

Supreme Court of India

State Of West Bengal vs Dinesh Dalmia on 25 April, 2007

Author: A Mathur

Bench: A.K.Mathur, Tarun Chatterjee

CASE NO. :

Appeal (crl.) 623 of 2007

PETITIONER:

State of West Bengal

RESPONDENT:

Dinesh Dalmia

DATE OF JUDGMENT: 25/04/2007

BENCH:

A.K.MATHUR & TARUN CHATTERJEE

JUDGMENT:

J U D G M E N T (Arising out of SLP(Crl.) No. 5124/06) A.K. MATHUR, J.

Leave granted.

This appeal is directed against the order dated 27.9.2006 passed in A.S.T. No.570 of 2006 by the Calcutta High Court whereby the learned single Judge of the High Court has set aside the order dated 16.6.2006 passed by the learned Chief Metropolitan Magistrate, Calcutta and directed the 5th Court of Metropolitan Magistrate, Calcutta to consider the matter afresh and pass necessary order in the light of observation made by the Court.

Aggrieved against this order dated 27.9.2006 passed by learned Single Judge, the present S.L.P. was preferred by the State of West Bengal.

Brief facts giving rise to this appeal are that the Respondent, Dinesh Dalmia filed a petition under Section 397/482 of the Code of Criminal Procedure, 1973 in the High Court of Calcutta for setting aside the order of 27th May, 2006 and 16th June, 2006 passed by the learned Chief Metropolitan Magistrate, Calcutta and the learned 5th Court of Metropolitan Magistrate, Calcutta respectively in connection with GDD 476 dated 24.9.2002 corresponding to G.R.No. 2001 of 2002 being investigated by Detective Department (Special Cell) Lalbazar pending before the 5th Court of Metropolitan Magistrate, Calcutta.

The Secretary of the Calcutta Stock Exchange Association Limited lodged a written complaint with the Hare Street Police Station on 9th September, 2002 alleging a commission of offences under Sections 120B/4 20/409/467/468/471/477A of the Indian Penal Code against Harish Chandra Biyani and others. The complaint was treated as First Information Report and was registered at Park Street P.S. case No. 476 dated 24.9.2002 under the aforesaid Sections of the I.P.C.. Thereafter, the investigation of the case was taken up by the Detective Department. During the course of the

