Madras High Court
Palanisamy @ Palani vs State Rep. By on 14 November, 2002

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14/11/2002

CORAM

THE HON'BLE MR.JUSTICE. MALAI.SUBRAMANIAN

CRL.R.C.NO.1908 of 2002
AND
CRL.M.P.NO.11018 of 2002

1. Palanisamy @ Palani
2. Subramani
3. Narayanappa
4. Raja @ Rajappa
5. Naga @ Nagaraj
6. Senthil @ Senthilkumar .... Petitioners

-Vs-

State rep. By
Inspector of Police,
Thali Police
Dharmapuri District .... Respondent

Revision filed under Sec.392 read with 401 Cr.P.C. against the Order passed in Crl.M.P.No.1334/2002 dated 5.9.2002 on the file of District Munsif-cum-Judicial Magistrate, Thenkanikottai.

!For petitioners : Mr.K. Gandhikumar

^For respondent : Mr.O. Srinath
Govt. Advocate (Crl. Side)

:ORDER

This revision has been directed against the Order passed by the District Munsif-cum-Judicial Magistrate, Thenkanikottai in Crl.M.P.No.133 4/2002, whereby the learned Magistrate dismissed the bail application filed by the petitioners under Sec.167(2) Cr.P.C.

2. The petitioners are accused in Cr.No.121/2002 on the file of the Inspector of Police, Thali Police

Station. They were remanded to custody for offences punishable under Secs.147, 148 and 302 IPC and Sec.25(A) of the Indian Arms Act. Investigation was completed and final report was filed on 26.8.2002, but the learned Magistrate returned the final report remarking that the prosecution under the Arms Act requires sanction from the authorities concerned. The petitioners filed a petition under Sec.167(2) Cr.P.C on 28.8.2002 requesting the Court to release them on bail, since investigation was not concluded within a period of 90 days as per Sec.167 (2) Cr.P.C.

3. The learned counsel appearing for the petitioners contends that the learned Magistrate is wrong in dismissing the petition since on the date when the petition was filed, no charge sheet was filed on the file of the learned Magistrate concerned. In support of his contention he also relies on a ruling of the Andhra Pradesh High Court reported in 1994 Crl.L.J. 257 in the case of M.C. Venkatareddy vs State of Andhra Pradesh, wherein the learned Judge has held as follows:

"In the instant cases, while the petitioners in Crl.P.341/93 are remanded to judicial custody on 30.9.1992 and the period of 90 days expired on 28.12.1992, the petitioner in Crl.P.No.559/93 was remanded to judicial custody on 29.10.1992 and the period of 90 days expired on 26 .1.1993. The application was filed by the accused to release them on bail since the period of 90 days expired and there is no police report before the Court and the Magistrate has failed to take cognizance of the cases. The same was rejected by the Magistrate on the ground that the petitioners are not entitled for bail under Sec.167(2) Crl. P.C because the SHO (Station House Officer), filed the charge-sheet already within 90 days on 28.12.1992 and that the same was returned to comply the objections. From this, it is crystal clear that there was no police report on record of the court and even on its own showing, the prosecution has not filed the report conforming to the requirements of Sections 173(2) and 173(5) and as such the same was returned. Inasmuch as the charge-sheet was not in conformity with the procedure established by law and as the same was returned, the action of the Magistrate in returning the same was only administrative in nature and not judicial and the Magistrate was not competent to take cognizance of the offence as the charge-sheet was not filed as contemplated under law and was not there on record within the stipulated time of 90 days. It is not sufficient for the prosecution to just file some sort of police report not conforming to the provisions of Sections 173(2) and 173(5) Cr.P.C and then play fraud not only on the statute but also on the Constitution. This kind of tactics by the police to water down and nullify the constitutional and statutory guarantees cannot be countenanced and in fact, the Courts should keep a strict vigil on this kind of unscrupulous acts of officers to get over the constitutional and statutory mandate of filing a charge-sheet within the stipulated time under the guise of filing defective charge-sheet and then knowing fully well that it will be returned. Until a charge-sheet with all specifications enumerated under Sec.173(2) Cr.P.C and accompaniments under Section 173(5) Cr.P.C is filed into the court and the court scrutinises it on its administrative side to satisfy that all such documents are in order and unless the court takes it on record and keeps it on its file for examination for taking cognizance or not, it cannot be said that a police report (charge-sheet) is filed as contemplated under Section 173(2) Cr.P.C. Once the police report is filed, it should be capable of examination for the purpose of judicial determination to take cognizance of the offence and to proceed further into Chapter XVI Cr.P.C and any act short of that cannot be construed as "taking cognizance".

