Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. /2012
(Arising out of S.L.P. (Crl.) No. 7821/2011)

SATYAJIT BALLULBHAI DESAI & ORS. ..Appellants

Versus

STATE OF GUJARAT ..Respondent

J U D G E M E N T

GYAN SUDHA MISRA, J.

1. Leave granted.

2. The appellants herein have assailed the judgment and order of the High Court of Gujarat at Ahmedabad dated 29.09.2011 passed in Special Crl. Application No.810/2011 alongwith Criminal Miscellaneous Application No.11636/2011 whereby the learned single Judge was pleased to dismiss the

applications and thus upheld the order passed by the learned Magistrate permitting police remand of the appellants herein for three days for their interrogation in complaint case No.3/2004 registered in the court of Judicial Magistrate (1st Class) Valod, Gujarat which had been referred to the police for investigation after which the said complaint was registered as Talod M. Case No.1/2004.

3. Before we consider the justification and correctness of the impugned order permitting police remand of the appellants, the relevant factual details are required to be recorded which disclose that a lady named Surjaben widow of Badharsinh @ Babarsinh Chauhan aged approximately 80 years filed a criminal complaint before the Judicial Magistrate 1st Class (JMIC) , Valod in Gujarat being case No.3/2004 against the appellants alleging inter – alia that the husband of the complainant namely Badharsinh @ Babarsinh Ratnaji Chauhan had expired on 10.6.1967 and after his death and death of other brothers of the husband

of the complainant, name of the complainant got entered in the revenue record. However, when the complainant obtained a copy of the revenue record in respect of the aforesaid land, she came to know that one Satyajitbhai Ballubhai Desai forged and created a bogus power of attorney at the instance of the owner of the property in the name of one Jaydipbhai Ranchhodbhai Solanki who is a fictitious person and on the basis of the bogus and fabricated power of attorney, he got executed a registered sale deed on 2.8.2003 in favour of a 3rd party without the knowledge of the complainant. The learned Magistrate sent the matter for investigation to the police which registered it as Talod M.Case No.1/2004.

4. The complainant apart from filing the complaint against the appellants also instituted a Regular Civil Suit No. 15/2004 in the court of learned Civil Judge (Jr. Division), Valod against the appellant No.1 herein for declaration, permanent injunction and cancellation of registered sale deed executed on

2.8.2003. However, on appearance of the appellant No.1 in the civil suit, a compromise came to be arrived at between the appellant No.1 Satyajit Ballubhai Desai and the complainant Surjaben wherein the parties agreed that the criminal complaint filed by the complainant will be withdrawn unconditionally. The learned Civil Judge accepted the said compromise and directed to draw a decree as per the terms of the compromise.

5. In view of the aforesaid compromise, the complainant as also the appellant No.1 appeared before the learned Judicial Magistrate First Class, Valod and prayed to withdraw the criminal complaint. In view of the request made by the parties, the Judicial Magistrate directed the Deputy Superintendent of Police Vyara to return the complaint by February 15, 2005. However, a third person and a stranger to the dispute namely Randhirsing Deepsing Parmar, who according to the appellants had nothing to do with the dispute between the complainant and the appellants herein, felt

aggrieved with the order dated February 15, 2005 passed by the JMFC and filed a Special Criminal Application No. 918/2007 before the High Court of Gujarat challenging the order of JMFC by which the order of investigation in the complaint case had been directed to be returned.

6. The High Court, however, was pleased to allow this application and directed for investigation of the complaint which had been lodged by Surjaben. As a result of this order of the High Court dated November 30, 2007, the criminal complaint case No. 3/2004/Talod M.Case 1/2004 got revived in spite of the fact that a compromise decree had been drawn before the Civil Court in regard to the property for which criminal complaint had been lodged and the complainant had withdrawn the complaint but was revived by order of the High Court. The appellants, therefore, had to approach the High Court seeking anticipatory bail in the criminal complaint which was revived and the same was rejected but subsequently the High Court by order

dated 23rd March, 2011 enlarged the appellants herein on regular bail. However, the Dy. S.P. Vyara only six days thereafter on 29.3.2011, filed an application before the Judicial Magistrate First Class,Valod Court, Valod seeking police remand of the appellants for seven days in connection with M.Case No.1/2004 based on the complaint of the complainant lady – Surjaben which had been registered with the Valod Police Station on the basis of the complaint lodged for offences under Section 406, 420, 467,468, 471, 504, 506 (2) and 114 of the Indian Penal Code and had been withdrawn but was later revived as stated hereinbefore.

