

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CRR-1504-2019

Date of Decision : July 12, 2019

Manjinder Singh Petitioner

Versus

State of Punjab Respondent

2. CRR-1505-2019

Harjeet Singh alias Happy Petitioner

Versus

State of Punjab Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. P.S.Hundal, Senior Advocate,
with Mr. Jashandeep Singh, Advocate,
for the petitioner(s).

Ms. Manika Jalota, DAG, Punjab.

Ms. Satwant Mehta, Advocate,
for the complainant.

SHEKHER DHAWAN, J.

Challenge in the above titled two revision petitions is to the orders dated 12.06.2019 and 13.06.2019 passed by learned Judge, Special Court, Amritsar whereby applications for bail under Section 167(2) (a)(i) and (ii) of Cr.P.C. filed by the petitioners were dismissed. Therefore, both these revision petitions are being taken up together and are being

disposed of by this common order.

2. For facility of reference, facts are being taken from CRR-1504-2019. FIR No. 76 dated 11.4.2019 was registered against the petitioners for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (Amended Act 2018), (for short, "the Act") and subsequently, Sections 409 and 120-B IPC were added. After expiry of period of 60 days, an application for grant of bail on default clause was filed on the ground that report under Section 173 Cr.P.C. has not been filed within the stipulated period of 60 days. So, the petitioner be released on bail.

3. Learned trial Judge after hearing both the sides passed detailed order dated 12.06.2019 to the effect that stipulated period for presentation of challan in this case was 90 days and not 60 days as per the provisions of Section 167(2)(a)(i) as the sentence provided for the offence punishable under Section 409 IPC is Imprisonment for life as well and in that case, the period stipulated for presentation of challan is 90 days which had not expired at the time of filing of the bail application before the Judge, Special Court, Amritsar.

4. At the time of arguments, learned senior counsel representing the petitioners raised two-fold arguments. Firstly, it is contended that report under Section 173 Cr.P.C. has not been filed within stipulated period of 60 days as provided under Section 167(2)(a)(ii) Cr.P.C. where period is prescribed as 60 days for completion of investigation. Secondly, it is contended the offence under Section 409 IPC is not made out in this case. But, mainly, the argument raised by learned senior counsel for the petitioners is on the point of release of the petitioners on bail on the basis

of non-compliance of provisions as contained in Section 167 Cr.P.C.

5. Learned counsel for the petitioners has placed reliance upon the decision of Hon`ble Apex Court in **Union of India through C.B.I. Vs. Nirala Yadav @ Raja Ram Yadav @ Deepak Yadav, 2014 (3) R.C.R. (Criminal) 534**, wherein Hon`ble Apex Court was of the view that the Court is to see rights of the parties regarding release of accused on bail on completion of stipulated period and the said right is not frustrated after filing of final report under Section 173 Cr.P.C. after stipulated period and before filing of the application, unless application for extension of time is allowed by the Magistrate.

6. Learned senior counsel also placed reliance upon the decision of Hon`ble Apex Court in **Rajeev Chaudhary Vs. State (N.C.T.) of Delhi, 2001(2) R.C.R. (Criminal) 754** wherein view was taken that the case would fall under Section 167(2)(a)(ii) where punishment provided is upto 10 years.

7. Learned State counsel has fairly stated that the report under Section 173 Cr.P.C. was not filed within 60 days, but the same was filed before the Court below within 90 days as the period prescribed in the present case is 90 days. She further contended that the case of the petitioner falls under Section 167(2)(a)(i) where the period provided for presentation of challan is 90 days. As regards to commission of offence under Section 409 IPC, the said Section has been added during investigation and on facts also, the present case is a one, where the petitioner allegedly committed offence under Section 409 IPC as he was using the property which was with him as trust property as the Car was deposited in the *malkhana*.

8. Learned State counsel further contended that in identical matter was before Hon`ble Apex Court in **Suresh Kumar Bhikamchand Jain Vs. State of Maharashtra and another**, 2013 (3) SCC 77 and Hon`ble Apex Court had taken the view that stipulated period for cases where offence alleged against the accused is under Section 409 IPC is 90 days.

9. Having considered the submissions made by learned counsel for the parties and relevant provisions of law, this Court is of the considered view that mainly, it is a case of interpretation of Section 167(2) Cr.P.C. and Section 409 IPC and for ready reference, both these provisions of law are being extracted hereunder:-

“167. Procedure when investigation cannot be completed in twenty-four hours.—

(1) xx xx xx xx

(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.”

Section 409 IPC

“409. Criminal breach of trust by public servant, or by banker, merchant or agent. --

Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with **imprisonment for life**, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

10. The above provisions contained in Section 409 IPC leave no doubt that the punishment provided under Section 409 IPC is **Imprisonment for life**. The above provision contained in Section 167(20) (a) (i) are ample clear on the point that if punishment provided is with regard to offence punishable with death, imprisonment for life or

imprisonment for a term of not less than 10 years, meaning thereby that if it is a case related to the offence punishable for imprisonment for life, as is the present case, the period prescribed for presentation of final report would be 90 days.

11. On facts, the present case is distinguishable from the facts of **Rajeev Chaudhary case** (supra) inasmuch as in that case, Hon`ble Apex Court was dealing with a matter where the allegations were for offences punishable under Sections 386, 506 and 120-B IPC and the sentence provided for commission of offence under Section 386 IPC is upto 10 years and not imprisonment for life.

12. As regard to the judgment of Hon`ble Apex Court in **Nirala Yadav's case (supra)**, relied upon by learned senior counsel for the petitioners, there is no controversy as per view taken by Hon`ble Apex Court because in the said case, the petitioner has a right to be released on bail if investigation was not completed and final report was not submitted in stipulated period, but it is the Court to consider what will be the stipulated period in a particular case and in the present case, the stipulated period for completion of investigation was 90 days as per the view rightly taken by Judge, Special Court, Amritsar and as discussed above.

13. Similar view was taken by Hon`ble Apex Court in **Suresh Kumar Bhikamchand Jain (Supra)** that period prescribed for presentation of challan in such cases where offence alleged against the accused is under Section 409 IPC is 90 days and not 60 days.

14. As regard to nature of allegations and the offence against the present petitioners under Section 409 IPC, at this stage, this Court would refrain from expressing any opinion on the merits of the case lest the same

15. In view of the above, there is no merit in the present revision petitions and the same stand dismissed.

July 12, 2019
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Whether speaking/reasoned? : Yes
Whether reportable? : Yes