

THE HON'BLE SRI JUSTICE E.V.VENUGOPAL

CRIMINAL REVISION CASE No.781 of 2024

ORDER:

Heard Sri Y.Soma Srinath Reddy, learned counsel for the petitioner and Smt.S.Madhavi, Assistant Public Prosecutor, representing learned Public Prosecutor for State/respondent.

2. Challenge in this criminal revision case, filed under Sections 397 and 401 Cr.P.C, is to the remand order dated 18.07.2024 passed against the petitioner/accused No.2 in Crime No.19 of 2024 of PS, EOW, Cyberabad on the file of the learned Principal Junior Civil Judge-cum-Metropolitan Magistrate, Rangareddy District at LB Nagar.

3. Crime in FIR No.19 of 2024 for the offences under Sections 420, 406 and 409 IPC was registered against the petitioner and three others by the PS, EOW, Cyberabad basing on the complaint lodged by one Kartheek Motamarri, the de-facto complainant, alleging that he was induced and misrepresented by Shilpa (A4), stated to be the Marketing Partner of M/s.GSR Infra Group, making him to believe that they were constructing villas in the land admeasuring Ac.16.00 by obtaining HMDA approval and offered a villa admeasuring 200 Sq.Yards and 2500 SFT in Sy.No.298, Kollur Village, RC Puram Mandal for lesser price as a pre-launch offer and obtained Rs.1.17 Crores through cheques and online transactions to GSR Infra Private Ltd., (A1) bank account bearing

A/c.No.410805500101 from September, 2023 to October, 2023 and issued cash receipts to that effect, signed by Guntapalli Srinivas Rao (A2), Managing Director of M/s.GSR Infra Luxurious Villas LLP.

3(a) Further, A2, on behalf of A1, executed agreement of sale dated 21.10.2023 stating that he is acquiring land in Sy.Nos.298, 347 and 351 of Kollur Village, RC Puram Mandal, Sanga Reddy District. Further, A2 promised the de-facto complainant to register land admeasuring 350 Sq.Yards instead of 200 Sq.Yards as security assurance within a week in his favour and after receiving approvals from concerned departments the project will be completed within three years and executed an un-registered agreement of sale on Rs.100/- non-judicial stamp paper vide No.BA274180 on 21.10.2003. However, in-spite of repeated persuasions A2 postponed registration of the land, as agreed, in favour of the de-facto complainant. Accordingly, on suspicion, when the de-facto complainant visited the office of A2, he, while giving two typed documents as assurance, stated that on or before 25.01.2024 he would register the document or otherwise he would repay the amount with 24% interest by 31.03.2024.

3(b) Subsequently, the de-facto complainant came to know that there were some issues between the land lords and the accused and when he enquired A2 regarding the said issues, he admitted stating that the landlords are demanding more amounts. On that occasion, the de-facto complainant observed some

other individuals including Sudheer Kolipakula and Kishore Kasam asking security for the amounts paid by them. Then A2 stated that he had purchased development rights of the land admeasuring Ac.10.13 Gts., in Sy.No.352, Kollur Village, RC Puram Mandal, Sanga Reddy District from Bricmor Infra Projects Pvt. Ltd., and assured the de-facto complainant that he would accommodate 5000 Sq.Yards in place of 2500 Sq.Yards in Sy.No.298 in Villa Project. He further told the de-facto complainant that he is going to construct multi-storeyed residential apartments and executed MOUs on Rs.100/- non-judicial stamp paper vide BB575067 in favour of the de-facto complainant dated 15.02.2024 and stated that he paid amounts to the landlords in respect of land covered under Sy.No.298. A2 also executed allotment letters to nearly 32 members in the month of February, 2024 stating that he will provide flats in high-rise residential apartment in Sy.No.352 according to the payments made by them in villa projects. The de-facto complainant further came to know that A2 is absconding and that he handed over construction works to Anvita Built Pro. LLP. The said Anvita Built Pro., LLP did not give any assurance to the de-facto complainant and others for their investments and allotment of residences, as agreed by A2.

