

State Vs G.K. Muralikishna and Others

Court: Madras High Court

Date of Decision: April 27, 2015

Acts Referred: Constitution of India, 1950 - Article 21
Criminal Procedure Code, 1973 (CrPC) - Section 167, 167(1), 167(2)

Hon'ble Judges: R. Subbiah, J

Bench: Single Bench

Advocate: S. Shanmugha Velayutham, Public Prosecutor, for the Appellant; P.S. Raman, Senior Counsel for M/s. Nithyaesh and Vaibhav, Advocates for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R. Subbiah, J.

This revision has been filed as against the order passed by the Special Judge under TNPID Act in CrI. M.P. No. 662 of

2015, dated 13.04.2015, dismissing the petition filed by the prosecution/Revision Petitioner under Section 167(2) of Cr.P.C., to handover the

respondents/accused, for police custody, for a period of five days for the purpose of investigation in respect of Crime No. 5 of 2015 pending on

the file of the revision petitioner/police.

2. The brief facts, which are necessary for deciding this revision, are as follows--

The 1st respondent herein/A2 is the Managing Director of the Company viz., M/s. Helios and Matheson Information Technology Limited,

Chennai, which is arrayed as 1st accused in this case. The 2nd respondent herein/A3 is a Director of the said Company. The 3rd respondent

herein/A7 is the founder-cum-Director of the said Company. The 1st accused/company had received deposits from investors for the durations of

12, 24 and 36 months. The 1st accused-company engaged the services of some agencies for collecting the deposits from the public. M/s. Bajaj

Capital Limited, Mylapore Branch has collected deposits from the public as an agent company of the 1st accused/company viz., M/s. Helios and

Matheson Information Technology Limited. The de facto -complainant Dr. Ranjit Chitturi had deposited five deposits totally to the tune of Rs.

59,50,000/- with the 1st accused/company, through the said M/s. Bajaj Capital Limited, Mylapore Branch for the period of one year and three

years. The de facto -complainant deposited the amount from 11.07.2011 to 16.12.2013. The rate of interest that was offered by the 1st

accused/company is 12%. Out of five deposits, three deposits attained maturity on 14.05.2014, 12.06.2014 and 11.07.2014, for a total amount

of Rs. 36,50,000/-. But, the 1st accused/company defaulted in repayment of deposit amount as well as interest even after maturity to the de facto -

complainant inspite of repeated demand made by him. Hence, the de facto -complainant lost his faith on the 1st accused-company about the

repayment of deposited amount and preferred a report for retrieval of five deposit amounts totally to the tune of Rs. 59,50,000/- against the

company and the respondents herein/accused. Hence, he had lodged the complaint with the Police and the same was registered as Crime No. 5 of

2015. Based on the complaint given by the said Dr. Rajit Chitturi, the respondents herein/accused were arrested on 01.04.2015 at 12.00 noon at

the Office of the E.O.W-II, Headquarters, Anna Nagar, Chennai and they were remanded to judicial custody on the same day and lodged at

Puzhal Prison at Chennai. Thereafter, the revision petitioner/Prosecution has filed a petition on 08.04.2015 in Crl. M.P. No. 662 of 2015 before

the learned Special Judge under TNPID Act, Chennai, seeking custody of the respondents/accused 2, 3 and 7 for five days. The said petition was

dismissed by the Court below on 13.04.2015 on a conclusion that no purpose would be served even if the custody of the accused persons are

ordered to be handed over to the police for interrogation. Aggrieved over the denial of police custody by the Court below, the present Revision

petition has been filed before this Court by the Police.

3. Since on the date of filing this Revision Petition, the first 15 days time from the date of remand has lapsed, the learned Public Prosecutor

appearing for the revision petitioner, before making his submissions on merits, at the outset, made his submissions with regard to the entitlement of

the Police to ask for the custody of the respondents/accused for the purpose of interrogation after lapse of 15 days time from the date of remand.

