and bailable, and some of the offences, viz., the offences falling under Ss.163, 170, 241, 254, 267, 295, 453 and 461 I.P.C. are cognizable and non-bailable. No doubt, sub-S.(1) to (4) of S.167 cover both warrant cases and summons cases. It is to be noted that whilst, as per proviso (a) to sub-S(2), a person accused of an offence either in a warrant case or in a summons case, is entitled to be released on bail on the expiry of 90 days or 60 days, as the case may be, the said proviso does not ipso facto stop the investigation. But the framers of the Code have put a deadline of six months' period for completion of investigation in a summons case from the date of the arrest of the accused, obviously with the aim of eradicating the malady of protracted investigation of such offences, unless the officer making the investigation satisfies the Magistrate concerned that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary. Sub-S.(5) impose statutory duties, one on the Court and another on the investigating officer. As per the first part of this sub-section, if the investigation in a summons case is not concluded within a period of six months from the date of the arrest of the accused, there is a statutory duty on the part of the Magistrate to make an order stopping further investigation into the offence and as per the second part of the sub-section, if the investigating officer wants further time beyond the period of six months for continuing the investigation, he is statutorily obliged to satisfy the Magistrate that the continuation of the investigation beyond such period is necessary for special reasons to be mentioned and in the interests of justice.

9.The Crl.P.C. 1973 (Act II of 1974) has introduced drastic changes keeping in view, among others, certain basic principles, viz., that an accused person should get a fair trial in accordance with the accepted principles of natural justice, that every effort should be made to avoid delay in investigation and trial which is harmful not only to the individuals involved but also to the society and that the procedure should not be complicated and should, to the utmost extent possible, ensure a fair deal to the poorer sections of the community. It is a patent fact, and one should not feel shy to admit, that a number of under-trial prisoners are kept behind the bars for long periods mainly due to the non-completion of the investigation within 90 days or 60 days, as the case may be, as envisaged under S.167(2)(a)(i) and (ii). Secondly, detention for 90 days or 60 days, as the case may be, are entitled to be released on bail, a number of them, who are very poor and practically indigent and who do not possess sufficient means or have no means to furnish bail, have to suffer incarceration silently even in summons cases till the cases are over, and in certain cases they have to be in detention for even longer for even longer periods than the maximum term of imprisonment provided under the concerned penal provision without their trial having been commenced. It would not be out of place to mention here that more often than not, Courts impose heavy sureties and put stringent conditions without consideration of the relevant factors and the principal purpose of bail. The indigent under-trial prisoners who could not afford bail have necessarily to be in cellular confinement till the disposal of the cases whether they are summons of warrant cases, and they are very often treated like the convicted criminals, despite our treasured principle of criminal jurisprudence that an accused is presumed innocent until proved guilty. In the present day social outlook, there is a deep thinking that the orthodox pattern of releasing the accused on heavy surety bonds which could be furnished invariably only moneyed people should be changed and we should stimulate a more basic change in the system of releasing the under-trial prisoners on bail, mainly taking into consideration the stability and community roots of the accused in the society and the satisfaction of the Court that there would be no risk of their non-appearance during the trial of the cases, etc., in case the Court considers it necessary to impose any condition, it can do so as contemplated under S.437 (3) of the Code. In this context, reference can also be had to Sub-S.(6t) of S.437, which enacts that a Magistrate trying any case of non-bailable offence should release the accused on bail if the trial is not concluded within a period of 60 days from the first day fixed for taking evidence in that case, provided the accused is in custody during the whole of the said period, unless for reasons to be recorded in writing the Magistrate otherwise directs. Of course, in all situations, it is imperative on the Courts to examine the nature of the offence committed by the accused and its impact on the society and the mode of the execution of the crime, etc., to see whether the accused deserves to be released on bail or not. If the Courts insist on the under-trial prisoners, even if they are indigent, to furnish heavy sureties, practically such accused would be deprived of the benefit of getting bail for the simple reason that they are caught between the jaws of poverty. In such circumstances, they are constrained to think that money is the key to open the exit gate of the jail and that only the moneyed people own key. Therefore, I am of the view that Courts, while considering the applications for bail, should bear in mind that neither the accused is a hostage of the prosecution till the investigation is over, nor should the surety demanded for his bail partake the nature of a ransom.

