P L D 1975 Lahore 625

Before Ataullah Sajjad, J

AMIR-Petitioner

versus

BAKHSHU AND 6 OTHERS-Respondents

Criminal Miscellaneous Appeal No. 2900/13 of 1974, decided on 10th October 1974.

(a) Criminal Procedure Code (V of 1898)-

-- Ss. 344 & 167-Remand of criminal cases-Adjournment for completion of investigation-Can be allowed by Magistrate but for good reasons reduced into writing-Failure of police to file challan for months together without indicating any sufficient reason-Magistrate not entitled to go on adjourning case mechanically for indefinite period.

The Magistrate, under section 344, Cr. P. C. can pass an order for good reasons, but he has to reduce these reasons into writing. The object of the law is that there should not be any indifferent treatment of criminal cases and justice should be administered at the earliest possible time. The fifteen days' time fixed by section 167. Cr. P. C. for investigation expired in this case on 4th or 5th of January 1974. Thereafter the case could be adjourned under section 344, Cr. P. C. for a reasonable cause. The failure of the police to file the challan for months together without indicating any reasonable reason for this delay, would not entitle a Magistrate to go on mechanically adjourn ing a case for an indefinite period of time. It is to be observed that the law enjoins that an order passed under section 344, Cr. P. C. has to be passed for a reasonable cause. It has to be in writing and shall contain reasons for adjournment.

Muhammad Aslam and 2 others v. The State P L D 1974 Note 104 at p. 156 and Fazal Husain and 4 others v. The State 1974 P Cr. L J 161 ref.

(b) Criminal Procedure Code (V of 1898)-

S. 497(2)-Bail-No charge-sheet filed enabling Magistrate to consider nature of criminality of accused-Absence of charge-sheet indicative of existence of sufficient grounds for inquiry into accused's guilt-Case, held, fell within purview of S. 497(2).

It is not denied that there is no charge-sheet against the accused before a Magistrate which could persuade him to consider the nature of the criminality. The absence of such a charge at least shows that there are sufficient grounds for further inquiry into the guilt of the accused. The very fact that the police has taken months to investigate the truth or otherwise of the F. I. R. lodged by the first informant would indicate that this is a case for further inquiry and would, therefore, fall within the purview of subsection (2) of section 497, Cr. P. C.

(c) Criminal Procedure Code (V of 1898)-

-- - S. 497(5)-Bail, cancellation of-Session Judge's order passed on legal ground-Complainant not barred in coming straightaway to High Court on questions of law and fact.

Since the order of the Sessions Judge was passed on a legal ground there was no bar against the complainant in coming to the High Court straightaway on questions of law and fact.

Mahmoodul Hasan for Petitioner.

S. M. Zubair for Respondents.

Kh. Shaukat Ali for the State.

ORDER

This order shall dispose of two applications for cancellation of bail namely, Cr. Misc. Nos. 2900/11 and 2903/11 of 1974. The respondents in the first case are six in number while Qutba is the sole respondent in Cr. Misc. No. 2903/11 of 1974. They have been accused of the commission of offences under sections 148, 302, 307, 325 and 452 read with section 149, P. P. C.

2. The occurrence took place on 20th of December 1973, at 1-3J p. m. in the area of Chak No. 27/4-L, Tehsil Okara, District Sahiwal. Actually sixteen persons were named as accused persons. As a result of the alleged onslaught by the accused persons, one Bahu lost his life, while Amir, his wife Mst. Fatima, Akbar, Shahabal, Mst. Sardaran and Mat. Maryam wife of Uaman received injuries.

3. It appears that the local police found that the respondents in these two applications had taken part in the commission of the offence. They declared nine others as innocent. The complainant moved an application to the higher police authorities and the case was entrusted to C. I. A., Sahiwal for further investigation. Mr. Muhammad Sharif, Sessions Judge, Sahiwal, by order dated 25th of June 1974, allowed bail to the six respondents in Petition No. 2900/B on the ground that a period of more than six months elapsed but the police had not submitted challan in Court. The learned Sessions Judge referred to Muhammad Aslam and 2 others v. The State (P L D 1974 Note 104 at p. 156) where it was held that if a challan was not put in Court for months to gether, it is clear violation of the provisions of section 344, Cr. P. C. He did not say anything about the merits. Qutba, respondent in Petition No. 2903/11 was granted bail on the same ground on 8th of July 1974.

4. The cancellation of bail to the respondents in the two petitions has been asked for on the ground that mere delay in filing a challan could not be used as a legal ground for granting bail to the respondents; that the learned Sessions Judge failed to consider the merits of the case and the seriousness of the offence committed by the respondents and that the res pondents since their enlargement on bail have misused this concession by trying to overawe the witnesses. In this connection reports dated 30th of June, 1st of July and 4th of July 1974, made by Muhammad Amir petitioner, Nur Muhammad and Allah Yar P. Ws in Police Station Shah Bhore have been relied upon. Affidavits of the eye-witnesses dated 22nd of July 1974, have also been placed on the record of Petition No. 2900/ 8 to substantiate this allegation of fact.