The submission made by the learned Public Prosecutor is as follows--

3(1) The respondents/accused were arrested on 01.04.2015 and the petition in Crl. M.P. No. 662 of 2015 seeking custody of the

respondents/accused was filed before the learned Special Judge under TNPID Act on 08.04.2015. While so, on 09.04.2015, the respondents

herein/accused filed a petition in Crl. O.P. No. 8964 of 2015 before this Court seeking grant of bail. Since the bail petition was pending before this

Court, the custody petition in Crl. M.P. No. 663 of 2015 was not precipitated before the Court below as the order that was going to be passed in

the bail petition would have bearing on the petition seeking custody of the respondent/accused pending before the Court below. Subsequently, the

said bail petition was dismissed by this Court on 13.04.2015. Similarly, the custody petition was also dismissed by the Court below on the date on

which the bail petition was dismissed by this Court i.e., on 13.04.2015. Though the custody petition was dismissed on 13.04.2015, the certified

copy of the order was made ready only on 16.04.2015, by that time, 15 days time from the date of remand has lapsed. After obtaining certificate

copy of the order dated 16.04.2015 necessary approval from the concerned authorities, was obtained and thereafter, the present revision petition

was filed on 21.04.2015 and hence, absolutely there is no fault on the part of the prosecution with regard to the lapse of 15 days time from the

date of remand in asking for the custody of the respondents/accused. The lapse of first 15 days time from the date of remand, on the date of filing

the revision petition is only due to the act of the Court; therefore, the act of the Court should not prejudice the right of the Prosecution in seeking

the custody of the accused for the purpose of interrogation. In this regard, the learned Public Prosecution has also relied upon the decision

rendered by the Bombay High Court reported in CDJ 2010 BHC 1056 [State of Maharashtra Vs. Mitesh Manila/Lodhiya], wherein it has been

held as follows--

9. Coming to the reasons given by the learned revisional court, I find that those reasons are also factually and legally wrong. Merely because

during the pendency of the matter, period of 15 days was over the revisional Court was not entitled to ignore the legality and validity of the order

under challenge before him. He ought to have tested the validity of the order made by Chief Judicial Magistrate. Merely because of the wrong

order made by Chief Judicial Magistrate period of 15 days had lapsed the State could not be put to prejudice since that was the act of the Court,

actus curiae neminem gravabit. The decisions cited before me relate to the cases where the facts are totally different. In those cases the order of

the trial Magistrate was not found to be illegal for any reason. In the instant case, however, I find that the order of Chief Judicial Magistrate in

refusing police custody remand is illegal and the validity of the same is under challenge before me. The cited cases are therefore distinguishable.

3(2) The learned Public Prosecutor has also relied upon the decision reported in Gulabrao Baburao Deokar Vs. State of Maharashtra and Others,

(2014) 1 AD 177 : (2014) CriLJ 845 : (2014) 2 JT 189 : (2014) 1 RCR(Criminal) 459 : (2013) 15 SCALE 484 : (2014) 2 SCJ 555 , in support

of his contention that when there is justification in asking custody of the accused, the Court has to consider the same.

4. Apart from the above submissions, on merits, the learned Public Prosecutor appearing for the Revision Petitioner/Prosecution submitted that

custody of the respondents/accused are very much essential in this case to identify the properties of the 1st accused-Company and also the

properties of the other accused for attachment of the same and also to ascertain the diversion of the deposited amount and to seize the relevant

vital documents pertaining to this case. The learned Public Prosecutor would further submit that the 1st accused/company has received a sum of

Rs. 55,20,70,000/- as deposit from 6,541 depositors from all over India. From the investigation so far conducted prima facie it appears that the

deposited amounts were diverted by the accused persons to their other concerns; therefore, the custody of the respondents/accused persons is

absolutely essential in this case to ascertain the diversion of the deposited amount; but, the Court below without considering this aspect has come

to the conclusion that the Police can obtain necessary particulars about the 1st accused-company from the Registrar of Companies. Assailing the

said finding of the Court below, the learned Public Prosecutor submitted that the certain information which are in the knowledge of the

respondent/accused persons cannot be obtained from the Registrar of Companies; therefore, the reasons assigned by the Court below for denying

the custody of the respondent/accused persons to the Police is not correct.