4. That was a case where the charge sheet was returned for want of material papers contemplated under Sec.173(5) Cr.P.C. That is why the learned Judge (as he then was) has held that it is not sufficient for the prosecution to just file some sort of police report not conforming to the provisions of Sections 173(2) and 173(5) Cr.P.C and play fraud not only on the statute but also on the Constitution. This kind of tactics by the police officer was deprecated. But in this case, charge sheet was not returned for want of any material papers contemplated under Sec.173(5) Cr.P.C. The Magistrate chose to return the charge sheet on the ground of absence of sanction to prosecute the petitioners under the Arms Act.

5. It is relevant to note that the documents referred to under Sec.1 73(5) have been submitted to the Court. It cannot be said that obtaining sanction from the authorities concerned is part of investigation. Sanction is required only to enable the Court to take cognizance of the offence. The Court may take cognizance of the offence after the sanction order was produced before the Court, but the moment the final report is filed along with the documents that may be relied on by the prosecution, then investigation will be deemed to have been completed. Taking cognizance is entirely different from completing investigation. Completing investigation and filing a final report is the duty of the Investigating Agency, but taking cognizance of the offence is the power of the Court. Suppose the Court does not take cognizance of the offence for some more time even after filing of the final report, the accused concerned cannot claim their indefeasible right under Sec.167(2) Cr.P.C. What is contemplated under Sec.167(2) Cr.P.C is that the Magistrate concerned has n o powers to order detention of the accused beyond the period of 90 days or 60 days as the case may be. If investigation is concluded within the prescribed period, no right accrues to the accused concerned to be released on bail under the proviso to Sec.167(2) Cr.P.C.

6. Of course the learned Magistrate may not be right in returning the charge sheet for want of sanction order to prosecute the petitioners under the Arms Act. He could have kept the charge sheet on the file and could have directed the investigating officer to file the sanction order so as to enable him to take cognizance of the offence. Sec.1 97 Cr.P.C only says that no Court shall take cognizance of offence except with the previous sanction of the Government concerned. May be it is the duty of the Investigating Officer or the Prosecuting Agency to obtain proper sanction and file the same before the Court to enable the Magistrate to take cognizance of the offence, but it does not entitle the Magistrate concerned to return the charge sheet. At any cost, non filing of the sanction order does not make the investigation incomplete. Once a final report has been filed with all the documents on which the prosecution proposes to rely, the investigation shall be deemed to have been completed. After completing investigation and submitting a final report to the Court, the Investigating Officer can send a copy of the final report along with the evidence collected and other materials to the sanctioning authority to enable the sanctioning authority to apply his mind to accord sanction. According sanction is the duty of the sanctioning authority who is not connected with the investigation at all. In case the sanctioning authority takes some time to accord sanction, that does not vitiate the final report filed by the investigating agency before the Court. It is relevant to note that Sec.197 Cr.P.C occurs in Chapter XIV which deals with conditions requisite for initiation of proceedings. Sec.173 Cr.P.C does not speak about the sanction order at all. Sec.167 also speaks only about investigation and not about cognizance by the Magistrate. Therefore, once a final report has been filed, that is the proof of completion of investigation and if final report is filed within the period

of 90 days from the initial date of remand of accused concerned, he cannot claim that a right has accrued to him to be released on bail for want of filing of sanction order.

7. Sec.173 (5) Cr.P.C of course requires all the documents or the relevant extracts there of on which the prosecution proposes to rely to accompany the final report. Sanction order cannot be brought within the category of those documents contemplated under clause (5) to Sec.173 Cr.P.C. According sanction is altogether a different act to be performed by the Government concerned under Sec.197 Cr.P.C.

8. In view of the above discussions, I am of the view that the ruling cited by the learned counsel for the petitioners will not apply to the facts of the present case and the petitioners are not entitled to be released on bail under Sec.167(2) Cr.P.C, since the final report has been filed by the Investigating Agency on 26.8.2002 itself before the prescribed period while the bail application was received by the Magistrate only on 28.8.2002.

9. Therefore, the revision stands dismissed. Consequently, the connected Crl.M.P.11018/2002 is closed.

14-11-2002 sr Index:Yes Web site: Yes To

1. The District Munsif-cum-Judicial Magistrate, Thenkanikottai.

2. The Public Prosecutor, High Court, Madras.