

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.866 OF 2017

ORDER:

This Criminal Petition is filed under Sections 437 and 439 of Cr.P.C. to enlarge the petitioner on bail in Crime No.94 of 2016 of Yeleswaram Police Station, East Godavari District, registered for the alleged offence punishable under Section 8 (c) read with 20(b) (ii) (C) of the N.D.P.S. Act.

Petitioner herein is A.3 in the above crime.

The case of the prosecution, in brief, is as follows.

Petitioner herein and other accused committed an offence punishable under Section 8 (c) read with 20(b) (ii) (C) of the N.D.P.S. Act and he was remanded to judicial custody on 19-7-2016. Since then, he is in judicial custody, but Investigating Agency failed to file Charge Sheet within 180 days and mandatory period of remand was expired by 15-1-2017 which was permitted under the Act but Charge Sheet was filed on 16-1-2017 i.e., one day after expiry of 180 days but trial court dismissed the petition on the ground that Charge Sheet was filed on 16-1-2017. The present petition was also filed on the same day i.e., 16-1-2017 and therefore, filing of Charge Sheet and petition on the same day and after filing the Charge Sheet, petitioner is not entitled to seek bail under Section 167 (2) of Cr.P.C.

During hearing, learned counsel for the petitioner has drawn the attention of this court to a decision of the apex court reported in *UNION OF INDIA THROUGH C.B.I. v. NIRALA YADAV ALIAS RAJA*

RAM YADAV ALIAS DEEPAK YADA (¹) to contend that when the Charge Sheet is not filed within 180 days i.e., time permitted for filing Charge Sheet under the provisions of Cr.P.C. the petitioner is entitled for statutory bail.

Undisputedly, the offence allegedly committed by the petitioner is punishable under Section 8 (c) read with 20(b) (ii) (C) of the N.D.P.S. Act and is punishable with imprisonment for ten years and the outer limit of time for filing Charge Sheet is 180 days for such offence which expired by 15-1-2017. But the petition was filed on 16-1-2017 i.e., on Monday, Charge Sheet was also filed on the same day i.e., 16-1-2017.

The learned Public Prosecutor for the State of Andhra Pradesh would contend that petition was filed under Section 167 (2) of Cr.P.C. subsequent to filing of the Charge Sheet whereas the S.R.Number of petition filed under Section 167(2) is 215 of 2017.

Thus, Charge Sheet and Petition were filed on the same day itself.

The main endeavor of the counsel for the petitioner is that after expiry of 180 days permitted under the Act for filing Charge Sheet, petitioner is entitled for statutory bail under Section 167 (2) Cr.P.C. The reason assigned by the trial court is that 180th day happened to be holiday, i.e., Sunday, therefore, filing of Charge Sheet on the next day would save limitation.

¹ AIR 2014 SC 3036

Learned counsel for the petitioner relied on a decision reported in *UNION OF INDIA THROUGH C.B.I. v. NIRALA YADAV ALIAS RAJA RAM YADAV ALIAS DEEPAK YADA (1st cited)* wherein the apex court concluded at para 41 of the said decision, which reads as follows”

“The day the accused filed the application for benefit of the default provision as engrafted under proviso to sub-section (2) of Section 167 Cr.P.C., the Court required the accused to file a rejoinder affidavit by the time the initial period provided under the statute had expired. There was no question of any contest as if the application for extension had been filed prior to the expiry of time. The adjournment by the learned Magistrate was misconceived. He was obliged on that day to deal with the application filed by the accused as required under Section 167 (2) Cr.P.C. We have no hesitation in saying that such procrastination frustrates the legislative mandate. A court cannot act to extinguish the right of an accused if the law so confers on him. Law has to prevail.”

In *SHAIK ABDUL GANI MIAH Vs. STATE OF A.P.* (²), this court held at para 14 of the decision of the apex court which reads as follows:

“In the present case, the charge-sheet was indeed filed on 16-3-2013. The charge-sheet was returned. By 19-3-2013, the petitioners accrued the right to be enlarged on bail as 90 days’ period has elapsed from the date of their arrest. It would not matter whether the prosecution subsequently laid correct charge-sheet or otherwise. However, it would appear that the prosecution laid corrected charge-sheet in June, 2013, which again stood returned. I therefore hold that this is a case where the charge-sheet is not deemed to have been filed within the statutory period.

The petitioners consequently are entitled to be enlarged on bail on the ground that the charge-sheet has not been filed within the statutory period.”

² MANU/AP/0061/2014

Similarly, in a decision of this court reported in *MATCHUMARI CHINA VENKATAREDDY AND OTHERS Vs. STATE OF ANDHRA PRADESH* (³) at paragraph 11, this court took a view and laid down five guidelines which are as follows:

“(1) That the police report (charge-sheet) under [section 173\(5\) Cr.P.C.](#) is not complete unless it is accompanied by the material papers (statements etc.) as contemplated under [section 173\(5\) Cr.P.C.](#)

(2) That a perusal of police report (charge-sheet) as to whether the same is inconsonance with sub-[sections 173\(2\)](#) and [173\(5\) Cr.P.C.](#) is only an administrative act and not a judicial act.

(3) That judicial act commences when the police report (charge-sheet) is filed in complete form, both complying with the provisions contained under [sections 173\(2\)](#) and [173\(5\) Cr.P.C.](#) and it is taken on the file of the court and perused by the court for taking a decision under [Section 190\(1\)\(b\) Cr.P.C.](#)

(4) That if the investigation is not completed either within 90 days or 60 days, as the case may be, and if the police report (charge-sheet) is not filed in complete form as mentioned supra within the stipulated periods, the accused shall have absolute right for being released on bail subject to their readiness for furnishing sureties; and (5) As the provisions of [Section 167\(2\)](#), have not been complied with in the instant cases, the petitioners in both the Criminal Petitions shall be released on bail on each of their furnishing personal bonds for the sum of Rs. 10,000/- (Rupees ten thousand only) with one surety each for Rs.10,000/- (Rupees ten thousand only) to the satisfaction of the Judicial First Class Magistrate, Darsi, Prakasam District.”

