

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-8521-2022

Date of decision: 09.03.2022

Nikki

... Petitioner

Versus

State of Punjab and another

... Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Rahil Mahajan, Advocate, for the petitioner.

RAJESH BHARDWAJ, J.

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

The petitioner has approached this Court by way of the present petition under Section 482 Cr.P.C. seeking:

- i) Set-aside/Quash the Order dated 4.1.2021 (Annexure P-9) passed by the Learned JMIC (D), Kharar in case FIR No.49 dated 19.5.2020 u/s 363, 366A, 376, 120-B IPC, u/s 3, 4, 17 POCSO Act PS Naya Gaon, SAS Nagar, thereby granting purported 'permission to arrest' to the Respondent Investigating Agency qua the Petitioner who was already languishing in judicial custody since 17.11.2020 in the same case by virtue of Orders dated 17.11.2020 & 18.11.2020 passed by the said Court;
- ii) Set-aside/Quash the Order dated 4.1.2021 (Annexure P-11) passed by the Learned JMIC (D), Kharar in case FIR No.49 dated 19.5.2020 u/s 363, 366A, 376, 120-B IPC, u/s 3, 4, 17 POCSO Act PS Naya Gaon, SAS Nagar, vide which, the Petitioner was remanded to Police custody after the expiry of the period of 15 days from the date of his first remand i.e. 17.11.2020, as the same is in the blatant violation of Section 167 Cr.P.C. as well as the settled position of law

enunciated by the Hon'ble Supreme Court *inter-alia* in '**Central Bureau of Investigation, Special Investigation Cell-I, New Delhi vs. Anupam J. Kulkarni (1992) 3 SCC 141**';

- iii) Set-aside/Quash the investigations carried out by the respondents including the Supplementary Challan u/s 173 (8) Cr.P.C. dated 4.2.2021 presented qua the Petitioner as a consequence of the blatantly illegal and non-est impugned Order dated 4.1.2021 (Annexure P-13) and all consequential proceedings arising therefrom as the same are completely illegal, non-est, otiose, nugatory and clearly hit by maxims "**Debile fundamentum fallit onus**", meaning thereby that when the foundation falls, everything falls; and "**Sublato fundamento cadit opus**"; meaning thereby, in case a foundation is removed, the superstructure falls;
- iv) During the pendency of the instant petition, this Hon'ble Court may be pleased to stay the proceedings before the learned Trial Court in case FIR No.49 dated 19.5.2020 u/s 363, 366A, 376, 120-B IPC, u/s 3, 4, 17 POCSO Act PS Naya Gaon, SAS Nagar.

As per the facts of the case, the FIR was lodged by Vinod Kumar son of Madan Lal. It was alleged that his daughter (victim) was studying in 10th class and her date of birth is 26.12.2003 and, thus, she was 16 years and 04 months of age at the time of incident. Nikki son of Kailash used to harass his minor daughter. On 19.05.2020, Nikki had taken away his minor daughter by inducing and making false promise of marriage. It was further alleged that Nikki's friend Suresh is also involved in abduction of his minor daughter. A request was made to take legal action against the culprits. On the commencement of the investigation, co-accused Suresh was arrested and challan was presented against him. However, the petitioner could not be arrested but later on he surrendered on 17.11.2020. On his surrender before the

Judicial Magistrate, he was sent to the judicial custody on the very same day. After having spent 48 days in judicial custody, the police asked for his remand and, thus, on 04.01.2021, learned JMIC (D), Kharar granted the investigating agency one day remand of the petitioner. Thereafter, the police filed the supplementary challan under Section 173(8) Cr.P.C. on 04.02.2021.

