Supreme Court of India
Bhupinder Singh & Ors vs Jarnail Singh & Anr on 13 July, 2006
Author: A Pasayat
Bench: Arijit Pasayat, S.H. Kapadia

CASE NO.:
Appeal (crl.) 757 of 2006

PETITIONER:
Bhupinder Singh & Ors

RESPONDENT:
Jarnail Singh & Anr

DATE OF JUDGMENT: 13/07/2006

BENCH:
ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:

JUDGMENT (Arising out of S.L.P. (Crl.) No. 5850 of 2005) ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is to the order passed by a learned Single Judge of the Punjab and Haryana High Court cancelling the bail granted to the appellants.

Factual background in a nutshell is as under:

On 16.4.2003 appellant No.1-Bhupinder Singh was married to Smt. Kamaljit Kaur (hereinafter referred to as the 'deceased'). On 2.8.2004 she was found dead. On the allegation that the appellants had committed murder of the deceased, First Information Report (in short the 'FIR') was lodged by the Respondent Jarnail Singh and on that basis appellants 1 and 2 (Bhupinder and Balwinder) were arrested on 5.8.2004. Subsequently on 7.8.2004 appellant No.3 (Kanwaljit Kaur) was arrested. Prayer for bail was made before learned Judicial Magistrate, Ist Class, Batala on 4.11.2004 who refused to grant bail to the appellants. Their stand before the Court in essence was that since challan was not filed in time, they were entitled to bail in terms of Section 167(2)(a)(ii) of the Code of Criminal Procedure, 1973 (in short the 'Cr.P.C.'). Learned Magistrate rejected the application stating that the challan was presented in court prior to the completion of 90 days and therefore, it was presented within the prescribed period. The order was challenged before learned Sessions Judge, Gurdaspur who granted bail relying on certain decisions of the Delhi High Court and Karnataka High Court (State v. B.B. Singh [2005 (1) Chandigarh Law Reporter 135], Amer v. State of Karnataka [2005 (1) Recent Criminal 107], and Nadeem Ahmed v. State [2004 Cr.L.J. 4798] holding that in relation to Section 304(B) of the Indian Penal Code, 1860 (in short the 'IPC') period of 60 days of remand would be applicable and not 90 days for the purpose of Section 167(2)(a)(ii). Questioning correctness of the said decision a revision petition was filed before the High Court by the complainant-respondent No.1. The High Court referring to the proviso to sub-section (2) of Section

167 Cr.P.C held that the period during which the challan has to be filed is 90 days and not 60 days as held by the learned Sessions Judge. Therefore, the order granting bail to the appellants was set aside.

According to learned counsel for the appellant learned Sessions Judge was correct in his view and the High Court has erred in holding that the period is 90 days and not 60 days. It was further submitted that though it was the stand of the State that the challan was filed within a period of 60 days it is contrary to the materials on record. The challan which had been filed was incomplete and in fact requisite documents did not accompany it.

Per contra learned counsel for the complainant and State of Punjab submitted that the view taken by the High Court is correct.

In reply to this stand about the defective challan learned counsel for the respondents submitted that the challan was in fact filed, some documents were filed later on, and that did not make the challan, filed within 60 days, incomplete.

The points raised needs careful consideration.

Sections 304(B) IPC and Section 167(2)(a) Cr.PC read as follows:

"304B (IPC): Dowry death (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death. Explanation.--For the purpose of this sub- section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.] "167 Cr.PC: Procedure when investigation can not be completed in twenty four houses.-

(2) Provided that

(a) the Magistrate may authorise 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 authorise 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 to released under the provisions of Chapter XXXIII for the purposes of that Chapter;] Two questions that essentially arise for consideration are as follows:

(a) In a case involving offence punishable under Section 304 (B) is the period for filing challan 90 days or 60 days?

(b) Does mere filing of challan without relevant documents satisfy the requirement of filing the challan within a stipulated period for the purpose of Section 167(2)(a)?

So far as the factual position is concerned there is no dispute that all the relevant documents were before the Court before expiry of 90 days. In case it is held that the period is 90 days and not 60 days in relation to an offence punishable under Section 304 (B) IPC, the second question would become academic so far as the facts of the present case are concerned. But this question crops up in a large number of cases.

