

Court No. - 46

Case :- CRIMINAL MISC. WRIT PETITION No. - 62 of 2013

Petitioner :- Anil Kumar Sharma

Respondent :- State Of U.P. & Others

Counsel for Petitioner :- Hitesh Pachori

Counsel for Respondent :- Govt. Advocate

Hon'ble Amar Saran,J.

Hon'ble Dinesh Gupta,J.

Heard Sri Sudhir Mehrotra, learned Special Counsel for the Allahabad High Court and Sri Vimlendu Tripathi, learned Additional Government Advocate representing the State.

Two affidavits of compliance dated 8.3.13 on behalf of the Home Department and the Director General of Police, UP have been filed by the learned Additional Government Advocate.

An affidavit of compliance of the Registrar General, High Court dated 15.5.13 has been filed by Sri Mehrotra.

As a final report has been submitted by the I.O. regarding which an affidavit dated 8.3.13 has also been filed, it will now be a matter for consideration by the Court concerned on whether to accept or to reject the final report. No further orders are needed in the matter, so far as the petitioner is concerned.

However as a number of other issues have arisen for expediting the process of trials and associated matters in the

State of U.P., as a result of this Courts' orders in this petition, affidavits and reports furnished by the parties from whom this Court has sought directions/ information, looking to the importance of the matter, this bench will continue to monitor the said matters by an on-going hearing of this petition.

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 the accused is absconding and his arrest was not possible, then action may be taken against the 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, and a submission of a compliance report on the next listing as to the extent that the DGPs circular on the directions issued is being followed.

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.

In the affidavit filed on behalf of the Home Department it has

been mentioned that a meeting was held on 5.3.2013 under the Chairmanship of the Principal Secretary (Home) in which Addtl. L.R., Special Secretary (Finance), ADG (Prosecution), DIG (Headquarters) and the Joint Director (Prosecution) participated. It was decided in the meeting dated 5.3.13 that the direction of this Court in the order dated 5.2.13 that photo copies of the police report required to be handed over to the accused under section 207 Cr.P.C be provided by the police officer/ I.O. at the time of his appearance before the Court could not be complied with as it was the obligation of the Magistrate concerned to supply the copies. Also there were problems in arranging for the photocopies because of lack of manpower and infrastructure at the police stations. However the Court system could be strengthened and the necessary budget could be provided.

We may state unequivocally that we are distressed by this attitude of the Home Secretary's Committee. We may mention here that under the present system the office of the subordinate Courts have excess paper work on their hands, as copies of papers have to be handed over in innumerable matters and are to be prepared for multiple purposes. When all of a sudden the report u/s 173(2) Cr.P.C is produced by the police officer before the Court (usually in the absence of

the accused), then routinely the matter is sent for preparation of its copies to the copying section, without any date being fixed. The I.O. also conveniently absolves himself of the responsibility of producing the accused, by taking the ingenious plea that after submission of the report he is not required to arrest or produce the accused without warrants or summons being issued by the concerned Courts. Owing to routine pressure before the Criminal Courts, absence of copies of the papers, delays are unavoidable. Also occasionally the accused collude with inferior officials in the district courts and matters are not brought to the notice of the concerned Magistrates for issuance of warrants or summons for appearance of the charge sheeted accused on a fixed date, for long periods of time. The result, as the figures hereunder will show, has been catastrophic.

In this connection it may be noted that by the order dated 5.2.13 we had also asked details from the State government and the High Court registry through the district judges as to the number of cases where the accused have not appeared in the Courts after the submission of the report under section 173(2) Cr.P.C for periods up to 3 months, 6 months, 9 months, 12 months or 2 years or more. In the meeting headed by the Home Secretary dated 5.3.13 three months

further time was sought for furnishing these details. However we are pleased to note that the registry has taken our direction very seriously and **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 (six lakh, twenty thousand, one hundred and four cases) 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.** We must record our strongest disapproval against the attitude of unwillingness to assume responsibility and the policy of shifting the burden adopted by the Home Secretary's committee in its 5.3.2013 meeting, where instead of taking on this grave problem of delay in bringing accused to justice head on, once the charge sheet is submitted by ensuring that the accused are produced/ appear before the Court on the first date when the charge sheet is submitted, (as has

