

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on : June 13, 2016

+ **CRL.REV.P. 770/2015 & Crl. M.A. No.17403/2015 (Delay), Crl.
M.A. No.17404/2015 (Delay in re-filing)**

STATE

..... Petitioner

Through: Mr.Rajat Katyal, Additional Public
Prosecutor for the State.

versus

HARGYAN

..... Respondent

Through: Mr.Manjeet Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

**Crl. M.A. No.17403/2015 (Condonation of delay) & Crl. M.A.
No.17404/2015 (Delay in re-filing)**

By these applications filed under Section 5 of Limitation Act read with Section 482 of Cr. P.C., the petitioner seeks condonation of delay of 12 days in preferring the present revision petition and 66 days in re-filing the petition.

For the reasons stated in the applications, the delay in filing as well as re-filing the petition is condoned. Applications allowed.

Crl.Rev.P. 770/2015

1. By this petition filed under Section 397 of Cr. P.C. the State has

preferred to challenge the order dated 22.04.2015 passed by the learned Additional Sessions Judge (01), West, Tis Hazari, Delhi in FIR No. 651/2014 under Section 408 of IPC registered at Police Station Kirti Nagar, Delhi, whereby the respondent has been ordered to be released on bail under Section 167(2) of Cr. P.C..

2. As per prosecution, the FIR No. 651/2014 was registered consequent to the complaint of one Prince Walia on 29.09.2014 under Section 408 of IPC against the accused and others on the ground that on internal audit, it was discovered that there was a physical shortage of Rs.73,85,100/- in different ATMs of Corporation Bank on the Nangloi Route and accused was the custodian of these ATMs and route and thus the accused persons had misappropriated the aforesaid amount and committed an offence of breach of trust.

3. Investigation was commenced and the accused (respondent herein) was arrested on 29.10.2014 and after completion of investigation, the police filed the final report in the case before the competent Court on 26.12.2014. The Court while looking into the final report found that certain aspects required further investigation and accordingly directed for further investigation in the case vide order dated 08.01.2015. The accused applied for statutory bail under Section 167(2) of Cr. P.C. which the learned Metropolitan Magistrate had rejected vide order dated 23.03.2015, while observing that the police had indeed filed the final report in the prescribed time and merely because Court had asked for further investigation before taking

cognizance would not deem to mean that charge sheet had not been filed within the prescribed time. The learned Metropolitan Magistrate relied on the judgment of ***Suresh Kumar Bhikam Chand Jain v. State of Maharashtra***, (2013) 3 SCC 77.

4. The respondent had preferred revision before the Court of Sessions Judge and vide order dated 22.04.2015, the respondent was ordered to be released on bail under Section 167(2) of Cr. P.C., which is impugned in the present petition.

5. Learned Additional Public Prosecutor for the State contended that though the accused/respondent was arrested in this case on 29.10.2014, and there is sufficient compliance of Section 167 of Cr. P.C. by the police as the charge sheet in this case was filed on 26.12.2014, i.e. the charge sheet was filed within 60 days from the date of arrest therefore the application for statutory bail under Section 167(2) of Cr. P.C. was not maintainable. It is further contended that the ratio of the judgment relied upon by the learned Metropolitan Magistrate in the case of ***Suresh Kumar Bhikam Chand Jain (supra)*** squarely applies to the facts of the present case and there is no illegality or infirmity in the order passed by learned Metropolitan Magistrate.

6. Mr. Manjeet Singh, learned counsel for the respondent submits that even if it is presumed for the sake of argument that the charge sheet was filed within a period of 60 days, but on such charge sheet no cognizance could be taken by the learned Metropolitan Magistrate and

the learned Metropolitan Magistrate has directed for further investigations vide order dated 08.01.2015. But the charge sheet could not even be filed after expiry of 60 days of the order dated 08.01.2015 and in such a situation the learned Additional Sessions Judge allowed the revision petition of the respondent thereby ordering the respondent to be released on bail. Therefore, there is no illegality or infirmity in the order passed by learned Additional Sessions Judge and the present revision petition preferred by the State is liable to be rejected.

7. I have heard the rival contentions of the parties and gone through the contents of the petition as well as the impugned order passed in this case. Perusal of the impugned order reveals that the learned Additional Sessions Judge has gone into all aspects of the matter and distinguish the case of ***Suresh Kumar Bhikam Chand Jain (supra)*** relying on which the learned Metropolitan Magistrate had rejected the application of the respondent under Section 167(2) of Cr. P.C. by observing that the facts of the case of ***Suresh Kumar Bhikam Chand Jain (supra)*** were totally different as in the said case the charge sheet was already filed by the investigation agency.

