

HON'BLE THE CHIEF JUSTICE

I have come across two divergent orders of learned single Judges of the Madurai Bench in relation to a plea of default bail in the light of provisions of Sec.167(2) CrI.P.C. The divergence is on account of the orders passed by the Apex Court on 23rd of March, 2020 in a Suo Motu Writ Petition (Civil) No.3 of 2020 followed by another order in the same proceedings on 6th of May, 2020 relating to the extension of the period of limitation.

The first order is passed in CrI.O.P. (MD) No.5291 of 2020, dated 8th May, 2020 in Settu v. The State, rep. by the Inspector of Police, Vallam Police Station, Thanjavur District. The accused/petitioner was taken into custody for having committed an offence of chain-snatching and a case was accordingly registered as Crime No.10 of 2020 under Sec.392 and Sec.397 of I.P.C.

The accused had earlier filed bail application which had been rejected by the very same Hon'ble Judge on the

ground of involvement of the accused in three previous cases of the same nature. The bail application gave rise to the order dated 8th May, 2020 was filed solely on the ground that since the police report was not filed within the mandatory time-limit, the accused/petitioner was entitled to bail.

The Prosecution took the plea that in view of the directions of the Apex Court on 23rd March, 2020 referred to above, which were in exercise of powers under Art.142 read with Art.141 of the Constitution of India, the delay in filing the Police Report has to be considered in the light of the above orders of the Supreme Court.

The learned single Judge held that the Supreme Court order did not touch upon any specific extension of time for completing investigation and once there was an expiry of the mandatory period as prescribed under Sec.167(2) of Cr.P.C. the accused was entitled for default bail. The learned Judge also referred to the Fundamental Right guaranteed under

Art.21 of the Constitution of India and any further detention was found to be in violation of the said right. Accordingly bail was granted by the learned single Judge.

In yet another case in CrI.O.P. (MD) No.5296 of 2020 (S. Kasi v. State through The Inspector of Police, Samanallur Police Station) where the offence was of idol theft and was based on an alleged recovery, another learned single Judge, by order dated 11th May, 2020, refused grant of bail that was prayed for after noting the order of the learned single Judge referred to hereinabove dated 8th May, 2020. The learned single Judge in this case came to the conclusion by inference that the period of limitation for investigation under Sec.167 Cr.P.C. would also stand extended keeping in view the extraordinary situation of the Covid Virus-19 spread which has led to a general order of extension by the Apex Court. Paragraphs 14 to 18 of the order dated 11th May, 2020 give reasons for not accepting the line of reasoning as adopted by the learned single Judge in the case of Settu (supra).

There is another order of a learned single Judge of the Uttarakhand High Court in the case of Vivek Sharma v. State of Uttarakhand, First Bail Application No.511 of 2020, decided on 12-05-2020, which is similar to the order passed in the case of Settu (supra).

The applicability of the order passed by the Apex Court has to be considered in the light of the fact that Sec.167 Cr.P.C. appears to only set out the outer limit of the detaining power of the Magistrate without charge and thus is an embargo on the period of detention of an accused. The investigation can still continue unhindered. Apart from this there is no express provision so as to condone delay in the Cr.P.C. except the provisions of Sec.468 to Sec.473 thereof.

Thus there are two conflicting opinions arising out of the orders referred to above and in my considered view, since the same is likely to have a direct impact on bail orders to be passed by the Subordinate Judiciary or even by this Court, the matter deserves to be resolved by an authoritative pronouncement.

Accordingly, in exercise of the powers conferred under Order I Rule 6 of the Madras High Court Appellate Side Rules the conflict between the above said two orders raising a pure question of law based on the interpretation of the order of the Supreme Court dated 23rd March, 2020 deserves to be clarified by an authoritative pronouncement. The reference to be answered that arises out of the said conflict of opinions is:

“Whether the orders passed by the Apex Court on 23rd March, 2020 and 6th May, 2020 in Suo Motu Writ Petition (Civil) No.3 of 2020 also apply to the proceedings under Sec.167(2) Cr.P.C. and consequently which of the two opinions expressed by the learned single Judges in the case of Settu (supra) and Kasi (supra) lays down the law correctly?”

Let this question be answered by a Division Bench presided over by Hon’ble P.N. Prakash at Madurai Bench itself.

The matter may be placed before the Hon'ble Administrative Judge of the Madurai Bench for listing of the matter at the earliest with notice to the learned Public Prosecutor and to the learned counsel for the concerned parties.

Sd/-
(A.P. SAHI, C.J.)
12-05-2020

To

The Registrar (Judicial)
Madras High Court.