

PETITIONER:
CENTRAL BUREAU OF INVESTIGATION, SPECIAL INVESTIGATION CELL-I

Vs.

RESPONDENT:
ANUPAM J. KULKARNI

DATE OF JUDGMENT 08/05/1992

BENCH:
REDDY, K. JAYACHANDRA (J)
BENCH:
REDDY, K. JAYACHANDRA (J)
AHMADI, A.M. (J)

CITATION:
1992 AIR 1768 1992 SCR (3) 158
1992 SCC (3) 141 JT 1992 (3) 366
1992 SCALE (1)1024

ACT:

Code of Criminal Procedure, 1973-Section, 167(1)-Person arrested and produced before Magistrate-Remand to police custody after initial period of 15 days-Whether legal.

HEADNOTE:

A case relating to abduction of four diamond merchants and one K was registered at Police Station on 16.9.91. The investigation was entrusted to C.B.I. During investigation it was disclosed that between 14th and 15th September 1991, the four diamond merchants, K and one driver were kidnapped from two hotels, and that K was one of the associates of the accused, responsible for the kidnapping.

On 4.10.91 K was arrested and was produced before the Chief Metropolitan Magistrate, on 5.10.91 and he was remanded to judicial custody till 11.10.91.

On 10.10.91 a test identification parade was arranged but K refused to cooperate and his refusal was recorded by the concerned Magistrate.

On 11.10.91 the investigating officer moved an application, seeking police custody of K, which was allowed.

When he was being taken on the way K pretended to be indisposed and he was taken to a Hospital, where he remained confined on the ground of illness upto 21.10.91 and then he was referred to Cardiac Out-patient Department of the Hospital. K was again remanded to judicial custody by the Magistrate upto 29.10.91 and thereafter he was sent to Jail.

As the Police could not take him into police custody all these days the investigating officer again applied to the court of Chief Metropolitan Magistrate for police custody of K.

The Chief Metropolitan Magistrate relying on a judgment in State

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(Delhi Admn.) v. Dharam Pal and others, 1982 CrL. L.J.1103 refused police remand.

A revision was filed before the High Court against the order of the Magistrate.

The High Court, without deciding the question, whether or not after the expiry of the initial period of 15 days a person could still be remanded to police custody by the

Magistrate before whom he was produced, granted K bail.

In these appeals, the C.B.I. challenged the order of the High Court, contending that the Chief Metropolitan Magistrate erred in not granting police custody and that Dharam Pal's case on which he placed reliance was wrongly decided; that the High Court erred in granting bail to K without deciding the question whether he can be remanded to police custody; that a combined reading of Section 167(2) and the proviso therein would make it clear that if for any reason the police custody could not be obtained during the period of first fifteen days yet a remand to the police custody even later was not precluded.

The respondent-accused submitted that the police custody if at all be granted by the Magistrate u/s. 167 Cr. P.C. should be only during the period of first 15 days from the date of production of the accused before the Magistrate and not later and that subsequent custody if any should only be judicial custody and the question of granting police custody after the expiry of first 15 days remand did not arise.

On the question, whether a person arrested and produced before the nearest Magistrate as required under Section 167(1) Code of Criminal Procedure could still be remanded to police custody after the expiry of the initial period of 15 days, this Court dismissing the appeals of the C.B.I.,

HELD : 1.01. Article 22(2) of the Constitution of India and Section 57 of Cr. P.C. give 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 the arrest to the court of the magistrate and no such person shall be detained in the custody beyond the said period without the authority of a magistrate. These two provisions clearly

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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 the detention of the accused in police custody. [175 C]

1.02. The detention in police custody is generally disfavoured by law. The provisions of law lay down that such detention can be allowed only in special circumstances and that can be only by a remand granted by a magistrate for reasons judicially scrutinised and for such limited purposes as the necessities of the case may require. The scheme of Section 167 is obvious and is intended to protect the accused from the methods which may be adopted by some overzealous and unscrupulous police officers.

