

MHCC050018412018



Presented on : 19-04-2018
Registered on : 19-04-2018
Decided on : 27-02-2020
Duration : 1 years, 10 months, 8 days

**IN THE COURT OF SESSIONS, AT DINDOSHI
(BORIVALI DIVISION), GOREGAON, MUMBAI**

CRIMINAL REVISION APPLICATION NO.124 OF 2018

Vipul Nagindas Sanghvi
Hindu, Adult, Aged 45 years,
Residing at C/203, Gokul Heights,
Gokul Township, Agashi Road,
Virar (W), Dist. Palghar,
Maharashtra

.....Applicant
(Orig. First Informant)

V/s.

1. State (Through Charkop Police Stn.)
2. Sonali Kalidas Chandane
3. Kalidas Nana Chandane
Respondent No.2 and 3 both residing at
551/28, Chandrakiran, Sector-05,
Charkop, Kandivali(W),
Mumbai – 400 067

.....Respondents.

**CORAM: H.H.ADDITIONAL SESSIONS JUDGE,
SHRI S. S. OZA (C.R.NO.13)**

DATED : 27th February, 2020

Adv. Mr. Vishwakarma for applicant.
Adv. Mr. Mallikarjun Bhoire for respondent Nos.1 and 2.
APP R. C. Savle for State.

ORAL ORDER

1. Being aggrieved by the order dated 04.04.2018 passed by Ld. Addl. Chief Metropolitan Magistrate, 24th Court, Borivali, Mumbai in R.A.No.686/RA/2017, whereby the Ld. Metropolitan Magistrate granted default bail u/sec.167(2) of Cr. P. C. to the accused/respondent Nos.2 and 3, applicant/original first informant filed this criminal revision application to challenge the legality, correctness and propriety of said order.

2. Briefly stated, applicant's case is as under:-

On the report of applicant, C. R. No.163/2017 is registered against the respondent Nos.2 and 3, wherein the respondent Nos.2 and 3 filed an application for default bail u/sec.167(2) of Cr. P. C. and on 04.04.2018 the Ld. Metropolitan Magistrate granted bail to them. Accused were arrested for an offence punishment u/sec.420, 406, 467, 468, 471, 403, 506, 120(b) of I. P. C. and u/sec.3, 4 of MOFA Act. The Hon'ble High Court rejected their anticipatory bail application. They were arrested and produced before the Ld. Metropolitan Magistrate on 02.02.2018. Since then till the order dated 04.04.2018 which allowed default bail of accused, both were in jail for a period of 61 days. Thus, in short, according to the applicants, as respondent Nos.2 and 3 are arrested for an offence punishable u/sec.467 of I. P. C., therefore the period for completion of investigation is 90 days and not the 60 days as per Sec.167(2) of Cr. P. C. Hence, he prayed to set aside the impugned order.

3. Respondent Nos.2 and 3 were appeared in this matter and filed reply to the revision application vide Ex.8. They supported the impugned order. They prayed for dismissal of revision application.

4. Heard Ld. Counsel for applicant, Ld. APP for prosecution and Ld. Counsel for respondent Nos.2 and 3 at length. The learned counsel for the applicant has filed the Written Notes of Argument at Exh. 5 with following two citations:

- a) Rakesh Kumar Paul Vs. State of Assam vide Sp.Leave to Appeal No. 2009 of 2017;
- b) Som Nath Vs. State of Punjab Cri. Misc. No.M-10219 of 2011 dated 28.04.2011

5. Adv. Mr. Mallikarjun Bhoire, the learned Counsel for respondent Nos.2 and 3 in support of his argument placed reliance on the judgment of Hon'ble Chhattisgarh High Court in the case of Smt. Shalini Verma Vs. State of Chhattisgarh in CRMP NO.2551 of 2018 and judgement of Allahabad High Court in the case of Rakesh Puri Vs. State of Uttar Pradesh dated 25th September, 2006. All these citations are referred and discussed in the reasoning at appropriate stage.

6. From the rival submissions of both the parties and averments in the Criminal Revision Application, the following points arise for my consideration and determination and I have recorded my findings against its, with reasons thereon, as under:

Sr.No.	<u>POINTS</u>	:	<u>FINDINGS</u>
1.	Whether impugned order dated 04.04.2018 passed by Ld. Addl. Chief Metropolitan Magistrate, 24 th Court, Borivali, Mumbai is just, correct and proper?		In the negative.
2.	What order?	:	As per final order.

REASONS**As to point No.1:-**

7. At the outset, it is to be noted that applicant has placed on the record the copy of Charge-sheet. And from the copy of charge-sheet, it reveals that after passing impugned order, charge-sheet filed for an offence punishable u/sec.420, 406, 467, 468, 471, 506, 120(b) of I. P. C. and sec.3 and 4 of MOFA Act. However, it reveals that initially on the report of first informant/applicant, offence registered only under Sec.420, 406, 120(b) of I. P. C. and sec.3 and 4 of MOFA Act. Thus, initially offence punishable u/sec.467 of I. P. C. was not registered.

8. However, from the impugned order, it reveals that when impugned order was passed, at that time an offence punishable u/sec 467 of IPC was also added against the accused person. It is needless to say that the entire controversy depends upon the question whether provision of Sec.167(2)(a)(i) or 167(2)(a)(ii) of Cr.P.C. is applicable to offence punishable under section 467 of IPC. Section 167(2) of Cr.P.C is read as under:

"Section 167(2): The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorize the detention of the accused in such custody as such Magistrate thinks fit, 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 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 15 days, if

he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorize 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 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 subsection shall be deemed to be released under the provisions of Chapter XXXIII for the purposes of that Chapter.