3(c) Since the accused, particularly A2 and A4, cheated the de-facto complainant and others on the pretext of constructing villas in Sy.No.298, Kollur Village, RC Puram Mandal, Sangareddy District and collected huge amounts to a tune of Rs.60 crores from them and is absconding and without the knowledge

of the intending purchasers including the de-facto complainant, A2 had handed over construction works to Anvita Built Pro.LLP, who did not give any assurance for the investments made by the de-facto complainant and others, the de-facto complainant got registered the present complaint.

4. Accordingly, on the directions of DCP, EOW, Cyberabad, the case was registered on 15.06.2024 by LW10/SHO against the accused for the offences under Sections 420, 406 and 409 IPC and investigation was entrusted to LW11/P.Vijaykumar, Inspector, EOW PS, Cyberabad. Subsequently in view of transfer of LW11, further investigation was conducted by LW12/B.Narahari, Inspector of Police, EOW PS, Cyberabad, who, on reliable information, apprehended the petitioner/A2 near Red Rose Mart, Engine Bowli, Falaknuma, Hyderabad on 17.07.2024 duly informing the grounds of arrest, brought him to EOW Police Station, Cyberabad at 09.30 p.m. on 17.07.2024 along with his car bearing No.TS 08 GN 4009 and after investigation effected his arrest and after completing all procedural formalities produced him before the concerned Magistrate at 09.45 p.m. on 18.07.2024. The trial Court had accepted the remand holding that prima-facie case and grounds for arrest of the petitioner are well founded and accordingly remanded him to judicial custody till 11.08.2024.

5. Accused No.1 is a firm. So far as accused No.3 is concerned, as per orders of this Court vide CrI.P.No.7128 of 2024, dated 16.07.2024 notice under

Section 41A of Cr.P.C. was served on him. So far as accused No.4 is concerned, as per orders of this Court vide CrI.P.No.7083 of 2024, dated 10.07.2024, she was directed to appear before the Investigating Officer on or before 30.07.2024 and in turn the Investigating Officer was directed to follow the procedure laid down under Section 35(3) BNSS.

6. Aggrieved by the order of remand the petitioner/A2 preferred the present criminal revision mainly contending that the petitioner was falsely implicated in the present case without there being his involvement, the arrest of the petitioner is against the constitutional provisions and fundamental rights under Article 22(2) of the Constitution of India and under Section 57 of Cr.P.C. and various judicial decisions as he was produced before the Court concerned after 24 hours of his arrest and hence, the entire arrest of the petitioner became otiose exercise, the investigating officer did not follow the procedure laid down under Section 50A of Cr.P.C. in giving intimation of arrest of the petitioner to his family members since the said intimation does not contain the endorsement of any relative of the petitioner, the investigating agency failed to give plausible explanation for the delay occurred in producing the petitioner before the Court concerned, the Magistrate concerned without application of his mind towards the lapses on the part of the investigating agency and the law laid down and without affording an opportunity of hearing the learned counsel for the petitioner/A2 and without there being any grounds of arrest, has automatically accepted the remand in a routine manner. It is further contended

that in view of the above factual matrix, the remand of petitioner under Section 167 of Cr.P.C. does not arise. In support of his contentions, learned counsel for the petitioner relied upon the decisions rendered in **Vishal Manohar Mandrekar Vs. State of Telangana** ¹, **Criminal Revision Case No.228 of 2024 of this Court, dated 29.02.2024, Ahak Hussain Allah Detha @ Siddique and another Vs.The Assistant Collector of Customs (P) Bombay and another**² and **Mrs.Iqbal Kaur Kwatra Vs. The District General of Police, Rajasthan State, Jaipur**³, **Criminal Revision Case No.699 of 2022 of this Court dated 29.10.2022**. He further contended that no person shall be deprived of his liberty except in accordance with the procedure established in law.

7. On the other hand, learned Assistant Public Prosecutor vehemently opposed the present application mainly contending that there is no violation in production of the petitioner for remand attributable to the investigating agency and hence, the trial Court, having satisfied that no ill-treatment or violations committed, had rightly accepted the remand of the petitioner and in such scenario, there is no need or necessity for this Court to interfere with such well considered findings.

