

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.M.P. No. 241 of 2016

1. Amit Shrivastava, S/o. Satyendra Lal Shrivastava, Aged About 41 Years.
2. Nitin Shrivastava, S/o. Satyendra Lal Shrivastava, Aged About 36 Years.
3. Neeta (Reeta) Shrivastava, W/o. Amit Shrivastava, Aged About 38 Years
4. Smt. Reebha Shrivastava, W/o. Amit Shrivastava, Aged About 36 Years,
All R/o L.I.G.-06, Dinesh Complex Sabin Radhika Nagar, Maitri Vihar, Bhilai, Tahsil and District Durg Chhattisgarh.
5. Smt. Pooja Tandon, W/o. Devendra Singh, Aged About 43 Years, R/o. Smriti Nagar, Supela, Bhilai, District Durg Chhattisgarh.

---- Petitioners

Versus

State Of Chhattisgarh, Through : Police Station- Supela, District -Durg Chhattisgarh.

-----Respondents

For Petitioners	: Mr. B.P. Singh, Advocate
For Respondent/State	: Mr. Lav Sharma, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

01/08/2017

Heard.

1. It is submitted by the counsel for the petitioners that petitioners have been arrested in connection with criminal case registered under

Section 420, 409, 120(B) read with Section 34 of Indian Penal Code and Section 3, 4, 5 and 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, Section 10 of the Chhattisgarh Nikshepakon Ke Hiton Ka Sanrakshan Adhiniyam, 2005 and Section 45 of the R.B.I. Act on 29.09.2015.

2. On completion of investigation, charge-sheet was submitted before the Court of Chief Judicial Magistrate, Durg on 23.12.2015. The offence under Chhattisgarh Nikshepakon Ke Hiton Ka Sanrakshan Adhiniyam, 2005 was triable by the Special Court, the Court of Sessions, hence an order was passed on 01.01.2016 by the Chief Judicial Magistrate, Durg returning the charge-sheet to the prosecutor for filing before the Special Court. A charge-sheet was filed before the Special Court, the Court of Sessions Judge on the same day.
3. It is submitted by the counsel for the petitioners that charge-sheet was filed in the Court having jurisdiction on 01.01.2016 i.e. after the completion of 90 days, which entitles the petitioners for grant of bail under Section 167(2) of Cr.P.C. The filing of charge -sheet in Court of Chief Judicial Magistrate not having jurisdiction to try the case is of no effect and shall amount to non-filing of charge-sheet until it was filed in Court having jurisdiction. Petitioners moved an application on 23.01.2016 before the Court of Sessions Judge, Durg for grant of bail and the same has been rejected holding that the period of detention of the petitioners between the period 23.12.2015 to 01.01.2016 can not be held as illegal detention.
4. Counsel for the petitioners has placed reliance on the judgment of the Hon'ble Supreme Court in case of **Sampat Singh & Ors. Vs. State of Haryana & Ors.**, reported in **(1993) 1 Supreme Court Cases 561**, in

which it was held that on submission of final report by the police, the Court of competent jurisdiction is obliged to decide on proper application of mind whether to accept and reject the report. This does not help the petitioners, as it is not a matter of accepting or rejecting the final report. Reliance has also been placed on the judgment of Allahabad High Court in case of ***Dharmanand @ Mahato Vs. State***, reported in ***1994 (1) Crimes, 397*** in which it was held that right of accused to be released on bail if the charge-sheet is not filed within the period of 90/60 days, as the case may be, is absolute and can not be defeated or taken away on subsequent filing of the charge-sheet and it is the duty of the Magistrate to pass an order of bail even if any application is not moved. Reliance has also been placed on the judgment of Hon'ble Supreme Court in case of ***Hussainara Khatoon & Ors. (V) Vs. Home Secretary, State of Bihar, Patna***, reported in ***(1980) 1 Supreme Court Cases 108***, wherein it is held that that duty is cast on the Magistrate to inform the accused of his right to be released on bail under the provisions of Section 167(2) of the Cr.P.C. and also to provide assistance of lawyer in case accused demands for it.

5. A question raised in the case merely appears to be this whether filing of charge-sheet before the Court not having jurisdiction to try the cases can be regarded as non-filing of charge-sheet.
6. In this case, requirement under Section 167 of Cr.P.C. is limited to this extent that charge-sheet has to be filed before expiry of 90/60 days in the case concerned and the police has filed the charge-sheet against the petitioners before expiry of 90 days, which was the period prescribed U/s. 167 (2) of Cr.P.C. in accordance with offence

registered against the petitioners. This does not appear to be any such irregularity which would vitiate the proceedings before the trial Court. Section 462 of Cr.P.C. provides that no finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice.

7. Hence for these reasons, there appears to be no substance in this petition and it is dismissed accordingly at motion stage itself.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram