

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

CRL.O.P.No.29107 of 2019
and CRL.M.P.No.16154 of 2019

Crl OP No.29107/19
State by Inspector of Police
District Crime Branch
Kanchipuram
(Crime No.27 of 2019) ...Petitioner

Vs.

Vinoth Kumar ...Respondent

Crl.M.P.No.16154/19

K.RAJASEKARAN
SENIOR MANAGER
SUNGWOO HITECH INDIA PVT. LTD
KANCHEEPURAM DISTRI ..Implead Petitioner

Vs

- 1 THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE
DISTRICT CRIME BRANCH
KANCHIPURAM ...1st Respondent/Petitioner in Crl OP
- 2 VINOTHKUMAR ...2nd Respondent/Respondent in Crl.OP

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to set aside the order dated 23.10.2019 made in CMP No.6202 of 2019 in Crime No.27 of 2019 passed by the learned Judicial Magistrate-I, Kanchipuram and to grant custody of the respondent/accused for 5 days for interrogation by the investigating officer.

Prayer in Crl MP : To implead the Petitioner as Respondent in Crl.O.P.No.29107 of 2019 on the file of this Honourable Court.

For Petitioner : Mr.A.Natarajan

(Crl.OP) & for R1 State Public Prosecutor for
(in Implead
Petitioner)

Mr.M.Mohamed Muzamail
Government Advocate (Crl. Side)

For Respondent : Mr.A.Sirajudeen
in Crl.OP Senior Counsel for
& R2 in Crl.MP

Mr.R.Rajamani

For Implead
Petitioner : Mr.M.Krishnamoorthy

O R D E R

This petition has been filed to set aside the order dated 23.10.2019 made in CMP No.6202 of 2019 in Crime No.27 of 2019 passed by the learned Judicial Magistrate-I, Kanchipuram and to grant custody of the respondent/accused for 5 days for interrogation by the investigating officer.

2.The learned State Public Prosecutor would submit that the petitioner was arrested and remanded on 17.10.2019 and the application seeking for police custody was made on 22.10.2019 for a period of 7 days which was rejected on 23.10.2019. A copy application was made on 24.10.2019 and the order passed came to be challenged before this Court on 25.10.2019 itself. In view of the pendency of the criminal original petition, 15 days period described under Section 167 of Cr.P.C. may not be adhered to, from the date of remand, in view of the pendency of this proceedings.

3. The learned Senior Counsel for the respondent put forth his objections on the following two contentions:

Firstly, under Section 167 of Cr.P.C., 15 days period of remand is mandatory and the learned Magistrate can direct the police custody within this period of 15 days and no further police custody is permissible, even though the order of rejection of police custody is put under challenge before the higher Courts.

The 2nd contention would be that even assuming that if such request of police custody is permissible, 15 days period requires to be calculated from the date of remand till the date of rejection and such days should be deducted while ordering police custody.

4.It is not in dispute that the petitioner was remanded on 17.10.2019 and the application for police custody was filed

on 22.10.2019 which was rejected on 23.10.2019. The prosecution has filed the present criminal original petition under Section 482 Cr.P.C., challenging the order on 25.10.2019 itself.

5.The main contention of the respondent seems to be that in view of Section 167 of Cr.P.C., the period of 15 days described therein entitling the police to seek for custody should be restricted to 15 days from the date of remand and any further request thereafter for custody cannot be entertained. In support of the such contentions, the learned counsel for the petitioner relied upon the decision of the Hon'ble Apex Court in the case of Central Bureau of Investigation, Special Investigation Cell-1, New Delhi vs. Anupam J. Kulkarni reported in 1992(3) SCC 141.

6.The issue involved in the present case is that, even before the expiry of 15 days from the date of remand, the application under Section 167 of Cr.P.C. was made and when rejected, the present criminal original petition has been filed. The challenge to the rejection order has been made well within the 15 days period. Since, some time came to be consumed over the pendency of this present petition, the 15 days period had lapsed in between.

7.When the prosecution had chosen to file an application under Section 167 of Cr.P.C. within this stipulated time of 15 days and when their application was rejected, they had right to challenge the rejection order. In the present case, though the appropriate remedy to challenge such rejection would have been through a revision, the prosecution had chosen to file an application under Section 482 of Cr.P.C. When the objection of the respondent seems to be that the request for police custody cannot be resorted to after the expiry of the 15 days, it would not be appropriate at this juncture to direct the prosecution to file a revision as against the rejection order of their application under Section 167 of Cr.P.C., which could cause further delay. It has been held in various decisions that the existence of alternate remedy under the Code will not be a total bar for the High Courts to exercise their power under Section 482 of Cr.P.C. While that being so, when the request for custody has been made in time and the 15 days had expired when the challenge to the rejection order was pending before this Court, the prosecution cannot be found fault with. When a right to challenge the rejection order has been conferred, any delay caused in disposing of such a rejection order cannot be put against the prosecution.

8.The decision of the Hon'ble Apex Court in the case of Central Bureau of Investigation, Special Investigation Cell-1, New Delhi vs. Anupam J. Kulkarni (supra) does not deal with such a situation and neither does the facts in this case is akin to the said decision. While that being so, the observations and findings referred in the case of Central

Bureau of Investigation, Special Investigation Cell-1, New Delhi vs. Anupam J. Kulkarni (supra) may not be in assistance to the respondent herein.

9.The learned counsel also relied upon such other decisions in the cases of State by Deputy Superintendent of Police, 'Q' Branch CID, Dharmapuri vs. Sundaramoorthy reported in 2007 (2) MWN (Cr.) 414 (DB) ; Rajani Kanta Meheta vs. State of Orissa reported in 1975 Cri LJ 83; Satyajit Ballulbhai Desai and Ors. vs. State of Gujarat reported in (2014) 14 SCC 434 and State of Gujarat vs. Swami Amar Jyoti Shyam reported in 1989 Cri LJ 501. The facts involved in these decisions are not similar to the facts involved in the present case. Further there are no findings in these decisions to the effect that when the 15 days period expires during the pendency of challenge to the rejection order of an application under Section 167 of Cr.P.C., police custody should not be granted. As such, no useful purpose would be met by referring to the observations made in the aforesaid decisions.

10.The learned counsel also relied upon a decision of a learned single Judge of this Court in the case of G.Priyadarshini vs. State, by the Assistant Commissioner of Police, Anti Dowry Cell, CCB, Thousand Lights, Chennai reported in 2014 (2) MWN (Cr.) 175, in which, it has been held as follows:

55.It is incumbent upon the party approaching this Court by taking necessary steps for the disposal of the Revision before the expiry of the first 15 days days period of remand. This has not been done in this case. On account of that the Court cannot overstep the mandate prescribed in Section 167(2), Cr.P.C. cannot stand in the way.

56.It has been contended by the learned counsel for the petitioner that in the interest of investigation as and when required, custodial interrogation could be considered and for doing justice Section 167(2), Cr.P.C. cannot stand in the way.

57.In the presence of Article 21, Constitution of India guaranteeing personal freedom and deprivation of a person's personal liberty only by a procedure established by law, namely, Section 167 (2), Cr.P.C. prescribing first 15 days' period this argument of the learned counsel for the revision petitioner cannot be accepted and it will also be an affront to Constitutional mandate, statutory prohibition and human right of the accused.

11.In the aforesaid decision, the accused had surrendered before the learned Magistrate on 28.04.2014 and the

investigating officer had filed an application under Section 167 of Cr.P.C. on the same day, which was rejected on 29.04.2014. The defacto complainant had chosen to challenge the rejection order on 30.04.2014 by way of revision before this Court. When the matter was pending with High Court, the Hon'ble acting Chief Justice had passed administrative orders allotting the revision to the learned single Judge on 03.06.2014. By this time, the 15 days period had expired. It is in this background, this Court had observed that it is incumbent upon the party approaching the Court to take necessary steps for the disposal of the revision before the expiry of first 15 days of period of remand, since, police custody cannot be granted under the circumstances beyond the first remand period of 15 days. The view expressed by the learned Brother Judge of this Court in the aforesaid decision is not on the basis of any settled precedents. The Courts have only reiterated that the police custody can be resorted to only within period of 15 days from the date of the first remand and not thereafter. Section 167 of Cr.P.C. also does not refer to the reckoning of period of 15 days in cases where the rejection order has been put under challenge. Therefore, it can be said that the view of this Court in *G.Priyadarshini vs. State*, by the Assistant Commissioner of Police, Anti Dowry Cell, CCB, Thousand Lights, Chennai case (supra) was based only on the facts involved in that case and cannot be construed to be a judgment in rem.

12. In this background, it can only be held that in cases where the order rejecting request for police custody for which application has been made within a period of 15 days and has been rejected and challenged before the higher forums, can be construed to have been made within time and the pendency of the proceedings with the higher forum cannot be reckoned for the purpose of calculating the 15 days period under Section 167 of Cr.P.C.

13. The learned counsel also apprehended that in the guise of police custody, the respondent police may resort to third grade methods and may illegally cause bodily harm to the petitioner. Such an apprehension can be thwarted if the guidelines rendered by the Hon'ble Apex Court in the case of *D.K.Basu vs. State of West Bengal* reported in (1997) 1 SCC 416 is directed to be adhered to.

14. In the result, the impugned order dated 23.10.2019 made in CMP No.6202 of 2019 is set aside. Consequently, the respondent police are at liberty to have police custody of the petitioner herein for interrogation for a period of 3 days and during the course of such interrogation, the following guidelines as enunciated in the case of *D.K.Basu vs. State of West Bengal* (supra) shall be strictly adhered to:

- i. The petitioner when taken in custody by the police shall be entitled to have one friend or relative or other

persons known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and taken into police custody.

ii. The petitioner should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the petitioner and the police officer effecting the arrest and its copy provided to the petitioner.

iii. The petitioner should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

iv. The petitioner may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

15. Accordingly, this criminal original petition is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

ssr

To

1. The Judicial Magistrate-I,
Kanchipuram.
2. Do-Through' The Chief Judicial Magistrate,
Kanchipuram District.
3. The Inspector of Police
District Crime Branch
Kanchipuram.
4. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Rajamani, Advocate SR.No.93877

+1cc to Mr.M.Krishnamoorthy, Advocate SR.No.

+1cc to Government Pleader SR.No.93606

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GMY(21/11/2019)