A bare reading of Section 304(B) IPC shows that whoever commits "dowry death" in terms of Section 304(B) IPC shall be punished with an imprisonment for a term which shall not be less than 7 years but which may extend to imprisonment for life. In other words, the minimum sentence is 7 years but in a given case sentence of imprisonment for life can be awarded. Put differently, sentence of imprisonment for life can be awarded in respect of an offence punishable under Section 304(B) IPC. Proviso to sub-section (2) of Section 167 consists of three parts. The first part relates to power of Magistrate to authorise detention of the accused person. This part consists of two sub-parts. In positive terms it prescribes that no Magistrate shall authorize detention of the accused in custody, under this paragraph [meaning sub-section (2)(a)] for a total period exceeding (i) 90 days where the investigation relates to an offence punishable under death, imprisonment for life or imprisonment for a terms of not less than 10 years (ii) 60 days where the investigation relates to any other offences. The period of 90 days is applicable to cases where the investigation relates to the three categories of offences which are punishable with (i) death, (ii) imprisonment for life; or (iii) imprisonment for a term of not less than ten years. The question is whether Section 304(B) is an offence "punishable" with imprisonment for life. Strong reliance was placed by Mr. D.K. Garg, learned counsel appearing for the appellant on the decision in Rajeev Chaudhary v. State (N.C.T.) of Delhi (AIR 2001 SC 2369). A reference is also made to the decisions of the Jharkhand, Delhi and Karnataka High Court where the ratio in Rajiv Chaudhary's case (supra) has been made applicable to cases involving offence punishable under Section 304(B) IPC. The Jharkhand High Court's decision is Sunil Kumar v. State of Jharkhand and Ors. (2003 (2) RCR (Criminal) 135). Contrary view appears to have been taken by the Rajasthan and the Himachal Pradesh High Courts in Keshav Dev and Ors. v. State of Rajasthan (2005 Cr.LJ 3306), and State of Himachal Pradesh v. Lal Singh (2003 Cr.LJ 1668). The Punjab and Haryana High Court appears to have taken somewhat different view in two different cases. In Kuldeep Singh v. State of Punjab RCR (Criminal) 599 it was held that the period is 90 days, as has been held in the case at hand. But a different view (though in relation to some other offences) was taken in Abdul Hamid and Another (Crl. Misc. No. 40599 M of 2005

disposed of on 21st September, 2005). A bare reading of Rajiv Chaudhary's case (supra) shows that the same related to an offence punishable under Section 386 IPC and the sentence in respect of the said offence is not less than 10 years. This court held that the expression "not less than" means that the imprisonment should be 10 years or more to attract 90 days period. In that context it was said that for the purpose of clause (i) of proviso (a) of Section 167(2) Cr.PC the imprisonment should be for a clear period of 10 years or more. The position is different in respect of the offence punishable under Section 304(B) IPC. In case of Section 304(B) the range varies between 7 years and imprisonment for life. What should be the adequate punishment in a given case has to be decided by the Court on the basis of the facts and circumstances involved in the particular case. The stage of imposing a sentence comes only after recording the order of conviction of the accused person. The significant word in the proviso is "punishable". The word "punishable" as used in statutes which declare that certain offences are punishable in a certain way means liable to be punished in the way designated. It is ordinarily defined as deserving of or capable or liable to punishment, capable of being punished by law or right, may be punished or liable to be punished, and not must be punished.

In Bouviers Law Dictionary meaning of the word "punishable", has been given as "liable to punishment". In "Words and Phrases" (Permanent Edition) following meaning is given:-

"The word "punishable" in a statute stating that a crime is punishable by a designated penalty or term of years in the State prison limits the penalty or term of years to the amount or term of, years stated in the statute".

"Corpus Juris Secundum" gives the meaning as:

"Deserving of or liable to, punishment; capable of being punished by law or right; said of persons or offences. The meaning of the term is not "must be punished" but "may be punished" or "liable to be punished".

