

said complaint. Jalandhar Court has no jurisdiction to try the respondents for these offences. The journey of both these respondents terminated at Moradabad.

(4) In my considered view, both the Courts below have failed to consider the provisions of section 183 of the Code of Criminal Procedure in right perspective. Section 183 reads as under :—

“183. OFFENCE COMMITTED ON JOURNEY OR VOYAGE.

When an offence is committed whilst the person by or against whom, or the thing in respect of which, the offence is committed is in the course of performing a journey or voyage, the offence may be inquired into or tried by a Court through or into whose local jurisdiction that person or thing passed in the course of that journey or voyage.”

(5) Thus, it is obvious that in journey if an offence is committed against any person, then that offence can be enquired into or tried by a Court through or into whose local jurisdiction that person (against whom the offence is committed) passed in the course of that journey. Admittedly, the complainant was travelling from Shahjahanpur to Jalandhar. His journey terminated at Jalandhar. Hence I find that under section 183 of the Code of Criminal Procedure, Chief Judicial Magistrate, Jalandhar, has territorial jurisdiction to enquire into complaint Annexure P-1.

(6) In view thereof, the impugned orders are set aside. The Chief Judicial Magistrate, Jalandhar, is directed to enquire into the complainant's complaint in accordance with law. The complainant is directed to appear before the Chief Judicial Magistrate, Jalandhar, on August 11, 1995.

J.S.T.

Before Hon'ble Dr. Sarojnei Saksena, J.

DARA SINGH @ RAJA,—Petitioner.

versus

THE STATE OF HARYANA.—Respondent.

Crl. M. No. 9985/M of 1995

23rd August, 1995

Code of Criminal Procedure, 1973—S. 167 (2)—Whether accused can be allowed bail before the challan is presented—Held default in

completion of investigation and filing of challan within prescribed time allows accused to avail right of bail—Only from time of default till challan is presented.

Held, that in Sanjay Dutt v. The State 1995 CrL.J. 477, the Apex Court has held "The indefeasible right" of the accused to be released on bail in accordance with Section 20(4) (bb) of TADA, 1987 read with Section 167(2) Cr.P.C. in default of completion of the investigation and filing of the challan within the time allowed is a right which enures to, and is enforceable by the accused only from the time of default till the filing of the challan and it does not survive or remain enforceable on the challan being filed."

(Para 1)

R. M. Singh, Advocate, for the Petitioner.

Mrs. Neena Madan, Asstt. Advocate-General, Haryana, for the Respondent.

ORDER

Dr. Sarojnei Saksena, J.

(1) The only point for consideration in this petition is whether even after the presentation of challan on July 20, 1995, the petitioner can claim that he be released on bail under Section 167(2) Cr.P.C. No doubt, the bail petition was filed on June 1, 1995, but before this petition could be decided on July 20, 1995, challan is presented against the accused. In *Sanjay Dutt v. The State* (1), the Apex Court has held "The indefeasible right" of the accused to be released on bail in accordance with Section 20(4) (bb) of TADA, 1987 read with Section 167 (2) Cr.P.C. in default of completion of the investigation and filing of the challan within the time allowed is a right which enures to, and is enforceable by the accused only from the time of default till the filing of the challan and it does not survive or remain enforceable on the challan being filed." The facts of *Raghubir Singh and others v. State of Bihar* (2), are slightly distinguishable because in that case the accused was already enlarged on bail and thereafter charge-sheet was filed. The point for consideration was whether that order stands defeated by filing of the charge-sheet. The answer was given in the negative. This judgment was relied on by a Single Bench of this Court in *Gurmit Kaur v. State of Punjab* (3). The ratio of *Rajnikant's case* (4), to the

(1) 1995 CrL.J. 477.

(2) A.I.R. 1987 S.C. 149.

(3) 1988 (1) Recent C.R. 258.

(4) 1990 S.C. 71.

extent of law elucidated in *Aslam Babalal Desai v. State of Maharashtra* (5), was overruled.

(2) In view of the judgment of the Apex Court in *Sanjay Dutt's* case, since in this case challan is filed on July 20, 1995 before this bail petition could be decided, the petitioner cannot claim that he is released on bail under Section 167(2) Cr.P.C. His that right is not enforceable now. Even otherwise, the petitioner's counsel could not satisfy this Court as to how under Section 37 of the NDPS Act he is entitled to bail. Accordingly, the petition is hereby dismissed.

J.S.T.

Before Hon'ble Jawahar Lal Gupta, J.

GURJIT SINGH,—Appellant.

versus

BANT SINGH,—Respondent.

R.S.A. No. 2041 of 1995.

6th September, 1995.

Code of Civil Procedure 1908—Forms 47 & 48, 1st Schedule—Plaint filed for specific performance not in conformity with Forms 47 & 48 of First Schedule of the Code—Suit cannot be dismissed on such ground as long as plaintiff avers that he was ready and willing to perform his part of the contract.

Held, that Forms 47 and 48 in the 1st Schedule to the Code of Civil Procedure indicate the broad outline of a suit for specific performance. However, it is not necessary that the forms have to be literally reproduced. A verbatim repetition is not the mandate of law. The forms do not contain a mathematical formula which may have to be repeated word for word. The court has to take into consideration the totality of circumstances. If on examination of the evidence, it is established that the party was ready and willing to perform its part of the contract, the suit cannot be dismissed merely because the statement of facts in the plaint is not a word for word reproduction of forms 47 and 48.

(Para 7)