12.Under the statutory provision viz., S.167 (5), there are statutory duties, one cast on the Court and the other on the investigating officer. For the invocation of this sub-section, the following conditions should be satisfied:

(1)The case to which this provision is to be applied, should be one triable by the Magistrate as a summons case;

(2)The accused in that case should have been arrested; and

(3)The investigation should not have been concluded within a period of six months from the date of the arrest of the accused.

If these three conditions are satisfied, the Magistrate before whom the case is pending, is statutorily obliged to make an order stopping further investigation into the offence, unless the officer making the investigation by application satisfies the Magistrate that for special reasons and in the interests of justice the continuation of investigation beyond the period of six months is necessary. Therefore, there is a statutory duty laid on the investigating officer to satisfy the Magistrate that for special reasons (not general reasons) and in the interests of justice the continuation of the investigation beyond the period of six months is necessary. The question is whether these duties cast on the Court and the police officer are not independent of each other. A careful examination of the section shows that the duty cast on the police officer is to be performed earlier in point of time to the duty of the Magistrate. This could be explained by an illustration. Suppose that an accused has been arrested in a case triable as a summons case on 1st January, 1982 and the investigation is continued, as per section, the Magistrate can stop the proceedings of the investigation on the expiry of six months viz., immediately after 1st July, 1982. But, the officer making the investigation, in order to get the permission for continuing the investigation, beyond the period of six months, should necessarily approach the Court and satisfy it, for special reasons and in the interests of justice, that the continuation of investigation is necessary. Therefore, it is the incumbent duty of the police officer to approach the Court even before the expiry of the six months' period, that is, on or before 30th June, 1982 because once the period of six months expires, the Magistrate can stop further proceedings and in that case, the question of approaching the Magistrate seeking permission for continuation of the investigation does not arise. The only remedy open to the investigating officer, when the investigation is stopped by an order of the Magistrate on 1st July, 1982, is to approach the Sessions Judge by resorting to sub-S.(6) of S.167 by filing a revision. Thus, it is clear that the officer making the investigation has necessarily to move the Court before which the case is pending, for an order permitting continuation of the investigation beyond the period of six months, before the Magistrate discharges his duty, which comes only after the expiry of six months. It follows that these two duties cast on these two functionaries are independent of each other."

5. In the above decision, it was specifically mentioned what is the procedure to be followed. But in the present case, the case is not only registered for an offence punishable under Section 12(1)(b) of the Passport Act but the FIR has been registered for the offences under Sections 420, 468 and 471 of I.P.C. along with 12(1)(b) of the Passport Act. At the time of registering the case, it was only a warrant case and not a summon case. After the investigation only, the charge sheet has been filed for an offence under Section 12(1)(b) of the Passport Act and hence, there is no necessity for filing application seeking extension of time. So, this ground also fails and consequently, the Criminal Original Petition deserves to be dismissed and accordingly, it is dismissed. However, a direction is issued to the learned Judicial Magistrate, Alandur, to dispose of the case in C.C.No.51 of 2011, within a period of two months from the date of receipt of copy of this order. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(AS)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate,
Alandur.

2.The Chief Judicial Magistrate,
Chennai.

3.The Inspector of Police,
S-2, Airport Police Station,
Meenambakkam,
Chennai.

4.The Additional Public Prosecutor,
High Court, Madras.

5.The Section Officer,
Criminal Section,
High Court,
Madras-104.

+1cc to Mr.V.Bharathidasan, Advocate Sr.13963

CRL.O.P.No.169 of 2016

msm(CO)
srg(22/03/2016)