While dealing with a case relating to Punjab Borstal Act, 1926, this Court held that a person convicted under Section 302 IPC and sentenced to life imprisonment is not entitled to benefit of Section 5 of the said Act as offence of murder is punishable with death. (See Sube Singh and Ors. v. State of Haryana and Ors. (1989 (1) SCC 235).

Where minimum and maximum sentences are prescribed both are imposable depending on the facts of the cases. It is for the Court, after recording conviction, to impose appropriate sentence. It cannot, therefore, be accepted that only the minimum sentence is imposable and not the maximum sentence. Merely because minimum sentence is provided that does not mean that the sentence imposable is only the minimum sentence. The High Court's view in the impugned order that permissible period of filing of challan is 90 days is the correct view. Contrary view expressed by Jharkhand, Delhi and Karnataka High Courts is not correct. Himachal Pradesh, Rajasthan and Punjab and Haryana High Courts taking the view 90 days is the period have expressed the correct view. Therefore, on that ground alone the appeal fails. But since another point urged for consideration which as noted above arises in many cases, we are considering that matter. In Tara

Singh v. The State (AIR 1951SC 441) four Judge Bench of this Court inter-alia had examined the effect of supplementary report. The contents of the report as required to be given under Section 173(1)(a) of Criminal Procedure Code, 1898 (in short the 'old Code') were examined. In para 14 it was noted as follows :-

"When the police drew up their challan of the 2nd October, 1949, and submitted it to the court on the 3rd, they had in fact completed their investigation except for the report of the Imperial Serologist and the drawing of a sketch map of the occurrence. It is always permissible for the Magistrate to take additional evidence not set out in the challan. Therefore the mere fact that a second challan was put in on the 5th October would not necessarily vitiate the first. All that section 173(1)(a) requires is that as soon as the police investigation under Chapter XIV of the Code is complete, there should be forwarded to the Magistrate a report in the prescribed form :

"Setting forth the names of the parties, the nature of the information and the names of the person who appear to be acquainted with the circumstances of the case."

All that appears to have been done in the report of the 2nd October which the police called their incomplete challan. The witnesses named in the second challan of the 5th October were not witnesses who were "acquainted with the circumstances of the case." They were merely formal witnesses on other matters. So also in the supplementary challan of the 19th. The witnesses named are the 1st Class Magistrate, Amritsar, who recorded the dying declaration, and the Assistant Civil Surgeon. They are not witnesses who were "acquainted with the circumstances of the case." Accordingly, the challan which the police called an incomplete challan was in fact a completed report of the kind which section 173(1)(a) of the Code contemplates. There is no force in this argument and we hold that the Magistrate took proper cognisance of the matter."

Section 173 of the Cr.P.C. deals with report of police officer on completion of investigation. The said provision so far as relevant reads as follows :

"173. Report of police officer on completion of investigation (1) Every investigation under this Chapter shall be completed without unnecessary delay.

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committeed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with out without sureties;

(g) whether he has been forwarded in custody under section 170.

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which Section 170 applies, the police officer shall forward to the Magistrate along with the report

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject matter of the proceeding or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section(5)".

In the instant case undisputedly the challan was filed on 30.10.2004 and the trial court passed an order to the effect that the Ahlmad was to check and report. The Ahlmad examined the challan and noted as follows :

"Challan checked and found that negatives of the three photographs are not attached with."

The negatives were filed on 1.11.2004 and it was indicated that "Challan checked, found correct".

In Satya Narain Musadi and Ors. v. State of Bihar (AIR 1980 SC 506) dealing with the Section 11 of the Essential Commodities Act, 1955 held as follows:

"Section 11 of the Act precludes a Court from taking cognizance of the offence punishable under the Act except upon a report in writing of the facts constituting such offence made by a person who is a public servant as defined in Section 21 of the Indian Penal Code. The question is, if such police officer investigating into an offence which the Act has declared as cognizable submits a report in writing under Section 173(2) disclosing an offence under the Act and requesting for proceeding further into the matter, would it satisfy the requirements of Section 11 for taking cognizance of the offence so disclosed? Undoubtedly the police officer submitting the report would be a public servant within the meaning of S.21 and his report has to be in writing as required by Section 173(2). It must disclose an offence of which cognizance can be taken by the Magistrate.

