* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 09.08.2019
Date of Decision: 14.08.2019

\+ **CRL.M.C. 3903/2019 and CRL.M.A. 33058/2019 (stay)**

LALITA SAINI ..... Petitioner
Through: Mr. Anurag Jain and Ms. Ayushi Sharma, Advocates.

versus

STATE & ANR ..... Respondents
Through: Ms. Manjeet Arya, APP for State with with Insp. Ashwani Kumar, EOW.

Mr. Dinesh Kumar Sabharwal, Mr. Sameer Bhatnagar and Ms. Heena Ahluwalia, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J.

1. By way of present petition filed under Section 482 CrPC read with Section 439(2) CrPC, the petitioner has brought a challenge to an order dated 02.08.2019 passed by the District and Sessions Judge (North-West), Rohini, Delhi, whereby respondent No. 2 was granted "default bail" in terms of Section 167(2)(a)(ii) CrPC on the ground that the prosecution has failed to file the charge-sheet within the stipulated period of 60 days from the date of the first remand. It is contended that in the present case the stipulated period for filing the charge-sheet is 90 days. A status report has been filed on behalf of the state, supporting the petition.

2. The proceedings arise out of FIR No.66/2016, registered under Sections 506/409/420/120-B IPC at Police Station Subhash Place, New Delhi and now being investigated by the Economic Offences Wing (EOW), New Delhi. Initially, the FIR was registered under Sections 420/406 IPC, however, during the course of investigation, Section 409 IPC was added on 15.06.2019. The respondent No.2 was arrested on 03.05.2019.

3. Ld counsel for the petitioner submitted that initially, the bail application filed by the Respondent no.2 seeking benefit of "default bail" under Section 167(2) CrPC, claiming that the charge sheet ought to have been filed within 60 days, was dismissed by the CMM vide order dated 08.07.2019. The said order was challenged by the respondent No.2 by way of a Revision Petition before the Sessions Court. The District and Sessions Judge, while referring to the decision rendered by Supreme Court in the case of Rakesh Kumar Paul vs. State of Assam reported as **(2017) 15 SCC 67**, held that for an offence punishable under Section 409 IPC, the stipulated period for filing the charge-sheet was 60 days in terms of the provisions contained in Section 167(2)(a)(ii) of CrPC and consequently granted the "default bail" to the respondent No.2.

4. Briefly, the facts, as stated in the FIR are that the respondent No.2 along with other co-accused persons was a member of the governing body /managing committee of one Vedanta Welfare Society. It is alleged that the accused persons misrepresented to the victims that the Society, after allotting membership to 700 members, was in the process of acquiring more land to increase the membership of the society to 850 members. The new members were required to deposit the full value of the land which was approximately Rs.11 lacs for a three-bedroom flat. The cost of construction

was linked with the progress of the construction. The complainant and other victims paid the demanded amounts however, neither the share certificate nor the membership was allotted to them. The complainant along with his family members had deposited about Rs.33,95,000/- however, despite passage of time neither the money was refunded nor any share certificate was allotted to them. While dismissing the bail application filed under S.437 CrPC, it was noted by the learned ASJ that as per the report of the IO, no property was registered in the name of the said Society. Also, on confirmation from the DDA Land Pooling Cell, no authority letter was ever issued to the said Society and the Society was not authorized to collect funds from the public to purchase the land.

5. As per the status report filed on behalf of the State, it was mentioned that besides the complainant, 47 more victims have filed their complaints against the accused persons. Learned counsel for the petitioner submitted that the petitioner is one of the victims at the hand of the accused persons, who had deposited around Rs.12 lacs by way of banking channels only.

6. The short controversy which arises in the present petition relates to interpretation of Section 167 CrPC vis-à-vis Section 409 IPC. In other words, whether for an offence punishable under Section 409 IPC, the stipulated period for filing the charge-sheet from the date of first remand is 60 days or 90 days?

7. To delve into the controversy in hand, I deem it appropriate to reproduce the relevant part of the two Sections.

Section 409 IPC reads as under:

"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 1[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"

<u>Section 167 CrPC reads as under:-</u>

"167. Procedure when investigation cannot be completed in twenty four hours.

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(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 sub- section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]"

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8. A perusal of Section 409 IPC show that an accused could be punished with a sentence which is either imprisonment for life or for a term which may extend to 10 years. Thus, it is in the domain of the Court whether to impose the maximum or the minimum sentence, depending on the facts and circumstances of the case.

9. The proviso to Section 167(2) CrPC provides for two categories of offences. In the first category, where the investigation relates to the offences punishable with death sentence, imprisonment for life or imprisonment for a term not less than 10 years, the authorised period of detention of an accused person cannot exceed 90 days. In the second category, where the investigation relates to any other offences, the authorized detention period of an accused person could not exceed 60 days.

10. The offences which are punishable with sentence of death or life imprisonment or a sentence of not less than 10 years are serious and grave offences where extensive investigation is required and thus an extended time to file the charge-sheet has been granted by the Legislature.

