N. K. S.

Before S. S. Sandhawalia, C.J. and D. S. Tewatia, J.

HARSIMRAN SINGH,—*Petitioner.*

versus

THE STATE OF PUNJAB,—*Respondent.*

Criminal Revision No. 140 *of* 1982.

November 25, 1983.

Code of Criminal Procedure (II of 1974)—Section 167(2)—Accused arrested and remanded to police custody for investigation of a case—Series of other cases registered against the accused requiring investigation—Limit of police custody not exceeding 15 days in the whole—Whether applicable only to a single case—Such limit—Whether equally attracted to the different cases against the same accused.

Held, that the limit of police custody not exceeding 15 days in the whole, as prescribed by section 167(2) of the Code of Criminal Procedure, 1973, is applicable only to a single case and is not attracted to a series of different cases requiring the investigation against the same accused.

(Para 17)

1. State *vs.* Sontakh Singh, A.I.R. 1956 Madhya Bharat 130.
2. Dhaman Hiranand *vs.* Emper, A.I.R. 1937 Sind 251.
3. Tirlochan Singh *vs.* The State (Delhi Administration), 1982 C.L.R. 57.

DISSENTED FROM:

Case referred by Hon'ble Mr. Justice D. S. Tewatia on February 12, 1982, *to a larger bench for decision of an important question of law involved in the case. The larger bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia and Hon'ble Mr. Justice D. S. Tewatia, finally decided the case on 25th November,* 1983.

Petition under Section 401 *of Cr. P. C. for the revision of the order of the Court of J.M.I.C. Amritsar, dated 29th January,* 1982 *remanded the accused to police custody till 4th February,* 1982 *and to be produced in court on that day.*

Charge : *Under Section* 124-*A and* 153-*A of I.P.C.*

G. S. Grewal, Senior Advocate, with H. S. Nagra and H. S. Bhullar, Advocates, *for the Petitioner.*

Anand Swarup, Senior Advocate, with Sanjiv Pabbi, Advocate, *for the Respondents.*

JUDGMENT

S. S. Sandhawalia, C.J.

(1) Is the limit of police custody, not exceeding fifteen days in the whole, as prescribed by Section 167(2) of the Code of Criminal Procedure, 1973, applicable only to a single case or is equally attracted to a series of different cases requiring investigation against the same accused—is the significant question necessitating this reference to the Division Bench. Equally at issue is a veiled doubt raised regarding the correctness of the earlier Single Bench view on this point in *Harminder Singh Sandhu* v. *The State of Punjab* (1).

2. Harsimran Singh petitioner was admittedly arrested by the police on January 12, 1982 and was remanded to police custody for the investigation of a case against him by the Judicial Magistrate 1st Class, Jullundur. He was duly interrogated by Shri Kehar Singh,

(1) Cr. Mis 5260-M/81 decided on 30th November, 1981.

Deputy Superintendent of Police, in the said case and it would appear that after the expiry of the period of police remand, he was placed under judicial custody. However, he was later formally re-arrested in another case registered,—*vide* First Information Report No. 360 of 1982, at Police Station 'Kotwali', Amritsar. He was accordingly produced before the Judicial Magistrate 1st Class, Amritsar for seeking a further police remand for interrogation and investigation in the second case aforesaid. On behalf of the petitioner, the grant of the police remand was stoutly opposed on the ground that he had already been fully interrogated by Shri Kehar Singh, Deputy Superintendent of Police and had remained in police custody for nearly fifteen days in the whole and, therefore, no further police remand was permissible under Section 167(2) of the Code of Criminal Procedure, 1973 (hereinafter called 'the Code'). This plea of the petitioner was, however, rejected by the learned Magistrate on the ground that he had been re-arrested in a second case and was being produced before him for the first time for interrogation of offences under Section 13 of the Unlawful Activities Prevention Act, 1967 and under Sections 124-A and 153-A of the Indian Penal Code. Consequently, he remanded the petitioner to further police custody till February 4, 1982.