investigation, Investigating Officer prayed for issuance of warrant of arrest against the respondent on 12th February, 2006. Prior to that the respondent was arrested in New Delhi by the Central Bureau of Investigation, Bank Securities and Fraud Cell, New Delhi in connection with CBI Case No. RC 4(E)/200 3-BS &F C CBI. He was produced before the learned Additional Chief Judicial Magistrate, Tis Hazari. On transit remand, the respondent was produced before the learned Court of Additional Chief Judicial Magistrate, Egmore, Chennai on 14th February, 2006. In the mean time, the Investigation Officer of the present case also prayed for issuance of production warrant against the respondent before the Court of learned Chief Metropolitan Magistrate Calcutta, as the respondent was arrested and detained in the aforesaid CBI case pending before the Chief Metropolitan Magistrate, Egmore, Chennai. The Chief Metropolitan Magistrate, Calcutta by order dated 13th February, 2006 allowed such prayer of the Investigating Officer and directed that the accused-respondent be produced before the the Learned Chief Metropolitan Magistrate, Calcutta on or before 22nd February, 2006. A copy of the said order was sent to the Court of Additional Chief Metropolitan Magistrate, Egmore, Chennai. On 14th February, 2006, the order dated 13th February, 2006 passed by the Chief Metropolitan Magistrate, Calcutta was brought to the notice of the Additional Chief Metropolitan Magistrate, Egmore, Chennai by the CBI in their further remand application. The Addl. Chief Metropolitan Magistrate, Egmore, Chennai observed that the matter of Calcutta Police would be considered after the period of CBI custody was over. On 17th February, 2006 the Investigating Officer of the present case filed an application before the learned Court of Chief Metropolitan Magistrate, Calcutta intimating that the accused-respondent was in the custody of CBI till 24th February, 2006 in connection with the aforesaid CBI cases and sought direction for production of the accused- respondent in Calcutta on or by 8th March, 2006. The Court at Calcutta by order dated 17th February, 2006 observed that looking to the gravity of the offences complained against the accused-respondent in the cases pending in Calcutta, he should not be released in the CBI cases at Chennai. On 23rd February, 2006, the Investigating Officer in the present case filed an application before the Magistrate at Egmore, Chennai regarding production of the accused-respondent being in the present case before the Court of Chief Metropolitan Magistrate at Calcutta. By that time, the accused-respondent came to know that he was wanted in two more cases pending against him in Calcutta. When the accused-respondent was in custody on 27th February, 2006 in connection with the CBI case pending before the Addl. Chief Metropolitan Magistrate, Egmore, Chennai, he voluntarily surrendered before the learned Magistrate, Chennai as he was wanted in connection with the two cases of Calcutta Police. i.e. Case No. 300/2002 and 476/2002. The accused respondent surrendered on 27th February, 2006 and that was accepted by the Addl. Chief Metropolitan Magistrate, Egmore, Chennai on the same date. But the Learned Additional Chief Metropolitan Magistrate Egmore, Chennai remanded the accused respondent to the judicial custody till 13th March, 2006. The learned Additional Chief Metropolitan Magistrate, Chennai further directed production of the accused before the Court at Calcutta. An intimation in this regard was also forwarded to the Chief Metropolitan Magistrate, Calcutta along with surrender papers of both the cases. An intimation dated 28th February, 2006 was also forwarded to the Hare Street Police Station and Park Street Police Station where those two cases were pending. The Investigation Officer requested the learned Addl. Chief Metropolitan Magistrate, Egmore, Chennai for counter signature on the production warrant issued by the learned Chief Metropolitan Magistrate, Calcutta. The Addl. Chief Metropolitan magistrate, Chennai counter signed the production warrant and served upon the Jail Superintendent, Egmore, Chennai. On 3rd March, 2006 in response to the

prayer made by the CBI, the learned Magistrate at Chennai directed for conducting of Polygraph, Brain Mapping and Nacro Analysis tests on the accused-respondent. The learned Magistrate directed the Superintendent, Central Jail, Chennai to hand over the accused for the aforesaid test to Inspector, CBI and produce him before the Court on 9.3.2006. Thereafter on 11.3.2006 on the request of Calcutta Police accused was handed over to Calcutta Police to be escorted to Calcutta for production before the Magistrate at Calcutta. Therefore, on the request made by the CBI, the accused respondent was handed over to the CBI team for the above tests. On 13th March, 2006 pursuant to the order of the learned Magistrate at Calcutta the accused respondent was produced in the Court of Chief Metropolitan Magistrate, Calcutta. The Investigating Officer of the instant case requested the Court of Chief Metropolitan Magistrate, Calcutta to hand over the accused for 15 days for police remand for investigation. An application was moved by the defence praying for bail on behalf of the accused-respondent before the Court of Addl. Chief Metropolitan Magistrate, Calcutta. It was contended that the accused-respondent had surrendered on 27th February, 2006 before the Magistrate at Chennai and the period of 15 days was over and Police had not filed the challan, therefore accused be enlarged on bail. As against this, it was submitted that he was arrested by CBI and the accused was produced before the Calcutta Court in this case on 13th March, 2006 so the period of 15 days was not over. The case was fixed for 16th March, 2006 for further hearing and on that date the bail application was rejected and the accused was remanded to police custody up to 24.3.2006 and the Court directed to produce the accused on the fixed date. The learned Chief Metropolitan Magistrate, Calcutta after considering the submission took the view that the custody of the petitioner cannot be considered unless and until he is physically produced before the Court and since in the present case it was done on March 13, 2006 on the strength of the production warrant issued by the learned Chief Metropolitan Magistrate, Calcutta, the period of police custody was to be considered from the date of his physical production. The accused-respondent was remanded to the police custody till 28th March, 2006. Hence aggrieved against this order the respondent approached the Calcutta High Court in revision. The learned Single Judge has taken the view that the Chief Metropolitan Magistrate has not correctly approached the matter and has wrongly taken the view that the accused did not surrender before the Metropolitan Magistrate, Egmore, Chennai on 24.2.2006. However, the accused was given liberty to file application before the said Court afresh and the Magistrate was directed to consider the same in the light of the aforesaid judgment. It was also mentioned that still 8 more days from 19.5.2005 to 27.5.2006 were left to the Police to file final report. The Police still did not file the final report. Then again accused moved the bail application before the Chief Metropolitan Magistrate, Calcutta. The Chief Metropolitan Magistrate, Calcutta rejected the bail application holding that statutory period of 90 days has not expired by his order dated 27.5.2006.

