

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**Cr.M.P. No. 2444 of 2019**

Devendra Chandra, S/o Balram Chandra, Aged about 21 years,
R/o Village Kikirda, P.S. Birra, Distt. Janjgir-Champa, Chhattisgarh.

---- Applicant (in jail)**Versus**

State Of Chhattisgarh Through The Station House Officer, Police
Station Hasaud, District Janjgir-Champa, Chhattisgarh

---- Non-applicant

For Applicant : Mr. Ravindra Sharma, Advocate
For Non-applicant/State: Mr. Ravi Bhagat, Deputy Government Advocate
and Mrs. Astha Shukla, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****15/11/2019**

1. The short question involved in this criminal miscellaneous petition for consideration states as under :-

“Whether an accused person against whom the jurisdictional police, though has filed charge-sheet under Section 167 (2) of the Cr.P.C. within the prescribed period of 90 days from the date of arrest but has not supplied the copy of the charge-sheet to him as provided under Section 207 of the Cr.P.C. within the said period, would be entitled for grant of default bail under proviso (a) to sub-section (2) of Section 167 of Cr.P.C. ?”

2. The aforesaid question arises in the following factual backdrop :-

2.1. Accused/applicant was arrested for commission of offence punishable under Section 489A, 489B, 489C, 489D, 255, 256 and

120-B of the Indian Penal Code (hereinafter, "IPC") on 20/06/2019 and investigation was completed and he was charge-sheeted by the jurisdictional police before the jurisdictional criminal Court on the 89th day of his arrest i.e. on 17/09/2019, but the police did not supply the copy of the charge-sheet to him (accused) [within a period of 90 days] contemplated under Section 207 of the Cr.P.C. and it was ultimately supplied to him on the 95th day from his arrest i.e. on 23/09/2019 through his counsel.

2.2. The aforesaid circumstances led to the filing of an application by the accused/applicant under proviso (a) of sub-section (2) of Section 167 of the Cr.P.C. stating *inter alia* that though the charge-sheet has been filed on 17/09/2019 but on that very day, he was not produced before the jurisdictional criminal Court and the copy of the charge-sheet was supplied to him on the 95th day after his arrest i.e. on 23/09/2019, therefore, by virtue of the aforesaid provision, he is entitled to be released on default bail.

2.3 Learned trial Magistrate rejected the said application filed by the accused/applicant vide order dated 23/09/2019 finding no merit and the said order passed by the Magistrate declining to release the accused/applicant on default bail, on being challenged, was affirmed by the revisional Court vide order dated 05/10/2019 which necessitated the filing of this criminal miscellaneous petition under Section 482 of the Cr.P.C. for extending to him (accused) the privilege of bail under the default clause.

3. Mr. Ravindra Sharma, learned counsel for the accused/applicant would submit that though the charge-sheet was filed within the statutory period of 90 days from the date of arrest of

accused/applicant but the copy of the charge-sheet was not supplied to him (accused) within 90 days and neither he was produced before the judicial Magistrate on the date of filing of charge-sheet, nor the copy of the charge-sheet was supplied to him on the date of filing of charge-sheet as contemplated under Section 207 of the Cr.P.C. and ultimately, the copy was supplied on the 95th day i.e. on 23/09/2019 through his counsel, therefore, the accused/applicant is entitled to be released on bail under the default provision referred above. He further places reliance upon the decision of the Madhya Pradesh High Court in ***Dodha v. State of M.P.***¹.

4. Mr. Ravi Bhagat and Mrs. Astha Shukla, learned State counsel would submit that the statutory mandate as to file charge-sheet under Section 167 (2) of the Cr.P.C. envisages the stage when a suspect is arrested and the investigation is not completed within the prescribed period. In this case, the investigation has been completed within the prescribed period of 90 days from the date of arrest and the accused/applicant has been charge-sheeted also on the 89th day i.e. on 17/09/2019, but the copy of the charge-sheet was supplied to him through his counsel on the 95th day i.e. on 23/09/2019 under Section 207 of the Cr.P.C. and the non-supply of the copy of the charge-sheet is nothing but a mere irregularity. Moreover, once a charge-sheet is filed within the stipulated time, the question of grant of default bail or statutory bail under Section 167 (2) of the Cr.P.C. does not arise, as such, the petitioner is not

¹ 1992 (II) MPWN 125

entitled to be released on default bail and the petition deserves to be dismissed.