5. Countering the submissions made by the learned Public Prosecutor, the learned Senior Counsel appearing for the respondents/accused, by

relying upon the judgment delivered by the learned Single Judge of this Court reported in G. Priyadarshini Vs. State, (2014) 2 LW(Cri) 120 :

(2014) 3 MLJ(Cri) 108 , submitted that in the said judgment, the learned Single Judge of this Court by relying upon various decisions of the

Hon"ble Supreme Court has held that the Police custody cannot be granted under any circumstance beyond the first period of 15 days from the

date of remand and the Court cannot overstep the mandate prescribed in Section 167(2) of Cr.P.C; Thus, the learned senior counsel appearing for

the respondents/accused submitted that in the instant case also, since the first period of 15 days has already expired, the custody of the accused

cannot be given to the Police.

6. With regard to the merits of the case, the learned senior counsel appearing for the respondents/accused submitted that since January-2015, the

respondents/accused appeared before the Police more than 20 times and their Passports were also seized by the Police and they have also

produced more than 100 documents before the Investigating Officer and the particulars about their immovable properties have also been submitted

in Form VIII to the Registrar of the Companies as per the Company General Rules and Regulations of 1956. Further, the respondents/accused are

ready to co-operate with the investigation; therefore, absolutely there is no need for custodial interrogation of the respondents/accused in this case.

7. Heard the submissions made on either side and perused the materials available on record.

8. In view of the above submissions made on either side, the question that falls for consideration in this revision is as to whether the Police is

entitled to have the custody of the accused since first 15 days time from the date of remand has already lapsed?

9. It is the submission of the learned Public Prosecutor that the respondents/accused were arrested and remanded on 01.04.2015; the custody

petition under Section 167(2) of Cr.P.C., was filed on 08.04.2015; while so, on 09.04.2015 the respondents herein/accused filed bail petition

before this Court; since the bail petition was pending before this Court, the custody petition was not precipitated before the Court below. But after

the dismissal of the bail petition by this Court, immediately on the same date i.e., 13.04.2015, the custody petition was dismissed by the Court

below. Thereafter, certificate copy of the order passed by the Court below in the custody petition was obtained only on 16.04.2015; but, in the

meanwhile, 15 days time from the date of remand to seek the custody of the accused expired on 15.04.2015. Thereafter, necessary approval was

obtained from the concerned authorities and the present revision petition has been filed on 21.04.2015. Hence, only due to the furnishing of the

certified copy of the dismissal order by the Court below on 16.04.2015, the revision petition could not be filed within first 15 days time from the

date of remand. Hence, due to the act of the Court, the prosecution was not in a position to file the revision petition within first 15 days from the

date of remand. Therefore, according to the learned Public Prosecutor, the delay in obtaining the certificate copy of the order passed by the Court

below has to be excluded for computing 15 days time.

10. But, in my considered opinion, the said submission of the learned Public Prosecutor cannot hold good, because as per Section 167(2) of

Cr.P.C. as well as as per various decisions of the Hon"ble Supreme Court, the police custody cannot be granted under any circumstance beyond

the first period of 15 days. In fact, the judgment delivered by the learned Single Judge of this Court in the case of G. Priyadarshini Vs. State,

(2014) 2 LW(Cri) 120 : (2014) 3 MLJ(Cri) 108 , which was relied upon by the learned senior counsel for the respondents/accused, gives a fitting

answer to this issue. The relevant portions in the said judgment are as follows--

48. The learned Senior Counsel for A1 submitted that once the said outer limit of 15 days is over, no Court can grant Police Custody. It is a

valuable safety, safeguard provided to the accused under Section 167(2), Cr.P.C. Going beyond the said 15 days will militate against the

Constitutional guarantee contained in Article 21, Constitution of India.

49. But, the learned Counsel for the Revision Petitioner as well as the learned Public Prosecutor would submit that the Revision has been filed well

before the expiry of first 15 days of remand, all these days, the revision is pending in this Court and thus the matter is subjudiced. By the act of

Court, a party should not suffer. In such circumstances, expiry of 15 days" period for grant of Police Custody prescribed in Section 167(2),

Cr.P.C., will not apply.

50. In reply, the learned Senior Counsel for A1 submitted that for any reason whatsoever, a Court cannot extend the period prescribed in Section

167(2), Cr.P.C. It is the look out of the Revision Petition to see that the matter has been taken up before the expiry of the first 15 days of remand.

She should have taken necessary steps. She cannot blame the Court. She cannot ask the Court to break the law. There cannot be judicial

legislation. Justice should be administered only as provided, prescribed in the statute.

