

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Review Petition No. 164 of 2017**

Ashish Sinha, S/o A.K. Sinha, aged about 37 years, through wife –Smt. Anupriya Sinha, aged about 36 years, W/o Ashish Sinha, R/o.H-2/97, Narmada Nagar, Bilaspur, Tahsil & District Bilaspur, Chhattisgarh.

---- Petitioner**Versus**

State Of Chhattisgarh Through Station House Officer, Civil Lines, Bilaspur, District Bilaspur, Chhattisgarh.

---- Respondent

For the Petitioner	:	Shri Hemant Gupta, Advocate.
For the Respondent/State	:	Shri Anupam Dubey, Dy. G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**ORDER****10.01.2018**

1. This review petition has been brought praying for review of the order passed by this Court in W.P. (Cr.) No. 330 of 2017, dated 6.10.2017.

2. Learned counsel for the applicant submits that by the impugned order, this Court has allowed the petition but in the operative paragraph of the order, after setting aside the order passed by the Judicial Magistrate First Class dated 10.8.2017, the concerned Magistrate has been directed to reconsider the application of the petitioner under Section 167(2) of the Code of Criminal Procedure afresh keeping in view the observation made in that order. This part of

the order is not in accordance with the principles laid down and violates the fundamental rights of the petitioner.

3. Reliance has been placed on the judgment of the Supreme Court in the case of **Adalat Prasad vs. Rooplal Jindal** reported in **2004 LawSuit (SC) 912**. The High Court of Orissa in the case of **District Manager, Food Corporation of India vs Jayashankar Mund** reported in **1989 Law Suit (Ori) 11**, has held that the Magistrate has no power to review his own order. Reliance has also been placed on the judgment of the Supreme Court in **Rakesh Kumar Paul vs. State of Assam** reported in **AIR 2017 SC 3948**, in which it has been clearly held that the right of default bail under Section 167(2) of the Cr.P.C. cannot be frustrated on any pretext. Hence, on this ground, it is submitted that there is no requirement for the concerned Court to reconsider on the application as all the requirements under Section 167(2) of the Cr.P.C. are fulfilled.

4. Learned State counsel opposed the application and the submissions made in this respect. It is submitted that the petitioner has already been benefited by the impugned order and the direction given is in no way contrary to the provision under Section 167(2) of the Cr.P.C. or against the ratio of law laid down by the Supreme Court. Reliance has been placed on the judgment of the Supreme Court in **Hari Singh Mann vs Harbhajan Singh Bajwa** reported in **AIR 2001 (SC) 43**, in which it was held that in view of the provisions under Section 362 of the Cr.P.C., the Court has no power to review or alter

his own judgment and as such, the order passed cannot be reviewed under the cloak of Section 482 of the Cr.P.C.

5. Considering the submissions made, the question before this Court is whether the prayer for modification of a direction issued to the concerned Court if allowed, would amount to review of its own order by this Court.

6. Reviewing an order would mean the formal assessment of the order already passed with intention to change the finding or conclusion, if necessary. In this case the impugned order has been passed allowing the petition of the petitioner and setting aside the impugned order passed by the Judicial Magistrate First Class. No such prayer has been made by the petitioner to review the finding or the conclusion of this Court of setting aside the order of the JMFC, Bilaspur. The only prayer is related to the modification of a direction issued to the concerned Court praying that the direction given is not inconsonance with the provisions under Section 167(2) of the Cr.P.C. On this basis, it appears that the prayer of the petitioner in this case is not a prayer to review the order passed by this Court. It is simply for modification of a direction issued which can be taken into consideration and if necessary the direction issued to the concerned Court may be modified.

7. Considering the ratio laid down by the Supreme Court in the case of **Rakesh Kumar Paul vs. State of Assam** (supra) which is

based on the view expressed in the Supreme Court in the case of **Sanjay Dutt vs. State through CBI, Bombay** reported in **1994 AIR SCW 3857** that the right accrued in favour of the accused to be released on bail under Section 167 of the Cr.P.C. is indefeasible right. Once the accused has applied for grant of bail, after completion of statutory period of his confinement in Judicial remand, subsequent filing of charge-sheet shall not have any effect on this right. This view has been further confirmed by Hon'ble Supreme Court in the case of **Uday Mohanlal Acharya vs. State of Maharashtra** reported in **2001 5 SCC 453** and **Syed Mohd Kazmi vs. State** reported in **2013 AIR SC 152**.

8. Proviso under Section 167 (2) of the Cr.P.C. reads as follows:

'167 (2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that-

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days; if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,-

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this subsection shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;'

As the provision speaks, that after completion of 90 days or 60 days as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail. The words 'accused is prepared to and does furnish bail' has to be construed that filing of bail application would show that accused is prepared to furnish bail. In this case the preparation of the accused in the present context can be assumed that he has filed the application before the concerned Court. Hence, for these reasons, the direction given in the impugned order needs to be modified and explained so that the order is complied with by the concerned Court in accordance with the principles of the law laid down.

9. Consequently, this review petition is allowed and the direction issued in the impugned order is modified. Instead of direction issued earlier, it is ordered that the concerned magistrate shall consider on the

preparedness of the petitioner on the basis of the application filed previously and if satisfied may pass the orders for furnishing bail bonds as per the provisions under Section 167(2) of the Cr.P.C. in view of the observations made and the principles laid down so far.

10. Accordingly, this review petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nimmi