Basa alias Basu Dev Vs State of West Bengal

C.R.M. No. 13423 of 2013

Court: Calcutta High Court

Date of Decision: Dec. 3, 2013

Citation: (2014) CriLJ 663

Hon'ble Judges: Mrinal Kanti Chaudhuri, J; Jayanta Kumar Biswas, J

Bench: Division Bench

Advocate: Milon Mukherjee and Sankar Banerjee, for the Appellant; Manjit Singh, Public Prosecutor, Saryati Datta and Sabyasachi Chatterjee, for the Respondent

Judgement

Jayanta Kumar Biswas, J.
The petitioner accused of offences under S. 302/34, IPC and S. 25/27, Arms Act and in custody from March

1, 2013 is seeking bail under S. 439, Cr.P.C. The bail prayer was rejected by the court below on June 4, 2013, the 92nd day, considering the

nature and gravity of the offences and the charge-sheet.

2. Mr. Mukherjee appearing for the petitioner has submitted as follows. A charge-sheet was submitted on May 28, 2013; but cognizance was not

taken. The court below declined to accept the charge-sheet on June 18, 2013. It ordered further investigation and allowed prayer to interrogate

the petitioner once again. A fresh charge-sheet was submitted on July 30, 2013, when cognizance was taken. Hence the first charge-sheet could

not extinguish the petitioner"s statutory bail right under S. 167(2), Cr.P.C. on June 4, 2013.

3. Mr. Mukherjee has relied on the decisions in Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, ; Mohamed Iqbal

Madar Sheikh and Others Vs. State of Maharashtra, Mithabhai Pashabhai Patel and Others Vs. State of Gujarat,

4. Mr. Singh, the Public Prosecutor, has submitted as follows. The first charge-sheet extinguished the petitioner"s statutory bail right, even though

cognizance was not taken; for cognizance is not a requirement of S. 167(2), Cr.P.C. The order dated June 18, 2013 is that the court finding the

charge-sheet not satisfactory directed further investigation. The second charge-sheet, an outcome of court order, could not make the first charge-

sheet non-existent.

5. Mr. Singh has relied on the decisions in Suresh Kumar Bhikamchand Jain Vs. State of Maharashtra and Another, and Jeewan Kumar Raut and

Another Vs. Central Bureau of Investigation,). Mr. Mukherjee has submitted that the decision in Suresh Kumar was given on the facts of that

case, and that the decision in Jeewan Kumar does not apply to this case presenting a unique problem on its peculiar facts.

6. The question is whether the petitioner was entitled to statutory bail under S. 167(2), Cr.P.C. on June 4, 2013. Admittedly, June 4, 2013 was

the 92nd day.

7. The order of the court below dated May 28, 2013 reveals that it perused the charge-sheet and kept the cognizance in abeyance. On June 4,

2013 the petitioner prayed for bail. The court refused bail and remanded the petitioner in custody.

8. Relying on Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, Mr. Mukherjee has submitted that it was the duty of the

court to grant the petitioner statutory bail on June 4, 2013 even if he did not apply for it. The question is whether he was actually entitled to

statutory bail on June 4, 2013. According Mr. Mukherjee, since cognizance was not taken till June 4, 2013, the first charge-sheet was no charge-

sheet in the eye of law and in law the investigation was still in progress beyond 90 days.

9. The law has been clearly stated by the Supreme Court in Suresh Kumar Bhikamchand Jain Vs. State of Maharashtra and Another,), relied on

by Mr. Singh. It was held that filing of charge-sheet, irrespective of whether cognizance is taken or not, extinguishes the right of the accused to get

statutory bail under S. 167(2), Cr.P.C. The proposition gets full support also from the decision in Jeewan Kumar Raut and Another Vs. Central

Bureau of Investigation, . We are unable to accept that the principles stated in these two decisions do not apply to the present case. We do not

think the decision in Mohamed Iqbal lays down a different principle.

10. It has been explained in Mithabhai Pashabhai Patel and Others Vs. State of Gujarat, that until cognizance is taken an accused is remanded

under S. 167(2), Cr.P.C.; and after cognizance under S. 309(2), Cr.P.C.

11. In this case though the charge-sheet was submitted on May 28, 2013 cognizance, kept in abeyance, was not taken on or before June 4, 2013

and June 18, 2013, when the court refused the petitioner bail and remanded him in custody. By the order dated June 18, 2013 the court directed

further investigation. Hence we do not find anything wrong with the orders of the court below remanding the petitioner in custody.

12. The question is what is the effect of the charge-sheet submitted on July 30, 2013. The case diary reveals that it was an original charge-sheet,

though against the same accused. There are certain things regarding discharge of some accused persons who were not sent up for trial. According

to Mr. Mukherjee, it made the first charge-sheet non-existent, especially when the court took cognizance on the basis of it.

13. No provision of law empowered the court below to reject the first charge-sheet submitted on May 28, 2013; nor did any provision empower

it to direct re-investigation; it was empowered only to direct further investigation under S. 173(8), Cr.P.C.; and by its order dated June 18, 2013

it, expressing its inability to accept the first charge-sheet for the reasons stated in the order, directed further investigation under S. 173(8), Cr.P.C.

14. It is, therefore, evident that the second charge-sheet was submitted by the investigating officer because of the order of the court below dated

June 18, 2013, not because of his (the investigating officer"s) failure to complete the investigation and submit the charge-sheet within the statutory

90 days.

15. In our opinion, simply because the investigating officer submitted the second charge-sheet in original form, it cannot make the first charge-sheet

non-existent. In view of the provisions of S. 173(8), Cr.P.C. the investigating officer was to submit further report or reports, not a fresh report in

original form. However, it is not necessary for us to give an opinion on the effects of the second charge-sheet.

16. Right to statutory bail under S. 167(2), Cr.P.C. can be claimed by an accused only when the investigating officer fails to conclude the

investigation within the specified period; no step taken or not taken by the court creates the right or keeps it alive. Once the charge-sheet is

submitted, the right extinguishes. A further investigation order cannot keep the right alive. Hence the petitioner was not entitled to statutory bail on

June 4, 2013. For these reasons, we dismiss the CRM. Everything said herein is only for the purpose of bail. Certified xerox.