

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

CRIMINAL APPEAL No.1561 OF 2018

Between:

Union of India, rep. by
Addl. Superintendent of Police,
National Investigation Agency,
Hyderabad, rep. by Spl. Public Prosecutor

..... APPELLANT

VERSUS

Md. Mahaboob Baig @Azhar Baig
and another

.... RESPONDENTS

ORDER PRONOUNCED ON : 27.06.2018

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

1. Whether Reporters of Local : Yes/ No
newspapers may be allowed to see
the Judgment ?
2. Whether the copies of judgment may : Yes/ No
be marked to Law Reporters/ Journals
3. Whether Their Ladyship/ Lordship wish : Yes/ No
to see the fair copy of judgment

C. PRAVEEN KUMAR, J

KONGARA VIJAYA LAKSHMI, J

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! Counsel for Appellant : Sri P.Vishnuvardhana Reddy
Spl. Public Prosecutor for NIA

^ Counsel for Respondents : Sri L.Srinivasu

< GIST :

> HEAD NOTE :

? Cases referred :

1. 1992 AIR SC 1768
2. (2013) 4 KHC 529
3. (2000) 9 SCC 266
4. (2010) 6 SCC 753
5. (2002) 2 SCC 121

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JUDGMENT : (per Hon' ble Sri Justice C.Praveen Kumar)

1) The short question that falls for consideration in the present appeal filed under Section 21 of the National Investigation Agency Act, 2008 (for short "the Act"), is "whether the appellant herein is entitled for police custody of two respondents/accused in Pc.No.1/ 2018/ NIA/ Hyderabad (Seizure of FICN in Visakhapatnam), after the expiry of first 15 days of remand on the ground that there was a change in the investigating agency".

2) The brief facts which lead to filing of the present appeal are as under:

Fake Indian currency notes of Rs.2,000/- denomination having face value of Rs.10,20,000/- were seized from the possession of the two respondents/accused while they were traveling in Train No.18645, Howrah-Hyderabad East Coast Express at Visakhapatnam railway station. The incident is said to have occurred on 31.03.2018 at 5.55 a.m., wherein the Regional Unit of the Directorate of Revenue Intelligence, Visakhapatnam, conducted raid, seized the notes and arrested the accused. The accused in their statement disclosed that the fake Indian currency notes were smuggled from Bangladesh and they were handed over to them at a place near Farakka, Malda District, West Bengal, by a

courier sent by one Tajamul. It is said that initially a case was registered by the Directorate of Revenue Intelligence under Section 135 (1) (i) (C) of the Customs Act, 1962 and then they were arrested and remanded to judicial custody till 13.04.2018. Later, their remand was extended in connection with the said crime. Thereafter, the Government of India, Ministry of Home Affairs, issued a letter dated 13.04.2018 opining that the scheduled offence under the Act has been committed and having regard to the gravity of the offence and its interstate as well as cross border linkages, directed the National Investigation Agency to investigate the case in accordance with the Act. In exercise of powers conferred under sub-section 4 of Section 6 read with Section 8 of the Act, the Central Government directed the National Investigation Agency to take up the investigation of the case. Pursuant thereto, the case was transferred from the file of Directorate of Revenue Intelligence to the National Investigation Agency, whereon it came to be re-numbered as Pc.No.01/ 2018/ NIA/ HYD (FICN CASE) and accordingly the case was also transferred from the Court of Economic Offences at Visakhapatnam to the Court of the Metropolitan Sessions Judge-cum-Special Judge for trial of NIA Cases at Vijayawada. The accused were produced before the Court on 27.04.2018 on which date the investigating agency filed an application seeking police custody of the two accused for a period of 12 days, for the purpose of extensive investigation. It is to be noted here that the Agency re-registered the above crime for the offence punishable under

Section 120-B and 489-B and 489-C of IPC, which are shown in the Schedule of the Act. The said application filed by the Agency for police custody of respondents herein was rejected on 04.05.2018. Challenging the same the present appeal came to be filed under Section 21 of the Act.