been directed by the DGP's circular dated 7.3.13), by immediately ensuring that the 207 Cr.P.C papers are ready and duly handed over to the accused through the Magistrates concerned, so that the people's confidence in the justice administration system is not destroyed. The committee has instead chosen to take such escapist pleas, that the duty is of the Courts with their overload of cases and lack of staff, (for which the State is eventually responsible) that they must get the photocopies prepared for handing over the accused, even though as a result of the earlier system where the police officer could shirk his responsibility of bringing the accused to justice by taking the spurious plea that no warrants or summons have been issued by the Court concerned, and thereafter summons or warrants could be avoided as the 173(2) Cr.P.C copies were not available for handing over to the accused, the result has been that in over 6 lakhs 20,000 cases, the accused have merrily roamed around for years even after a prima facie case was established against them on submission of the reports u/s 173(2) Cr.P.C. Compared to the delays and complications involved in the Court getting the papers prepared in all the cases where reports u/s 173 (2) Cr.P.C are submitted, it is a comparatively minor problem for a police officer, to have the

photo copies of the papers mentioned in s. 207 Cr.P.C available in the few cases where he decides to submit the charge sheet, for passing on to the Magistrate for supply to the accused u/s 207 Cr.P.C when he submits his report u/s 173(2) Cr.P.C and simultaneously to ensure that the accused is present at that time. This small step could have gone such a long way for solving the problem of the accused not being brought to justice for such long periods of time, which would have substantially reduced the delays in the trial process.

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 the 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. The Principal Secretaries Finance and Law, the DGP and the Director Prosecutions are directed to render all assistance to the Home Secretary for complying with these directions.

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 the 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.

**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 and directing the accused to appear before the Court concerned on the dates fixed.

In case the State government disputes the correctness of the figures regarding the number of cases or the accused who have not appeared before the Courts after submission of the reports u/s 173(2) Cr.P.C as furnished in the R.G.s affidavit, they may give the correct figures as per their estimation on the next listing.

The copy of the affidavit of the Registrar General, High Court, Allahabad dated 15.3.2013 may be handed over to the learned AGA at the earliest.

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. Such a letter No. 3348 dated 7.2.13 was already sent to the Secretary (Law), and Secretary (Home), UP as well as the Law Commission of India, New Delhi along with Chief Justice's approval note dated 27.2.13 pursuant to our earlier order dated 5.2.13. We would like a response of the said respondents on this suggestion by the next listing.

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, keeping in mind the fact that the brief circulars issued so far by the registry (one such brief circular being the circular dated 8.3.13 which has even been annexed with the RG's

affidavit of compliance) did not give clear and 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 under section 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.

We have also not received adequate feed back from the District Judges regarding the information sought in the order dated 5.2.13 about the extent of compliance with s. 309 Cr.P.C by the subordinate Courts and their suggestions for expediting trials and the difficulties that they face. Let reminder letters be expeditiously sent by the registry to all the concerned District Judges for furnishing the said information before the next listing.

List this case on 19.7.2013.

On that date, we would like personal affidavits of to be filed by the Principal Secretary, Home, Finance, and Law, DGP and Director (Prosecutions), U.P. regarding the extent to which the aforesaid directions by the present order and by the earlier order dated 5.2.13 have been complied with. Senior officers under the DGP, Principals Secretaries Home, Finance and Law capable of taking decisions and who can acquaint the Court on the steps taken on these matters be also present on the next listing.

Copy of this order may also be given to Shri Sudhir Mehrotra, Special Counsel for Allahabad High Court and Shri Vimlendu Tripathi, learned Additional Government Advocate for compliance. The order may also be placed

before the Hon'ble Chief Justice and the Registrar General
at the earliest.

Order Date :- 24.5.2013

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