

Vidya Amin.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION No. 715 OF 2018

Satyanarayan Rajaiah Karrela & Ors. ... Applicants
VS.
The State of Maharashtra ... Respondent

**WITH
CRIMINAL APPLICATION No. 716 OF 2018**

Krishna Lingayya Ghoshaka ... Applicant
VS.
The State of Maharashtra ... Respondent

Mr. Sudeep Pasbola a/w. Mr. Karl Rustomkhan, Mr. Arif Siddiqui
i/b. Susan Abraham, Advocate for the applicant.
Mr. Vaibhav Bagade, Spl. P.P. a/w. Ms. Veera Shinde, APP for the
respondent/State.

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: 17th December, 2018**

P.C. :

Both these Criminal Applications are made under section 482
r/w. 439 and 167(2) of the Code of Criminal Procedure. In these
cases, the order granting extension of time for filing charge sheet
passed on 9th April, 2018 by the learned Additional Sessions
Judge, Mumbai in M.C.O.C.A. Remand Application No. 63 of 2018
and also the order dated 24th April, 2018 passed below Exhibits 18
and 20 by the learned Additional Sessions Judge, City Civil and
Sessions Court, Greater Bombay thereby rejecting the Application

Exhibit 18 for setting aside the order of granting extension of time for filing charge sheet and also Application Exhibit 20 for statutory bail.

2. The learned counsel Mr. Pasbola for the applicants submitted that the service of notice on the accused in the Applications seeking extension of time for filing charge sheet under Unlawful Activities (Prevention) Act, 1967 (U.A.P. Act) is mandatory. He submitted that as per the police report, the Superintendent of jail has made endorsement that on 5th April, 2018, the applicants/accused refused to accept service, then on the next dates, i.e., 6th or 7th April, the prosecution should have moved the Court informing that the accused were not accepting the service. He has submitted that at the time of remand, the counsel of the accused were present, however, before that, the Application seeking extension to file charge sheet was decided and period was extended upto 28th May, 2018. He has submitted that the valuable right of the accused to get audience is defeated due to non-service of notice and the order was passed behind the back of the advocates representing the accused persons. The learned counsel submitted that on the next date, i.e., 10th April,

2018, the advocates of the applicants/accused have moved an application for setting aside the order of extension of time, however, the said Application was rejected after hearing on 24th April, 2018. He further submitted that the order passed by the learned Judge of extension of time is non-speaking and without reasons, therefore, both the orders are to be set aside. Hence, these Criminal Revision Applications.

3. The learned Special Public Prosecutor submitted that the Application was made by the prosecutor earlier on 4th April, 2018 for extension of time for filing the charge sheet. After receiving the said Application, the Court has issued notice to the applicants/accused in Arthur Road jail. On 5th April, 2018 when the Superintendent of Arthur Road tried to serve Court notice on the applicants/accused, they refused to accept and accordingly the said noting was placed before the Court. The Court has considered that it is deemed to be accepted. The learned Spl. P.P. further submitted that there is a compliance under Section 43D of U.A.P. Act. The Application seeking extension to file the charge sheet was preferred by the prosecutor stating reasons for the same. He further submitted that no grievance is made by the

applicants/accused that they were not properly served. He supported the order dated 24th April, 2018 passed by the learned Additional Sessions Judge rejecting the Application Exhibit 18 for setting aside the order of granting extension of time for filing charge sheet and also rejected Exhibit 20, i.e., Application for statutory bail. He further submitted that the charge sheet is filed on 13th May, 2018, i.e., within stipulated period.

4. The facts which are admitted can be stated as follows:

On 4th April, 2018 the Application for extension of time for filing charge sheet under U.A.P. Act was filed by the Prosecutor before the Court. Pursuant to that, notices were issued to the applicants/accused, who were in Arthur Road Jail. The matter was fixed further on 9th April, 2018. At that time, the accused persons were not produced before the Court. The last date of completion of 90 days was on 12th April, 2018. On 9th April, 2018, the learned Judge passed the order and extended the time till 10th May, 2018. Thereafter, the matter was again called out and the order was passed below Remand Application. It was mentioned that “the counsel of the accused were present and the jail custody is extended till 23rd April, 2018 in view of extension of time for filing

charge sheet”.

5. It is also an admitted fact that thereafter on the next day, i.e., 10th April, 2018, Application Exhibit 18 was moved by the counsel for the applicants/accused praying that the order granting extension of time to file charge sheet is to be set aside, as the advocates of the applicants/accused were not heard on the previous date when the said Application Exhibit 16 was decided. The said Application and another Application Exhibit 20 which was made for bail, were rejected by order dated 24th April, 2018.