5. I have heard learned counsel for the parties, considered their rival submissions and went through the records with utmost circumspection.
6. It is well-settled legal position that accused drives an indefeasible right to be admitted to bail under the proviso (a) to sub-section (2) of Section 167 of the Cr.P.C. if the investigation of the case is not completed within the prescribed period of 60 or 90 days, as the case may be and the charge-sheet is not filed within the above-stated period. [See: ***Hitendra Vishnu Thakur and Ors. v. State of Maharashtra and Ors.***²; ***Uday Mohanlal Acharya v. State of Maharashtra***³ and lastly, ***Rakesh Kumar Paul v. State of Assam***⁴]
7. In the instant case, though the charge-sheet was filed within 90 days from the date of arrest of the accused/applicant, as contemplated under Section 167 (2) of the Cr.P.C. but the copy of the charge-sheet was supplied to the accused/applicant on the 95th day from his arrest, thus, the question so arises is whether the supply of charge-sheet after the period of 90 days would entitle him to be released on default bail under Section 167 (2) of the Cr.P.C.
8. Sub-section (2) of Section 173 of the Cr.P.C. provides that as soon as investigation is completed, the officer incharge of the police station shall forward to a Magistrate empowered to take

2 (1994) 4 SCC 602

3 (2001) 5 SCC 453

4 (2017) 15 SCC 67

cognizance of the offence on a police report, a report in the form prescribed by the State Government. Once such a report is submitted to the Magistrate under Section 173 (2) of the Cr.P.C., the Magistrate takes cognizance of the offence under clause (b) of Section 190 (1) of the Cr.P.C. and thereafter to proceed in the matter as per the procedure laid down in Chapter XVI of the Cr.P.C. relating to “Commencement of Proceedings before the Magistrate.”

9. Section 207 of the Cr.P.C. provides for supply to the accused of copy of police report and other documents, which states as under :-

“Sec. 207. Supply to the accused of copy of police report and other documents. - In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following -

- (I) the police report;
- (ii) the first information report recorded under Section 154;
- (iii) the statements recorded under sub-section (3) of Section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such excluding has been made by the police officer under sub-section (6) of Section 173;
- (iv) the confessions and statements, if any, recorded under Section 164;
- (v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of Section 173:

Provided that the Magistrate may, after perusing any such part of a statement as is referred to in Clause (iii) and considering the reasons given by the police officer for the request, direct that copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused:

Provided further that if the Magistrate is satisfied that any document referred to in Clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in the Court.”

10. Section 238 of the Cr.P.C. provides as under :-

“Sec. 238. Compliance with Section 207 – When, in any warrant case instituted on a police report, the accused appears or is brought before a Magistrate at the commencement of the trial, the Magistrate shall satisfy himself that he has complied with the provisions of Section 207. ”

11. The Supreme Court, in the matter of ***Tarun Tyagi v. Central Bureau of Investigation***⁵, emphasized the need for compliance of Section 207 of the Cr.P.C. for ensuring fair trial by giving due opportunity to the accused to defend himself and has held as under in Paragraph 8 of the report :-

“8. Section 207 puts an obligation on the prosecution to furnish to the accused, free of cost, copies of the documents mentioned therein, without any delay. It includes, documents or the relevant extracts thereof which are forwarded by the police to the Magistrate with its report under Section 173 (5) of the Code. Such a compliance has to be made on the first date when the accused appears or is brought before the Magistrate at

⁵ (2017) 4 SCC 490

the commencement of the trial inasmuch as Section 238 of the Code warrants the Magistrate to satisfy himself that provisions of Section 207 have been complied with. Proviso to Section 207 states that if documents are voluminous, instead of furnishing the accused with the copy thereof, the Magistrate can allow the accused to inspect it either personally or through pleader in the Court.”

