



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:05.04.2017

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CORAM:

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Cr1.RC(MD)No.764 of 2016

[Orders Reserved on 29.11.2016]

1.Mootaimasanam

2.J.Veera Subhash : Petitioners / A3 & A4

Vs.

State through

The Inspector of Police,

Sellur Police Station,

Madurai,

(In Crime No.2131 of 2016) : Respondent / Complainant

Prayer: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records of the impugned order passed by the learned Judicial Magistrate No.II, Madurai in C.R.M.P.No.2957 of 2016, dated 15.09.2016 and set aside the same and consequential acts of the respondent based on the impugned order by allowing the revision petition.

For Petitioners : Mr.J.Selvam

For Respondent : Mr.P.Kandasamy
Govt.Advocate (crl.side)

ORDER

The present Revision is filed by the petitioners / A3 & A4 praying to set aside the order passed by the learned Judicial Magistrate No.II, Madurai in C.R.M.P.No.2957 of 2016, dated 15.09.2016 and consequential acts of the respondent based on the impugned order by allowing the Revision Petition.

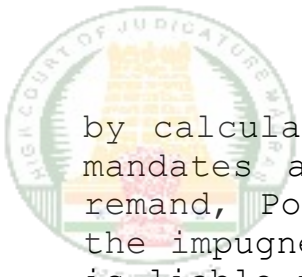
2. The respondent Police registered a case in Crime No.2131 of 2016 on 23.08.2016 for the offence punishable under Section 302 IPC., against unknown persons, on a written complaint given by the Village Administrative Officer, Madurai North, on receipt of the complaint given by the Village Assistant viz., Ganesan that an unidentified dead body with stab injuries was lying in the middle of the Vaigai River and the complainant went to the spot and found

that an unidentified dead body with stab injuries over the other parts of the body and also cut injuries in the neck of the dead body lying at the said place.

3. Admittedly, the petitioners herein surrendered themselves before the learned Judicial Magistrate No.1, Usilampatti on 26.08.2016 in connection with the above said case in Crime No.2131 of 2016, on the file of the respondent Police, for the alleged aforesaid offence, by filing a surrender petition in C.R.M.P.No.3745 of 2016, before the learned Judicial Magistrate No.1, Usilampatti and subsequently, they were remanded by that Court to the Judicial custody on the same day to be produced before the learned Judicial Magistrate No.2, Madurai, the Jurisdictional Magistrate on 02.09.2016 and thereafter, the remand was further extended by the jurisdictional Magistrate, Madurai.

4. After registration of the FIR., the respondent took up the investigation in which, he came to know that the dead person is one Arumugam S/o. Ganesan and he was murdered on account of the existence of animosity between Accused No.1 / Kalyanasundaram and the deceased in connection with the money dealings and the respondent has firstly arrested one Sasikumar / A5 on 30.08.2016 and he given a voluntary confession statement and based on which, the respondent was proceeding and he came to understand that the petitioners herein / A3 and A4 were being remanded by the learned Judicial Magistrate No.2, Madurai, by passing an order of remand on 02.09.2016 and immediately on such information, the respondent moved a petition in C.R.M.P.No.2957 of 2016 on 09.09.2016, for the purpose of interrogating the petitioner under Police custody. The learned Judicial Magistrate No.2, Madurai, vide order dated 15.09.2016, has granted Police custody of the petitioners herein for one day ie., from 5.00 p.m., on 15.09.2016 to 5.00 p.m., on 16.09.2016 and by virtue of the said order, the petitioners were taken into custody on 15.09.2016 at 5.00 p.m., and they were thoroughly interrogated and during the course of their examination, both of them on their own accord have voluntarily given statement and accordingly the same were recorded. In their confession statement they have not only admitted the guilt, but also have produced the weapons [Knife - seized from A3, and Sword - seized from A4] and after seizing the same, on the next day, ie., on 16.09.2016, they were produced before the said learned Judicial Magistrate No.II, Madurai, as ordered and they were remanded to the Judicial custody for further period. The recorded confession statement and the seized material objects have also been produced before the concerned Court.

5. The learned counsel appearing for the Revision Petitioner would contend that the learned Judicial Magistrate No.2, Madurai has passed the impugned order, dated 15.09.2016, mechanically granting Police custody after 20 days of the remand without considering the provisions of Section 167(2) of Cr.P.C.,



by calculating the said period from the date of surrender, which mandates after expiry of the period of 15 days of the first remand, Police custody cannot be granted by the Court and hence, the impugned order granting police custody is illegal and the same is liable to be set aside.

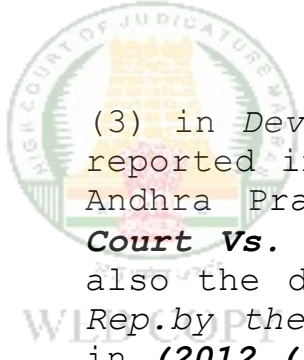
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6. The learned Government Advocate (crl.side) appearing for the respondent would contend that the petitioners were remanded by the learned Judicial Magistrate No.2, Madurai only on 02.09.2016 and in such a case, the period of 15 days will have to be reckoned from 02.09.2016 and had it been calculated so, the date of impugned order ie., 15.09.2016 would be well within the limitation of 15 days and it is only on the date of remand extension ie., on 02.09.2016. The respondent was intimated about the custody of the petitioners and in other words, the knowledge with regard to their confinement had come to the respondent only on 02.09.2016. He would further contend that on a plain reading of the said provision it is crystal clear that 15 days of the period of limitation has to be considered from the date of remand made through an order by the concerned jurisdictional court in connection with the particular case upon which the police custody is sought for and hence, the order of remand that has been made by the learned Judicial Magistrate No.1, Usilampatti, cannot be utilized by the petitioners for considering the period of 15 days.