The final report under Section 173(2) of the Code of Criminal Procedure was submitted before the Chief Metropolitan Magistrate, Calcutta and the case was transferred to Vth Court of Metropolitan Magistrate, Calcutta. Then again on 12.6.2006 a bail application was filed before the Vth Metropolitan Magistrate, Calcutta. Learned Metropolitan Magistrate rejected the bail application holding that this bail application amounted to review of the order and he has no power of review, therefore, the same was rejected by order dated 16.6.2006.

Aggrieved against that order the present revision petition was filed before the High Court.

The Calcutta High Court took the view that the detention of the accused should be counted w.e.f. 27th February, 2006 when the accused alleged to have surrendered himself in the case of 476/2002 before the Additional Chief Metropolitan Magistrate, Egmore, Chennai and accordingly held that more than 90 days period has expired. Therefore, the matter should be considered by the Metropolitan Magistrate again in the light of observation made by the Court, by order dated 27.9.2006. The revision petition of the accused was allowed. Aggrieved against the order of the Calcutta High Court, dated 27.9.2006 the present appeal was filed. We heard learned counsel for both the parties and perused the record. The crucial question before us is whether the detention period should be counted from 13th March, 2006 when the police took the accused in custody or the period should be counted from 27th February, 2006 when the accused surrendered in the case of 476/2002 before the Metropolitan Magistrate, Egmore, Chennai. Learned counsel for the State submitted that under Sub-Section 2 of Section 167 of Criminal Procedure Code the period should only be counted when he is arrested/ taken in custody by the police not before the date when he surrendered before the Magistrate on 27th February, 2006. Learned counsel submitted that in fact the accused was taken in custody by the police on 13th March, 2006 and was produced before the Magistrate on 13th March, 2006 and on that date the police sought the custody of accused for completion of the investigation. Therefore, the period commences from 13th March, 2006. In respect thereof, learned counsel invited our attention to a case of Uday Mohanlal Acharya v. State of Maharashtra reported in (2001) 5 SCC 453 as against this Learned counsel for the respondent submitted that the period should be counted from the date when the accused-respondent surrendered in case No. 476/2002 before the Metropolitan Magistrate, Egmore, Chennai. The challan has not been filed within the period of 90 days. Therefore, the accused-respondent is entitled to bail as per sub-section (2) of Section 167 of the Cr.P.C. In respect thereof, learned counsel invited our attention to cases of Niranjana Singh & Another v. Prabhakar Rajaram Kharote & Ors. reported in (1980) 2 SCC 559, Central Bureau of Investigation, Special Investigation Cell, New Delhi v. Anupam J. Kulkarni reported in (1992) 3 SCC 141 and learned counsel also invited our attention to the case Directorate of Enforcement v. Deepak Mahajan and Another reported in (1994) 3 SCC 440 (para 44).

We have considered the rival submissions of the parties and perused the record.

