

Sl. No. 43

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R.O.C.NO.5920-A/09/FT

P.DIS.NO 8/2010

CIRCULAR

Sub: High Court, Madras – Criminal Rules of Practice – Preliminary enquiry under Rule 87(107) (i) – Code of Criminal Procedure – conditions for initiation of proceedings – procedures u/s.173(1) & (2) & 167- certain directions issued – copy communicated – regarding.

Ref.: Orders of Hon'ble High Court in CrI.O.P.No.16253 / 2007 (RRJ), dated 8.10.2009

A copy of the orders of the Hon'ble High Court is hereby enclosed for strict compliance and necessary followup action.

**HIGH COURT, MADRAS
DATED: 29/01/2010**

**Sd/- A.Arumugha Swamy
REGISTRAR GENERAL**

//True copy/Forwarded/By Order//

DEPUTY REGISTRAR (COMPUTERS)

To:

1. All the Chief Judicial Magistrates.
2. The Chief Metropolitan Magistrate, Egmore, Chennai
3. The Chief Judicial Magistrate, Puducherry.
4. The Director, Tamil Nadu State Judicial Academy, Chennai
5. The Registrar (Admn.) Madurai Bench of Madras High Court, Madurai.
6. The Registrar (Judicial) Madurai Bench of Madras High Court, Madurai.

- } With a request to
- } communicate the order to
- } all the Judicial Magistrates
- } with instructions to bring it
- } to the notice of respective
- } Head Clerks under their
- } control
- } To be given to trainee
- } Magistrates as part of study
- } material.

Copy to:

1. All the Principal District Judges / District Judges.
2. The Chief Judge, Puducherry.

Received on
8/10/09
M...

(H)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

THURSDAY, THE EIGHTH DAY OF OCTOBER
TWO THOUSAND AND NINE

PRESENT:

THE HONOURABLE MR. JUSTICE R. REGUPATHI

MISCELLANEOUS PETITION NO.1 OF 2009

IN

Crl.O.P.No.16253 of 2007

Chrishtopher

Vs

... Petitioner

Inspector of Police
District Crime Branch
Ooty, Nilgiris District
Crl.No.3/07

... Respondents

Petition praying that in the circumstances stated therein and in the affidavit filed therewith. The High Court will be pleased to direct the respondent to expedite the investigation and to file the final report in Cr.No.3 of 2007 on the file of the Inspector of Police, District Crime Branch, Ooty, the Nilgiris District, Crl.OP.No.16253 of 2007 petitioner filed under section 482 of the code of the Criminal Procedure to direct the 1st respondent to register a case on the basis of the complaint dated. 17.5.2007 pending on its file.

ORDER

This Petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the argument of Mr.K.V.Sridharan for the respondent, the Court made the following order:-

The Petitioner is the defacto complainant in crime No.3 of 2007 on the file of the respondent i.e., Inspector of Police, DCB, Ooty. In the petition filed, by stating that though investigation was taken up on the complaint given by the petitioner on 17.5.2007, final report is not filed so far, it is pleaded that a suitable direction may be issued to conclude the investigation at the earliest and file final report.

2.Learned Additional Public Prosecutor submitted that investigation of the case has been completed as early as on 07.10.2008 itself and that though final report as on 07.10.2008 itself promptly laid before the Judicial magistrate, Coonoor, it has not been taken on file and, to substantiate such fact, he has produced a copy of the final report.

3. In view of the submission made by the learned Additional Public

Prosecutor, the Judicial Magistrate, Coonoor, is directed to receive the final report submitted by the respondent police and pass orders one way or the other within a period of two weeks from the date of receipt of copy of the order.

4. With regard to an unusual practice prevalent at the Judicial Magistrate Courts in the State in dealing with the final reports filed by the Police, learned Additional Public Prosecutor has graphed out the scenario by stating that, in numerous instances where final reports are filed, learned magistrates do not instantly react to the same by resorting to the procedure and practice involved and, in many cases, final reports enclosed with the materials relied on by the Investigating Officer on being presented before the Head Clerk of the Court, who is supposed to make verification, submission of the same before the Magistrate is delayed for extraneous reasons after casually entering the presentment of the final reports in a register called 'Not Taken on File Cases Register', and the Magistrates also do not take pain to verify the cases entered in such Register, with the result, umpteen number of final reports received by the courts of Judicial Magistrates are kept pending without any rhyme or reason and, after long efflux of time, those final reports would be returned back by raising certain queries and for compliance on negligible aspects. In view of such strange practice adopted by almost all the Judicial Magistrates in the state, the resultant position is, in many cases, there is inordinate delay in commencing the proceedings while in other cases, prosecution could not be launched on account of various factors like lapse of time, non-availability/demise of the parties etc. By referring to Rule-87 of the Criminal Rules of practice which is to the following effect.