3) Learned counsel for the appellant would submit that the finding of the trial Court in holding that the police custody can be granted only in the first 15 days of remand, would not apply to the case on hand. According to him the agency to which the case has been entrusted is empowered to conduct investigation in serious cases where the sovereignty, integrity and economic stability of the Country is involved and as such they are entitled for police custody within the first 15 days of remand, after the case was transferred to them. He further pleads that since the case is re-numbered and the nature of offence committed are one under the provisions of the Indian Penal Code, the agency is entitled to have police custody of the accused, to know the truth. He took us through Sections 5, 6 and 8 of the Act and also the judgments of the Apex Court in Central Bureau of Investigation v. Anupam J. Kulkarni¹ and the judgment of the learned Single Judge of this Court in Byrraju Ramalingaraju vs. The State through Central Bureau of Investigation, decided in CrI.A.Nos.2144, 2145 and 2146 of 2009, in support of his plea. According to him, as the initial registration of a crime by Directorate of Revenue Intelligence was under Customs Act, the re-registration of the

¹ 1992 AIR SC 1768

crime by the National Investigation Agency, for grave offence cannot be equated to be one and the same. Since the nature of investigation by the National Investigation Agency is from a different angle and taking into consideration the ramifications involved, pleads that it is a fit case where the Agency is entitled for police custody.

4) On the other hand, the learned counsel appearing for the respondents/accused would contend that the appellant is not entitled for police custody since such a request was never made within the first 15 days of the remand. He submits that merely because the investigation has been handed over to an other agency, where they re-numbered the case, does not by itself mean that a new crime has been committed by the accused. According to him, what the National Investigation Agency is doing is nothing but continuing the investigation in respect of an incident which took place in March, 2018. He also took us through the judgment of the Apex Court in Anupam J. Kulakarni's case (1 supra), to show that the police custody can be granted only if there is a new offence is registered against the accused.

5) The fact that no request for police custody was made in the first 15 days of the remand i.e., within 15 days after 31.03.2018 is not in dispute. It is also not in dispute that subsequent to the arrest of the accused their remand was extended. Only on 27.04.2018, the National Investigation Agency filed an application seeking police custody on the ground that the case has been

entrusted to them pursuant to the letter of the Government of India dated 13.04.2018 and that their request was within first 15 days after the case was transferred to the Special Court constituted under the Act.

6) At this stage two things also required to be noted. (1) Initially the case was registered by the Directorate of Revenue Intelligence, Visakhapatnam under Section 135 of the Customs Act and after the case was handed over to National Investigation Agency, it came to be re-registered for the offences punishable under Sections 120-B, 489-B and 489-C of IPC. It is also to be noticed here that the incident/ occurrence is one and the same and the change of status is only with regard to the investigating agency and section of law. The second aspect which requires to be noted here is that the National Investigation Agency never showed the arrest of the accused. The arrest was made only on 31.03.2018 by the Directorate of Revenue Intelligence, Visakhapatnam. These are the un-disputed facts.

7) Having regard to the above factual matrix, it is to be seen whether the National Investigation Agency is entitled to police custody under Section 167 (2) of Cr.P.C., long after the arrest and remand of the accused and within 15 days after they were directed to investigate the case?

8) Section 6 of the Act deals with investigation of scheduled offences. Section 6 (5) of the Act states that notwithstanding anything contained in the said Section, if the Central Government

is of the opinion that a Scheduled Offence has been committed which is required to be investigated under the Act, it may, *suo motu*, direct the Agency to investigate the said offence. Schedule of the Act prescribe that the Agency can investigate offences punishable under Sections 489-A to 489-E of IPC. A reading of the said provision makes it clear that the Central Government, if it is of the opinion that the Scheduled Offence has been committed, which is required to be investigated under the Act, it may, *suo motu* direct the Agency to investigate the said crime.

9) At this stage, we also intend to refer to Section 167 of Cr.P.C. It may not be necessary to refer the purport of entire section, but the proviso inserted by Act 45 of 1978 is of importance in deciding the question. It states that where the Magistrate thinks fit that further detention beyond the period of 15 days is necessary, the Magistrate may authorize the detention of accused person, otherwise than in the custody of the police, beyond the period of fifteen days. The words “otherwise than the custody of police beyond the period of 15 days” assume significance. This issue came up for consideration before the Apex Court in Anupam J.Kulkarni case (1 supra). A Two Judge Bench of the Apex Court after referring to various judgments of the High Courts and Apex Court, and Section 57 of Cr.P.C., held that the police custody can only be in first 15 days of the remand. It was a case where C.B.I. filed an application for police custody within first 15 days of the remand and obtained an order, but they could not execute the

same, as the accused fell sick. Hence they filed another application for police custody as the earlier order granting police custody could not be executed. The learned counsel for the appellant therein would contend that in grave crimes it would be impossible for the police to gather all the materials within first fifteen days and if some valuable information is disclosed at a later stage and if police custody is denied, investigation would be hampered which would result in failure of justice. The Apex Court while dealing with the scheme and object of Section 167 Cr.P.C., and the procedure to be followed by the Courts and having regard to the subsequent amendment introduced by way of Act 45 of 1978, rejected the said plea. While rejecting the said request, the Apex Court observed as under:

“A question may then arise whether a person arrested in respect of an offence alleged to have been committed by him during an occurrence can be detained again in police custody in respect of another offence committed by him in the same case and which fact comes to light after the expiry of the period of first fifteen days of his arrest. The learned Additional Solicitor General submitted that as a result of the investigation carried on and the evidence collected by the police the arrested accused may be found to be involved in more serious offences than the one for which he was originally arrested and that in such a case there is no reason as to why the accused who is in magisterial custody should not be turned over to police custody at a subsequent stage of investigation when the information discloses his complicity in more serious

offences. We are unable to agree. In one occurrence it may so happen that the accused might have committed several offences and the police may arrest him in connection with one or two offences on the basis of the available information and obtain police custody. If during the investigation his complicity in more serious offences during the same occurrence is disclosed that does not authorise the police to ask for police custody for a further period after the expiry of the first fifteen days. If that is permitted then the police can go on adding some offence or the other of a serious nature at various stages and seek further detention in police custody repeatedly, this would defeat the very object underlying Section 167. However, we must clarify that this limitation shall not apply to a different occurrence in which complicity of the arrested accused is disclosed. That would be as different transaction and if an accused is in judicial custody in connection with one case and to enable the police to complete their investigation of the other case they can require his detention in police custody for the purpose of associating him with the investigation of the other case. In such a situation he must be formally arrested in connection with other case and then obtain the order of the magistrate for detention in police custody. The learned Additional Solicitor General however strongly relied on some of the observations made by Hardy, J. in Mehar Chand's case extracted above in support of his contention namely that an arrested accused who is in judicial custody can be turned over to police custody even after the expiry of first fifteen days at a subsequent stage of the investigation in the same case if the information discloses his complicity in more serious offences. We

are unable to agree that the mere fact that some more offences alleged to have been committed by the arrested accused in the same case are discovered in the same case would by itself render it to be a different case. All these offences including the so-called serious offences discovered at a later stage arise out of the same transaction in connection with which the accused was arrested. Therefore there is a marked difference between the two situations. The occurrences constituting two different transaction give rise to two different cases and the exercise of power under Section 167(1) and (2) should be in consonance with the object underlying the said provision in respect of each of those occurrences which constitute two different cases. Investigation in one specific case cannot be the same as in the other. Arrest and detention in custody in the context of Sections 167(1) and (2) of the Code has to be truly viewed with regard to the investigation of that specific case in which the accused person has been taken into custody. In S. Harsimran Singh v. State of Punjab, 1984 CrL. L.J. 253 a Division Bench of the Punjab and Haryana High Court considered the question whether the limit of police custody exceeding fifteen days as prescribed by Section 167(2) is applicable only to single case or is attracted to a series of different cases requiring investigation against the same accused and held thus:

"We see no inflexible bar against a person in custody with regard to investigation of a particular offence being either re-arrested for the purpose of the investigation of an altogether different offence. To put it in other words, there is no insurmountable hurdle in the conversion of judicial custody into police custody by an order of the

Magistrate under S.167(2) of the Code for investigation another offence. Therefore, a rearrest or second arrest in a different case is not necessarily beyond the ken of law".