The admitted position is that there were two cases pending in the Calcutta Court against the accused and the accused-respondent was arrested at Delhi in CBI case and he was produced before the Additional Chief Metropolitan Magistrate Egmore, Chennai under the investigation of CBI. The accused was remanded for the investigation before the CBI after that the accused was sent for judicial custody in the CBI case. The Calcutta Court directed the production of the accused-respondent and a request was made before the Additional Chief Metropolitan Magistrate, Egmore, Chennai for the custody of the accused in the cases pending before the Calcutta. In fact the accused was detained in CBI case pending in Egmore, Chennai. The CBI sought the police remand of accused for some scientific test and the accused was sent for the test and after that the accused was sent back by the CBI to the Egmore, Court. Then an order dated 11th March, 2006 was passed for handing over of the accused to the Calcutta Police for being produced before the Magistrate on 13th March, 2006 and on 11th March, 2006 Police took physical custody of the accused under the order of the Metropolitan Magistrate, Egmore, Chennai and on the basis of the transit warrant, the

accused was taken over on 11th March, 2006 and was produced before the Calcutta court on 13th March, 2006 and from there the accused was sent to the custody of the police for investigation. Therefore, in the sequence of event, physical custody of the accused was taken over for investigation by the Calcutta Police on 13.3.2006. The accused was very well aware that there were two cases registered against him in Calcutta for which he was required by the Police, so he voluntarily surrendered before the Magistrate on 27th February, 2006 when he was already in custody in relation to the CBI case. Therefore, this voluntary surrender cannot be conceived to be detention under a case registered at Calcutta i.e.476/2002. Though knowing well that a requisition was sent by the Metropolitan Magistrate, Calcutta but in fact the physical custody of the accused was given by the Calcutta Police for investigation by the order of the Metropolitan Magistrate on 13th March, 2006. Therefore, so called notional surrender of the accused in the case No. 476/02 of Calcutta cannot be deemed to be a custody of the police for investigation for a case registered against the accused at Calcutta.. In fact the accused continued to be under the judicial custody in relation to the CBI case. It may be relevant to mention here that the CBI again took the accused in custody for scientific test and he was surrendered back on 10th of March, 2006 and on 11th March, the Calcutta police was given a custody of the accused by the Egmore Court, Chennai to be produced before the Magistrate in Calcutta on 13th March, 2006 and he was produced before the Calcutta Court on 13th March, 2006 and the Court directed the custody of the accused to the police on 13th March, 2006 for investigation in the criminal case registered against him in Calcutta. Therefore, the police custody will be treated from 13th March, 2006 and not from 27th February, 2006. In this back-ground, the view taken by the learned single Judge that since he voluntarily surrendered on 27th February, 2006, therefore, he shall be deemed to be under the police custody w.e.f. 27th February, 2006 is far from correct and 90 days shall be counted from that date only i.e. 13.3.2006. Section 167 of the CR.P.C. clearly lays down that where investigation cannot be completed within twenty four hours and accused is under arrest with Police, he has to be produced before Magistrate for further detention if necessary. This is a salutary provision to safeguard the citizen's liberty so that Police cannot illegally detain any citizen. Sub-sections (1) & (2) of Section 167 which are relevant for our purposes read as under:

"167 Procedure when investigation cannot be completed in twenty-four hours.

(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty four hours fixed by Section 57, and there are grounds for believing that the accusation or information is well- founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(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 fifteen 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 of 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 sub-section shall be deemed to be released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorize detention in any custody under this section unless the accused is produced before him;

) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorize detention in the custody of the police."