Section 173(2) thus provides what the report in the prescribed form should contain. In this case the report did contain the name of the accused and the nature of the offence. In fact Section 170 provides that if upon an investigation under Chapter XII it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground to proceed against the accused such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report, etc. If the accused is on bail that fact will be notified in the final report submitted under Section 173(2) would be complied with if the various details therein prescribed are included in the report. This report is an intimation to the Magistrate that upon investigation into a cognizable offence the investigating officer has been able to procure sufficient evidence for the Court to inquire into the offence and the necessary information is being sent to the Court. In fact, the report under Section 173(2) purports to be an opinion of the investigating officer that as far as he is concerned he has been able to procure sufficient evidence for the trial of the accused by the Court and when he states in the report not only the names of the accused, but names of the witnesses, the nature of the offence and a request that the case be tried, there is compliance with Section 173(2). The report as envisaged by Section 173(2) has to be accompanied as required by sub-Section (5) by all the documents and statements of the witnesses therein mentioned. One cannot divorce the details which the report must contain as required by sub-Section (2) from its accompaniments which are required to be submitted under sub-section 5. The whole of it is submitted as a report to the Court. But even if a narrow construction is adopted that the police report can only be what is prescribed in Section 173(2) there would be sufficient compliance if what is required to be mentioned by the statute has been set down in the report. To say that all the details of the offence must be set out in the report under Section 173(2) submitted by the police officer would be expecting him to do something more than what the Parliament has expected him to set out therein. If the report with sufficient particularity and clarity specifies the contravention of the law which is the alleged offence, it would be sufficient compliance with Section 11. The details which would be necessary to be proved to bring home the guilt to the accused would emerged at a later stage, when after notice to the accused a charge is framed against him and further in the course of the trial. They would all be matters of evidence and Section 11 does not require the report to be or to contain the evidence in support of the charge, its function being merely to afford a basis for enabling the Magistrate to take cognizance of the case (see Bhagwati Saran v. State of Uttar Pradesh, 1961 (3) SCR 563).

In this connection Mr. Nag referred to Rachpal Singh v. Rex. (AIR 1949 Oudh 66) wherein after observing that the failure to mention facts constituting the contravention of a rule means the absence in the report of the very first of the numerous steps in the course of the trial of something which is vital and goes to the very root of the case, a further contention on behalf of the State that the Court may at that stage look into the first information report filed in the case was negatived. This very narrow view of the matter does not commend to us. In fact, on the introduction of Section 173 in its form in the Code of Criminal Procedure, 1973, the police officer investigating into a cognizable offence is under a statutory obligation to submit alongwith his report under Section 173(2) documents purporting to furnish evidence collected in the course of investigation and the statements of the witnesses and the court before proceeding into the case under a duty to inquire whether the accused has been furnished with copies of all relevant documents received under Section 173 by the Court, and the entire complexion of what should normally be styled as report submitted under Section 173(2) of the Code has undergone a change. Court can look at the report in prescribed form along with its accompaniments for taking cognizance of the offence."

Stand of learned counsel for the appellant was that the mere filing of the defective challan was really of no consequence. This aspect has been dealt with in Tara Singh's and Satya Narain's cases (supra) in detail. Since all the relevant documents were before the Court before expiry of 90 days period, grievance of the appellant is sans merit.

It would be appropriate if original photographs relied upon are filed along with the report under Section 173(2) of Cr.P.C., and can be taken back with permission of the Court to be produced as and when required. Alternatively, the zerox copies can be filed along with a certificate that they can be compared with the originals, as and when so directed by the Court.

A residuary plea was taken by Mr. D.K. Garg, learned counsel for the appellant that the bail was granted on 11.2.2005 and was cancelled on 10.11.2005. It is stated that there is no allegation against that the appellant had misused the liberty of bail from the date of grant of bail upto the date of cancellation or thereafter as the order of cancellation has been stayed. At the stage of consideration of the bail application in terms of Section 167(2) there was no consideration on the merits of the case. Let the appellants surrender forthwith to custody. It is, however, open to them to move for bail which shall be considered in its own perspective. We make it clear that we have not expressed any opinion on merits. The appeal is allowed.