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PUNJAB AND HARYANA HIGH COURT

Before: Sudhir Mittal, J.

CRR No.710 of 2020 Decided on: 02.07.2020

Hansa Singh Petitioner

Versus

State of Punjab Respondents

Present:

Mr. Salil Dev Singh Bali, Advocate, for the petitioner.

Ms. Monika Jalota, DAG, Punjab.

A. Code of Criminal Procedure, 1973 (2 of 1974), Section 167(2) – Default bail – Period of challan to be reckoned -- It is now settled that the word 'custody' occurring in the proviso to Section 167(2) Cr.P.C. encompasses police custody as well as judicial custody.

(Para 8)

B. Code of Criminal Procedure, 1973 (2 of 1974), Section 167(2), 173 – Default bail – Language of the proviso to Section 167(2) Cr.P.C. is clear -- If a challan is not presented within the said period, the accused gets an indefeasible right to bail which cannot be defeated by filing the challan after 90 days but before the release of an accused on bail.

(Para 9)

C. Code of Criminal Procedure, 1973 (2 of 1974), Section 167(2) – Default bail – Petitioner not arrested kept in Column no. 2 -- Evidence necessary for commencement of trial collected by the investigating agency -- Warrants of arrest had been requested for – Held, it is not essential for a person to be arrested before a challan can be presented against him -- Only requirement for applicability of the proviso to Section 167(2) Cr.P.C. is that investigation should be pending against the petitioner -- Trial Court dismissed the application for default bail – No merit in the revision petition, the same is dismissed.

(Para 1, 3, 10-14)

Cases referred:

1. Dinesh Dalmia vs. C.B.I., 2007(4) RCR (Criminal) 282.

2. Ravinder Singh vs. State of Punjab, 2005(2) R.C.R. (Criminal) 340.

3. Ranbir Singh and another v. The State of Haryana, 1988(2) RCR (Cri.) 5.

4. Mehar Singh vs. The State of Punjab, CRM-M-17764-2009 dated 03.09.2009.

5. Pankaj Ganda vs. State of Haryana, CRM-M-37940-2016 dated 09.01.2017.

6. Uday Mohanlal Acharya vs. State of Maharashtra, 2001(2) RCR (Criminal) 452.

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SUDHIR MITTAL, J. –

The issue involved in this revision petition is whether the petitioner is

entitled to grant of default bail under Section 167(2) Cr.P.C.?

2. The petitioner is an accused in FIR No.222, dated 23.11.2018, registered at Police Station Guru Har Sahai, under Sections 420, 406, 409, 465, 467, 468, 471, 120-B of IPC and 7 & 13(1) A of Prevention of Corruption Act, 1988. The petitioner has been involved in this case as at the relevant time he was working as Inspector, Grade-II, PUNSUP, Ferozepur, deputed to purchase paddy from 'Mandi Jiwan Arai' and 'Panje ke Uttar' and allegedly, he along with the co-accused showed purchase of more paddy than actually done thereby causing a loss of Rs.3 crores (approx.) to the State Exchequer. The co-accused mentioned in the FIR are Jaswinder Pal Singh prop. of M/s Reet Enterprises, Sandeep Kumar prop. Of M/s Jagdish Chander & Sons, Rashu Mutneja prop. of M/s Dhruv Commission Agent and Jasmeet Singh s/o Amarjeet Singh sole prop. of M/s Sunrise Food Products. Challan was presented in the Court on 23.01.2019 wherein the petitioner and his co-accused named in the FIR were kept in column No.2. At the end of the challan, it was mentioned that warrants have been got issued from the learned Illaqa Magistrate against the petitioner and his co-accused named in the FIR and that supplementary challan would be presented after arresting them. It has also been mentioned that separate supplementary challan would be submitted against the staff of Punjab National Bank after collecting evidence of their involvement. Challan was presented only against Sandeep Kumar s/o Fakir Chand who was in custody having been arrested on 25.11.2018.