Sub-section (1) says that when a person is arrested and detained in custody and it appears that investigation cannot be completed within 24 hours fixed under Section 57 and there are grounds of believing that accusation or information is well-founded, the officer in charge of the Police Station or the Police Officer making the investigation not below the rank of sub-inspector shall produce the accused before the nearest judicial magistrate. The mandate of sub-section (1) of Section 167, Cr.P.C. is that when it is not possible to complete investigation within 24 hours then it is the duty of the Police to produce the accused before the Magistrate. Police cannot detain any person in their custody beyond that period. Therefore, Sub-Section (1) pre-supposes that the police should have custody of an accused in relation to certain accusation for which the cognizance has been taken and the matter is under investigation. This check is on police for detention of any citizen. Sub-Section (2) says that if the accused is produced before the Magistrate and if the Magistrate is satisfied looking to accusation then he can give a remand to the police for investigation not exceeding 15 days in the whole. But the proviso further gives a discretion to the Magistrate that he can authorize detention of the accused otherwise than the police custody beyond the period of 15 days but no Magistrate shall authorize detention of the accused in police custody for a total period of 90 days for the offences punishable with death, imprisonment for life or imprisonment for a term of not less than ten years and no magistrate shall authorize the detention of the accused person in custody for a total period of 60 days when the investigation relates to any other offence and on expiry of the period of 90 days or 60 days as the case may be. He shall be released if he is willing to furnish bail. Therefore, the reading of sub-Sections (1) & (2) with proviso clearly transpires that the incumbent should be in fact under the detention of police for investigation. In the present case, the accused was not arrested by the police nor was he in the police custody before 13.3.2006. He voluntarily surrendered before a Magistrate and no physical custody of the accused was given to the police for investigation. The whole purpose is that the accused should not be detained more than 24 hours and

subject to 15 days police remand and it can further be extended up to 90/60 as the case may be. But the custody of police for investigation purpose cannot be treated judicial custody/ detention in another case. The police custody here means the Police custody in a particular case for investigation and not judicial custody in another case. This notional surrender cannot be treated as Police custody so as to count 90 days from that notional surrender. A notorious criminal may have number of cases pending in various police station in city or outside city, a notional surrender in pending case for another FIR outside city or of another police-station in same city, if the notional surrender is counted then the police will not get the opportunity to get custodial investigation. The period of detention before a Magistrate can be treated as device to avoid physical custody of the police and claim the benefit of proviso to Sub-Section 1 and can be released on bail. This kind of device cannot be permitted under Section 167 of the Cr.P.C. The condition is that the accused must be in the custody of the police and so called deemed surrender in another criminal case cannot be taken as starting point for counting 15 days police remand or 90 days or 60 days as the case may be. Therefore, this kind of surrender by the accused cannot be deemed to be in the Police custody in the case of 476/02 in Calcutta. The Magistrate at Egmore, Chennai could not have released the accused on bail as there was already cases pending against him in Calcutta for which a production warrant had already been issued by the Calcutta Court. In this connection in the case of State of Maharashtra Vs. Bharati Chandmal Varma (Mrs.) reported in (2002)2 SCC 121 their Lordships has very clearly mentioned that:

"For the application of the proviso to Section 167(2) of the Code, there is no necessity to consider when the investigation could legally have commenced. That proviso is intended only for keeping an arrested person under detention for the purpose of investigation and the legislature has provided a maximum period for such detention.. On the expiry of the said period the further custody becomes unauthorized and hence it is mandated that the arrested person shall be released on bail if he is prepared to and does furnish bail. It may be a different position if the same accused was found to have been involved in some other offence disconnected from the offence for which he is arrested. In such an eventuality the officer investigating such second offence can exercise the power of arresting him in connection with the second case. But if the investigation into the offence for which he was arrested initially had revealed other ramifications associated therewith, any further investigation would continue to relate to the same arrest and hence the period envisaged in the proviso to Section 167(2) would remain unextendable."

Therefore, it is very clearly mentioned that the accused must be in custody of the police for the investigation. But if the investigation into the offence for which he is arrested initially revealed other ramifications associated therewith, any further investigation would continue to relate to the same arrest and hence the period envisaged in the proviso to Section 167(2) would remain unextendable. Meaning thereby that during the course of the investigation any further ramification comes to the notice of the Police then the period will not be extendable. But it clearly lays down that the accused must be in custody of police. In the case of Directoate of Enforcement v. Deepak Mahajan and Another reported in (1994)3 SCC 440 their Lordships observed that Section 167 is one of the provisions falling under Chapter XII of the Code commencing from Section 154 and ending with Section 176 under the caption "Information to the police and other powers to investigate". Their Lordships also observed that main object of Section 167 is the production of an arrestee before a