7. The prayer made by the Dy. S.P. in the application seeking police remand for three days was partly allowed by the Principal Civil Judge and Judicial Magistrate First Class, Valod permitting police remand of the appellants for three days against which the appellants moved the High Court whereby a stay against the order of police remand was passed in favour of the appellants herein. However, when the

matter was heard finally, the High Court upheld the order passed by the magistrate permitting police remand of the appellants for a period of three days in view of the investigation which was conducted in regard to the case lodged by the complainant-Surjaben, finally giving rise to a case before the police for investigation at the instance of a third party, namely, Randhirsing Deepsing Parmar who was a stranger to the dispute.

8. The appellants feeling aggrieved with the order passed by the High Court and the JMIC permitting police remand of the appellants for a period of three days has challenged this order in this appeal essentially on the ground that the order granting police remand of the appellants are not based on valid or justifiable reason on the part of the investigating agency and hence the same encroaches on the personal liberty of the appellants as the appellants have never tried to scuttle the investigation justifying police remand. It was further submitted that the grant of police remand is an exception and not the rule and therefore the

investigating agency was required to make a strong case for taking police custody of the appellants in order to undertake further investigation and only in that event police custody would be justified. The appellants having fully co-operated with the investigating authority and having appeared for questioning as and when required after the grant of bail, should not have been allowed to be sent for police remand on the pretext of conducting further investigation as prayed for by the investigating authority.

9. Learned counsel for the State however has supported the order of the JMFC and the High Court permitting police remand of the appellants herein in view of revival of investigation by the police.

10. Having considered and deliberated over the issue involved herein in the light of the legal position and existing facts of the case, we find substance in the plea raised on behalf of the appellants that the grant of order for police remand should be an exception and not a rule and for that the investigating agency is required

to make out a strong case and must satisfy the learned Magistrate that without the police custody it would be impossible for the police authorities to undertake further investigation and only in that event police custody would be justified as the authorities specially at the magisterial level would do well to remind themselves that detention in police custody is generally disfavoured by law. The provisions of law lay down that such detention/police remand can be allowed only in special circumstances granted by a magistrate for reasons judicially scrutinised and for such limited purposes only as the necessities of the case may require. The scheme of Section 167 of the Criminal Procedure Code, 1973 is unambiguous in this regard and is intended to protect the accused from the methods which may be adopted by some overzealous and unscrupulous police officers which at times may be at the instance of an interested party also. But it is also equally true that the police custody although is not the be-all and end-all of the whole investigation, yet it is

one of its primary requisites particularly in the investigation of serious and heinous crimes. The Legislature also noticed this and, has therefore, permitted limited police custody.

11. It may, therefore, be noted that Article 22 (2) of the Constitution of India and Section 57 of the Cr.P.C. gives a mandate that every person who is arrested and detained in police custody shall be produced before the nearest magistrate within a period of 24 hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person can be detained in the police custody beyond the said period without the authority of a magistrate. These two provisions clearly manifest the intention of the law in this regard and therefore it is the magistrate who has to judicially scrutinise circumstances and if satisfied can order detention of the accused in police custody. The resultant position is that the initial period of custody of an arrested person till he is produced before a Magistrate is neither

referable to nor in pursuance of an order of remand passed by a Magistrate. In fact, the powers of remand given to a Magistrate becomes exercisable only after an accused is produced before him in terms of sub section (1) of Section 167 Cr.P.C.

12. The Judicial Magistrate thus in the first instance can authorise the detention of the accused in such custody i.e. either police or judicial from time to time but the total period of detention cannot exceed fifteen days in the whole. Within this period of fifteen days there can be more than one order changing the nature of such custody either from police to judicial or vice-versa. If the arrested accused is produced before the Executive Magistrate he is empowered to authorise the detention in such custody either police or judicial only for a week, in the same manner namely by one or more orders but after one week he should transmit him to the nearest Judicial Magistrate along with the records. When the arrested accused is so transmitted the Judicial Magistrate, for the remaining period, that is

to say excluding one week or the number of days of detention ordered by the Executive Magistrate, may authorise further detention within that period of first fifteen days to such custody either police or judicial. After the expiry of first period of fifteen days further remand during the period of investigation can only be in judicial custody. There cannot be any detention in the police custody after the expiry of first fifteen days even in a case where some more offences either serious or otherwise committed by him if the same transaction come at a later stage. But this bar does not apply if the same arrested accused is involved in a different case arising out of a different transaction.

