

CRIMINAL MISC. WRIT PETITION No. - 62 of 2013

Anil Kumar Sharma Vs. State Of U.P. & Others

Hon'ble Amar Saran,J.; Hon'ble Dinesh Gupta,J.

Order Date :- 24.5.2013

SUMMARY OF THE DIRECTIONS

1. DGPs circular dated 7.3.2013 directing police officers to produce the accused in Court on the date of submission of the report u/s 173(2) Cr.P.C.

- We are pleased to note that a circular dated 7.3.2013 has been issued by the Director General of Police pursuant to the High Court's orders dated 7.1.2013, 17.1.2013 and 5.2.13 in the present writ petition for ensuring the appearance of the accused persons in the Court on the date when the report u/s 173(2) Cr.P.C is to be filed, which *inter alia* provides that where the accused was arrested prior to submission of charge sheet and where he has got himself bailed out, or in those cases where the provisions of section 41(1)(a) and 41(1)(b) Cr.P.C apply or where there was a stay order restraining the arrest of the accused till submission of the charge sheet under section 173(2) Cr.P.C. or an unconditional stay of arrest order, in all those eventualities, the accused may be directed to appear before the Court concerned on the date fixed.
- If the accused was in jail and has not been bailed out, then the Jailer should be directed to produce him on the date fixed, when the report u/s 173(2) Cr.P.C is to be submitted. If accused is absconding and his arrest was not possible, then action may be taken against accused persons under section 174(a) IPC.
- A proforma directing the accused to appear on the date that the charge sheet is filed has also been prepared and is appended to the DGPs circular. The steps taken in this regard are to be noted by the I.O. in his case diary. The supervising officer must also ensure compliance of the aforesaid directions. Any negligence in ensuring compliance with this circular will invite stringent action against the I.O. and his supervising officer. We also direct strict compliance of the DGPs circular.

2. Criticism of Affidavit of Home Department refusing to direct police officers to prepare copies of papers u/s 173(2) Cr.P.C for furnishing to accused on first appearance before Magistrate.

- **On the basis of the information furnished by the District Judges from 71 districts it has prepared a tabular chart which shows that in as many as 6,20,104 the accused have not been arrested after submission of the reports u/s 173(2) Cr.P.C. Out of which in 10371 cases the accused have not appeared for a period of up to 3 months, in 95385 cases for a period up to 6 months, in 97948 cases for a period up to 9 months, in 96155 cases for a period up to 12 months, in 164313 cases for a period up to 2 years, in 62602 cases for a period of more than two years. These figures shock the conscience of the Court.**
- Section 207 only requires the Magistrate to hand over the report and papers mentioned in s. 173 Cr.P.C to the accused free of cost. It does not direct that the Court alone should get the papers prepared. Under section 173(7) Cr.P.C also powers have been conferred on the I.O. to furnish copies of the papers mentioned in s. 173(5) Cr.P.C to the accused. With computerization of papers and other facilities we also see no impediment before the I.O., handing over the papers to the accused, and obtaining a receipt from him, when the report u/s 173(2) Cr.P.C is to be submitted. There could thus be no harm if the papers could be prepared and were available with the I.O. for getting them handed over directly or by the Magistrate, when he submits his report u/s 173(2) Cr.P.C., and the accused are also present.
- **The Principal Secretaries Home, is therefore being assigned responsibility to ensure that :**
 - a) the accused are present in Court when the report u/s 173(2) Cr.P.C is submitted, as has been directed by the DGPs circular dated 7.3.13 in compliance of this Court's earlier orders and**
 - b) that copies of the papers mentioned u/s 207 Cr.P.C are available with the I.O. for handing over free of cost to the accused through the Magistrate at the time of the initial appearance of the accused. For this objective the Home Secretary must ensure that either infrastructure and manpower for photocopying is directly available in the police stations/ C.O.'s office or indirect arrangements for preparing photocopies of these papers is made.**

3. Direction to DGP and Principals Secretary (Home) to ensure appearance of accused in 62014 cases where they have not appeared despite submission of reports u/s 173(2) Cr.P.C

- We also direct the DGP and the Principal Secretary (Home), U.P. and Director (Prosecutions) to ensure that in all the aforementioned 620104 cases, the accused must be produced before the Courts concerned where reports u/s 173(2) Cr.P.C have been submitted within a period of 3 months.

- They will not be required to first obtain warrants/ summons from the Courts concerned in each case for production of the accused in all such cases where the accused have not yet been produced or appeared before the Court even though reports u/s 173(2) Cr.P.C have been submitted, and that the copies of the papers mentioned u/s 207 Cr.P.C. be available for handing over to the accused on their first appearance.
4. **Courts directed not to accept reports u/s 173(2) Cr.P.C unless accused produced.**
- The Courts concerned are directed not to accept the reports u/s 173(2) Cr.P.C unless the accused are produced in custody or appear before the Court at the time of submission of the report.
 - The only exception to this direction could be when the production of an accused who is in custody cannot be avoided due to illness or other genuine reason, and the 60 or 90 days period for completion of investigation by submission of the charge sheet mandated u/s 167(2) Cr.P.C, is about to expire.
 - The Magistrate could then pass appropriate orders for custody or bail and immediately issue other directions such as for taking cognizance and for committing the case to the Court of Sessions Judge & directing the accused to appear before the Court concerned on the dates fixed.
5. **Feedback sought from Secretary (Law), and Secretary (Home), UP and Law Commission of India on amending s.209 Cr.P.C for allowing police to directly submit charge sheets to the Sessions Courts in Sessions triable cases, without requirement for committal by Magistrate**
- Let a fresh reminder be sent forthwith (along with the copy of the earlier order of this Court dated 5.2.13) suggesting that s. 209 Cr.P.C be amended and the police be directed to submit the reports u/s 173(2) Cr.P.C directly to the Sessions Judge in Sessions triable cases without compelling the police officer to follow the circumlocutory procedure of first submitting the report to the Magistrate, who in turn is required to commit the same under section 209 Cr.P.C. to the Court of Sessions.
6. **Direction for issuance of effective circular under section 309 Cr.P.C for ensuring day to day trials of accused**
- In the previous order, dated 5.2.13 we had directed that a more effective circular under section 309 Cr.P.C for day to day trials of the accused be issued on the same lines as has been issued by the Delhi High Court as is described in paragraph 27 in ***Akil @ Javed v State of NCT, Delhi, 2012(11) SCALE 709***, by the next listing, i.e. by 8.3.2013., - i.e. effective directions to the lower Courts on how to ensure proper compliance with the mandate of s. 309 Cr.P.C.
 - We regret to note that although a detailed circular seems to have been prepared by the Registry, it has still not been issued and circulated and there has been a failure to comply with that important direction for checking unwarranted delays in the trials.
 - *It may be noted that now an outer time limits of two months from the date of charge sheet in rape and allied cases u/s 376, 376 A to 376 D (instead of from the date of first examination of the witnesses), has been fixed by the of the Criminal Law Amendment Act, 2013 with effect from 3.2.13.*
 - The Apex Court has again in a recent judgment dated 10.5.2013 in ***Gurnaib Singh v. State of Punjab*** reviewed the law and cases reiterating the mandatory nature of s. 309 Cr.P.C, and has criticized the Punjab High Court for allowing the trial to be unduly prolonged in contravention of this salutary provision. Hence any further delay in issuing an effective circular u/s 309 Cr.P.C is wholly unwarranted.

We therefore direct that the Registrar General ensures that the said detailed circular is issued by the next listing.