Magistrate within twenty four hours as fixed by Section 57 when investigation cannot be completed within that period so that the Magistrate can take further course of action as contemplated under sub-Section (2) of section 167. In para 54 their Lordships have also observed with regard to the pre-requisite condition which reads as under:

"54. The above deliberation leads to a derivation that to invoke Section 167(1), it is not an indispensable pre-requisite condition that in all circumstances, the arrest should have been effected only by a police officer and none else and that there must necessarily be records of entries of a case diary. Therefore, it necessarily follows that a mere production of an arrestee before a competent Magistrate by an authorized officer or an officer empowered to arrest (notwithstanding the fact that he is not a police officer in its stricto sensu) on a reasonable belief that the arrestee " has been guilty of an offence punishable" under the provisions of the Special Act is sufficient for the Magistrate to take that person into his custody on his being satisfied of the three preliminary conditions, namely (1) the arresting officer is legally competent to make the arrest; (2) that the particulars of the offence or the accusation for which the person is arrested or other grounds for such arrest do exist and are well-founded; and (3) that the provisions of the special Act in regard to the arrest of the persons and the productions of the arrestee serve the purpose of Section 167(1) of the Code."

As against this learned counsel for the accused respondent has invited our attention to the case of *Niranjan Singh & Anr. v. Prabhakar Rajaram Kharote & Ors.* [(1980) 2 SCC 359]. This case only relates to 'custody' under section 439 Cr.P.C. Therefore, this case does not provide us any assistance whatsoever. In another case, *Central Bureau of Investigation, Special Investigation Cell-I, New Delhi v. Anupam J. Kulkarni* [(1992) 3 SCC 141] their Lordships observed in paragraph 11 as follows :

"In one occurrence it might so happen that the accused might have committed several offences and the police may arrest him in connection with one or two offences on the basis of the available information and obtain police custody. If during the investigation his complicity in more serious offences during the same occurrence is disclosed that does not authorize the police to ask for police custody for a further period after the expiry of the first fifteen days. If that is permitted then the police can go on adding some offence or the other of a serious nature at various stages and seek further detention in police custody repeatedly, this would defeat the very object underlying Section 167. But their Lordships put an occasion and added that limitation shall not apply to a different occurrence in which complicity of the arrested accused is disclosed. That would be a different transaction and if an accused is in judicial custody in connection with one case and to enable the police to complete their investigation of the other case they can require his detention in police custody for the purpose of associating him with the investigation in other case. In such a situation he must be formally arrested in connection with other case and then obtain the order of the Magistrate for detention in police custody."

Their Lordships have clarified that if one case is registered against the accused in which during the course of investigation it is found that he has committed more than one offence then it will be treated to be one investigation and for each offence a separate police remand cannot be sought. But in case it is a different offence which has been committed by him then it will be a separate case registered and separate investigation will be taken up and for that the detention by the accused in

the previous case cannot be counted towards a new case or different case registered against the accused. In fact, the observation in this case answers the question raised in this petition. Therefore, their Lordships observed; "the occurrence constituting to different transactions give rise to two different cases and the exercise of power under Sections 167(1) and (2) should be in consonance with the object underlying the said provision in respect of each of those occurrences which constitute two difference cases . Arrest and detention in custody in the context of Section 167(1) &(2) of the Code has to be truly viewed with regard to the investigation of that specific case in which the accused person has been taken into custody.

Therefore, for the separate offence the accused has to be tried separately and for that the proceedings will be initiated separately and independent remand can be sought by the accused.

In view of the above discussion, we are of the opinion that the view taken by the learned Single Judge of the Calcutta High Court is not correct and we accordingly set side the order of the Calcutta High Court dated 27.9.2006 and allow the appeal filed by the State of West Bengal and direct the Metropolitan Magistrate to proceed in the matter in accordance with law.