



2024:PHHC:012754

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

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CRM-M-31749-2023 (O&M)

Date of decision: 29.01.2024

Narinder Kumar alias Nindi and anotherPetitioners

Versus

State of Punjab and othersRespondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Mansur Ali, Advocate and
Mr. Imran Ahmad, Advocate
for the petitioner.

Mr. Adhiraj Thind, AAG, Punjab.

Mr. Lalit Singla, Advocate and
Ms. Varsha Sharma, Advocate
for the complainant.

MANJARI NEHRU KAUL, J.

1. The petitioners are seeking quashing of order dated 22.06.2023 (Annexure P-15) passed by learned Sub Divisional Judicial Magistrate, Nangal in case FIR No.0030 dated 22.03.2023 under Sections 302, 323, 148, 149 of the Indian Penal Code, 1860 (for short, 'the IPC') (Section 427 of the IPC added lateron) registered at Police Station Nangal, District Rupnagar whereby application filed by them for grant of default bail under Section 167(2) of the Cr.P.C. was dismissed.

2. The case as set up by the prosecution may be summed up as thus: On 22.03.2023, at about 11:30 P.M., a phone call was received by the complainant that Mandeep Singh @ Bhoda and 7-8 other

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persons after entering the land under his ownership, were hurling abuses at him; on receipt of the phone call, he along with his driver Anil, Deepak Kumar and chowkidar Bahadar Singh, went to the spot in his vehicle, where Mandeep Singh @ Bhoda (petitioner No.2) along with Narinder Kumar @ Nindi (petitioner No.1), armed with dandas were already present along with 7-8 other persons. Petitioner No.2 on seeing the complainant, collided his vehicle with the vehicle of the complainant. When the complainant party tried to alight from the vehicle, petitioner No.2 again hit the complainant's driver, Anil (hereinafter referred to as 'deceased'), with his vehicle as a result of which the deceased fell down. Petitioner No.2 gave a danda blow to the deceased on his head and petitioner No.1 also inflicted injuries to the deceased. The complainant in view of the attack by the accused party, managed to run to his safety. Later, he learnt that his driver Anil Kumar i.e. the deceased, had died on account of the injuries inflicted by the petitioners.

3. **Submissions made by learned counsel for the petitioners:-**

3(i). That they were arrested in the case in hand on 22.03.2023; challan under Section 173(2) of the Cr.P.C. was presented on 20.06.2023 which, however, was an incomplete challan since neither the DNA report nor the viscera report nor any FSL report along with other relevant documents were annexed with it.

3(ii). That in fact the petitioners had been falsely implicated and death of the deceased was caused in a motor vehicular accident by the complainant himself; it was, however, being given the colour of

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homicide; there was documentary evidence in the form of a photograph which showed that it was the petitioners who had taken the deceased to the hospital after he sustained injuries in the motor vehicular accident.

3(iii). That in the aforementioned background all the relevant scientific evidence including the FSL report etc. was required to be annexed along with the challan. In absence thereof, there was no cogent material on record to even prima facie make out any case against the petitioners, much less for an offence under Section 302 of the IPC.

3(iv). That subsequently FSL report etc. had been received which also corroborated the false implication and innocence of the petitioners as no blood on the weapon of offence (sticks) was found which clearly pointed to the deceased having succumbed to injuries received by him in a motor vehicular accident.

3(v). That a piecemeal challan had been hurriedly and intentionally presented by the investigating agency on 20.06.2023, to circumvent the right of the petitioners under Section 167(2) of the Cr.P.C. as the statutory period of 90 days was to expire on 20.06.2023.

4. **Submissions made by learned State counsel and learned counsel for the complainant:-**

Per contra, learned State counsel assisted by learned counsel for the complainant, while vehemently controverting and opposing the submissions made by the counsel opposite, have contended as under:-

4(i). That on 20.06.2023, when the petitioners filed an application for default bail under Section 167(2) of the Cr.P.C. they



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were not even entitled to the said concession.

4(ii). That it was a matter of record that the petitioners were remanded to police custody on 23.03.2023; the police had filed the challan on 20.06.2023 i.e. on the 89th day. Therefore, no right stood accrued to the petitioners under Section 167(2) of the Cr.P.C. as challan already stood filed prior thereto and that too before the expiry of the 90 days. In support of this contention, learned counsel have placed reliance upon a decision rendered by the Hon'ble Supreme Court in ***Enforcement Directorate, Government of India Vs. Kapil Wadhawan, Criminal Appeal No.701-702 of 2020*** wherein it held as under:-