7. He would further contend that the order passed by the learned Judicial Magistrate No.2, Madurai, had been implemented and the petitioners were interrogated under the Police custody and subsequently, they have also been produced before the said Court on 16.09.2016 and no purpose would be served to the petitioners by pressing the main Criminal Revision Petition, as the same has become 'infructuous.'

8. The learned counsel appearing for the Revision Petitioner would further contend that no person shall be deprived of personal liberty according to the procedures established by law, as per the Article 21 of the Constitution; that the arrest of a person is a condition precedent for taking him to judicial custody and in other words, taking of a person into judicial custody is followed after arrest of a person by the Magistrate on appearance or surrender and that the petitioners were sent to judicial custody, when they surrendered themselves before the learned Judicial Magistrate No.1, Usilampatti and submitted themselves to the direction of the said Court.

9. The learned counsel appearing for the petitioners, in support of his contention, refers the decisions of the Hon'ble Supreme Court (1) in **Central Bureau of Investigation, New Delhi Vs. Anupam J. Kulkarni** reported in (1992 (3) SCC 141); (2) in **Budh Singh Vs. State of Punjab** reported in (2000 (9) SCC 266) and



(3) in *Devender Kumar and Another Vs. State of Haryana and Others* reported in (2010 (6) SCC 753). He also referred the decision of Andhra Pradesh High Court (4) in ***Public Prosecutor, A.P. High Court Vs. J.C.Narayana Reddy*** reported in (1992 Cr1.L.J.462) and also the decision of this Court (5) in *K.S.Palanichamy Vs. State Rep.by the Inspector of Police, EOW, Unit-II, Dindigul*, reported in (2012 (2) MLJ (Cr1) 737).

10. This Court considered the rival contentions advanced by both sides and also perused the materials available on record.

11. The petitioners approached this Court by way of filing the present Revision invoking Section 397 r/w 401 of Cr.P.C., pertaining to the impugned order passed by the learned Judicial Magistrate No.2, Madurai, in C.R.M.P.No.2957 of 2016, dated 15.09.2016 and to set aside the same as illegal.

12. The Hon'ble Apex Court in the Judgment reported in (1992 (3) SCC 141) (cited supra) has dealt with the ambit and scope of Section 167 Cr.P.C., holding that there could be no detention of Police custody after expiry of the first remand of 15 days even in a case where some more offences either serious or otherwise committed by an accused in the same transaction, which were brought to light at a latter stage.

13. The Hon'ble Apex Court in ***Budh Singh's case*** (cited supra) and subsequently, in the recent decision in ***Devender Kumar's case*** (cited supra) has categorically held that within the first 15 days of arrest, the Magistrate may remand the accused either to judicial custody or police custody for a given number of days, but once the period of 15 days expires, the Magistrate cannot pass orders for police custody. It has been made clear by the Apex Court that the Magistrate is empowered to grant police custody under Section 167 of Cr.P.C., for a few days, if he satisfied only within 15 days from the date of the first remand and after the expiry of the 15 days from the date of the first remand, he has no power to grant police custody. The above said decisions are relied on by the High Court of Andhra Pradesh and also by this Court.

14. In the decision referred to by the counsel for the petitioner in the Judgment of the Andhra Pradesh High Court reported in (1992 Cr1.L.J.462) (cited supra) it is contended by the prosecution that the Supreme Court decision did not deal with the situation where the accused directly surrendered before the Magistrate without being available to the Police for interrogation even for 24 Hrs. If they were arrested by the Police, the Police should keep them in custody for 24 Hrs., under Section 57 of the Code, but it was held that this contention has no force and whether the accused were arrested by the police or surrendered

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15. In the case on hand also it is admitted that the learned Judicial Magistrate No.1, Usilampatti, before whom the petitioners surrendered is not the jurisdictional Magistrate. The Judicial Magistrate No.2, Madurai, as jurisdictional Magistrate, has granted police custody during his first remand period of 15 days which would commence only from the date of remand by the jurisdictional Magistrate alone. Considering the above facts and circumstances of the case, this Court is not inclined to interfere with the order passed by the learned Judicial Magistrate No.2, Madurai in its order dated 15.09.2016 in C.R.M.P.No.2957 of 2016, for giving Police custody to the petitioners herein to the respondent.

16. In the result, the Criminal Revision stands dismissed.

Sd/-

Assistant Registrar (CS I)

/True Copy/

Sub Assistant Registrar

To

- 1.The Judicial Magistrate No.II,
Madurai.
- 2.The Inspector of Police,
Sellur Police Station,
Madurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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