11. In Rakesh Kumar Paul (supra), a Full Bench of the Supreme Court considered the interpretation of the words "imprisonment for a term not less than 10 years" appearing in Clause(i) of Proviso(a) to Section 167(2) CrPC. By the majority view while concurring, it was held as under:-

"84. In view of the above discussion, my findings are as follows:

84.1. I agree with both my learned brothers that the amendment made to the Prevention of corruption Act, 1988 by the Lokpal and Lokayuktas Act, 2013 applied to all accused charged with offences under this Act irrespective of the fact whether the action is initiated under the Lokpal and Lokayuktas Act, 2013, or any other law;

84.2. Section 167(2) (a) (i) of the Code is applicable only in cases where the accused is charged with (i) offences punishable with death and any lower sentence; (ii) ***<u>offences punishable with life imprisonment and any lower sentence and</u>*** *(iii) offences punishable with minimum sentence of 10 years.*

84.3. ***<u>In all cases where the minimum sentence is less than 10 years, but the maximum sentence is not death or life imprisonment</u>*** *then Section 167(2) (a) (ii) will apply and the accused will be entitled to grant of 'default bail' after 60 days in case charge-sheet is not filed.*

84.4. The right to get this bail is an indefeasible right and this right must be exercised by the accused by offering to furnish bail". (emphasis added)

12. Even in the minority view, insofar as the present controversy is concerned, it was held as under:-

"107. From the above analogy, I am of the opinion that the intention of the legislature was that <u>if an offence was punishable with imprisonment upto ten years, then it falls within the provision of Section 167 (2) (a) (i) of the Code, and the permissible period for investigation is ninety days.</u> The intention of the Legislature in extending the permissible time period from sixty days to ninety days for investigation is to include the offences in which sentence awardable is at least ten years or more. Therefore, as discussed above, though the expression "not less than ten years" used in Section 167 (2) (a) (i) of the Code has created some ambiguity, the real intention of the legislature seems to include all such offences wherein an imprisonment

which may extend to ten years is an awardable sentence. In other words, for offences wherein the punishment may extend to ten years imprisonment, the permissible period for filing charge sheet shall be ninety days, and only after non filing of the charge sheet. (In the present case, admittedly the charge sheet is filed within ninety days). I may further add that, since the expression "not less then ten years" has caused ambiguity in interpretation, the best course for the legislature would be to clear its intention by using the appropriate words". (emphasis added)

13. In Suresh Kumar Bhikam chand Jain Vs. State of Maharashtra reported as **(2013) 3 SCC 77**, the issue included the right of an accused person to be released on bail under Section 167 (2) CrPC for the offence punishable under Section 120-B, 406, 408, 409, 411, 465, 466, 468, 471, 177 & 109 read with Section 34 IPC and also under Sections 13(1)(c), 13(1)(d) & 13(2) of Prevention of Corruption Act, 1988. It was held that the accused was not entitled to grant of statutory bail under Section 167 CrPC, as the charge-sheet was filed within the stipulated period of 90 days.

14. While passing the impugned order, the District and Sessions Judge relied on the following passage from the decision rendered in Rakesh Kumar Paul (supra):-

"Consequently, we are of opinion that the petitioner had satisfied all the requirements of obtaining "default bail" which is that on 11th January, 2017, he had put in more than 60 days in custody pending investigations into an alleged offence not punishable with imprisonment for a minimum period of 10 years, no charge sheet had been filed against him and he was prepared to furnish bail for his release, as such, he ought to have been released by the High Court on reasonable terms and conditions of bail."

15. It is apparent that the District and Sessions Judge, while passing the impugned order, without appreciating the facts involved in the captioned

case has relied on the passage quoted above. In the captioned case, the offences related to allegations made under the Sections 7 & 13 of Prevention of Corruption Act, 1988 wherein as per the amended provisions, the punishment provided is "imprisonment for upto 10 years".

16. Learned counsel for respondent No.2 in support of his submission has placed reliance upon the decision rendered in Shalini Verma vs State of Chhattisgarh reported as **2019 SCC OnLine Chh 22.** In the captioned case, the offence involved was punishable with Section 467 IPC which also provides for sentence for imprisonment for life or for an imprisonment for a term which may extend upto 10 years. It is relevant that a Single Bench of Gujarat High Court in Manish Vs State of Gujarat reported as **2018 CriLJ 2959** came to the conclusion that the stipulated period for filing the charge sheet in an offence punishable under Section 467 IPC, is 90 days. Apparently, the concluding paragraphs of the concurring view in Rakesh Kumar Paul (Supra) were not brought to the notice of the court in Shalini Verma (supra).

17. The ratio in the case of Rakesh Kumar Paul (supra) is unambiguous as to the applicability of S.167(a)(i) CrPC to the offence punishable under Section 409 IPC. Accordingly, I am of the view that the stipulated period for filing the charge sheet for an offence punishable under Section 409 IPC would be 90 days and not 60 days. My view also finds support from the decision rendered by a Single Bench of High Court of Punjab and Haryana in the case of Manjinder Singh & Others vs. State of Punjab in **CRR No. 1504-2019** and **CRR 1505-2019** decided on 12.07.2019 and the decision rendered by a Single Bench of High Court of Uttarakhand in the case of Qazi Mohammed Nooruddin vs. State of Uttarakhand reported as **2019 SCC**

OnLine Utt 417. Both the courts came to the conclusion that for an offence punishable under Section 409 IPC, the stipulated period for presentation of charge-sheet is 90 days and not 60 days.

18. In the status report filed on behalf of the State, it is mentioned that the charge sheet has already been filed, i.e. within the stipulated period of 90 days.

19. In view of the above, the petition is allowed and the impugned order dated 02.08.2019 passed by the District and Sessions Judge, granting 'default bail' to the respondent No.2, is hereby set aside.

20. The petition and the application are disposed of in the above terms. A copy of this order be sent to the District and Sessions Judge (North-West), Rohini Courts, Delhi.

(MANOJ KUMAR OHRI)
JUDGE

AUGUST 14th, 2019
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