"87 (107) (i) Committing Magistrate to give preference to preliminary enquiries.... Committing Magistrates should give preference to preliminary enquiries over other work and should hold such enquiries from day to day in so far as this is practicable.

(ii) In every case in which the time taken between the date of receipt of the charge-sheet and the date of the committal order exceeds six weeks the Committal Magistrate should furnish an explanation for the delay which should be attached to the copy of the committal order sent to the District Magistrate."

It is submitted that, since there is no specific provision available in the code of Criminal Procedure stipulating the time factor with regard to taking the final report on file in all other cases triable by the courts of Judicial Magistrate, this court may, considering the aspects adverted to above, issue specific direction to the Judicial Magistrates in the State by fixing an outer limit in that regard so as to avoid unnecessary delay in taking the final reports on file.

Learned counsel for the petitioner, underpinning the submissions made by the learned Additional Public Prosecutor, states that such is the praxis not only in deciding the final reports laid by the police but also

the private complaints preferred by the litigant individuals.

5. As a clear illustration to the commented phenomenon rife at the Judicial Magistrate courts, in the case on hand, it is seen that, based on the complaint given on 17.5.2007, final report came to be filed on 07.10.2008 with an inordinate delay and such report could not be taken on file ever after expiry of about 13 months. When such lassitude is assessed in regard to the provision in the Criminal Rules of practice as adverted to above, the deteriorating situation could be inferred and added to that, as pointed out by the counsel for the petitioner, the same is also the position regarding private complaints. Before making observations and passing directions on the issue, it is but proper to refer to the relevant provisions of the code of criminal Procedure.

5-a Section 173 (1) & (2) provides 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.....

5-b. Section - 190 at Chapter XIV with the caption "Conditions requisite for initiation of proceedings" and dealing with cognizance of offences by Magistrates runs as follows:-

"190. Cognizance of offences by Magistrates.

- (1) Subject to the provisions of this Chapter, any Magistrate of the first class, specially empowered in this behalf under sub-section (2), may take cognizance of any offence-
 - (a) Upon receiving a complaint of facts which constitute such offences;
 - (b) Upon a police report of such facts;
 - (c) Upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed."

From the above provisions, it is clear that time is the essence of criminal investigation by the police as well as for enquiry by the criminal courts/Judicial Magistrates at the initial stage and in both courses, the exercise must be carried out without any unnecessary delay, else, great prejudice would result to the complainant on the one hand and the person accused of on the other hand. In this regard, it must be pointed out that, soon after registration of a case, pending investigation, the accused is arrested and, if there is delay on the part of the Investigating officer in concluding the investigation and the accused is kept in custody, he is entitled for bail as per sec.167 crl.p.c. With the heading 'Procedure when investigation cannot be completed in twenty-

four hours', sub-section(ii) being pertinent, relevant portions thereof are quoted below:-

(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, authorise the detention of the accused in such custody as such Magistrate thinks fit, a term not exceeding fifteen days in the whole; and if 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 magistrate having such jurisdiction:

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 so released under the provisions of Chapter XXXIII for the purposes of that chapter;)"

5-c. In the event of inordinate delay in investigation, prejudice would equally result to the complainant; thereby, the case could not be taken up on limitation and, in that regard, section-468 (i) and (2) at Chapter XXXVI of the Code with the caption "Limitation for taking cognizance of certain offences" provides thus:-

"(1) Except as otherwise provided elsewhere in this code, no court, shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) Six months, if the offence is punishable with fine only;

(b) One Year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) Three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years."

