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RAJEEV CHAUDHARY
V.
STATE (N.C.T.) OF DELHI

MAY 4 , 2001

B.

[M.B. SHAH AND S.N. VARIAVA , JJ .]

Criminal Procedure Code , 1973 - Section 167 (2) Proviso (a) (i)
Applicability of Expression " offence punishable with imprisonment for a
term of not less than ten years " -Connotation of - Held , inapplicable to
C S.386 of I.P.C. which prescribes punishment which may extend to ten years-
Penal Code , 1860 — S . 386 .

Words and Phrases

D

" Offence punishable with imprisonment for a term of not less than ten
years " -Meaning of in the context of S.167 (2) Proviso (a) (i) of the Criminal
Procedure Code , 1973 .

" Imprisonment which may extend to ten years " -Meaning of in the
context of S.386 of the Penal Code , 1860 .

E

Appellant , arrested in connection with an offence punishable under
Sections 386 , 506 and 120B of IPC , was released on bail under S.167 (2) of
the Criminal Procedure Code by the Magistrate on the ground that
chargesheet was not filed within 60 days . On revision , Additional Sessions
Judge set aside the bail order holding that for an offence under Section 386

F

IPC , period of sentence may extend upto 10 years and hence clause (i) of
proviso (a) to Section 167 (2) of the Code providing detention upto a period
of 90 days would be applicable . However , on challenge High Court set aside
the order of Additional Sessions Judge . Hence the present appeal .

Dismissing the appeal , the Court

G

HELD : 1.1 . Under Section 386 IPC , imprisonment can vary from
minimum to a maximum of 10 years and thus , it cannot be said that
imprisonment prescribed is not less than 10 years . Thus , the proviso (a) (i)
to Section 167 (2) of the Criminal Procedure Code , would not be applicable
to the offences under Section 386 IPC . [511 - D - F]

H

1.2 . Under S.167 (2) proviso (a) (i) pending investigation relating to offence punishable with imprisonment for a term " not less than 10 years " , the Magistrate is empowered to authorise the detention of the accused in custody for not more than 90 days . For rest of the offences , period prescribed in 60 days . The expression " not less than " would mean imprisonment should be 10 years or more and would cover only those offences for which punishment could be imprisonment for a clear period of 10 years or more . Under ^BSection 386 punishment provided is imprisonment of either description for a term which may extend to 10 years and also fine . That means , imprisonment can be for a clear period of 10 years or less . Hence , it could not be said that minimum sentence would be 10 years or more . [509 - H ; 510 - A - C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 606 of 2001 .

From the Judgment and Order dated 26.5.2000 of the Delhi High Court in CrI . M. (M) No. 2532 of 1999. .

Dr. Krishan Singh Chaudhan (A.C.) for the Appellant .

Kailash Vasdev , K.C. Kaushik for D.S. Mehra for the Respondent .

The Judgment of the Court was delivered by

SHAH , J. Leave granted .

Short question involved in this appeal is with regard to the interpretation and construction of the expression " offence punishable with imprisonment for a term of not less than ten years " occurring in proviso (a) to Section 167 (2) of the Criminal Procedure Code in context of the expression " imprisonment which may extend to ten years " occurring in Section 386 of the IPC .^F

Appellant was arrested in connection with an offence punishable under Sections 386 , 506 and 120 - B of the I.P.C. He was produced before the Metropolitan Magistrate , Delhi on 31.10.1998 and was released on bail by order dated 2.1.1999 by the Metropolitan Magistrate on the ground that G charge - sheet was not submitted within 60 days as provided under Section 167 (2) of the Criminal Procedure Code , 1973. That order was challenged before the Sessions Judge , New Delhi by filing Criminal Revision No.22 of 1999. By judgment and order dated 18.8.1999 , the Additional Sessions Judge , New Delhi allowed the said revision application . The learned Additional Sessions Judge held that for an offence under Section 386 IPC , period of sentence H

A could be up to 10 years RI . Hence , clause (i) of the proviso (a) to Section 167 (2) would be applicable . He , therefore , set aside the order passed by the Metropolitan Magistrate releasing the accused on bail . That order was challenged before the High Court by the accused . The High Court referred to its earlier decisions and held that expression " an offence punishable with imprisonment for a term of not less than 10 years " in clause (i) of the proviso B to Section 167 would mean an offence punishable with imprisonment for a specified period which period would not be less than 10 years or in other words would be at least ten years . The words ' not less than ' qualify the period . These words put emphasis on the period of ten years and mean period must be clear ten years . It was further held that on a plain reading of clause C (i) of proviso (a) to sub - section (2) of Section 167 Cr . P.C . , there seemed to be no doubt that offences punishable with death , imprisonment for life or imprisonment for a term of ten years or more would fall under clause (i) and offences which are punishable with imprisonment for less than ten years would fall under clause (ii) . Hence , the High Court set aside the order passed D by the Additional Sessions Judge . That order is challenged in this appeal .

Section 167 is a provision which authorises the Magistrate permitting detention of an accused in custody and prescribing the maximum period for which such detention could be ordered pending investigation . We are concerned with the interpretation of proviso (a) of Section 167 (2) which reads E thus :

" 167. Procedure when investigation cannot be completed in twenty four hours.- (2)

Provided that

F (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 G 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 ; "

H (ii) . 39

Further , Section 386 of I.P.C. provides as under :

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" 386. Extortion by putting a person in fear of death or grievous hurt. Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other , shall be punished with imprisonment of either description for a term which may extend to ten years , and shall also be liable to fine . "

B

(Emphasis added)

From the relevant part of the aforesaid sections , it is apparent that pending investigation relating to an offence punishable with imprisonment for a term " not less than 10 years " , the Magistrate is empowered to authorise the detention of the accused in custody for not more than 90 days . For rest of the offences , period prescribed is 60 days . Hence in cases , where offence is punishable with imprisonment for 10 years or more , accused could be detained up to a period of 90 days . In this context , the expression " not less than " would mean imprisonment should be 10 years or more and would cover only those offences for which punishment could be imprisonment for a clear period of 10 years or more . Under Section 386 punishment provided is imprisonment of either description for a term which may extend to 10 years and also fine . That means , imprisonment can be for a clear period of 10 years or less . Hence it could not be said that minimum sentence would be 10 years or more . Further , in context also if we consider clause (i) of proviso (a) to Section 167 (2) , it would be applicable in case where investigation relates to an offence punishable (1) with death ; (2) imprisonment for life ; and (3) imprisonment for a term of not less than ten years . It would not cover the offence for which punishment could be imprisonment for less than 10 years . Under Section 386 of the IPC , imprisonment can vary from minimum to maximum of 10 years and it cannot be said that imprisonment prescribed is not less than 10 years .

In the result , the appeal is dismissed .

S.V.K.

Appeal dismissed .