¹ 2024 SCC Online TS 69

² 1990 SCC OnLine Bom.3

³ 1996(1) APLJ 370 (HC)

8. This Court heard the rival contentions advanced on behalf of both sides and perused the material placed before it and also the proposition of law laid down in the decisions relied upon by learned counsel for the petitioner.

9. The main contention of learned counsel for the petitioner is that the very remand of the petitioner/A2 is illogical since it was made ignoring the settled propositions of law laid down and beyond the timeframe stipulated in the procedure. Therefore, without touching the merits and demerits of the case, this Court feels it appropriate to decide the said aspect.

10. Personal liberty is one of the cherished objects of the Indian Constitution and deprivation of the same can only be in accordance with law and in conformity with the provisions thereof, as stipulated under Article 21 of the Constitution. Article 22(2) of the Constitution of India and also Section 57 Cr.P.C., require that person arrested or detained in custody should be produced before the nearest Magistrate within 24 hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate, and that no such person should be detained beyond such period without the authority of the Magistrate. The Criminal procedure Code also made a similar provision in respect of persons arrested without warrant. The Magistrates will not allow remand of the accused to custody under Section 167 of Cr.P.C., or allow remand under Section 309 of Cr.P.C., without satisfying themselves that there are reasonable grounds for such remand.

11. A cautious reading of Section 167(1) of Cr.P.C. makes it clear that the officer in-charge of the police station or the investigating officer can ask for remand only when there are grounds to believe that the accusation or information is well founded and it appears that the investigation cannot be completed within the period of twenty-four hours as specified under Section 57 of the Act. Hence, Magistrate's power to give remand is not mechanical and adequate grounds must subsist if Magistrate wants to exercise his power of remand. The Hon'ble Apex Court in **Raj Pal Singh v. State of Uttar Pradesh**⁴ case held that the remand order sheet need not look like, a judgment delivered after full trial but application of mind must be evident.

12. That being the settled proposition of law, when the facts of the case on hand are perused, during the course of investigation the investigating officer intercepted A2/the petitioner herein on 17.07.2024 at 07.30 p.m. near Red Rose Mart, Engine Bowli, Falaknuma, Hyderabad and brought him to the office of EOW Police Station, Cyberabad at 09.30 p.m. on 17.07.2024 along with his car and after interrogation effected his arrest and produced the petitioner before the learned Principal Junior Civil Judge-cum-Metropolitan Magistrate, Ranga Reddy District at LB Nagar at 09.45 p.m., on 18.07.2024 requesting to remand the accused to judicial custody for a period of 14 days enabling him to complete the investigation. The learned Principal Junior Civil Judge concerned,

⁴ 1983 Cri.L.J. 109

having satisfied that no ill-treatment was meted out to the accused in the hands of the police and that there was strict compliance of Sections 41, 50 of 50(A) of Cr.PC, remanded A2 to judicial custody till 11.08.2024.

13. The contention of the learned counsel for the petitioner is that the investigating officer apprehended the petitioner/A2 at 07.30 p.m. on 17.07.2024 and showed his arrest at 09.30 p.m. on the same day and produced him before the Magistrate concerned at 09.45 p.m. on 18.07.2024 i.e. beyond 24 hours from his arrest and hence, the very remand is an otiose exercise and hence, the said order is liable to be set aside in exercise of the revisional powers.

14. Learned counsel for the petitioner further contended that as soon as the formal arrest is affected, the accused is taken into custody by the police and therefore, the period of detention in police custody commences from the moment the formal arrest is affected and that within 24 hours from the time of such formal arrest, the accused should be produced before the Magistrate. He further contended that if an arrest is made and the accused gets into physical custody of the police, surely, the said detention in police custody shall not exceed 24 hours and any such detention beyond 24 hours without the authorisation of the Magistrate shall be unconstitutional.

15. It is further contended by learned counsel for the petitioner that a police officer cannot detain any person in custody without arresting him and any such

detention will amount to a wrongful confinement within the meaning of Section 340 of the Indian Penal Code. A person in custody cannot be detained without producing him before a Magistrate under the colourable pretention that no actual arrest is made and the burden of proving the reasonable ground is on the arrester that the time occupied in the journey was reasonable with reference to the distance traversed as also other circumstances and in case of continuation of detention for twenty four hours, particularly, when the police officer has reason to believe that the investigation cannot be completed within twenty-four hours, he must produce the accused forthwith before the Magistrate and cannot wait for twenty-four hours.