3. The present Criminal Revision originally came up before my learned Brother Tewatia, J. sitting singly. Before him, the contention was assiduously pressed that the petitioner could not be remanded to police custody for a period longer than fifteen days even though he may be required to be interrogated by the police in a series of cases. Noticing the significance of the question and the relative paucity of precedent on the point, the case has been referred for an authoritative decision by the Division Bench.

4. Since the issue herein inevitably revolves around Section 167 of the Code, it becomes necessary to view it briefly in the context of its legislative history and in particular the changes wrought in the old Code by the Code of Criminal Procedure, 1973. It is first apt to quote the relevant parts of this somewhat exhaustive Section, for facility of reference :—

> "*Procedure when investigation cannot be completed in twenty-four hours.*
>
> (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed

within the period of twenty-four hours fixed by Section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(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, for a term not exceeding fifteen days in the whole; and if he* 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 a Magistrate having such jurisdiction :—

Provided that —

xx xx xx

x x x "

It is necessary to recall at the out-set that the power to remand into judicial custody in the old Code was additionally vested under Section 344 thereof (the corresponding Section of the Code is 309). However, the actual working of Sections 167 and 344 of the old Code, in the context of remands to police and judicial custody had thrown up certain unsatisfactory features. These were highlighted in the exhaustive 41st Report of the Law Commission with regard to the amendment of the old Code of Criminal Procedure. These were more concisely noticed in the Objects and Reasons to the Bill in the following words :—

".....

At present, section 167 enables the Magistrate to authorise detention of an accused in custody for a term not exceeding 15 days on the whole. There is a complaint that this provision is honoured more in the breach than in the observance and that the police investigation takes a much longer period in practice. A practice of doubtful legality

has grown whereby the police file a "preliminary" or incomplete chargesheet and move the court for remand under Section 344 which is not intended to apply to the stage of investigation. While in some cases the delay in investigation may be due to the fault of the police, it cannot be deemed that there may be genuine cases where it may not be practicable to complete the investigation in 15 days. The Commission recommended that the period should be extended to 60 days, but if this is done 60 days would become the rule and there is no guarantee that the illegal practice referred to above would not continue. It is considered that the most satisfactory solution of the problem would be to confer on the Magistrate the power to extend the period of extension beyond 15 days, whenever he is satisfied that adequate grounds exist for granting such extension....."

It was in the light of the aforesaid and other evils that remedies were sought to be provided by making amendments in Section 167 of the Code as also in Section 309 which corresponds to Section 344 of the old Code. The intention and the resultant effect of these amendments is to streamline the law on the matter by confining Section 309 of the Code to the post-investigative stage alone and for providing for judicial or police remand during investigation in a consolidated form in Section 167 alone.

The Law Commission had originally recommended a maximum of 60 days of custody if the investigation of the case was not completed within that period, but the legislature adopted a middle course of providing a maximum of 90 days in cases punishable with death, imprisonment for life or imprisonment for ten years and above and for 60 days for other offences. The net result now is that maximum confinement even in judicial custody is now limited from 60 to 90 days, as the case may be, during the course of investigation.

5. However, the other limit for police custody prescribed by Section 167(2) of the Code continues to be for a term not exceeding 15 days in the whole, for investigation. The core question, therefore is—whether this limit of 15 days of police custody is for a single case or equally so for two or more cases as well.

6. In construing Section 167, one cannot at the threshold be oblivious of the larger approach to and the underlying purpose of

the provisions of the Code. Perhaps this can be better eptiomised in the classic words of the Privy Council in *Emperor* v. *Khwaja Nazir Ahmed* (2), that under the Code there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime and that the functions of the judiciary and the police are complementary and not over-lapping in this regard. On larger principle also, it seems apt that whilst the accused person must be guaranteed a fair investigation and a judicial trial thereafter, yet, equally the police, which has a statutory duty to investigate, is not hampered or obstructed in the delicate task of unravelling crime at the threshold stage of the investigation. Therefore, the interpretative approach to these provisions is to strike a true balance in the larg social interest between a competent and incisive investigation into erious crimes by the police, on the one hand and the guaranteed right of the citizen to personal liberty under a reasonable and fair procedure established by law, on the other.