“50. Since there exists vacuum in the application and details of Section 167 CrPC, we have opted for an interpretation which advances the cause of personal liberty. The accused herein were remanded on 14.05.2020 and as such, the chargesheet ought to have been filed on or before 12.07.2020 (i.e. the sixtieth day). But the same was filed, only on 13.07.2020 which was the 61st day of their custody. Therefore, the right to default bail accrued to the accused persons on 13.07.2020 at 12:00 AM, midnight, onwards. On that very day, the accused filed their default bail applications at 8:53 AM. The ED filed the chargesheet, later in the day, at 11:15 AM. Thus, the default bail Applications were filed well before the chargesheet. In Ravindran(supra) and Bikramjit (supra), which followed the Constitution Bench in Sanjay Dutt(supra) it was rightly held that if the accused persons avail their indefeasible right to default bail before the chargesheet/final report is filed, then such right would not stand frustrated or extinguished by any such subsequent filing. We therefore declare that the stipulated 60/90 day remand period under Section 167 CrPC ought to be computed from the date when a Magistrate authorizes remand. If the first day of remand is excluded, the remand period, as we notice will extend beyond the permitted 60 /90 days’ period resulting in unauthorized detention beyond the period envisaged under Section 167 CrPC. In cases where the chargesheet/final report is filed on or after the 61st/91st day, the accused in our considered opinion would be entitled to default bail. In other words, the very moment the stipulated 60/90 day remand period expires, an indefeasible right to default bail accrues to the

accused.”

4(iii). That the benefit of the proviso appended to Sub Section 2 of Section 167(2) of the Cr.P.C. would have been applicable in the instant case only in case the charge sheet had not been filed and the investigation had been kept pending; however, once charge sheet stood presented, the right of the accused petitioners under Section 167(2) of the Cr.P.C. for being released on default bail ceased to exist.

4(iv). That this right would thus not accrue even if further investigation was pending, as provided in Section 173(8) of the Cr.P.C. In support, reliance has been placed on the judgment of the Hon'ble Supreme Court in ***Criminal Appeal No.391 of 2024 titled as 'Central Bureau of Investigation Vs. Kapil Wadhawan and another'*** decided on 24.01.2024.

4(v). That the case in hand rests upon eye witness account, and the investigating agency had gathered sufficient material to enable the Court to take cognizance. Hence, mere non-receipt of Chemical Examiner's Report etc. would not enure to the benefit of the petitioners so as to entitle them to default bail under Section 167(2) of the Cr.P.C.

4(vi). That it was also a matter of record that the presentation of challan had been put on hold vide orders dated 30.05.2023 of this Court in CRM-M-27782-2023 which had been filed by none other than the father of the petitioner wherein he had sought transfer of the investigation. Resultantly, there had been a stay on presentation of challan for 20 days from 30.05.2023; it was on 19.06.2023, the stay on the presentation of the challan was vacated by the Hon'ble Supreme Court vide order dated 19.06.2023 and liberty was granted to the State

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by Hon'ble the Supreme Court to present challan. Hence, this fact also precluded the petitioners from availing the benefit of the provisions of Section 167(2) of the Cr.P.C., considering that the delay in the conclusion of investigation was attributable to the petitioners, since it was his father who had approached this Court by way of a petition i.e. CRM-M-27782-2023.

4(vii). That the contention of learned counsel for the petitioners that the SHO Nangal could not have presented the challan, was bereft of any merit; as per the provisions of Section 173(3) of the Cr.P.C., a police report was required to be submitted by a superior officer only if there was a general or special order issued by the State Government. However, no such order had been issued by the State Government.

5. **Rebuttal by learned counsel for the petitioners:-**

The submission made by learned State counsel qua the investigation having come to a halt for 20 days, was completely unfounded as it was a matter of record that only presentation of challan had been stayed and there was no stay on investigation.

6. I have heard learned counsel for the parties and perused the relevant material on record.

7. Before proceeding further, it would be relevant to reproduce Sections 167(2), 173(1) and 173(2) of the Cr.P.C., which read as under:-

“Section 167(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;

(b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.”

Section 173(1)

Every investigation under this Chapter shall be completed without unnecessary delay.

1A. The investigation in relation to an offence under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or 376E of the Indian Penal Code shall be completed within two months¹ from the date on which the information was recorded by the officer in charge of the police station.

Section 173(2)

(i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating-

(a) the names of the parties;

(b) the nature of the information;



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(c) *the names of the persons who appear to be acquainted with the circumstances of the case;*

(d) *whether any offence appears to have been committed and, if so, by whom;*

(e) *whether the accused has been arrested;*

(f) *whether he has been released on his bond and, if so, whether with or without sureties;*

(g) *whether he has been forwarded in custody under section 170.*

(h) *whether the report of medical examination of the woman has been attached where investigation relates to an offence under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB, or 376E of the Indian Penal Code.*

(ii) *The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any whom the information relating to the commission of the offence was first given.*

8. A co-joint reading of Section 167(2) of the Cr.P.C. as well as Section 173 of the Cr.P.C. reveals that a great deal of emphasis has been placed on completion of “investigation”. The key question which thus arises is concerning the implication of the term “investigation” as appearing in both the above Sections, and when can it be considered to have concluded in cases under the IPC.

