

S. K. Nair v. The State of Punjab (S. C. Mital, J.)

N.K.S.

Before S. C. Mital, J.

S. K. NAIR,—Petitioner.

versus

THE STATE OF PUNJAB,—Respondent.

Criminal Misc. No. 6238-M of 1983.

December 15, 1983.

Code of Criminal Procedure (II of 1974)—Sections 57 and 167(2)—Accused arrested by Air Force authorities and kept under detention—Such accused subsequently handed over to the police—Accused applying for bail and relying on section 167(2) proviso—Computation of the period of ninety days mentioned in the proviso—Such period—Whether includes the detention under the Air Force authorities.

Held, that with regard to the nature of custody envisaged by section 167 of the Code of Criminal Procedure, 1973 its sub-section (1) is amply clear which lays down that whenever any person is arrested and detained in custody and it appears that investigation

cannot be completed within the period of 24 hours fixed by section 57 and there are grounds for believing that the accusation is well-founded, the police officer making the investigation shall produce the said person before the nearest Judicial Magistrate. From a combined reading of sections 167 and 57 of the Code, it is manifest that section 167 envisages arrest and detention of any person in police custody, preceding his production before a Judicial Magistrate. Besides, proviso (a) to section 167 of the Code speaks of the detention of an accused person by the authority of a Magistrate and, therefore, the period of the Air Force custody could not be brought within the ambit of the proviso to section 167(2) of the Code.

(Paras 2 and 3)

Application under Section 167/439 Cr. P.C. praying that the petitioner may be ordered to be released on bail during the pendency of the trial.

F.I.R. No. 137, dated 13th August, 1982, Police Station Nehianwala, District Bhatinda case under Sections 302/307 IPC.

Ujagar Singh, Sr. Advocate, H. P. S. Gill, Advocate with him,
for the Petitioner.

H. S. Bajwa, Advocate, *for A.G. (Punjab).*

JUDGMENT

S. C. Mital, J.

(1) The salient facts of this case are that against Havildar S. K. Nair, F.I.R. No. 173 was registered under sections 302 and 307, Indian Penal Code, at Police Station, Nehianwala, District Bhatinda, on 13th August, 1982. The offences were allegedly committed in the barracks. The same day he was arrested by the Air Force authorities and kept under detention thereafter. He was made over to the police on 28th October, 1983. Under the authority of the Magistrate he has been in custody ever since, but the chalan has not been put in so far. Proviso (a) (i) to section 167 (2) of the Code of Criminal Procedure lays down that no Magistrate shall authorise the detention of an accused person in custody for a total period of 90 days. Relying thereon, this petition for release on bail has been filed.

(2) Now, the question for determination is, in computing the period under proviso (a) to section 167(2) of the Code, whether the period of the Air Force custody is to be included ?

Employees State Insurance Corporation, Chandigarh and another
v. The D. M. Oil & General Industries, Khanna (G. C. Mital, J.)

With regard to the nature of custody envisaged by section 167, its sub-section (1) is amply clear, which lays down that whenever any person is arrested and detained in custody, and it appears that investigation cannot be completed within the period of twenty-four hours fixed by section 57 and there are grounds for believing that the accusation is well-founded, the police officer making the investigation shall produce the said person before the nearest Judicial Magistrate. Here, the terms of section 57 may be quoted with advantage :—

“No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is essential, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.”

From the combined reading of the above-said provisions of the Code, it is manifest that section 167 envisages arrest and detention of any person in police custody, preceding his production before a Judicial Magistrate. Besides, proviso (a) to section 167 of the Code speaks of the detention of an accused-person by the authority of a Magistrate.

(3) For the foregoing reasons, learned counsel for Havildar S. K. Nair was unable to show how the period of the Air Force custody could be brought within the ambit of the proviso (a)(i) to section 167(2) of the Code. That being so, this petition fails and the same is hereby dismissed.

N. K. S.