51. In Central Bureau of Investigation, Special Investigation Cell-I, New Delhi Vs. Anupam J. Kulkarni, AIR 1992 SC 1768 : (1992) CriLJ 2768

: (1992) 2 Crimes 310 : (1992) 3 JT 366 : (1992) 1 SCALE 1024 : (1992) 3 SCC 141 : (1992) 3 SCR 158 , the Hon"ble Supreme Court in

clear cu terms declared the law relating to Section 167(2), Cr.P.C. specifically with reference to the period within which the Court can grant Police

Remand, namely, before the expiry of the first 15 days of remand. Thereafter, with reference to the same offence, the learned Magistrate has no

power to grant Police Custody. This will be the law applicable to all the Courts.

52. In Budh Singh Vs. State of Punjab, (2001) CriLJ 2942 : (2000) 8 JT 511 : (2000) 9 SCC 266 , Accused surrendered before the learned

Magistrate on 20.01.1999 and on 2.1.2000, Police Custody of the accused was sought for. He was remanded. On 4.1.2000, the Investigation

Officer asked for further Police Remand. The learned Magistrate rejected it. Because by that time, the first 15 days of remand period was over.

The State filed Revision as against the refusal to grant Police Custody. It was dismissed on 17.01.2000 by the learned Sessions Judge, Ludhiana.

However, a learned Judge of the Punjab and Haryana High Court set aside the Order of Dismissal passed by the learned Sessions Judge and

directed the Magistrate to grant 7 days" Police Custody. This was challenged by the accused before the Hon"ble Supreme Court. The Hon"ble

Apex Court set aside the High Court's Order as under;

5. In the face of facts, as noticed above, the order of the learned Judicial Magistrate, dated 04.01.2000, in our opinion, did not require any

interference. The mandate of Section 167, Criminal Procedure Code, 1973 postulates that there cannot be any detention in Police Custody, after

the expiry of the first 15 days, so far as an Accused is concerned. That period of 15 days had in this case admittedly expired on 4.1.2000. The

impugned Order of the High Court violates the statutory provisions contained in Section 167, Cr.P.C. Since it authorised Police remand for a

period of seven days after the expiry of the first fifteen days period. In Central Bureau of Investigation, Special Investigation Cell-I, New Delhi Vs.

Anupam J. Kulkarni, AIR 1992 SC 1768 : (1992) CriLJ 2768 : (1992) 2 Crimes 310 : (1992) 3 JT 366 : (1992) 1 SCALE 1024 : (1992) 3

SCC 141 : (1992) 3 SCR 158, this Court considered the ambit and scope of Section 167 Cr.P.C. and held that there cannot be any detention in

Police Custody after the expiry of the first 15 days even in a case where some more offences, either serious or otherwise committed by an Accused

in the same transaction come to light at a later stage. The Bench, however clarified that the bar did not apply if the same arrested Accused was

involved in some other or different case arising out of a different transaction, in which event the period of remand needs to be considered in respect

of each of such cases. The impugned Order of the High Court under the circumstances, cannot be sustained. The direction to grant Police remand

for a period of seven days by the High Court is, accordingly, set aside. The Appeal, therefore, succeeds and is allowed to the extent indicated

above.

53. In Devender Kumar and Another etc. Vs. State of Haryana and Others etc., (2010) CriLJ 3849 : (2010) 2 DMC 224 : (2010) 4 JT 595 :

(2010) 5 SCALE 325 : (2010) 6 SCC 753, the Accused was produced before the learned Judicial Magistrate, Palwal on 08.10.2008. The

Application for Police Custody filed by the Assistant Sub-Inspector was rejected on 08.10.2008 as it was not filed by the S.I. of Police and the

Accused was remanded to judicial custody till 22.10.2008. On 09.10.2008, Police Custody Petition filed by the Station House Officer, Hodal

was dismissed on 10.10.2008 and the Accused was granted bail on the same day. The de facto complainant filed petition in the High Court of