3. Thereafter, the petitioner surrendered on 23.11.2019. As per the prosecution, the petitioner was taken into custody in this case on 02.12.2019 when he was produced before the Magistrate by way of production warrant. This implies that either the petitioner was arrested elsewhere and produced before the Magistrate on 02.12.2019 or that he was arrested in some other case and produced in this case on 02.12.2019. The actual position is not forthcoming from the record and is inconsequential in view of the reasons given hereinafter. The petitioner sought default bail under Section 167(2) Cr.P.C. vide a petition dated 24.02.2020 in which the learned Special Judge, Ferozepur has observed that no challan against the petitioner had been presented till 10:55 AM on the said date. However, parties have admitted that challan against the petitioner was in fact submitted on 24.02.2020. Again, this fact is inconsequential as 90 days had expired earlier and an indefeasible right had accrued in favour of the petitioner which could not be taken away. Vide the impugned order dated 25.02.2020, the learned trial Court dismissed the application filed under Section 167(2) Cr.P.C. on the ground that the main challan already stood presented on 23.01.2019 which was even before the date of surrender of the petitioner. To conclude so, he placed reliance upon ***Dinesh Dalmia vs. C.B.I., 2007(4) RCR (Criminal) 282***.

4. Learned counsel for the petitioner submits that challan against the petitioner was presented on 24.02.2020. In the challan presented on 23.01.2019, the petitioner had been kept in column No.2 and thus, it is evident that investigation against the petitioner was not complete on the said date. The trial Court was in error in concluding that challan already stood presented against the petitioner. The judgment in ***Dinesh Dalmia (supra)*** is distinguishable as in the said case; the petitioner therein had been named in the challan presented before his arrest. Further, if a period of 90 days, elapses

without conclusion of investigation and presentation of challan, an accused gets an indefeasible right to bail which could not be extinguished by presenting a challan after 90 days. Reliance is placed upon ***Ravinder Singh vs. State of Punjab, 2005(2) R.C.R. (Criminal) 340***.

5. Learned State counsel, however, submits that the petitioner and his co-accused were kept in column No.2 as per the prevailing practice, as they had not been arrested till the presentation of the earlier challan. This is corroborated by a statement made to this effect in the challan itself. Sufficient evidence stood collected against the petitioner also and merely because the petitioner was kept in column No.2 it cannot be said in law that the challan presented on 23.01.2019 had not been presented against the petitioner. The challan presented against the petitioner on 24.02.2020 was a mere formality which had to be completed after the petitioner had been arrested so that he could be tried. Thus, the petitioner cannot seek benefit of Section 167(2) Cr.P.C. It is also submitted that the order of the trial Court makes it abundantly clear that the petitioner was arrested in this case on 02.12.2019 after he was produced on production warrant. Thus, in any case, period of 90 days had not elapsed on 24.02.2020 and the petitioner was not entitled to any relief.

6. In response to the argument of the learned State counsel that the custody of the petitioner in this case is to commence with effect from 02.12.2019 when he was produced before the Magistrate on production warrant, learned counsel for the petitioner submits that the argument is based on a misunderstanding of law. Custody of an accused commences on the date he is arrested whether in the concerned case or in any other case. Admittedly, the petitioner had surrendered on 23.11.2019 and his custody is to be reckoned with effect from the said date irrespective of the date of production before the concerned Magistrate in this case. Reliance has been placed upon ***Ranbir Singh and another vs. The State of Haryana, 1988(2) RCR (Criminal) 5***; judgment **dated 03.09.2009 passed in CRM-M-17764-2009 titled as *Mehar Singh vs. The State of Punjab*** and judgment **dated 09.01.2017 passed in CRM-M-37940-2016 titled as *Pankaj Ganda vs. State of Haryana*.**

7. In the first instance I shall take up the argument raised by the learned State counsel that the petitioner having been taken into custody on 02.12.2019 in this case, period of 90 days had not elapsed when challan was presented against him on 24.02.2020. This argument assumes that challan presented on 23.01.2019 had not been presented against the petitioner.

8. It is not in dispute that the petitioner had surrendered on 23.11.2019. The mode and manner of his surrender is not clear. Whatever be the same, it is now settled that the word 'custody' occurring in the proviso to Section 167(2) Cr.P.C. encompasses police custody as well as judicial custody. The petitioner surrendered on 23.11.2019 and the period of his 'custody' commenced with effect from the said date. Thus, even if he was produced before the Magistrate on 02.12.2019, period of 90 days has to reckon with effect from 23.11.2019. The judgments relied upon by the learned counsel for the petitioner in this regard are fully applicable. This argument of the learned State counsel is thus rejected.

