

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of decision:23.07.2016

1. CRM-M-No.24797 of 2015

Tarsem Lal

...Petitioner

Vs

State of Punjab and another

...Respondents

2. CRM-M-No.24799 of 2015

Tarsem Lal

...Petitioner

Vs

Dalip Kumar and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present:- Mr. Gulzar Mohd., Advocate
for the petitioner.

Ms. Harsimrat Rai, D.A.G, Punjab.

Mr. Krishan S.Dadwal, Advocate
for respondent No.2.

ANITA CHAUDHRY, J.

These are two petitions filed under Section 482 Cr.P.C seeking quashing of order dated 16.07.2015 passed by Additional Sessions Judge Jalandhar, whereby order dated 17.10.2014 passed by the Additional Chief Judicial Magistrate, Jalandhar was set aside. The Additional Chief Judicial Magistrate Jalandhar had granted default bail to the petitioner under Section 167 (2) Cr.P.C. The order passed by the Additional Chief Judicial Magistrate Jalandhar was challenged by the complainant in CRR No.588 of 2014 whereas the State filed CRR No.39 of 2015 which was allowed by the

Additional Sessions Judge. Since there were two revisions, therefore, the accused has filed two petitions.

It is necessary to only refer to the facts which are relevant. A case under Section 304-B/34 IPC was registered on 09.11.2013 at P.S Division No.3, Jalandhar against the petitioner and his family members. The petitioner surrendered in the Court of Additional Chief Judicial Magistrate on 15.07.2014 and he was remanded to judicial custody till 25.07.2014. The police approached the Court for issuance of production warrants and the petitioner was ordered to be produced on 21.07.2014. The petitioner was then sent to police custody and after the expiry of police custody, he was sent to judicial custody. The petitioner filed an application seeking bail under Section 167 (2) Cr.P.C. as the police had failed to file the challan within 90 days. The Additional Chief Judicial Magistrate allowed bail to the petitioner under the default clause. The Additional Chief Judicial Magistrate noted the following in the concluding paragraph:-

“Coming to the point as to whether or not period for which the accused have been remanded to police custody after his surrender in the Court is or not to be considered while computing the period of 90 days, this Court is of the view that in view of the ration of judgment in the matter of “Ravinder Singh Vs. State of Punjab” 2005 (2) R.C.R (criminal) 340, the period of police custody is also to be included for computation of period of 90 days. Accordingly, the application having been filed prior to the presentation of challan is hereby allowed and accused is ordered to be admitted to bail on furnishing his bail bonds in the sum of Rs.50,000/- with one surety in the like amount.”

Aggrieved by the order, both the complainant and the State filed revisions before the Additional Session Judge. Both the revisions were allowed, relying upon Dinesh Dalmia's case holding that the date of notional surrender could not be counted for calculating period of 90 days for submission of challan.

The submission made on behalf of the petitioner is that the date of surrender was 15.07.2014 and a period of 90 days were to be calculated from that date, the Counsel had relied upon “Central Bureau of Investigation Vs. Anupam J.Kulkarni” 1192 (2) R.C.R. (Criminal) 147 & “Chaganti Satyanarayana and others Vs. State of A.P.”1987(1) R.C.R. (Criminal) 40 & “Sundeep Kumar Bafna Vs. State of Maharashtra and another” 2014 (2) R.C.R. (Criminal) 416 & Niranjan Singh Vs. Prabhakar Rajaram Kharote, (1980) 2 SCC 559. It was urged that the Apex Court in Sundeep Kumar Bafna's case had held that a person would be stated to be in judicial custody when he surrenders before the Court and submits to its directions. It was urged that the Apex Court had analyzed the words custody, detention and arrest and it would be the date of arrest which should have been counted for calculating the period of 90 days and the Additional Session Judge wrongly computed the period from the date of first remand.

On the other hand, the submission made on behalf of the complainant as well as the State was that the matter had been examined on numerous occasions starting from Anupam J.Kulkarni's case where it was

held that the period of 90 days has to be computed from the date of order of the Magistrate. It was urged that the police is given 90 days time to complete the investigation and till they get the custody, the investigation cannot start and only because the accused had voluntarily surrendered would not mean that period would start from that date. It was urged that in Dinesh Dalmia's case notional surrender of the accused in a Calcutta case was not deemed to be custody of the police for the purpose of investigation. It was further urged that the police had got physical custody on 21.07.2014 and the challan had been presented on 10.10.2014 i.e. before the expiry of 90 days. Reliance was placed upon **“Pragyna Singh Thakur Vs. State of Maharashtra” (SC) R.C.R. (Criminal) 302 & “Saranjit Singh @ Sabi Vs. State of Punjab” 2014 (1) R.C.R. (Criminal) 341 & “State of West Bengal Vs. Dinesh Dalmia” 2007 (2) R.C.R. (Criminal) 953.**

In Chaganti Satyanarayan's case (supra), the Supreme Court after analyzing the various provisions contained in the Criminal Procedure Code held as under:-

“Thus in any view of the matter i.e. construing proviso (a) either in conjunction with sub-section (2) of Section 167 or as an independent paragraph, we find that the total period of 90 days under clause (i) and the total period of 60 days under clause (ii) has to be calculated only from the date of remand and not from the date of arrest.”

Learned counsel for the petitioner had relied upon Sundeep Bufna's case (supra) but the issue before the Apex Court in that case was not under Section 167 (2) Cr.P.C.

The issue here is whether the date of voluntary surrender in the Court is to be counted for the purposes of calculating 90 days. Is the date of first remand to be included? This questions had arisen in Pragyna Singh Thakur's case (supra). It was held that relevant date of counting 90 days for filing charge-sheet would be the date of first order of remand and not the date of surrender.

If the argument of the petitioner is accepted it would lead to incongruous situation. To elaborate, if a case is registered in Haryana and the accused voluntarily surrenders in another State, the Investigating Officer would not be able to get the custody till the accused is actually produced before the Area Magistrate. By then a number of days would have passed. It would shorten the period provided to the Investigators. It has been seen in many cases, the accused have surrendered in a different State to get the benefit. Similarly, even if it is the same Court, the analogy would apply.

In Dinesh Dalmia's case, the accused was arrested in a criminal case and produced before the Magistrate. There was another case registered against him and the accused voluntarily surrendered in the second case. The custody of the accused in the second case was given to the police on 13.03.2006. The argument put-forth on behalf of the accused who was praying for bail under Section 167 (2) Cr.P.C was that he was entitled to bail in the second case as the challan had not been put up within 90 days from date of custody which was 02.02.2006. It was held that the notional surrender of the accused in February, 2006 could not be deemed to be the custody of the police for investigation and police custody in the Calcutta

case could be treated from 13.03.2006. The plea was rejected.

In the present case, the petitioner had surrendered voluntarily on 15.07.2014 but the police was able to get his custody only on 21.07.2014 therefore, the period of 90 days were to be counted from 21.07.2014. The challan was filed within 90 days. There is no infirmity in the order passed by the revisional Court. Both the revisions are dismissed. The entire trial is held up. The petitioner would surrender within a week from today.

(ANITA CHAUDHRY)
JUDGE

23.07.2016
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