Punjab and Haryana for cancellation of the bail and also quash the Order dated 10.10.2008 whereunder the request of Police Remand has been

rejected. On 19.3.2010, the High Court set aside the Order of the Magistrate and also granted Police Custody. The Accused aggrieved by the

said Order, appealed to the Hon"ble Supreme Court. It was argued before the Hon"ble Supreme Court that the order of the High Court as against

the provisions of Section 167(1), Cr.P.C. The Hon"ble Apex Court accepted the arguments and held as under:

15. With regard to the second point which was urged by Mr. Luthra, the same was considered in depth and was settled in Central Bureau of

Investigation, Special Investigation Cell-I, New Delhi Vs. Anupam J. Kulkarni, AIR 1992 SC 1768 : (1992) CriLJ 2768 : (1992) 2 Crimes 310 :

(1992) 3 JT 366 : (1992) 1 SCALE 1024 : (1992) 3 SCC 141 : (1992) 3 SCR 158 , referred to hereinabove. What is clear is the fact that the

Police Remand can only be made during the first period of remand after arrest and production before the Magistrate, but not after the expiry of the

said period.

54. In Inspector of Police, Town Police Station, Karaikkal Vs. R. Vaithyanathan Iyappan Govindaraj, 2013 (3) MWN (Cr.) 473, it was held that

Police Custody cannot be granted under any circumstances beyond the first remand period of 15 days.

55. It is incumbent upon the party approaching this Court by taking necessary steps for the disposal of the Revision before the expiry of the first 15

days period of remand. This has not been done in this case. On account of that the Court cannot overstep the mandate prescribed in Section

167(2), Cr.P.C.

56. It has been contended by the learned Counsel for the petitioner that in the interest of investigation as and when required, custodial interrogation

could be considered and for doing justice Section 167(2), Cr.P.C. cannot stand in the way.

57. In the presence of Article 21, Constitution of India guaranteeing personal freedom and deprivation of a person"s personal liberty only by a

procedure established by law, namely, Section 167(2), Cr.P.C. prescribing first 15 days" period this argument of the learned counsel for the

Revision Petitioner cannot be accepted and it will also be an affront to Constitutional mandate, statutory prohibition and human right of the

accused.

58. Now, in this case, A1 as surrendered before the learned XI Metropolitan Magistrate, Saidapet, Chennai on 28.04.2014. The Police Custody

Petition was filed on the same day. It was dismissed by the learned Magistrate on 29.04.2014. Thereafter, Revision has been filed before this

Court on 30.04.2014. The 15 days" initial period prescribed in Section 167(2), Cr.P.C., was already over. In the circumstances, question of

granting Police Custody will not arise. In such view of the matter, consideration of the merit aspect as to whether Police Custody could be granted

has become unnecessary.

In the said judgment, the learned Single Judge of this Court by relying upon various decisions of the Hon"ble Supreme Court has held that the

Court cannot overstep the mandate prescribed in Section 167(2) of Cr.P.C. In fact, the factual aspects of that case would show that though the

revision petition was filed within the 15 days from the date of remand, at the time of hearing the revision petition, 15 days time from the date of

remand had expired in that case. The learned Single Judge, by considering various decisions of the Hon"ble Supreme Court has held that since

initial period of 15 days has already lapsed, question of granting custody of the accused to the Police cannot be considered.

11. In the present case, the respondents/accused were arrested and remanded on 01.04.2015 and 15 days period expired on 15.04.2015. Even

on the date of dismissal of the custody petition by the Court below i.e., on 13.04.2015, 2 more days" time was available for the expiry of 15 days

time from the date of remand; whereas on perusal of the record, I find that copy application itself was filed by the Prosecution only on 15.04.2015

and on the next day i.e., on 16.04.2015 certified copy was furnished by the Court below to the prosecutor. Even thereafter, the revision petitioner

took five days time to file the present revision. Therefore, in my considered opinion, the submission made by the learned Public Prosecutor that for

the act of the Court, the right of the prosecution in seeking the custody of the accused should not be prejudiced, does not hold good in this case.

Therefore, the decisions relied upon by the learned Public Prosecutor cannot be made applicable to the present case. Since the 15 days time from

the date of remand has already lapsed, now at this juncture, the present revision petition cannot be entertained and the same is liable to be

dismissed on this ground alone.

12. In view of the above, there is no need to deal with the other submissions made on either side on merits of the case.

In fine, the criminal revision petition is dismissed.