(Rest of the provisions are not relevant)

9. So far as section 467 of IPC is concerned, same read as under:

Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, **or any document** purporting to be an acquaintance or receipt acknowledging the payment of money, or an acquaintance or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

10. Thus, from perusal of provision of Sec.467 of IPC. its reveals that the punishment for imprisonment for life is provided for forgery of a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security.

11. So far as the case in hand is concerned, from the charge-sheet its reveals that allegations against respondent Nos.2 and 3 are regarding forgery of flat allotment letter, forged power of attorney and sale agreement. Definitely, in my humble view, all these documents are covered under the first part of section 467 of IPC for which punishment is provided for imprisonment for life. Thus, it is to be noted that Sec.467 of I. P. C. is added prior to filing of charge-sheet itself. Therefore, it appears that Part I of Sec.467 is applicable in this case for which the period of limitation to complete the investigation is prescribed of 90 days u/sec.167(2)(a)(i) of Cr. P. C. and not 60 days under section 167(2)(a)(ii) as observed by the Ld. Metropolitan Magistrate by relying on the judgment of Hon'ble Punjab & Haryana High Court.

12. So far as the judgment of Hon'ble Punjab and Haryana High Court in the case of Som Nath and Anr (Supra) is concerned , it is to be noted that His Lordship observed that Sec.467 of I. P. C. does not provide minimum sentence which could be less than 10 years. From said judgment it reveal that His Lordship considered various factors including pendency of said Misc. Application before his Lordship since long and accordingly, His Lordship observed that -

“In the humble opinion of this Court, it would be futile

exercise to ask the accused to approach the Magistrate first if argument is advanced that even during the pendency of the bail application before this Court, statutory period provided under Sec.167(2) of the Code for filing the challan has expired. This Court can take note of the law and can consider the bail application itself without asking the accused to approach the Magistrate first. In the opinion of this Court, hypertechnical view should not be adopted to refuse the relief if accused is otherwise legally entitled for.”

13. Thus, it reveal that His Lordship considered various factors particularly that accused were sent to judicial custody to 28.01.2010. And bail application was filed before Hon'ble High Court on 5.04.2011. Challan was not submitted within 60 days from 28.01.2020 and was submitted during the pendency of the bail application. In view of all these facts, His Lordship observed that petitioners are entitled for bail for non filing of the challan within the period of 60 days. Thus, facts before His Lordship are totally different in comparison from the facts before the Ld. Metropolitan Magistrate. The learned counsel for the applicant also placed reliance on the judgment of Hon'ble Supreme Court in the case of Rakesh Kumar Paul Vs. State of Assam case supra. In this ruling the charge for an offence punishable under Section 13(1) of the Prevention of Corruption Act, 1988, which "punishable with imprisonment for a term which shall be not less than four years but which may extend to ten years" and fine.

14. Per contra, Ld. Counsel for respondent Nos.2 and 3 placed reliance on the judgment of Chhattisgarh High Court and in the case of Smt. Shalini Verma vs. State of Chhattisgarh. From said judgment, its

reveals that in the said case Sec.467 of IPC was added by way of filing charge-sheet. Thus, it reveal that when default bail application was filed, charge was only for an offence punishable u/sec.420 r/w sec.3 and 4 of MOFA Act. Therefore, facts in this ruling and case in hand are totally different.

15. The Ld. Counsel for respondent Nos.2 and 3 further placed reliance on the judgment of Hon'ble Allahabad High Court in the case of Rakesh Puri Vs State of Uttar Pradesh on the point of maintainability of criminal revision application. However, said judgment is on the point of Sec.156(3) of Cr. P. C. In the case in hand, revision application is maintainable as impugned order is not interlocutory order. Even in view of provision of sec.439(2) of Cr. P. C., the present application is maintainable. Therefore, there is no substance in the objection raised by the respondent Nos.2 and 3 regarding maintainability of revision application.

16. Thus, overall, it reveals that after registration of offence, before passing of impugned order, Sec. 467 of IPC was added by the prosecution and offence punishment u/sec.467 of IPC particularly the allegation of forgery of flat allotment letter, forged power of attorney and sale agreement are punishable u/sec.467 of IPC with imprisonment for life. Therefore, the period of limitation to complete the investigation is 90 days as per Sec.167(2)(a)(i) of Cr. P. C. and not 60 days as observed by Ld. Metropolitan Magistrate. Therefore, the impugned order is not just, correct and proper. Consequently, it is necessary to interfere in the impugned order of Ld. Trial Court.

Hence, in view of above discussion, I record my findings to point No.1 in negative and proceed to pass the followig order.

ORDER

- 1) Revision Application No.124 of 2018 is allowed.
- 2) Accordingly, impugned order dated 04.04.2018 passed by Ld. ACMM, 24th Court, Borivali, Mumbai is set aside and one month time is granted to the respondent Nos.2 and 3 to surrender before the Ld. ACMM for taking necessary steps for bail.
- 3) Revision Application No.124 of 2018 stands disposed of accordingly.

Dt.27.02.2020

(S. S. OZA)
 Additional Sessions Judge,
 City Civil & Sessions Court,
 Borivali Division, Dindoshi, Mumbai

Dictated on : 27.02.2020
 Transcribed on : 12.03.2020
 Signed on : 12.05.2020

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”

Date : 12.05.2020
 Time : 1. 00 pm
 UPLOAD DATE AND TIME

Mrs. Trupti S. Bhogte
 (H.G.Stenographer)
 NAME OF STENOGRAPHER

Name of the Judge (with Court room no.)	HHJ Shri S. S. Oza (C.R.No.13)
Date of Pronouncement of JUDGMENT/ORDER	27.02.2020
JUDGMENT/ORDER signed by P.O. on	12.05.2020
JUDGEMENT/ORDER uploaded on	12.05.2020