7. Yet, at the out-set, we must regretfully notice an argument eloquently advanced by Mr. G. S. Grewal, regarding not the mere possibility but the actual misuse of Section 167(2), if the limit of police custody of 15 days is made applicable to a single case only. Pinning himself on Article 21 of the Constitution, he had contended that in a country like ours, where most of the populace lived below the poverty line, the long arm of the police is laid somewhat harshly on accused persons by procuring innumerable remands in police custody either on trumped up charges or by splitting the crime by the registration of a large number of cases, it was alleged that by this somewhat macabre methodology, an accused person is arrested in one case and produced before a Magistrate for police remand under Section 167(2) upto the maximum limit of 15 days for its investigation. Thereafter, on the eve of the said period, the accused is shown to be re-arrested in another case and produced afresh before any Magistrate or even before the same Magistrate and a fresh police remand for 15 days is sought and is not unusually secured. The process, according to counsel, is repeated by registration of a third case and is capable of further extension converting it into what the learned counsel colourfully called as "chain custody", which can continue to be extended by adding yet another link. He further pinpointed that often enough, the accused persons are deliberately produced before Magistrates who do not have jurisdiction to try the

(2) AIR 1945 Privy Council 18.

offences and police custody obtained from them for their production before Magistrates having jurisdiction. On these premises, Mr. Grewal submitted with some vehemence that unless by judicial construction the limit prescribed by Section 167(2) is confined to 15 days in all for even a series of cases, such misuse by the police making inroads into personal liberty of the citizen cannot be prevented under the law. In sum, the argument is that police remand even in a series of cases, against the same accused, once taken into custody, should not exceed the period of 15 days of custody and any remaining part of the investigation should only be done whilst he is in judicial custody.

8. We are not unmindful of even designed misuses of procedural provisions by investigating agencies sometimes, and cannot but record that the fears eloquently voiced by the learned counsel for the petitioners, are not totally unfounded. However, whilst deprecating in no uncertain terms such misuse and abuse of the fair procedure of law, we must equally avoid the pitfall that a construction of a statutory provision is not to be distorted merely on the ground of its likely misuse. One has yet to come across a power or provision which is immune against misuse by the over-ingenuous. The remedy, therefor, however, lies elsewhere and we have no doubt that the authorities, that be, would take pointed notice thereof. We cannot, however, interpret a statutory provision on the assumption that it would necessarily be abused or by a process of constrained construction attempt to insulate it against all such possibilities. It is unnecessary to multiply authorities on the point that the argument of fear that a provision is likely to be abused has no meaningful place in judicial interpretation, because of the succinct observations of Mr. Justice Wanchoo in *L. C. Golak Nath and others* v. *State of Punjab and another* (3), as under :—

> ".....It is well settled so far as ordinary laws are concerned that mere possibility of abuse will not induce to hold that the power is not there, if the law is valid and its terms clearly confer the power....."

In view of the above, we must proceed to construe Section 167 of the Code fearlessly and objectively to arrive at its true meaning, whilst remaining second to none in condemning unreservedly any misuse or abuse of its provisions by the investigating agency.

(3) AIR 1967 S.C. 1643.

9. In this context, however, we must observe that some ancillary remedy against such misuse of abuse is also provided by the sound exercise of its discretion by the magistracy itself. It had to be fairly conceded before us that remand to judicial or police custody has necessarily to be sanctioned by the orders of a Magistrate. The law here has provided safeguards by laying down that an arrested person must be produced before a Magistrate within 24 hours and thereafter can be detained only under a magisterial mandate and further as regards one case, police custody is limited to 15 days, and at least during the pendency of investigation, even in the most serious offences, even judicial custody cannot extend beyond 90 days in all. It appears that the difficulties and deficiencies arise really in the application of the law. Consequently, we would content ourselves by a mandate that discretion for the grant of police or judicial custody must be exercised fairly and vigilantly and not mechanically.

