
**Allan John Waters Vs The State of Maharashtra and The Supt. of Jail
Byculla Central Prison**

Criminal Writ Petition No. 2196 of 2011

Court: Bombay High Court

Date of Decision: March 13, 2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 166, 2, 377, 428, 70#Evidence Act, 1872
â€” Section 27

Citation: (2012) BomCR(Cri) 242 : (2012) CriLJ 2996

Hon'ble Judges: A.V. Nirgude, J

Bench: Single Bench

Advocate: Taraq Sayyed with Ms. Sartaj Shaikh, for the Appellant; R.M. Gadhavi, APP for the State, for the Respondent

Judgement

A.V. Nirgude, J.
Heard.

Rule. Rule made returnable forthwith.

2. The question required to be decided is `whether the detention period of the petitioner from 2nd July 2003 to 6th September 2004 in United

State of America would amount to his ""period of detention"" as understood by section 428 of Code of Criminal Procedure, 1973 (Cr.P.C.)?" The

facts are admitted and can be stated as under:

3. Offence u/s 377 etc. was registered by Colaba Police Station on 15th November 2001 vide Crime No. 312/2001. The name of the petitioner

was shown as one of the accused since beginning. The police, therefore, went in search of the petitioner. After investigation, it was learnt that the

petitioner had gone out of India and would be found in America etc. Accordingly, the police obtained warrant of arrest from the concerned

Magistrate. It was a red corner notice issued to Central Bureau of Investigation (C.B.I.). Pursuant to this notice/ warrant, the petitioner was

arrested in America on 2nd July 2003 at New York. He was admittedly not wanted in any other case in America at that time. He was admittedly

arrested pursuant to the warrant issued by the Indian Court. Investigation Officer then started procedure for extradition of the petitioner from

America to India and pursuant to certain extradition treaty, the competent Court in America allowed extradition of the petitioner to India. This

order was passed on 24th November 2003 and on 6th September 2004 the petitioner was finally brought to India. It is, thus, an admitted fact that

the petitioner was under the detention of the America Court from 2nd July 2003 to 6th September 2004. The Sessions Court vide order dated

18th March 2006 convicted the petitioner for various offences and sentenced him to suffer rigorous imprisonment. After the petitioner was

convicted, the usual order of set off was passed. The said order was not disturbed by the final Court. The question is whether the detention period

of the petitioner in America is a period of detention as understood by section 428 of Cr.P.C. Section 428 of Cr.P.C. reads as under:

428. Period of detention undergone by the accused to be set off against the sentence of imprisonment. Where an accused person has, on

conviction, been sentenced to imprisonment for a term, not being imprisonment in default of payment of fine, the period of detention, if any,

undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction, shall be set off against the term

of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted

to the remainder, if any, of the term of imprisonment imposed on him:

4. It is said that the petitioner was arrested in America during investigation of this crime. The question is what is investigation and the answer would

be found in the definition of term "investigation" given in section 2(h) of Cr.P.C., which reads as under:

2. Definitions. In this Code, unless the context otherwise requires,

(a) to (g).....

(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 in this behalf;

5. Thus, all the proceedings permissible under Cr.P.C., for collection of evidence, is investigation. The moment offence was registered in this case,

the investigation started. The police at one hand arrested other accused in this case and also recorded the statement of various witnesses while the

petitioner was abroad and eluding his arrest. The investigation was going on. When the police sought arrest warrant against the petitioner, the same

was part of investigation and such warrant was issued under the provisions of section 166 read with section 70 of Cr.P.C. The proceedings

adopted by the Investigation Officer for seeking arrest warrant against the petitioner was, thus, part of the investigation. Whatever happened

subsequent to issuance of warrant was, thus, part of investigation. So arrest of the petitioner pursuant to the said warrant was also part of the

investigation. The steps taken by the investigation officer seeking extradition of the petitioner was also part of the investigation. After the petitioner

was brought to India whatever steps that were taken in respect of the petitioner such as recording of his statement or making him stand in test

identification parade or getting his statement recorded u/s 27 of the Evidence Act were all part of the investigation. So, by no stretch of

imagination, one can say that the detention of the petitioner in America was not his detention during investigation.

6. The learned counsel appearing for the petitioner as well as learned A.P.P. could not show me any judgment directly on this point. The learned

A.P.P. tried to refer to a judgment of the Supreme Court in the case of *Maliyakkal Abdul Azeez Vs. Assistant Collector, Kerala and Another*, .

The question before the Supreme Court in that case was whether the detention of accused under the preventive detention laws was his detention as

understood by section 428 of Cr.P.C. The Supreme Court held that such detention under the preventive detention laws was not punitive but was a

precautionary measure and, therefore, such period could not be set off u/s 428. This judgment, really, has no relevance to the present case. There

is no direct judgment on this point, but, having regard to the definition of term "investigation", I am of firm view that the detention period of the

petitioner in America was his detention period during investigation in this case and, thus, he is entitled to get set off of that period. Rule is made

absolute accordingly.

7. At the request of learned A.P.P., this order shall take effect from 13th April 2012.

8. All the concerned to act on an authenticated copy of this order.