This view of the Division Bench of the Punjab & Haryana High Court appears to be practicable and also conforms to Section 167. We may however, like to make it explicit that such re-arrest or second arrest and seeking police custody after the expiry of the period of first fifteen days should be with regard to the investigation of a different case other than the specific one in respect of which the accused is already in custody. A literal construction of Section 167(2) to the effect that a fresh remand for police custody of a person already in judicial custody during investigation of a specific case cannot under any circumstances be issued, would seriously hamper the very investigation of the other case the importance of which needs no special emphasis. The procedural law is meant to further the ends of justice and not to frustrate the same. It is an accepted rule that an interpretation which furthers the ends of justice should be preferred. It is true that the police custody is not the be-all and end-all of the whole investigation but yet it is one of its primary requisites particularly in the investigation of serious and heinous crimes. The legislature also noticed this and permitted limited police custody. The period of first fifteen days should naturally apply in respect of the investigation of that specific case for which the accused is held in custody. But such custody cannot further held to be a bar for invoking a fresh remand to such custody like police custody in respect of an altogether different case involving the same accused."

10) From the findings of the Apex Court, it is clear that in one occurrence it may so happen that the accused might have committed several offences and the police may arrest him in connection with one or two offences on the basis of the available information and obtain police custody. If during the investigation his complicity in more serious offences during the same occurrence is disclosed, that does not authorize the police to ask for police custody for a further period after the expiry of the first fifteen days. The Apex Court further held that if that is permitted the police can go on adding some offence or the other of a serious nature at various stages and seek further detention in police custody repeatedly, which would defeat the very object of Section 167 of Cr.P.C. The Apex Court clarified that the said limitation shall not apply to a different occurrence in which complicity of the arrested accused is disclosed. The Court went on to hold that if it is a different transaction and if the accused is in judicial custody in connection with one case, to enable the police to complete their investigation of the other case they can require his detention in police custody, for the purpose of assisting them with the investigation in other case. In such a situation the accused must be formally arrested in connection with other case and then obtain an order from the Magistrate for detention in police custody.

11) Hence, from the above, it is clear that police custody can be granted after the first 15 days of the remand, only if the accused is involved in different transaction/different occurrence, and if the investigating agency wants to have the police custody in another

crime, they should first show his arrest in that crime and then make an application seeking detention in police custody.

12) In the instant case, there is only one occurrence and only one arrest was made by the Directorate of Revenue Intelligence. But whether re-registration of crime and adding few more sections of Penal Law or new Sections of law would change the situation is the question here. The argument of the learned counsel for the appellant is that in the instant case there is transfer of investigation from one agency to another agency leading to *suo motu* re-registration of crime and consequently fresh investigation for a different nature of offence. Fact is, there was a change in investigating agency, change in crime number and the offences are altered from Section 135 of Customs Act to Sections 489-B and 489-C IPC, but the incident/ occurrence is one and the same, that's why no arrest of the accused was shown by the National Investigation Agency after re-registering the crime.

13) Now the issue is whether re-registration of the crime and re-assigning a new crime number amounts to fresh crime/ occurrence warranting police custody?

14) Section 6 (4) of the Act states that "Where the Central Government is of the opinion that the offence is a Scheduled Offence and it is a fit case to be investigated by the Agency, it shall direct the Agency to investigate the said offence". Sub-Section (5) of Section 6 of the Act states that "Notwithstanding anything contained in this section, if the Central Government is of

the opinion that a Scheduled Offence has been committed which is required to be investigated under this Act, it may, *suo motu*, direct the Agency to investigate the said offence.”. Sub-section (6) of Section 6 of the Act states that “ Where any direction has been given under sub-section (4) or sub-section (5), the State Government and any police officer of the State Government investigating the offence shall not proceed with the investigation and shall forthwith transmit the relevant documents and records to the Agency”. Sub-Section (7) of Section 6 of the Act states that “till the agency takes up the investigation of the case, it shall be the duty of the officer-in-charge of the police station to continue the investigation”.