8. I have also perused the order of learned Additional Sessions Judge wherein the judgment of the Supreme Court in the case of ***Union of India through CBI v. Nirala Yadav @ Raja Ram Yadav @ Deepak Yadav, (2014) 9 SCC 457*** was relied upon. Indisputably, the learned Metropolitan Magistrate before taking cognizance had returned the charge sheet and ordered for further investigation of the

case and the charge sheet filed was not retained on the record nor copy of the same was supplied to the accused/respondent. The learned Additional Sessions Judge has rightly observed that since charge sheet was filed by the Investigating Officer on 26.12.2014 whereon the learned Metropolitan Magistrate was pleased to order for further investigation cannot be formed the basis for declining the relief for bail in default.

9. This court has also perused the judgment of the Hon'ble Supreme Court in the case of *Union of India through CBI vs. Nirala Yadav @ Raja Ram Yadav @ Deepak Yadav*, (2014) 9 SCC 457, in which the accused filed an application under Section 167(2) of Cr. P.C. and after filing of the application for statutory bail, the prosecution filed the charge sheet and that too without filing any application for extension of time for filing the charge sheet. In that case, it was 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. 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."*

10. In present case, the factual position emerges that the accused was arrested on 29.10.2014 and the charge sheet was filed before the court on 26.12.2014. On perusal of the charge sheet, the court finding

that certain aspects were incomplete due to incomplete investigation, the Investigating Officer was directed to further investigate into the matter and the charge sheet was returned for the purpose of filing the charge sheet after completing the investigation on all aspects. Undisputedly, Section 167(2) Cr. P.C. precludes the concerned Magistrate to have the custody of the detenue beyond 60 days until he receives the charge sheet under Section 173 Cr. P.C. to adjudicate upon the same.

11. In the present case, accepting an incomplete report on 26.12.2014 and returning the same on account of incomplete investigation on certain aspects, and making the accused disentitled for benefit under Section 167(2) Cr. P.C. is an apparent abuse of law.

12. This court is of the considered opinion that charge sheet filed within statutory period of 60 days ought to be complete to enable the concerned Magistrate to adjudicate and not an incomplete charge sheet to infringe upon the right of the accused to be released on bail.

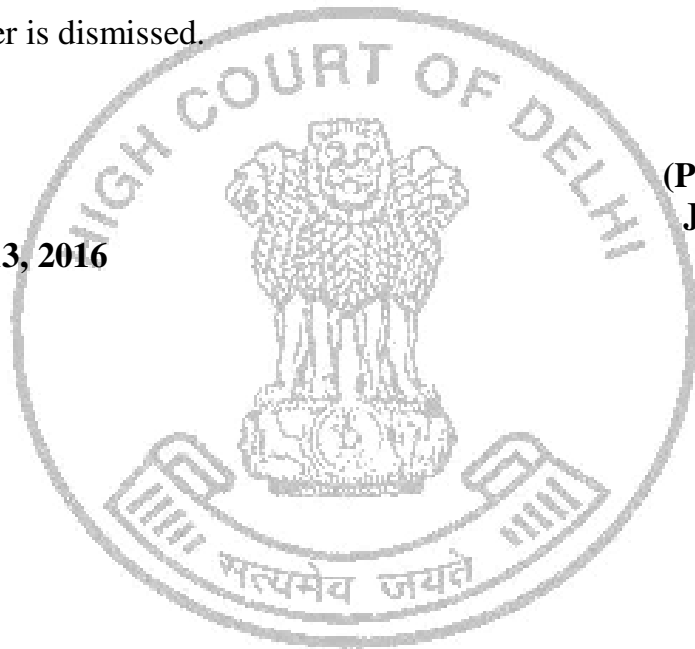
13. In the scenario mentioned above, in order passed by the learned Magistrate whereby the accused was not granted bail is not sustainable in the eye of law and order dated 22.04.2015 passed by learned Additional Sessions Judge deserves to be upheld. Consequently the present petition is dismissed.

14. Before parting with the order, this court would like to place it on record by way of abundant caution that whatever has been stated

hereinabove in this order has been so said only for the purpose of disposing of the prayer for cancellation of bail made by the petitioner. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the Trial Court seized of the trial.

15. With aforesaid direction, the present petition filed by the petitioner is dismissed.

JUNE 13, 2016
pkb



(P.S.TEJI)
JUDGE