9. The learned State counsel has also argued that challan against the petitioner had been presented on 24.02.2020 i.e. before decision of his bail

application. Thus, the petitioner was not entitled to claim benefit of the proviso to Section 167 (2) Cr.P.C. This argument is being noticed only to be rejected. The language of the proviso to Section 167(2) Cr.P.C. is clear. It bars a Magistrate from remanding an accused to custody in excess of 90 days in cases punishable with death, imprisonment with life or imprisonment upto 10 years. Thus, if a challan is not presented within the said period, the accused gets an indefeasible right to bail which cannot be defeated by filing the challan after 90 days but before the release of an accused on bail. I am supported in this view by the judgment of ***Ravinder Singh (supra)*** which has itself relied upon a judgment of the Supreme Court in ***Uday Mohanlal Acharya vs. State of Maharashtra, 2001(2) RCR (Criminal) 452***. Consequently, this argument of the learned State is also rejected.

10. Finally, we come to the issue whether the challan presented on 23.01.2019 can be said to be a challan presented against the petitioner although he was kept in column No.2.

11. A perusal of the challan presented on 23.01.2019, a copy whereof is annexed as Annexure P-2, shows that list of the case property had been filed therewith along with a list of witnesses. Thereafter, the facts of the case have been narrated. The last few lines are reproduced:-

> "*The warrants have been got issued from the Learned Illaqa Magistrate against Sandeep Kumar son of Jagdish Chander r/o Panj Ke Utar Police Station Guruharsahai, Rishu Matneja w/o Sandeep Kumar r/o Panj Ke Utar Police Station Guruharsahai, Jaswinder Pal Singh son of Gurmeet Singh r/o Dashmesh Nagar Jalalabad, Jasmeet Singh son of Amarjeet Singh r/o Jalalabad. Hansa Singh, Inspector Grade 2, resident of Shamshabad, District Fazilka, Harpreet Singh son of Gurmeet Singh resident of Dashmesh Nagar, Jalalabad and after arresting them supplementary challan would be presented in the court and after getting evidence of involvement of staff of Punjab National Bank, a separate supplementary challan would be submitted against them. The pending enquiry of the case after taking the record and thereafter supplementary challan shall be presented. As per the evidence, the investigation till and the evidence collected on file challan under Sections 420, 465, 467, 468, 471, 406, 120-B IPC against accused Sandeep Kumar is required to be presented and the same after being prepared against Sandeep Kumar under Sections 420, 465, 467, 468, 471, 406, 120-B IPC is being presented to the Court. The witnesses mentioned in Column no.6 shall give their statements as required.*"

12. From the aforementioned reproduction from the challan it is evident that evidence necessary for commencement of trial against the petitioner and his co-accused has/had been collected by the investigating agency. The petitioner was kept in column No.2 only because he had not been arrested as is the practice in the State of Punjab. Learned counsel for the petitioner has not refuted the submission of the learned State counsel that such a practice exists in the State of Punjab. Warrants of arrest had been requested for and this would not have been the case if the petitioner had not been found guilty. The challan dated 24.02.2020 against the petitioner was only a formality. In ***Dinesh Dalmia (supra)*** it has been held as follows:-

> "*15. A charge sheet is a final report within the meaning of Sub-*

section (2) of Section 173 of the Code. It is filed so as to enable the court concerned to apply its mind as to whether cognizance of the offence thereupon should be taken or not. The report is ordinarily filed in the form prescribed therefor. One of the requirements for submission of a police report is whether any offence appears to have been committed and, if so, by whom. In some cases, the accused having not been arrested, the investigation against him may not be complete. There may not be sufficient material for arriving at a decision that the absconding accused is also a person by whom the offence appears to have been committed. If the investigating officer finds sufficient evidence even against such an accused who had been absconding, in our opinion, law does not require that filing of the charge sheet must await the arrest of the accused."

13. From the aforementioned observation, it is evident that in law it is not essential for a person to be arrested before a challan can be presented against him. The only requirement for applicability of the proviso to Section 167(2) Cr.P.C. is that investigation should be pending against the petitioner. The language of the challan presented on 23.01.2019 gives the impression that investigation against the petitioner is not pending. Learned counsel for the petitioner has not been able to dispel this impression either with his argument or with the help of any other evidence. Thus, the ratio of ***Dinesh Dalmia (supra)*** is applicable to this case irrespective of the fact that in the said case the petitioner therein had been specifically named in the challan prior to his arrest. The position in law remains un-altered despite the said distinction on facts.

14. Accordingly, I do not find any merit in the revision petition. The same is dismissed.

Petition dismissed.

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