[175 B]

1.03. Whenever any person is arrested under Section 54 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. If Judicial Magistrate is not available, the police officer may transmit the arrested accused to the nearest Executive Magistrate on whom the judicial powers have been conferred. [178 D]

1.04. The Judicial Magistrate can in the first instance 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. [178 E]

1.05. 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. [178 F]

1.06. 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 the first period of fifteen days the further remand during the period of investigation can only be in judicial custody. [178 G]

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1.07. 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 in the same transaction come to light at a later stage. [178.H]

1.08. But this bar does not apply if the same arrested accused is involved in a different case arising out of a different transaction. Even if he is in judicial custody in connection with the investigation of the earlier case he can formally be arrested regarding his involvement in the different case and associate him with the investigation of that other case and the Magistrate can act as provided under Section 167(2) and the proviso and can remand him to such custody as mentioned therein during the first period of fifteen days thereafter in accordance with the proviso. [179 A]

1.09. If the investigation is not completed within the period of ninety days or sixty days then the accused has to be released on bail as provided under the proviso to Section 167(2). The period of ninety days or sixty days has to be computed from the date of detention as per the orders of the Magistrate and not from the date of arrest by the police. [179 C]

1.10. The first period of fifteen days mentioned in Section 167(2) has to be computed from the date of such detention and after the expiry of the period of first fifteen days it should be only judicial custody. [179C]

State (Delhi Admn.) v. Dharam Pal and Others, 1982 Crl. L.J. 103, approved partially.

S. Harsimran Singh v. State of Punjab, 1984 Crl. L.J. 253, approved.

Gian Singh v. State (Delhi Administration), 1981 Crl. L.J. 100; Trilochan Singh v. The State (Delhi Administration), 1981 Crl. L.J. 1773; State v. Mehar Chand, 1969 D.L.T. 179; State (Delhi Administration) v. Ravinder Kumar Bhatnagar, 1982 Crl. L.J. 2366; State of Kerala v. Sadanadan, 19184 K.L.T. 747; Chaganti Satyanarayana and Others v. State of Andhra Pradesh, [1966] 3 S.C.c. 141 and Natabar Parida and Others v. State of Orissa, [1975] 2 SCC 220, referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 310-311 of 1992.

From the Judgment and Order dated 9.12.1991 of the Delhi High

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Court in Crl.M.(M) no. 2409/91 and Crl. R. no. 201 of 1991.
K.T.S.Tulsi, Addl. Solicitor General, Kailash Vasdev

and Ms. Alpana Kirpal for the Appellant.

Ram Jethmalani, Dinesh Mathur and Ms. Binu Tamta for the Respondent.

The Judgment of the Court was delivered by
K. JAYACHANDRA REDDY, J. Leave granted.

An important question that arises for consideration is whether a person arrested and produced before the nearest Magistrate as required under Section 167(1) Code of Criminal Procedure can still be remanded to police custody after the expiry of the initial period of 15 days. We propose to consider the issue elaborately as there is no judgment of this Court on this point. The facts giving rise to this question may briefly be stated. A case relating to abduction of four Bombay based diamond merchants and one Shri Kulkarni was registered at Police Station Tughlak Road New Delhi on 16.9.91 and the investigation was entrusted to C.B.I. During investigation it was disclosed that not only the four diamond merchants but also Shri Kulkarni, who is the respondent before us and one driver Babulal were kidnapped between 14th and 15th September, 1991 from two Hotels at Delhi. It emerged during investigation that the said Shri Kulkarni was one of the associates of the accused one Shri R. Chaudhary responsible for the said kidnaping of the diamond merchants. On the basis of some available material Shri Kulkarni was arrested on 4.10.91 and was produced before the Chief Metropolitan Magistrate, Delhi on 5.10.91. On the request of the C.B.I. Shri Kulkarni was remanded to judicial custody till 11.10.91. On 10.10.91 a test identification parade was arranged but Shri Kulkarni refused to cooperate and his refusal was recorded by concerned Munsif Magistrate. On 11.10.91 an application was moved by the investigating officer seeking police custody of Shri Kulkarni which was allowed. When he was being taken on the way Shri Kulkarni pretended to be indisposed and he was taken to the Hospital the same evening where he remained confined on the ground of illness up to 21.10.91 and then he was referred to cardiac Out-patient Department of G.B. Pant Hospital. Upto 29.10.91 Shri Kulkarni was again remanded to judicial custody by the Magistrate and thereafter was sent to Jail. In view of the fact that the Police

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could not take him into police custody all these days the investigating officer again applied to the court of Chief Metropolitan Magistrate for police custody of Shri Kulkarni. The Chief Metropolitan Magistrate relying on a judgment of the Delhi High Court in State (Delhi Admn.) v. Dharam Pal and others, 1982 CrL. L.J. 1103 refused police remand. Questioning the same a revision was filed before the High Court of Delhi. The learned Single Judge in the first instance considered whether there was material to make out a case of kidnaping or abduction against Shri Kulkarni and observed that even the abducted persons namely the four diamond merchants do not point an accusing finger against Shri Kulkarni and that at any rate Shri Kulkarni himself has been interrogated in jail for almost seven days by the C.B.I. and nothing has been divulged by him, therefore it is not desirable to confine him in jail and in that view of the matter he granted him bail. The High Court, however, did not decide the question whether or not after the expiry of the initial period of 15 days a person can still be remanded to police custody by the magistrate before whom he was produced. The said order is challenged in these appeals.

