

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.284 of 2018

Arising Out of PS. Case No.-142 Year-2017 Thana- RAMKRISHNANAGAR District- Patna

Mithilesh Yadav @ Mithilesh Kumar Yadav, aged about 28 years, Son of
Bijendra Rai @ Bijendra Yadav, R/o Vill- Bari Pahari, P.s.- Agam Kuan,
District- Patna Petitioner

Versus

The State of Bihar Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Shambhu Narain Singh, Advocate
Mr. Rajeev Ranjan, Advocate
For the Opposite Party/s : Mr. Jharkhandi Upadhyay, app

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 10-10-2018 Heard learned counsel for the petitioner and Mr.
Jharkhandi Upadhyay, learned APP No. 28 for the State.

The petitioner in the present case is seeking quashing
of the order dated 06.11.2017 passed by learned A.C.J.M. XIII,
Patna on a bail petition preferred by the petitioner under the
provision of Section 167 (2) of the Cr.P.C. in connection with
Ram Krishna Nagar P.S. Case No. 142 of 2017 under Sections
302/34 of the Indian Penal Code and Section 27 of the Arms
Act.

Learned counsel for the petitioner submits that the 90
days of the judicial custody of the petitioner expired on 30th
September, 2017. On 06.10.2017 he filed an application for his
release in terms of the provision of Section 167 (2) of the Cr.P.C
because no charge-sheet was filed or was available on the record
of the case. The said application preferred by the petitioner has



been rejected by the learned A.C.J.M. XIII when the report was submitted by the office clerk of the court disclosing that the charge-sheet was submitted on 26.09.2017 itself. The contention of the petitioner is that admittedly on 06.10.2017 when the application was filed by the petitioner seeking his release, the charge-sheet was not available on the record. On the said date learned A.C.J.M. XIII, Patna had called for a report from his office clerk and the report was not submitted on that date and it was submitted only later on 07.10.2017. It is only at this stage when the office clerk disclosed the availability of the charge-sheet submitted by the Police in the present case.

Learned counsel submits that once the petitioner invoked his right which accrued to him under Section 167 (2) Cr.P.C. and it is fact that on that date when the application was moved by the petitioner, the charge-sheet was not available on the record, he had earned reliefs and it was incumbent upon the learned A.C.J.M. XIII, Patna to pass order of release of the petitioner. Learned counsel relied upon the judgment of the Hon'ble Apex Court in the case of **Achpal @ Ramswaoop & Another** recently decided on 24.09.2018 and further relied upon the judgment of the Hon'ble Supreme Court in the case of **Gopalanachari vs. The State of Kerala** reported in **AIR 1981**



SC 674 to contend that the court is the custodian of human rights.

Mr. Jharkhandi Upadhyay, learned APP, however, has vehemently opposed the submission of learned counsel representing the petitioner.

Learned APP submits that the petitioner is involved in a serious offence under Section 302 IPC. He happens to be the main assailant who had fired and killed the person concerned. It is submitted that if the contention of the learned counsel for the petitioner is accepted then any accused despite of there being submission of the charge-sheet in the office of the court may get benefit of Section 167 (2) Cr.P.C. only because of the laches on the part of the office clerk in not placing the charge-sheet on the records of the case.

Learned APP submits that in the present case what has happened is nothing more than mere laches on the part of the office clerk in not placing the charge-sheet at appropriate time before the learned A.C.J.M. XIII, Patna. It is not in dispute that there is no contention to this extent that the charge-sheet was not received by the office clerk on 26.09.2017. It is submitted that the office clerk has in fact made an incriminating statement against herself by saying that the charge-sheet was received by



her on 26.09.2017 and in such circumstance this Court can infer that no reasonable person who is holding the post of an office clerk in the court can make self incriminating statement which will reflect upon his/her own delinquency. In the present case the office clerk has in her report dated 07.10.2017 clearly submitted that the charge-sheet was received in the office of the court on 26.09.2017. Therefore, so far as compliance of Section 167 (2) Cr.P.C. is concerned, in the present case it cannot be argued that no charge-sheet was submitted by 90th day from the date of custody of the accused.

It is further submitted that the judgment relied upon by the learned counsel representing the petitioner in the case of **Achpal @ Ramswaoo** (Supra) the facts were quite different and in the said case what weighed with the Hon'ble Supreme Court was that the learned trial court had returned the charge-sheet because of certain discrepancies noticed therein and on the 90th day there was no charge-sheet available on the record. Facts in the present case are quite different and distinct. In this case, learned APP has also relied upon a judgment in the case of **Bharat Petroleum Corporation Limited & Anr. vs. N. R. V. Vairamani** reported in (2004) 8 SCC 579 and has contended that the Hon'ble Apex Court has observed time and again that



the judgment of the court should not be referred like euclid's theorem because a slight change in the facts of the case would make a sea difference in the judgment of the court. It is submitted that the case of **Achpal @ Ramswaoop** (Supra) is clearly distinguishable.

Having heard learned counsel for the parties and on perusal of the records, this Court finds that the petitioner being the assailant and accused of Section 302 IPC has been seeking his release under Section 167 (2) Cr.P.C. on the sole contention that on the date i.e. 06.10.2017 when he invoked his right to get the bail because of non-submission of charge-sheet, the charge-sheet was not on the record of the court. But at the same time this Court finds that there are ample materials on the record to show, including the report of the office clerk dated 07.10.2017, that the charge-sheet was already submitted in the office of the court and it was for the office clerk to place the charge-sheet on the record. But somehow or the other the office clerk failed to place the charge-sheet on record on 06.10.2017 when the report was called for. It is not the case of the petitioner that the charge-sheet was procured by the office clerk of the court on the subsequent date i.e. 07.10.2017 and the same was placed on the record. Had it been so the matter would have been different and



in that circumstance the office clerk would not have taken upon herself the responsibility to implicate himself by making self incriminating statement in her report.

This Court is convinced that the materials available on the record unambiguously suggest that the charge-sheet was received in the office of the court on 26.09.2017 but for one reason or the other in which the office clerk was unable to place the charge-sheet on the record on 06.10.2017 when the report was called for.

This Court agrees with the submission of the learned APP that if for the laches on the part of the office clerk in not placing the charge-sheet on the record, the accused would be allowed the benefit of bail under Section 167 (2) Cr.P.C., it will not only defeat the purpose of the provision of the default bail provision in Cr.P.C. but would also result in encouraging the accused facing charges under the serious provisions of the Indian Penal Code to indulge in delaying the placement of the charge-sheet on the record.

In the present facts situation, this Court does not find any merit in this application. The same is hereby dismissed.

(Rajeev Ranjan Prasad, J)

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