6. In the present case, certain facts are disputed by the applicants/accused. Firstly, it is not admitted that the notices were refused by the applicants/accused on 5th April, 2018, as it is submitted that no attempt was made to serve applicants/accused on 5th April, 2018. The fact that the refusal of notice is to be taken as deemed service is also challenged by the learned counsel for the applicants/accused in view of the ratio laid down by the Hon'ble Supreme Court in the case of **Hitendra Vishnu Thakur & Ors. vs. State of Maharashtra & Ors.**, reported in (1994) 4 SCC 602 and in the case of **Sanjay Dutt vs. State, through CBI.**,

reported in **(1994) 5 SCC 410**.

7. On 9th April, 2018, the Sessions Court passed two orders and it appears from roznama that two orders were passed on the same day but at different time. The first order was passed on Exhibit 16 by which the time to file the charge sheet was extended till 28th May, 2018. At that time, neither the accused nor their advocates were present. The roznama below Exhibit 16 does not disclose the presence of the advocates of the accused like the roznama of remand Application wherein the names of all the advocates of the accused are appearing. It is to be noted that immediately on the next date, i.e., 10th April, 2018, the counsel of the applicants/accused has moved an Application stating that the order of extension of time is to be set aside because the accused were not given opportunity to hear. In the case of extension of time for filing charge sheet beyond 90 days, it is the duty of the Court to give hearing to the accused or his lawyers because his indefeasible right which is mentioned under section 167(2) is going to be affected. On perusal of the order dated 24th April, 2018, nowhere the Judge has mentioned about the presence of the advocates of the applicants/accused on 9th April, 2018 at the time

of deciding the Application Exhibit 16. It appears that no advocate of the applicants/accused was present and without giving any opportunity to the applicants/accused, the order of extension of time to file the charge sheet was passed. On this background, the ratio laid down in the cases of **Hitendra Vishnu Thakur & Ors.** (*supra*) and **Sanjay Dutt** (*supra*) is stated as follows:

In the case of **Hitendra Vishnu Thakur**, it is held that -

“Similarly, when a report is submitted by the public prosecutor to the Designated Court for grant of extension under clause (bb), its notice should be issued to the accused before granting such an extension so that an accused may have an opportunity to oppose the extension on all legitimate and legal grounds available to him. It is true that neither clause (b) nor clause (bb) of sub-section (4) of Section 20 TADA specifically provide for the issuance of such a notice but in our opinion the issuance of such a notice must be read into these provisions both in the interest of the accused and the prosecution as well as for doing complete justice between the parties. This is a requirement of the principles of natural justice and the issuance of notice to the accused or the public prosecutor, as the case may be, would accord with fair play in action, which the courts have always encouraged and even insisted upon.”

In the case of **Sanjay Dutt** (*supra*), it is held that -

“(2)(a) Section 20(4)(bb) of the TADA Act only requires production of the accused before the court in accordance with Section 167(1) of the Code of Criminal Procedure and this is how the requirement of notice to the accused before granting extension beyond the

prescribed period of 180 days in accordance with the further proviso to clause (bb) of sub-section (4) of Section 20 of the TADA Act has to be understood in the Judgment of the Division Bench of this Court in Hitendra Vishnu Thakur. The requirement of such notice to the accused before granting the extension for completing the investigation is not a written notice to the accused giving reasons therein. Production of the accused at that time in the court informing him that the question of extension of the period for completing the investigation is being considered, is alone sufficient for the purpose.”

8. In the present case, whether the notice was served, whether it is refused or it was not served at all are disputed facts and it is a word against word. All the accused are in the prison, hence it is the duty of the State to ensure their production on the date of remand either by their physical production or through video conferencing. It was not done. Therefore, the learned Judge, on 9th April, 2018 when the accused were not produced on remand date, should have directed the production of the accused either on the same day or on the next day, i.e., 10th April, 2018 and then by serving the notice in the Court ought to have given audience to the accused on the point of extension of time for filing charge sheet. It is to be noted that all the accused persons were represented through their advocates, whose presence was shown specifically in the remand application, which was considered later, on the same day. The

learned Judge atleast should have given the opportunity to the counsel of the applicants/accused to argue the matter and put up their say on the point of extension of time for filing the charge sheet atleast on the next day, i.e., 10th April, 2018 or thereafter but prior to 12th April, 2018. The service of notice or opportunity to give audience to the applicants/accused when the issue of extension of time for filing charge sheet is involved, is not considered an empty formality but all the steps are required to be taken meaningfully and effective service of notice on the accused is necessary. Under such circumstances, the order dated 9th April, 2018 of extension of time is set aside and also the order below Exhibit 18 is set aside. The applicants/accused are at liberty to move the Application for bail before the trial Court.

9. Criminal Applications are allowed and are disposed of accordingly.

10. The learned Special Public Prosecutor Mr. Bagade submitted that the order of this Court is to be stayed.

11. In view of the ratio laid down by the Hon'ble Supreme Court in the case of **Hitendra Vishnu Thakur & Ors.** (*supra*) and in the case of **Sanjay Dutt** (*supra*), I am not inclined to stay this order.

(MRIDULA BHATKAR, J.)