Learned counsel for the petitioner has contended that the petitioner has himself surrendered before the learned Judicial Magistrate on 17.11.2020 and he was straightway sent to the judicial custody on the very same day. He submits that as the police never demanded any remand of the petitioner, hence, the Court sent him in judicial custody. However, after having spent 48 days in judicial custody, the investigation agency filed an application for issuance of production warrants of the petitioner and thereafter sought his remand. Learned court of JMIC, Kharar granted the remand of one day on 04.01.2021. He submits that in view of the statutory provisions of Section 167 Cr.P.C. and various judicial precedents, the learned Judicial Magistrate could not have granted the remand of the petitioner after 15 days from the day of surrender/arrest. The petitioner was directly sent in judicial custody and had spent 48 days, the investigating agency had no statutory right to seek the remand of the petitioner as the statutory period of 15 days had already been elapsed. He has relied upon the decisions of the Hon'ble Supreme Court and various High Courts in: **Central Bureau of Investigation v. Anupam J. Kulkarni, 1992(2) RCR (Criminal) 147 SC; Budh Singh v. State of Punjab, 2000(9) SCC 266 SC; State of Haryana v. Dinesh Kumar, 2008(1) RCR (Criminal) 725; Chander Ratra v. State of Punjab (CRR-68-1996, decided on 13.11.2002) P&H; K.S. Palanichamy v. State (Madras), 2014(10) RCR (Criminal) 2139; State of Kerala v. Maju and others, CRM-M-2815-2020,**

date of decision 27.7.2021; State of Punjab v. Davinder Pal Singh Bhullar and others, 2012(1) RCR (Criminal) 126, to buttress his arguments.

Learned counsel for the petitioner further submits that after having taken his illegal remand, the police filed a supplementary challan under Section 173(8) Cr.P.C. against him on 04.02.2021. He has submitted that as the impugned order granting remand dated 04.01.2021 is illegal, hence, all consequential proceedings arising therefrom deserve to be quashed being non-est in the eyes of law.

I have heard learned counsel for the petitioner and perused the record.

It is apposite to mention that the petitioner is not only specifically named in the FIR but in view of the allegations made therein, he is the main accused. The co-accused Suresh was already arrested, however, the petitioner could not be arrested. Admittedly, the petitioner surrendered before the learned JMIC on 17.11.2020 and was sent to the judicial custody. The precise grievance of the petitioner is that once he had spent 48 days in judicial custody, the investigating agency had no legal right to ask for his remand as the same was beyond the statutory period of 15 days as per the mandate of Section 167 Cr.P.C. There is no doubt regarding the statutory provisions and the law settled down by the Hon'ble Supreme Court in various judicial pronouncements, however, the stage at which the petitioner had agitated the issue is equally relevant for consideration of his grievance. Once the learned Judicial Magistrate had entertained the application filed by the investigating agency for his production warrants and taking his remand, which was evidently beyond 15 days, the petitioner was required to be vigilant enough for availing the appropriate remedy at the relevant time only. The remand under dispute

was granted on 04.01.2021 but the petitioner never disputed the same and kept sleeping over. Neither he approached the learned Sessions Judge by way of filing any revision petition nor this Court for redressal of his grievance in time. However, he approached this Court by way of the present petition after a gap of more than one year. For, it is always said that ignorance of law is no defence, the petitioner has already undergone the period of remand of one day granted by the Judicial Magistrate and, hence, the prayer made in the petition for quashing of the same has already become infructuous. In the attending facts and circumstances of the case, no relief qua the prayer made can be granted at this stage.

Coming to the prayer for quashing of supplementary challan filed under Section 173(8) Cr.P.C. dated 04.02.2021, learned counsel for the petitioner has submitted that the same deserves to be quashed as the remand order was illegal. From the record of the case, it is evident that the petitioner is the main accused on the basis of the allegations made in the FIR. He has specifically been named in the FIR and assigned the specific role. However, he could not be arrested before 17.11.2020 the date when he himself surrendered. By that time, challan qua the co-accused had already been presented by the investigating agency. The provisions of Section 173(8) of Cr.P.C. read thus:

“(8) Nothing in this Section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such

report or reports as they apply in relation to a report forwarded under sub-section (2).”

A reading of the relevant provisions of Section 173(8) would show that the investigating agency has a statutory independent right for further investigation of the case. Even if, the remand granted by the Magistrate was beyond 15 days, the same cannot result in making the investigation non-est in the eyes of law as contended by the learned counsel for the petitioner. The judgments relied upon by the learned counsel for the petitioner are distinguishable. With all humility, there is no dispute regarding the law laid down by the Hon’ble Supreme Court, however, the same is distinguishable in the facts and circumstances of the present case.

In view of the above, I do not find any merit in the present petition and the same is hereby dismissed. However, this should not be considered as any opinion on the merits of the case or curtailing the right of the petitioner to agitate the same during his defence before the trial Court.

(RAJESH BHARDWAJ)
JUDGE

09.03.2022
sharmila

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No