10. Section 167 of the Code opens with the words "whenever any person is arrested and detained in custody". Pinning himself literally and isolatedly on these words, Mr. Grewal had advanced the somewhat doctrinaire contention that the first postulate of an arrest by the police is that the accused or a citizen was a free man prior thereto. It was sought to be submitted that the arrest of a person already in custody is a contradiction in terms because such arrest is an antonym of liberty and a person already in jail cannot be re-arrested over again. On this premise, it was contended that Section 167 of the Code can have no application whatsoever to a person already in custody during the investigation of an earlier offence and, therefore, no issue of a fresh remand for police custody in such a case could arise at all under sub-section (2) of Section 167 of the Code. Reliance for this argument is on the somewhat cryptic observations in *Dhaman Hiranand* v. *Emperor*, (4); *Gurbaksh Singh Sibia* v. *State of Punjab* (5), and, *Gurbaksh Singh Sibbia etc.* v. *The State of Punjab* (6).

10-A. The contention aforesaid would bring some credit to the ingenuity of the learned counsel but is nevertheless, fallacious. We find ourselves unable to subscribe to this patently doctrinaire approach. We see no inflexible bar against a person in custody with

(4) AIR 1937 Sind 251.
(5) AIR 1978 Pb. & Hy. 11.
(6) AIR 1980 S.C. 1632.

regard to the investigation of a particular offence being either re-arrested for the purpose of the investigation of an altogether different offence. To put it in other words, there is no insurmountable hurdle in the conversion of judicial custody into police custody by an order of the Magistrate under Section 167(2) of the Code for investigating another offence. Therefore, a re-arrest or second arrest in a different case is not necessarily beyond the ken of law. Reference in this connection may instructively be made to Sections 41, 44, 48 and 57 of the Code, which either permit or enjoin arrest of an accused person *qua* a specific offence. Arrest and detention in custody in the context of Section 167 of the Code, has to be truly viewed with regard to the investigation of the specific case in which the accused person has been taken into custody. To visualise it as an abstraction in which the re-arrest of a person in custody for another offence would become metaphysically impossible, does not commend itself to us. Therefore, the utterly literal emphasis on the opening words of Section 167 of the Code, is uncalled for. Both on principle and precedent, the tilt now is unreservedly towards a contextual or a purposeful construction as against an overly literal one. Therefore, as we would presently show, if the result of such a literal construction would lead to anomalous and glaringly mischievous results, then the same must necessarily be avoided in favour of the view which advances the purpose of the statute, rather than frustrating it.

11. Now the interpretation canvassed by Mr. Grewal, the learned counsel for the petitioner, seems to us as leading to patently anomalous results. If this stand were accepted, then a person who has been once taken into custody under the Arms Act for the possession of an illicit arm, cannot be later sent to police custody for investigation of a murder charge by the use of the said arm. As in the present case, where the petitioner has as many as four specific cases registered against him on different dates for different offences, if he were to be once arrested in one of them, then police custody can never be secured for the investigation of the remaining three so long as he remains in judicial custody. Another curious result of the argument of the learned counsel for the petitioner would be (which he fairly conceded), that if such a person were to be released on bail, there would then be no bar for his re-arrest by the police, once he is a free man, for the second offence. We see no magic in first releasing the man and giving him his freedom and then technically arrest him immediately for the second offence. It seems to be both convenient and in advancement of the purposes of the law that

a formal re-arrest for the second offence may be shown for the purpose of inviting judicial discretion for the grant or otherwise of police custody. Similarly judicial custody may be changed to police custody under Section 167(2) of the Code, if found equitable and necessary by a Magistrate and sanctified by his order. The construction advocated on behalf of the petitioner would inevitably lead to the result that subsequent cases can never be adequately investigated. As we would presently show, the law requires the custody of an accused person with the investigating agency for probing into serious offences. With the greatest respect, we are unable to agree with the observations in *Dhaman Hiranand's case* (supra) for the detailed reasons which follow. Nor do we find anything in *Gurbaksh Singh Sibbia's case* (supra) which meaningfully advances the stance taken on behalf of the writ petitioner.