13. As the legal position noted above have an important bearing in discharge of the day to day magisterial powers contemplated under Section 167 (2) of the Cr.P.C., we considered it appropriate to sum up briefly and reiterate the settled legal position that whenever any person is arrested under Section 57 Cr.P.C., he should be produced before the nearest

Magistrate within 24 hours as mentioned therein. Such Magistrate may or may not have jurisdiction to try the case. This position was further enunciated upon in ***Chaganti Narayan Satyanarayan & Ors*** *Vs.* ***State of Andhra Pradesh (1986 AIR 2130)*** wherein it was held that the terms of sub section (1) of Section 167 have to be read in conjunction with Section 57 which interdicts a police officer from keeping in custody a person without warrant for a longer period than 24 hours without production before a Magistrate, subject to the exception that the time taken for performing journey from the place of arrest to the Magistrate's court can be excluded from the prescribed period of 24 hours. Since sub section (1) provides that if the investigation cannot be completed within the period of 24 hours fixed by Section 57 the accused has to be forwarded to the Magistrate alongwith the entries in the Diary, it follows that a police officer is entitled to keep an arrested person in custody for a maximum period of 24 hours for purposes of investigation. In the landmark

judgement of ***C.B.I.*** *Vs.* ***Anupam J. Kulkarni (1992) 3 SCC 141***, it was held that the law does not authorise a police officer to detain an arrested person for more than 24 hours exclusive of the time necessary for the journey from the place of arrest to the magistrate court. Sub-section (1) of Section 167 covers all this procedure and also lays down that the police officer while forwarding the accused to the nearest magistrate should also transmit a copy of the entries in the diary relating to the case. As already stated herein before, the initial period of police custody of an arrested person till he is produced before a Magistrate is neither referable to nor in pursuance of an order of remand passed by a Magistrate. In fact the powers of remand given to a Magistrate become exercisable only after an accused is produced before him in terms of sub section (1) of Section 167. But there cannot be any detention in the police custody after the expiry of first 15 days even in a case where some more offences either

serious or otherwise committed by him if the same transaction comes to light at the later stage.

14. While examining the case of the appellants in the light of the aforesaid legal position, it is apparent from the provisions of the Cr.P.C. that the order permitting police remand cannot be treated lightly or casually and strict adherence to the statutory provision is mandatory. In view of this, the order for police remand of the appellants cannot be sustained for more than one reason. In the first place, the courts below have overlooked that the complainant Surjaben who had lodged the complaint herself chose not to pursue the complaint as she had entered into a compromise with the alleged accused/appellant in the civil suit which she had filed against them and finally withdrew the complaint. The Judicial Magistrate 1st Class by order dated 14.2.2005 therefore had rightly directed the Dy. S.P. Vyara to return the complaint by February 15, 2005. But, thereafter, what weighed with the High Court to set aside this order and entertain an

application at the instance of a third person namely Randhirsing Deepsing Parmar who had nothing to do with the complaint lodged by Surjaben is neither clear nor does it stand to reason, but the appellants having not challenged the said order passed by the High Court permitting revival of the investigation at the instance of Sri Parmar as they had not been made party in the said application, this aspect of the matter cannot be examined herein by us.

15. However, even if the revival of the investigation was rightly or wrongly justified, the High Court as also the Magistrate lost sight of an important factor which is the order of the High Court granting bail to the appellants on 23.3.2011 which clearly had a bearing on the plea seeking police remand. When the appellants were enlarged on bail vide order dated 23.3.2011, it was incumbent upon the magistrate to meticulously examine the facts and circumstance as to whether it was so grave which persuaded the police authorities only after six days to file an application

seeking police remand of the appellants for seven days by filing an application on 29.3.2011 which was allowed by the Principal Civil Judge and Judicial Magistrate 1st Class, Valod by order dated 31.3.2011 as apparently the same is beyond comprehension since no reason had been assigned. It is thus obvious that an extremely casual approach has been adopted by the Judicial Magistrate permitting such police remand overlooking the legal position and yet the High Court has also confirmed it overlooking and ignoring two very important aspects - first one being that the complainant although had withdrawn the complaint, the investigation was revived at the instance of a third party namely Sri Parmar who was wholly unconnected with the case and secondly that the appellants although had been enlarged on bail by the High Court in the case for which investigation had been revived, yet police remand was sought only six days after the grant of bail. In spite of these glaring inconsistencies writ large on the matter, the Judicial Magistrate allowed the request

of the investigating authorities seeking police remand of the appellants without judicially scrutinizing and disclosing a single circumstance as to why it was so essential to seek police remand of the appellants for seven days in the interest of investigation which could not proceed until they were taken into police custody although they had already been enlarged on bail.