9. Section 2(h) of the Cr.P.C. defines “investigation” as under:-

“2(h) investigation” includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf;”

10. Thus, on a perusal of the above reproduced definition it can be said that this definition encompasses all proceedings conducted by the investigating agency to collect material in aiding the Magistrate

to determine whether an offence has been committed or not.

11. Thus, in the instant case, the most important question which arises for the consideration of this Court is whether the investigation was incomplete when the right of default bail under Section 167(2) of the Cr.P.C. had accrued to the petitioners.

12. Unlike in cases under the NDPS Act where FSL report/Chemical Examiner's report is required for positive determination of the substance recovered in order to ascertain whether an offence has been committed or not, for offences under the IPC, the statements of the complainant and witnesses, including the injured witnesses, form the foundation of the case of the prosecution, and other evidence including the medical evidence would at best be corroborative pieces of evidence.

13. Mere non-receipt of the viscera report alone would neither render the investigation incomplete nor render the Magistrate unable to take cognizance; moreso when the instant case is based on eye witness account wherein the identity of the deceased is not in dispute and furthermore, the manner in which the injuries were allegedly inflicted upon him also stands detailed in the FIR in question.

14. The Hon'ble Supreme Court in the Constitution Bench in ***K.Veerawami Vs. Union of India and others : 1991 SCC (3) 655*** has explained the scope of Section 173(2) of the Cr.P.C. The Hon'ble Supreme Court held that the final report under Section 173(2) of the Cr.P.C. signifies the culmination of the investigation by the investigating agency, into a cognizable offence by a police officer. This report is required to include essential details like the names of the

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parties, nature of information, the persons involved in the alleged crime, potential accused, arrest status and details pertaining to custody. While referring to *Satya Narain Musadi and Ors. v. State of Bihar, [1980] 3 SCC 152*, the Hon'ble Supreme Court further held that the report under Section 173(2) of the Cr.P.C. only serves as notice to the Magistrate signaling that the investigating officer had gathered adequate evidence to inquire into the alleged offence. The completeness of the report is confirmed when it is accompanied by the relevant documents and statements of the witnesses, with all other intricate details reserved for the trial. Thus, the report under Section 173(2) of the Cr.P.C. need not delve into all offence specifics.

15. It would also be relevant to refer to the observations of Hon'ble the Supreme Court in *Criminal Appeal No.391 of 2024 titled as 'Central Bureau of Investigation Vs. Kapil Wadhawan and another' decided on 24.01.2024*, wherein it highlighted that once a charge sheet has been filed, the right of an accused to claim default bail would cease precisely for the reason that the Court in cases under the IPC takes cognizance of the offence and not the offender; incomplete charge sheets with some missing documents and the pendency of the further investigation would not invalidate the charge sheet as long as the Court is satisfied with the evidence provided. It was held as under:-

“23. The benefit of proviso appended to sub-section (2) of Section 167 of the Code would be available to the offender only when a chargesheet is not filed and the investigation is kept pending against him. Once however, a chargesheet is filed, the said right ceases. It may be noted that the right of the investigating officer to pray for further investigation in terms of sub-section (8) of Section 173 is not taken away only because a chargesheet is filed under sub-section (2) thereof against the accused. Though ordinarily all



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documents relied upon by the prosecution should accompany the chargesheet, nonetheless for some reasons, if all the documents are not filed along with the chargesheet, that reason by itself would not invalidate or vitiate the chargesheet. It is also well settled that the court takes cognizance of the offence and not the offender. Once from the material produced along with the chargesheet, the court is satisfied about the commission of an offence and takes cognizance of the offence allegedly committed by the accused, it is immaterial whether the further investigation in terms of Section 173(8) is pending or not. The pendency of the further investigation qua the other accused or for production of some documents not available at the time of filing of chargesheet would neither vitiate the chargesheet, nor would it entitle the accused to claim right to get default bail on the ground that the chargesheet was an incomplete chargesheet or that the chargesheet was not filed in terms of Section 173(2) of Cr.P.C.”

16. Though it has been vehemently argued by the learned counsel for the petitioners that in the absence of any DNA or viscera report, the Trial Court had erred in framing charges against the petitioners under Section 302 of the IPC and further the petitioners had been falsely implicated in the instant case since a case of accident had been converted into one case of murder, however, it needs to be emphasized that the merits of the case cannot be gone into while deciding a petition under Section 167(2) of the Cr.P.C. Still further, this Court finds no merit in the submissions made by learned counsel for the petitioners that SHO Nangal was not authorised to file the challan as admittedly there is no order of the State Government, special or general, requiring the Assistant Superintendent of Police to present the challan before the Court.

17. As a sequel to the above discussion, this Court does not find any merit in the submissions of the learned counsel for the

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petitioners. Accordingly, the instant petition is hereby dismissed.

18. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

29.01.2024

Vinay

(MANJARI NEHRU KAUL)

JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No