15) Therefore as per Section 6 of the Act, National Investigation Agency only continues with the investigation of the crime which is already registered. It may be true that the National Investigation Agency has re-registered the case and assigned new number. Mere re-registration of the crime and assigning new number does not by itself mean that the National Investigation Agency registered a second F.I.R. in respect of the case. It is well known that re-registration and assigning a new number are only for administrative and statistical purpose. Further, it is being done only to avoid the confusion when the records are transmitted to National Investigation Agency. This view of ours gets support from the judgment of a Division Bench of Kerala High Court in *Majeed*

Koliyad @ Mohamed Abdul Khader Majeed v. State of Kerala
*rep. by the Public Prosecutor*² wherein it has held as under:

“ In para No.11 of the judgment of the Apex Court referred to above, the Court held that “mere fact that some more offences alleged to have been committed by the arrested accused in the same case are discovered in the same case would not by itself render it to be a different case. All the offences discovered at a later stage arises out of the same transaction in connection with which the accused was arrested. Hence the Court held that when “the occurrences constituting two different transactions give rise to two different cases, the exercise of power under Section 167 (1) & (2) of Cr.P.C. should be in consonance with the object underlying the said provision in respect of each of those occurrences which constitutes two different cases”. The Apex Court further held that “investigation into one specific case cannot be the same as in the other. Arrest and detention in custody has to be truly viewed with regard to the investigation in that specific case in which the accused person has been taken into custody”. Therefore, unless two different crimes are registered for two different transactions, police custody cannot be granted after the first fifteen days of remand.”

16) The said view of the Apex Court in Anupam J.Kulkarni (1 supra) was approved by Three Judge Bench of the Apex Court in Budh Singh v. State of Punjab³. Similarly in Devendra Kumar and

² (2013) 4 KHC 529

³ (2000) 9 SCC 266

another vs. State of Haryana and others⁴ the Apex Court held that “any remand to police custody including second remand application, can be made only within first 15 days after the arrest and not thereafter.” In the instant case there is only occurrence, one transaction and only one crime. Hence, the judgment of the learned Single Judge of this Court in Byrraju Ramalingaraju may not be of any help to the appellant.

17) In *State of Maharashtra v. Mrs. Bharati Chandmal Varma @ Ayesha Khan*⁵, the Apex Court dealt with a situation where initially a case was registered on 01.04.2001 for offences punishable under Sections 489-A, 489-B, 489-C, 120-B and 420 IPC. On 02.04.2001, the accused was produced before the Court and remanded to judicial custody. During the course of investigation, police discovered that organized crimes under Maharashtra Control of Organized Crime Act, 1999 had also been committed and that the accused had links with foreign collaboration in pumping counterfeit currency into India. The sanction to investigate under Maharashtra Control of Organized Crime Act, 1999 was granted on 21.04.2001 and charge sheet was laid on 12.07.2001. An application for default bail came to be moved under Section 167 (2) Cr.P.C., as the police failed to file a final report within ninety days. The issue there was whether the period of 90 days has to be calculated from 02.04.2001 or from the date when sanction was granted for investigating the crimes under Maharashtra Control of

⁴ (2010) 6 SCC 753

⁵ (2002) 2 SCC 121

Organized Crime Act, 1999. After referring to various judgment of the Apex Court and Section 167 Cr.P.C., the Court held as under:

“We are, therefore, unable to agree with the contention of the learned counsel for the State of Maharashtra that a new period of 90 days would commence from the date when approval was accorded under Section 23 of the MCOCA Act for initiating investigation for any offence under the said Act. In the present case, accused would be entitled to bail, not on the merits of the case, but on account of the default of the investigating agency to complete the investigation within 90 days from the date of the first remand of the respondent.”

18) From the discussions made and the judgments referred to above, we are of the opinion that even where there is change in the investigating agency; re-registration of a crime after transfer to a new investigating agency and adding of new sections of law during the course of investigation, police custody can only be in the first 15 days of the remand of that incident/ occurrence.

19) Hence, we see no merit in the appeal and the same is accordingly dismissed. Consequently, miscellaneous petitions, if any, pending shall stand closed.

C.PRAVEEN KUMAR, J

KONGARA VIJAYA LAKSHMI, J

27.06.2018
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