12. Now, further question for consideration would be whether provision contained under Section 207 of the Cr.P.C. is mandatory and whether non-compliance of the same is fatal and will cause prejudice to the accused ?
13. Section 207 of the new Code of Criminal Procedure, 1973 corresponds to Section 173 (4) and (5) of the repealed Code. Under the repealed Code, it was the statutory duty of the officer in charge of police station to supply copies of the specified documents to the accused. Since the police officer did not discharge that function satisfactorily and without delay, his duty has now been shifted to the Magistrate taking cognizance to ensure the supply of legible and proper copies to the accused under the present section.
14. In the matter of ***Narayan Rao v. State of Andhra Pradesh***⁶, their Lordships of the Supreme Court while considering the corresponding Section 173 (4) of the Cr.P.C. have held that an omission by a police officer, to fully comply with the provisions of Section 173 of the Cr.P.C., should not be allowed to have such a far-reaching effect as to render the proceeding including the trial

6 AIR 1957 SC 737 (V. 44)

before the Court of Session, wholly ineffective. Paragraph 10 of the judgment, being relevant herein, is extracted below :-

“10...Does such an omission necessarily render the entire proceedings and the trial null and void; or is it only an irregularity curable with reference of the provisions of [s. 537](#) (a) [of the Code](#) ? In other words, are the provisions of [S. 173\(4\)](#), read with s. 207A(3) mandatory or only directory ? There is no doubt that those provisions have been introduced by the amending Act of 1955, in order to simplify the procedure in respect of inquiries leading upto a Sessions trial, and at the same time to safeguard the interests of accused persons by enjoining upon police officers concerned and magistrates, before whom such proceedings are brought, to see that all the documents, necessary to give the accused persons all the information for the proper conduct of their defence, are furnished.

It has rightly been contended on behalf of the appellant that it was the duty of the magistrate to see that the provisions aforesaid [of the Code](#) have been fully complied with. Magistrates, therefore, have to be circumspect, while conducting such proceedings, to see to it that accused persons are not handicapped in their defence by any omission on the part of police officers concerned, to supply the necessary copies.

But we are not prepared to hold that non-compliance with those provisions has, necessarily, the result of vitiating those proceedings and subsequent trial. The word "shall" occurring both in sub-s. (4) of [s. 173](#) and sub-s. (3) of [s. 207A](#) is not mandatory but only directory, because an omission by a police officer, to fully comply with the provisions of [s. 173](#), should not be allowed to have such a far-reaching effect as to render

the proceedings including the trial before the court of Session wholly ineffective...”

15. The Supreme Court, in the matter of ***State of Uttar Pradesh v. Lakshmi Brahman and Anr.***⁷, considered the statutory obligation imposed upon the Magistrate under Section 207 read with Section 209 of the Cr.P.C. to furnish free of costs copies of documents and held that it is a judicial obligation and the Magistrate's function under Section 207 is not a trial but something other than a trial and being judicial function it would necessarily be an enquiry. Paragraphs 12 and 13 of the report are quoted below :-

“12... Section 207 as it then stood made it obligatory for the Magistrate to supply free of costs, copies of the documents set out in the section. The duty cast on the Magistrate by sec. 207 had to be performed in a judicial manner. To comply with sec. 207 which is cast in a mandatory language, when the accused is produced before the Magistrate, he has to enquire from the accused by recording his statement whether the copies of the various documents set out in sec. 207 have been supplied to him or not. No order committing the accused to the Court of Sessions can be made under sec. 209 unless the Magistrate fully complies with the provisions of sec. 207. And if it is shown that the copies of relevant documents or some of them are not supplied, the matter will have to be adjourned to get the copies prepared and supplied to the accused. This is implicit in [section 207](#) and sec. 209 provides that on being satisfied that the requisite copies have been supplied to the accused, the Magistrate may proceed to commit the accused to the Court of Sessions to stand his trial. The statutory obligation imposed by sec. 207 read with sec. 209 on the Magistrate to furnish free of