There is no quarrel about law declared by the apex court and this court in the above judgments but curiously the learned Public Prosecutor placed a reliance on the

³ 1993 (1) ALT (CrI) 531

decision of the apex court in *DR. BIPIN SHANTILAL PANCHAL Vs. STATE OF GUJARAT*⁽⁴⁾ where the apex court held as follows:

“If an accused person fails to exercise his right to be released on bail for the failure of the prosecution to file the charge-sheet within the maximum time allowed by law, he cannot contend that he had an indefeasible right to exercise it at any time notwithstanding the fact that in the meantime, the charge-sheet is filed. But on the other hand, if he exercises the right within the time allowed by law and is released on bail under such circumstances, he cannot be rearrested on the mere filing of the charge-sheet.”

Thus, the law is clear and the law declared by the apex court is that the petitioner can avail remedy under Section 167 (2) of Cr.P.C. Immediately, after prosecution failed to file charge sheet within time, the petitioner is entitled to statutory bail as per the provisio of Section 167 (2) Cr.P.C.

Here the circumstances are that 180th day happened to be holiday i.e., Sunday, Charge Sheet was filed on the next working day i.e., Monday. When Charge Sheet was filed and petition was filed under Section 167 (2), the filing of charge sheet on the next working day is sufficient compliance is the question.

It is useful to extract Section 10 of the General Clauses Act which deals with computation of limitation.

- (1) *Where, by any Central Act or regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the*

⁴ (1996) 1 SCC 718

last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

Provided that nothing in this section shall apply to any act or proceeding to which the⁵ [Indian Limitation Act, 1877 (15 of 1877)], applies.

(2) *This section applies also to all⁶ [Central Acts] and Regulations made on or after the fourteenth day of January, 1887."*

Section 10 (as also section 4 of the Limitation Act) gives expression to the general principle of law enunciated by the maxims "lex non cogit ad impossibilia", the law does not compel a man to do that which he cannot possibly perform, and "actus curiae neminem gravabit" i.e., an act of the court shall prejudice no man. The section does not in any way extend the period of limitation, nor does it furnish any date for computation of time; it merely embodies a rule of elementary justice that if the time allowed by statute to do an act or take a proceeding expires on a day when the Court is closed, it may be done on the next sitting of the Court vide *Raj Pande v. Sheepugan Pande*, AIR 1952 All 422 (FB); *Rambir v. Prabhakar*, AIR 1955 Nag 300. The section only provides that a party prevented from doing an act by some circumstances beyond his control can do so at the first subsequent opportunity.

Underlying object of the section is to enable a person to do what he could have done on a holiday, on the next working day vide *HUDA v. Babeswar Kanhar*, 2004 (8) Supreme 528, *Harinder Singh*

⁵. See now Limitation Act, 1963 (36 of 1963).

⁶ Subs. by the A.O. 1937

v. S.Karmail Singh, AIR 1957 SC 271. Where period is prescribed for the performance of an act in a Court or office, and that period expires on a holiday, then according to the section, the act should be considered to have been done within that period, if it is done on the next day on which the Court or office is open. For that section to apply, therefore, all that is requisite is that there should be period prescribed, and that period should expire on a holiday vide Harinder Singh v. S.Karnail Singhi, AIR 1957 SC 271; Refer, AIR 1999 SC 3558; AIR 1996 SC 796; Vishwamitra Press, Kanpur v. Workers of Vishwamitra Press, AIR 1953 SC 41.

Undoubtedly, N.D.P.S. Act is Central Act and according to Section 10 of General Clauses Act, where an Act, to which this Chapter applies, confers power to make rules or bye laws or to issue orders, expressions used in such rules, bye-laws or orders, have the same respective meanings as in the Act conferring the power.

Section 10 of the General Clauses Act which is identical to Section 4 of Limitation Act gives an expression to General principle of law. If Section 10 of General Clauses Act is not applied, the petitioner is entitled, such narrow view cannot be taken, in view of law declared by apex court to make the provision in the Act redundant.

Therefore, all that is required is that there should be a period of 180 days happened to be a holiday i.e., Sunday, filing of Charge Sheet on Monday i.e., next working day is sufficient compliance for filing charge sheet within 180 days. Therefore, filing of charge sheet

on the next working day would not confer any right on the petitioner to claim statutory bail under Section 167 (2) of Cr.P.C.

A similar question came before the other High courts in *N.SUREYA REDDY AND ANOTHER v. STATE OF ORISSA* (⁷) and *POWELL NAWA OGECHI v. THE STATE (DELHI ADMINISTRATION)* (⁸) wherein two courts discussed the scope of Section 10 of General Clauses Act and expressed the same view. Though the decisions are not binding, but has got persuasive value.

By applying principles laid down in the decision of apex court and persuaded by law laid down by other High Courts supra, trial court committed no error. However, even on fresh consideration of petition and filing of Charge Sheet is on the next working day, as 180th day happened to be a holiday i.e., Sunday itself is sufficient and thereby, petitioner is not entitled to claim any right under Section 167 (2) Cr.P.C. Hence, this petition is liable to be dismissed.

Accordingly, this Criminal Petition is dismissed.

As a sequel to the disposal of this petition, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE M.SATYANARAYANA MURTHY

Dated 13-2-2017.

Dvs.

⁷ 1985 CRL.L.J.939 (1)

⁸ 1986 CRL.L.J. 2081 (1)

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