

RAVI PRAKASH SINGH @ ARVIND SINGH

v.

STATE OF BIHAR

(Criminal Appeal No. 325 of 2015)

FEBRUARY 20, 2015

**[DIPAK MISRA AND PRAFULLA C. PANT, JJ.]**

*Code of Criminal Procedure, 1973 – s. 167(2) – Bail – Refusal to accused, when – Appellant surrendered before the Magistrate on 5.7.2013 – Application filed on 03.10.13 for release on bail u/s. 167(2) proviso, on the ground that the charge sheet was not filed – However, on 03.10.2013 itself, endorsement in the order sheet by the Magistrate that the charge sheet has already been received – Rejection of bail application by the Magistrate as also the Sessions Judge – Petition u/s. 482 Cr.P.C. seeking quashing of the order passed by the Sessions Judge and the Magistrate – Dismissed by the High Court – On appeal, held: High Court justified in dismissing the petition u/s. 482, and upholding the refusal of bail to appellant – While computing period of ninety days, the day on which the accused was remanded to the judicial custody should be excluded, and the day on which challan is filed in the court, should be included – Date 05.07.13 is to be excluded and, as such, the charge sheet was filed on ninethieth day, i.e., 03.10.13 – Thus, no infringement of s. 167(2) of the Code.*

**Dismissing the appeal, the Court**

**HELD:** While computing period of ninety days, the day on which the accused was remanded to the judicial custody should be excluded, and the day on which challan is filed in the court, should be included. In the instant case, date 05.07.13 is to be excluded and, as such,

- A the charge sheet was filed on ninethieth day, i.e., 03.10.13. Therefore, there is no infringement of section 167(2) of the Code of Criminal Procedure, 1973. The High Court did not err in law in dismissing the petition u/s. 482 of the Code, and upholding the refusal of bail to appellant
- B prayed by him u/s. 167(2) of the Code. [Para 12, 13] [248-C-D]

*State of M.P. v. Rustam and Ors.* 1995 Supp (3) SCC 221 – relied on.

- C *Powell Nwawa Ogechi v. The State (Delhi Administration)* 1986 (3) Crimes 577; *State of Maharashtra v. Sharan B. Sarda; N. Nureya Reddy* 1983 (2) Crimes 254; *N. Nureya Reddy and Anr. v. State of Orissa* 1985 CRLJ 939 (Orissa); *Chaganti Satyanarayana and others v. State of Andhra Pradesh* (1986) 3 SCC 141; 1986 (2) SCR 1128 – referred to.
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#### Case Law Reference

- |   |                        |              |         |
|---|------------------------|--------------|---------|
| E | 1986 (3) Crimes 577    | Referred to. | Para 9  |
|   | 1983 (2) Crimes 254    | Referred to. | Para 9  |
|   | 1985 CRLJ 939 (Orissa) | Referred to. | Para 10 |
|   | 1986 (2) SCR 1128      | Referred to. | Para 11 |
| F | 1995 Supp (3) SCC 221  | Relied on.   | Para 12 |

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 325 of 2015

- G From the Judgment and Order dated 24.12.2013 of the High Court of Judicature at Patna in Criminal Miscellaneous No. 48019 of 2013

- H Nagendra Rai, Smarhar Singh, Prerna Singh, Aakash Kumar, Shantanu Sagar for the Appellant.

Gopal Singh, Manish Kumar, Roshni Srivastava for the Respondent. A

The Judgment of the Court was delivered by

**PRAFULLA C. PANT, J.** 1. This appeal is directed against the judgment and order dated 24.12.2013 passed by the High Court of Judicature at Patna in Criminal Miscellaneous No. 48019 of 2013 whereby said Court has dismissed the petition under Section 482 of the Criminal Procedure Code, 1973 (for short "the Code") and declined to interfere with the order dated 22.10.2013, passed by Sessions Judge, In-charge, Kaimur at Bhabua in Bail Petition No. 542 of 2013, and upheld the refusal to release the appellant on bail under Section 167(2) of the Code. B C

2. Brief facts of the case are that appellant Ravi Prakash Singh @ Arvind Singh surrendered before Chief Judicial Magistrate, Kaimur on 5.7.2013 in connection with Crime No. 89 of 2013, registered at Police Station, Chainpur, relating to offences punishable under Section 302 read with Section 34 and Section 120B of the Indian Penal Code and under Section 27 of Arms Act. He was remanded to judicial custody till 19.7.2013. His remand was extended under Section 167 of the Code from time to time, and the last remand under said provision was granted till 3.10.2013. On 3.10.2013, the appellant moved an application under Section 167(2) of the Code for his release on the ground that the charge sheet has not been filed. On the same day, i.e., 3.10.2013, it was endorsed in the order sheet by the Chief Judicial Magistrate that as per report of the clerk of the Court, charge sheet has already been received, as such, the bail application moved under Section 167(2) of the Code was rejected by the Magistrate on the very day and further remand order was passed under Section 209 of the Code. Endorsement "seen" was also made by the Magistrate on 3.10.2013 on the charge-sheet. D E F G H

A 3. On 22.10.2013, the case was committed to the Court  
of Sessions Judge. The applicant moved bail application No.  
542 of 2013 before the Sessions Judge, Kaimur at Bhabua  
seeking bail on the ground that he was entitled to be released  
on bail under Section 167(2) of the Code. He further pleaded  
B that the Chief Judicial Magistrate has erred in law in rejecting  
his bail application on said ground. However, the In-charge  
Sessions Judge, who disposed of the above bail application,  
also opined that since the charge sheet had already been  
submitted, as such, the appellant was not entitled to bail on  
C the ground that charge-sheet was not received within time.