12. Now for counter-acting the argument that the refusal of police custody altogether for investigation of a second case, would frustrate the probe, the basic stand taken by Mr. Grewal was that police custody is not at all relevant or necessary for the investigation of an offence. He sought to argue that it is possible to conduct interrogation and investigation in jail custody itself and if it becomes necessary that the accused persons be taken outside the jail, the same must be done whilst he remains in the custody of a jail official. Basic reliance for this stand was placed on *State* v. *Santokh Singh* (7), and observations in *Gurbaksh Singh Sibbia* v. *State of Punjab* (8).

13. We regret our inability to agree with the learned counsel for the petitioner that custody by the police is a matter wholly irrelevant to the investigation of an offence. Whilst it is true that police custody is not the be-all and end-all of investigation, yet it seems undeniable that it is one of its requisites and this is the more so in the investigation of serious and heinous crimes. Reference in this connection may be made to Section 157 of the Code, which virtually enjoins the investigating officer after the registration of the crime to take immediate measures for the discovery and arrest of the offender. Section 167 of the Code then sanctifies police custody by magisterial mandate. This aspect was highlighted by the Full Bench in *Gurbaksh Singh Sibbia's case* (supra), after referring to the

(7) AIR 1956 Madhya Bharat 130.
(8) AIR 1980 S.C. 1632.

relevant provisions of Section 167 of the Code, as under :—

> "Now reading the relevant provisions together, it is plain that in a serious cognizable offence, the Code authorises the arrest and detention in custody of the offender for the first twenty-four hours without the interposition of the Magistracy and further police custody upto a period of 15 days with the authority of the Magistrate. It is clear, therefore, that the arrest and interrogation in police custody for cognizable crime is not only visualised but expressly authorised by the Code. On behalf of the respondent-State, indeed the stand is that this is not merely a right of the police but a duty enjoined upon them and is the life blood of any effective investigation into a serious crime. ....."

Now, apart from the above, Mr. Anand Swaroop, learned counsel for the respondent-State had pointed out that mere interrogation in custody of an accused person is not the sum total of investigation. Our attention was drawn to rule 25.56 in Volume-III of the Punjab Police Rules, 1934, which expressly, in this context, visualises the following matters :—

> " * * * * *
>
> (2) No application for remand to poilce custody shall be made on the ground that an accused person is likely to confess. Grounds for such an application should be of the following nature :—
>
> (a) That it is necessary to take the accused to a distance that he may be shown to persons likely to identify him as having been seen at or near the scene of the offence.
>
> (b) That it is necessary to have his footprints compared with those found on or near the scene of offence.
>
> (c) That the accused has offered to point out stolen property or weapons or other articles connected with the case.
>
> (d) Any other good and sufficient special reason."
>
> * * * * *

The rule obviously is not exhaustive but only illustrative. However, it seems plain that even the aforesaid matters cannot be complied

with if the accused person is to be retained in judicial or jail custody alone. The assumption that instead of accused being put in police custody, the investigating agency should be in a way placed in jail for conducting the investigation within the precincts thereof, does not appear to us as either practicable or tenable. We are gravely sceptical (and indeed no provision to this effect was brought to our notice) that the Jail Rules either envisage or permit a police investigation being conducted within its premises against a host of accused persons lodged therein. As at present advised, the law on this subject does not seem to envisage any exclusive police investigation within the jail precincts itself, and has a purpose of its own to serve as regards convicted persons and also as regards the undertrials. We must, therefore reject the contention raised on behalf of the petitioner that investigation into a series of offences must go on and be conducted in jail premises alone or only when the accused is in the custody of jail officials, once the period of 15 days has been exhausted with regard to one single case.