5. In support of the first contention the learned counsel for the (petitioner relied upon Fazal Hasatn and 4 others v. The Stare (1) wherein G. M. Mirza, J. observed that in a murder case if there is some negligence or delay in filing the challan that fact would not provide a good ground to an accused person for being admitted to bail. It may be noted that in the precedent case the occurrence had taken place on 3rd of December 1972, and the case was decided by his Lordship on 2nd of February 1973, which means that there had been a delay of about two months in filing the .challan. No legal argument appears to have been addressed to his Lordship on the provisions of sections 167 and 344, Cr. P. C. In the present case it was asserted by Mr. Muhammad Zubair,

the learned counsel for the respondents that no challan had so far been filed, while the learned counsel for the petitioner submitted that according to his instructions the challan had now been filed. 1Cbawaja Shaukat Ali, the learned counsel for the State was not in a position to rebut either of these statements. 1n the absence of any positive assertion by the State, I would presume that the challan has clot yet reached the Court.

6. The scheme of things in the Code of Criminal Procedure is that the investigation ordinarily should be finished in fifteen days and if the police require some further adjournment for the completion of the case they can apply to a Magistrate empowered to take cognizance of the case for this purpose. The Magistrate, under section 344, Cr. P. C. can pass an' order for good reasons, but he has to reduce these reasons into writing. The object of the law is that there should not be any indifferent treatment of criminal -cases and justice should be administered at the earliest possible time. The fifteen days' time fixed by section 167, Cr, P. C. for investigation expired in this case on 4th or 5th of January 1974. Thereafter the case could be adjourned under section 344, Cr. P. C. for a reasonable cause. The failure of the police to file the challan for months together without indicating any formidable reason for this delay, would not entitle a Magistrate to go on mechanically
adjourning a case for an indefinite period of time. It is to be observed that the law enjoins that an order passed under section 3,14, Cr. P. C. has to be passed for a reasonable cause. It has to be in writing and shall contain ,reasons for adjournment. The learned counsel for the petitioner or the learned counsel for the State did not at all refer to the magisterial orders passed in this connection and were not able to show that there was reason able cause for such postponement. The mere fact that the complainant bad asked for further investigation cannot deprive an accused person for months of his right of an early trial. Section 344, Cr. P. C. gives no licence to a Magistrate or to police to delay an investigation or trial for an unreason able time.

7. There is another aspect of the case. It is not denied that there is no charge-sheet against the respondents before a Magistrate which could persuade him to consider the nature of the criminality of the respondents. The absence of such a charge at least shows that there are sufficient ground for further inquiry into the guilt of the respondents. The very fact that the police has taken months to investigate the truth or otherwise of the F. I. R lodged by the first informant, would indicate that this is a case for further inquiry and would, therefore, fall within the purview of subsection (2) of section 497, Cr. P. C.

8. Mr. Muhammad Zubair also submitted that in view of the fact that the complainant has raised question of undue influence on the prosecution -witnesses, the matter could have been dealt in an appropriate way by the Sessions Judge himself and the complainant should have moved the applica tion for cancellation of bail before the Sessions Judge. Since the order of the Sessions Judge was passed on a legal ground, I think there was no bar f against the complainant in coming to this Court straightaway on questions of law and fact.

In my view, the learned Sessions Judge was quite justified in passing the impugned orders. He was not called upon to discuss the facts because the Investigating Agency itself had not assured itself as to what the facts were, and they were yet in the process of exploring facts when the two impugned orders were passed. This was not a case where an accused person had been arrested and was being proceeded against. The initial charge against the respondents-accused bad not been placed before any Court.

9. So far as the three police reports and the affidavits placed on the file of Criminal Misc. No. 2900/B of 1974 are concerned, I may observe that these reports were made on 30th of June, 1st of July and 4th of July, 1974, i. e. within a period of a ten days of the release of the six respondents, in Petition No. 2900/B. The affidavits are dated 22nd of July 1974, and it has not been asserted before me that the respondents had done anything to misuse their liberty on bail after this date. A perusal of the reports and the

affidavits shows that they are couched in routine general terms. It does not appear from them that there is any tangible evidence warranting inter ference in the impugned orders of bail. They are one-sided assertions of the persons belonging to the complainant party and it requires some independent ,evidence to come to the conclusion that there is some truth in these reports and affidavits.

10. The result is that the two petitions are dismissed. After the challam has been filed and some evidence has been recorded, the learned Magistrate shall be free to consider the question of the cancellation of the bail granted= to the respondents, if there are reasonable grounds to believe that they are guilty of an offence punishable with death or imprisonment for life.

S. A. H. Petition dismissed

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