16. When the accused appellant in the instant matter had already been enlarged on bail by the High Court, it was all the more essential and judicial duty of the Judicial Magistrate to ensure and ascertain as to why the appellant was required to be taken into police custody/police remand for conducting further investigation specially when revival of the investigation was done not even at the instance of the complainant but by a third person, namely, Sri Parmar whose locus-standi for revival of the investigation is itself not clear. We find sufficient force in the submission advanced on behalf of the appellants that the plea for grant of police remand should be an exception and not

the rule and the investigating agency ought to advance strong reasons seeking police remand for further investigation specially in a matter where the alleged accused had been enlarged on bail and the dispute had practically come to an end when the complainant had arrived at a compromise with the accused persons and subsequently withdrew the complaint; yet the investigation was revived at the instance of a stranger, namely, Randhirsing Deepsing Parmar who admittedly is a third party unconnected with the dispute and is alleged to have demanded money from the appellants by taking undue interest in the matter and getting the investigation revived without the consent of the complainant who herself had entered into a compromise with the appellant and had not sought revival of the complaint.

17. Be that as it may, the fact remains that the learned Magistrate as also the High Court appears to have adopted a casual or a mechanical approach permitting police remand of the appellants without

scrutinizing the reasons ignoring the fact that the appellants had already been enlarged on bail by the High Court and the dispute with the complainant Surjaben who had lodged the complaint had already been settled. Thus, the existing facts and circumstance prima facie were clearly not so grave or extraordinary justifying police remand which could have been overlooked by the High Court even though it was for three days only as it was bound to have ramification not only affecting the liberty of the person who was already granted bail but also the magistrate nullifying the order of the High Court granting bail even if it was for a period of three days only. In fact when the accused had been enlarged on bail by the High Court, it was all the more essential initially for the police authorities and thereafter by the magistrate to disclose and assign convincing reasons why investigation could not proceed further without seeking police remand of the accused and in case police remand was sought on any ground of interference with the investigation in any manner

alleging influencing the witnesses or tampering with the evidence in any manner, straightaway it could have been a case for cancellation of bail of the accused and the magistrate could have directed the police authorities to approach the High Court seeking cancellation or any other appropriate direction. What is sought to be emphasized is that the disclosure of reasons by the magistrate allowing police remand specially in a matter when the accused has been enlarged on bail by the High Court is all the more essential and cannot be permitted in absence of a valid and sufficiently weighty reason seeking such custody as it clearly affects the liberty of an individual who has been enlarged on bail by a court of competent jurisdiction. In fact, the correct course for the investigating authorities seeking police remand of an accused who had been granted bail by the High Court, should have been to approach the High Court as power of the magistrate to grant police remand after the accused has been granted bail by the High Court, would

cease to exist and any direction to that effect can be permitted by the High Court only in view of the fact that the High Court considered it just and appropriate to enlarge the accused on bail and the magistrate cannot be permitted to over-ride the order of bail even if it be for a brief period of few days. This in our view is the only appropriate course considering the strict legal provisions in the Code of Criminal Procedure wherein the Legislature has earmarked 24 hours minus the period of transportation of the accused from police station to the magistrate as the maximum period of police custody during the initial stage and not more than fifteen days by order of the Judicial Magistrate clearly is an indication that police custody cannot be permitted without adherence to strict judicial scrutiny from which it is obvious that it cannot be allowed without assigning clear and cogent reason for enhancement of the period of police remand and the same would all the more be essential when police remand is sought for an accused who has been

enlarged on bail by the High Court. The inference is thus candid and clear that police remand of the accused - more so, who has been enlarged on bail cannot be granted for an undisclosed or a flimsy reason.

18. In view of the aforesaid analysis of the legal position, we are of the considered opinion that the High Court as also the Judicial Magistrate were not legally justified in permitting the police remand of the appellants even for three days in the wake of the existing facts and features of the matter narrated hereinbefore. Consequently, we set aside the impugned order passed by the High Court as also the order dated 31.3.2011 passed by the Principal Civil Judge and Judicial Magistrate First Class, Valod permitting police remand of the appellants and thus allow this appeal.

.....J.
(G.S. Singhvi)

.....J.
(Gyan Sudha Misra)

New Delhi;
July 20, 2012