4. On this, appellant Ravi Prakash Singh @ Arvind Singh  
appears to have moved a petition under Section 482 of the  
Code before the High Court of Judicature at Patna, praying  
D that order passed by the Sessions Judge, as above, and the  
one passed by the Magistrate be quashed. But the High Court  
also took the view that since the charge sheet had already  
been filed within the period of ninety days, as such, it did not  
find any error in the orders passed by the courts below.

E 5. We have heard learned counsel for the parties and  
perused the original record of the case.

6. Sub-section (2) of Section 167 of the Code reads as  
under: -

F "167(2) The Magistrate to whom an accused person  
is forwarded under this section may, whether he has  
or not jurisdiction to try the case, from time to time,  
authorise the detention of the accused in such custody  
G 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  
H jurisdiction:

Provided that-

(a) The Magistrate may authorize 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;

(b) No Magistrate shall authorize detention of the accused in custody by the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;

(c) No Magistrate of the second class, not specially empowered in this behalf by the high Court, shall authorize detention in the custody of the police.

*Explanation 1.* – For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the

A period specified in paragraph (a), the accused shall be detained in Custody so long as he does not furnish bail.

B *Explanation II.* – If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorizing detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be.

C Provided further that in case of a woman under eighteen years of age, the detention shall be authorized to be in custody of a remand home or recognized social institution.”

D Above Proviso (a) to sub-section (2) of Section 167 of the Code provides that the Magistrate shall not authorize detention of an accused in custody in which the investigation relating to offence punishable with death, imprisonment for life or imprisonment for a term not less than ten years and if the investigation not completed within ninety days, the accused shall be entitled to be released on bail.

E 7. Admittedly, the appellant surrendered before the Magistrate on 5.7.2013. It is also not disputed that on 3.10.2013 the appellant moved an application for his release on bail under proviso (a) to sub-section (2) of Section 167 of the Code. However, the order sheet of the case shows that there is endorsement of the Magistrate on 3.10.2013 that the charge sheet has already been received.

F 8. The charge sheet against the appellant, in the original record, shows that the Investigating Officer signed it and submitted the same on 30.9.2013. Though the clerk concerned has not made any endorsement as to when actually the charge

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sheet was received, but there is endorsement of the Chief A  
Judicial Magistrate which shows that he has mentioned “seen”  
on 3.10.2013 and signed at the top of the first page of the  
charge sheet. Order sheet of the court of the Magistrate also  
corroborates that on 3.10.2013 the clerk concerned reported  
to Chief Judicial Magistrate that the charge sheet had already B  
been received.

9. It is argued on behalf of the learned senior counsel  
for the appellant that the appellant should have been given  
benefit of Section 167(2) of the Code. According to him, it C  
was 91<sup>st</sup> day of detention on 3.10.2013. It is further contended  
by Mr. Nagendra Rai, learned senior counsel, that even Sunday  
or holiday on ninetieth day cannot deprive the benefit of proviso  
(a) to sub-section (2) of Section 167 of the Code. In support of  
his arguments he relied upon cases of *Powell Nwawa Ogechi* D  
*v. The State (Delhi Administration)*<sup>1</sup> and *State of*  
*Maharashtra v. Sharan B. Sarda*<sup>2</sup>. In *Sharan B. Sarda*  
(supra) single Judge of Bombay High Court, and in *Powel*  
*Nwawa Ogechi* (supra) the Division Bench of Delhi High Court  
took the view that even if last day for filing charge sheet is E  
holiday, the accused cannot be deprived of benefit of Section  
167(2) of the Code.

10. Contrary to this, in *N. Nureya Reddy and another*  
*v. State of Orissa*<sup>3</sup>, the Division Bench of Orissa High Court,  
interpreting the provisions of Section 167(2) of the Code read F  
with Section 10 of the General Clauses Act, held that if ninetieth  
day is a holiday, filing of charge sheet on the next day should  
be treated sufficient compliance of filing of charge sheet within  
a period of ninety days and it cannot be said that provision G  
contained in Section 167(2) of the Code is infringed.

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<sup>1</sup> 1986 (3) Crimes 577

<sup>2</sup> 1983 (2) Crimes 254 (Short Note)

<sup>3</sup> 1985 CRLJ 939 (Orissa)

- A 11. In ***Chaganti Satyanarayana and others v. State of Andhra Pradesh***<sup>4</sup>, it has been held by this Court that period of ninety days under Section 167(2) of the Code shall be computed from the date of remand of the accused and not from the date of his arrest under Section 57 of the Code.
- B However, in the present case, we have to see the relevant date as the date when the accused surrendered and remanded by the court.

- C 12. In ***State of M.P. v. Rustam and others***<sup>5</sup>, this Court has laid down the law that while computing period of ninety days, the day on which the accused was remanded to the judicial custody should be excluded, and the day on which challan is filed in the court, should be included. That being so, in our opinion, in the present case, date 5.7.2013 is to be excluded and, as such, the charge sheet was filed on ninetieth day, i.e., 3.10.2013. Therefore, there is no infringement of Section 167(2) of the Code.
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- E 13. For the reasons, as discussed above, in our opinion, the High Court has not erred in law in dismissing the petition under Section 482 of the Code, and upholding the refusal of bail to appellant prayed by him under Section 167(2) of the Code.

- F Accordingly, the appeal is dismissed. Lower court record be sent back forthwith.

Nidhi Jain

Appeal dismissed.

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<sup>4</sup> (1986) 3 SCC 141

<sup>5</sup> 1995 Supp (3) SCC 221