⁷ (1983) 2 SCC 372

costs copies of documents is a judicial obligation. It is not an administrative function. It is a judicial function which is to be discharged in a judicial manner. It is distinctly possible that the copies may not be ready. That makes it necessary to adjourn the matter for some time which may be spent in preparing the copies and supplying the same to the accused. The Magistrate can proceed to commit the accused for trial to the Court of Sessions only after he judicially discharges the function imposed upon him by sec. 207. This conclusion is fortified by the provisions contained in Chapter XVIII which prescribed the procedure for trial of a case by Court of Sessions. Sec. 226 provides for opening the case for the prosecution. Sec. 227 confers power on the Court of Sessions to discharge the accused if upon consideration of the record of the case and the documents submitted therewith, the Judge considers that there is no sufficient ground for proceeding against the accused. No duty is cast on the Court of Sessions to enquire before proceeding to hear the case of the prosecution under sec. 226 to ascertain whether the copies of the documents have been furnished to the accused because [section 207](#) casts the obligation upon the Magistrate to perform the judicial function.

13. Now, if under sec. 207, the Magistrate is performing a judicial function of ascertaining whether copies have been supplied or not, it would undoubtedly be an inquiry for the purpose of satisfying himself that sec. 207 has been complied with in letter and spirit. That satisfaction has to be judicial satisfaction. It is not a trial but something other than a trial and being judicial function it would necessarily be an inquiry. The making of an order committing the accused to the Court of Sessions will equally be a stage in the inquiry and the inquiry culminates in making the order of commitment. Thus, from the time the accused appears or is produced

before the Magistrate with the police report under sec. 170 and the Magistrate proceeds to enquire whether sec. 207 has been complied with and then proceeds to commit the accused to the Court of Sessions, the proceeding before the Magistrate would be an inquiry as contemplated by sec. 2(g) [of the Code](#). We find it difficult to agree with the High Court that the function discharged by the Magistrate under sec. 207 is something other than a judicial function and while discharging the function the Magistrate is not holding an inquiry as contemplated by [the Code](#)...”

16. Reverting to the facts of the present case in light of the aforesaid settled legal position, it is quite vivid that investigation comes to an end the moment the police report is submitted to the Court under Section 170 read with Section 173 of the Cr.P.C. and the Magistrate performs judicial function in supplying the copies under Section 207 of the Cr.P.C, and the accused cannot be released on default bail under Section 207 of the Cr.P.C. on the ground that copies under Section 207 of the Cr.P.C. were not supplied to him within the prescribed period of 90 days, thereby, treating the function of the Magistrate under Section 207 of the Cr.P.C. as part of investigation and as such, supply of charge-sheet by the trial Magistrate to the application under Section 207 of the Cr.P.C. with a delay of three days would not fall within the meaning of proviso (a) to Section 167 (2) of the Cr.P.C. and the accused/applicant cannot be released on bail on that ground.

17. In the aforesaid view, I am supported by the decision of the Himachal Pradesh High Court in ***State of Himachal Pradesh v. Kanti Grover***⁸. In that view of the matter, the decision relied upon

by learned counsel for the accused/applicant i.e. ***Dodha*** (supra) is quite distinguishable and both the Courts are absolutely justified in rejecting the application filed by the applicant.

18. As a fallout and consequence of the above-stated discussion, this criminal miscellaneous petition under Section 482 of the Cr.P.C., being devoid of merits, deserves to be and is accordingly dismissed. No cost(s).

**Sd/-
(Sanjay K. Agrawal)
Judge**

Harneet