6. The provisions excerpted from the procedural law and the scope and operation of the same clearly highlight the essentiality of carrying out the task and duty saddled on the Investigating Agency and the Criminal courts with all seriousness and swiftness. Since Judicial Magistrate

four hours', sub-section(ii) being pertinent, relevant portions thereof are quoted below:-

(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, authorise the detention of the accused in such custody as such Magistrate thinks fit, a term not exceeding fifteen days in the whole; and if 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 magistrate having such jurisdiction:

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 so released under the provisions of Chapter XXXVIII for the purposes of that chapter;)"

5-c. In the event of inordinate delay in investigation, prejudice would equally result to the complainant; thereby, the case could not be taken up on limitation and, in that regard, section-468 (i) and (2) at Chapter XXXVI of the Code with the caption "Limitation for taking cognizance of certain offences" provides thus:-

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 - (a) Six months, if the offence is punishable with fine only;
 - (b) One Year, if the offence is punishable with imprisonment for a term not exceeding one year;
 - (c) Three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years."

6. The provisions excerpted from the procedural law and the scope and operation of the same clearly highlight the essentiality of carrying out the task and duty saddled on the Investigating Agency and the Criminal courts with all seriousness and swiftness. Since Judicial Magistrate

courts are the first point of entry for such cases and having regard to the multifarious functions they have to discharge, staff is provided to assist the Magistrates in such functioning particularly to verify the final reports filed. It is the bounden duty of the Judicial Magistrates, in view of the seriousness of the job involved in taking the final reports on file, to immediately react by routinely getting particulars regarding receipt of such reports by the Head Clerck for verification. But unfortunately, a new system has been evolved in the name of 'Not Taken on File Cases' whereby final reports are kept pending for long periods and in some cases, years together, at a crucial stage for both sides i.e., deciding on the issue of whether to take cognizance or not. It is stated that there are also instances where final reports were returned back citing trivial defects, seeking clarification, requiring compliance etc. In spite of the position that such aspects could be rectified/ clarified in the course of enquiry.

It is also noticed that, in many cases involving grave nature of offences, the police purposely and willingly delay submission of final reports with ulterior motives to facilitate the accused to come out on statutory bail because of political influence or clandestine understanding and that though this court condemned on several occasions such insalubrious illegal practice and in spite of repeated directions issued to the superior police officers, the unhealthy trends is continuing and the higher-ups are also not serious and earnest in dealing with such instances by calling for explanation from the Investigating Officers concerned, thus, a delay-control Mechanism is virtually absent in the present day set up with the police agency.

Therefore, since large-scale violations are reported by the prosecution and the other side, this Court deems it absolutely necessary to issue the following directions to the Judicial Magistrates and station House Police Officers/Investigating Officers functioning throughout the State of Tamilnadu.

A) The Head Clerks of the Judicial Magistrate Courts should bring to the notice of the Magistrate concerned, as part of the routine daily work, about the final reports/private complaints placed/filed on the particular day and in parallel, the Magistrates should make daily check-up with the Head clerks.

B) The Magistrates, after examining the final reports, in cases triable by them, should take necessary steps either to take cognizance or reject the same within a period of three days from the date of placement of the report.

C) A final report, whereby prima facie materials are made available to constitute the offence/s alleged, shall not be returned on flimsy grounds and for immaterial defects when there is scope to cure those trivial defects in the course of enquiry.

D) The Investigating Officers are directed to submit reports on weekly basis about the final reports laid by them before court so that the Magistrate concerned could verify and cross-check about the status of such reports so as to take further action, if any.

E) The Superintendents of Police of the Districts and the Chief Judicial Magistrates concerned should, every month, verify at both ends regarding the delay in filing the final report by the Investigating officer and the delay in acceptance of the same by the Magistrate and, if unusual or inordinate latency is noticed, the matter should be immediately reported to the district Judge concerned for taking appropriate action.

Registry is directed to issue copy of this order, after obtaining necessary orders from the Hon'ble The Chief Justice to all Judicial magistrate Courts in the state through the CMM/CJMS and also mark a copy of this order to the Director General of Police, Tamilnadu, for suitably instructing the Investigating Officers in the light of the observations made herein.

7. Miscellaneous Petition is disposed.

Sd/-
Asst. Registrar

/true copy/
M. Anandhi 1/12/09
Sub Asst. Registrar