16. Perusal of remand report and remand application reveals that upon reliable information regarding the whereabouts of the absconding accused/petitioner herein, the investigating officer visited the spot by 07.30 p.m. on 17.07.2024, intercepted and brought him along with his car to EOW Police Station, Cyberabad at 09.30 p.m. and effected his arrest. It is further revealed that due to late night, the investigating officer could not record the confessional statement of the accused. It is also revealed that after giving information to the father of the petitioner viz. G.Purnachandra Rao to his phone No.08632246788, after informing the grounds of arrest and after following the procedural aspects, the investigating officer effected arrest of the petitioner. It is further revealed that the petitioner was produced before the Magistrate at

09.45 p.m. on 18.07.2024. When the time of arrest and production of accused before the Magistrate concerned is observed, no doubt, the production of the accused is beyond the period of 24 hours. The proposition of law is settled that while calculating 24 hours, the time taken for transit of the accused shall be excluded. It is an admitted fact that upon reliable information with regard to the whereabouts of the absconding accused, the investigating officer intercepted the petitioner/A2 at 07.30 p.m. on 17.07.2024 near Red Rose Mart, Engine Bowli, Falaknuma, Hyderabad and after completing all the required formalities, he produced the petitioner/A2 before the learned Principal Junior Civil Judge-cum-Metropolitan Magistrate, Ranga Reddy District at LB Nagar at 09.45 p.m. on the next day i.e. on 18.07.2024. Admittedly, both the place of interception of the petitioner/accused and the location of the Court where the petitioner/accused was produced are not at a distance which can invariably result-in occurrence of delay in production of the accused beyond the period of 24 hours of his arrest and hence, the delay in production of the accused caused, cannot be waived under the guise of transit. Further, except stating that due to late night confessional statement of the accused could not be completed, no plausible explanation is offered by the investigating officer to give leverage or support to the delay occurred in production of the accused before the Magistrate concerned. Even otherwise the confessional statement of the accused was recorded on the next day, it does not take much time as pleaded by the investigating officer to produce the accused before the

Magistrate concerned for being forwarded him to the judicial remand. Apropos, it can safely be held that there is apparent error on the findings of the trial Court warranting interference of this Court in exercise of its revisional powers while setting aside the impugned order.

17. When the above facts and circumstances as well as the settled proposition of law laid down in this regard are considered, this Court finds force in the contention of the learned counsel for the petitioner that the Magistrate remanding the petitioner/accused to judicial custody would not frustrate the legislative mandate of producing him within 24 hours of his arrest. As such, the subsequent remand order made by the Magistrate would not legalize the prior detention which was against the constitutional and legal mandate. As such, producing the petitioner/A2 before the Magistrate beyond 24 hours without obtaining any transit warrant is considered as a violative of Article 22(2) of the Constitution and in that view of the matter, the petitioner/A2 is entitled to be released by setting aside the impugned order. However, it is made clear that the entitlement of the petitioner to be released is only due to the procedural flaw on the part of the prosecuting agency in producing him before the nearest judicial Magistrate within the stipulated timeframe of 24 hours but not based on the merits of the case.

18. In the result, the Criminal Revision Case is allowed setting aside the order of remand dated 18.07.2024 of the learned Principal Junior Civil Judge-

cum-Metropolitan Magistrate, Ranga Reddy District at LB Nagar. Consequently, the accused/A2 is directed to be set at liberty forthwith by granting bail by the learned Principal Junior Civil Judge-cum-Metropolitan Magistrate, Ranga Reddy District at LB Nagar to its satisfaction upon such terms and conditions as may be deemed fit and proper; if he is languishing in jail as on date and if he is not required in any other case. The petitioner shall co-operate for smooth completion of investigation. He shall not indulge in any other cases during his release. Any violation of the above grounds would entail his arrest in accordance with the procedure established under law.

Miscellaneous petitions pending, if any, shall stand closed.

Dated :30-09-2024
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E.V.VENUGOPAL, J