14. With the greatest deference, we are unable to endorse the somewhat wide ranging observations in *State* v. *Santokh Singh* (Supra). It is true that the Code does not inflexibly mandate police custody for investigation. However, it is equally true that Section 167 of the Code not only visualises but sanctifies police custody upto a period of 15 days in a single case by an order of a Magistrate. What the Code sanctifies—it obviously permits, with the qualification that the right to custody of the accused person by the investigating agency is subject to the judicial discretion of the Magistrate. With the greatest humility, we are unable to agree with the view expressed in *Santokh Singh's case* (supra) that the Code in any way inhibits the police custody of an accused person for purposes of investigation or that the jail custody cannot be converted to police custody by an order of the Magistrate under Section 167 of the Code.

15. We are equally unable to agree with the somewhat categoric observation of the judicial Commissioner in *Dhaman Hiranand* v. *Emperor* (supra), that once the powers conferred by the first part of Section 167(2) of the Code have been exercised by a Magistrate, they become exhausted and cannot be revived, and further, that an accused cannot be in magisterial custody in one case and police custody in another. These were pointedly considered and dissented from by the Division Bench presided over by Wanchoo, C.J. (as his Lordships then was), in *Amar Singh Madho Singh and others* v. *State*

of *Rajasthan* (9). In the said case it was further observed succinctly as under :—

> "Supposing a person is accused of one offence and investigation of that case is complete and the challan has been submitted to Court he will, in these circumstances, be sent to jail or to judicial custody to await his trial. Supposing later evidence is discovered of his complicity in another case, and the police in order to complete the investigation of that case requires to question the accused, or the handing over of the accused to police custody would aid the investigation in some ways; in such a case we fail to understand why it may not be open to a Magistrate under Section 167(2) to take the accused out of jail or judicial custody and hand him over to the police for the maximum period of 15 days provided in that section. Of course, before the Magistrate does so, he will have to satisfy himself that a good case is made out for detaining the accused in police custody in connection with the investigation of the other case.".

We are in respectful agreement with the aforesaid enunciation.

16. Again with deep deference, we are unable to endorse some observations of wide amplitude made by the learned Single Judge of Delhi in *Trilochan Singh* v. *The State* (*Delhi Administration*) (10). This, in essence, has referred to and followed the Madhya Bharat view in *Santokh Singh's case* (supra). On facts it was a case where the accused was earlier arrested in the same case and indeed is not directly relevant in the context of the registration of a second case for a distinct offence. However, blanket observations have been made therein with regard to the surrendering of an accused person to custody, in court. With humility, we are unable to see how such a procedure is in any way contrary to law or lacking in propriety. Reliance for the view taken in *Trilochan Singh's case* (supra) has been placed on *Kedar* v. *State* (11), but on a close perusal of the judgment, we do not find anything therein taking the view that surrender of an accused person in court is in any way illegal. If an accused person chooses to give himself up before the law, we are

(9) AIR 1954 Raj. 290.
(10) 1982 C.L.R. 57.
(11) 1977 Crl. J. 1230.

unable to see a better forum than that of the court of a magistrate. With the greatest respect, this appears to us as a somewhat salutary practice. Criminal Judicial process is part and parcel of the trial procedure and if an accused person chooses willingly surrender himself in the court custody, we cannot view the same with any disfavour or to compel him to seek the tender mercies of police custody directly. With great respect, we are compelled to record a dissent from *Trilochan Singh's case* (supra).

17. To finally conclude, it is held, in answer to the question posed at the very out-set that the limit of police custody not exceeding 15 days in the whole, as prescribed by Section 167(2) of the Code, is applicable only to a single case and is not attracted to a series of different cases requiring the investigation against the same accused. It would appear that though the matter was not exhaustively canvassed in *Harminder Singh Sandhu* v. *The State of Punjab* (supra), the conclusion arrived therein is correct and the said judgment is hereby affirmed.

18. Applying the aforesaid findings, it is common ground that the remand to police custody, which is under challenge, was granted in a different case. The merits thereof could not be seriously assailed before us. The revision is consequently without merit and is hereby dismissed.

D. S. Tewatia, J.—I agree.

N. K. S.