The learned Additional Solicitor General appearing for the C.B.I. the appellant contended that Chief Metropolitan

Magistrate erred in not granting police custody and that Dharam Pal's case on which he placed reliance has been wrongly decided. The further contention is that the High Court has erred in granting bail to Shri Kulkarni without deciding the question whether he can be remanded to police custody as prayed for by C.B.I. Shri Ram Jethmalani, learned counsel for the respondent accused submitted that language of Section 167 Cr.P.C. is clear and that the police custody if at all be granted by the Magistrate should be only during the period of first 15 days from the date of production of the accused before the magistrate and not later and that subsequent custody if any should only be judicial custody and the question of granting police custody after the expiry of first 15 days remand does not arise.

Section 167 Cr. P.C. 11973 after some changes reads as under:

"167. 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

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or information is well founded, the officer-in-charge of the police station or the police officer making the investigation, he if 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-

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding, -

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence,

and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXVIII for the purposes of that Chapter;

(b) no Magistrate shall authorise detention in any

custody under this section unless the accused is produced before him;

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(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of police.

Explanation 1- For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be so detained in custody so long as he does not furnish bail.

Explanation II.- If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorising detention.

(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), the officer-in-charge of the police station or the police officer making the investigation, if he is not below the rank of a sub-inspector, may, where a judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred a copy of the entry in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate may, for reason to be recorded in writing, authorise the detention of the accused person in such custody, as he may think for a term not exceeding seven days in the aggregate, and, on the expiry of the period of the detention so authorised, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub-section, shall be taken into account in computing the period specified in paragraph 2(a) of the proviso to sub-section (2);

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the

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entries in the diary relating to the case which was transmitted to him by the officer-in-charge of the police station or the police officer making the investigation, as the case may be.

(3) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

(4) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.

(5) If any case triable by a Magistrate as a summons-case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation

into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.

(6) Where any order stopping further investigation into an offence has been made under sub-section (5), the Sessions Judge may, if he is satisfied, on an application made to him, or otherwise, that further investigation into the offence ought to be made, vacate the order made under sub-section (5) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify."

Before proceeding further it may be necessary to advert to the legislative history of this Section. The old Section 167 of 1898 Code provided for the detention of an accused in custody for a term not exceeding 15 days on the whole. It was noted that this was honored more in the breach than in the observance and that a practice of doubtful legality grew up namely the police used to file an incomplete charge-sheet and move the court for remand under Section 344 corresponding to the present Section 309 which was not meant for during investigation. Having regard to the fact that there may be genuine cases where investigation might not be completed in 15 days, the Law Commission made certain recommendations to confer power on the Magistrate to extend the period of 15 days detention.

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These recommendations are noticed in the objects and reasons of the Bill thus:

".....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 honored 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 denied 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....."

The Joint Committee, however, with a view to have the desired effect made provision for the release of the accused if investigation is not duly completed in case where accused has been in custody for some period. Sub-section (5) and (6) relating to offences punishable for imprisonment for two years were inserted and the Magistrate was authorised to stop further investigation and discharge the accused if the investigation could not be completed within

six months. By the Cr. P.C. Amendment Act 1978 proviso (a) to sub-section (2) of Section 167 has been further amended and the Magistrate is empowered to authorise the detention of accused in custody during investigation for an aggregate period of 90 days in cases relating to major offences and in other cases 60 days. This provision for custody for 90 days is intended to remove difficulties which actually arise in completion of the investigation of offences of serious nature. A new sub-section (2A) also has been inserted empowering the Executive

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Magistrate to make an order for remand but only for a period not exceeding seven days in the aggregate and in cases where Judicial Magistrate is not available. This provision further lays down that period of detention ordered by such Executive Magistrate should be taken into account in computing the total period specified in clause (a) of sub-section (2) of Section 167. Now coming to the object and scope of Section 167 it is well-settled that it is supplementary to Section 57. It is clear from Section 57 that the investigation should be completed in the first instance within 24 hours if not, the arrested person should be brought by the police before a magistrate as provided under Section 167. 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. The entries in the diary are meant to afford to the magistrate the necessary information upon which he can take the decision whether the accused should be detained in the custody further or not. It may be noted even at this stage the magistrate can release him on bail if an application is made and if he is satisfied that there are no grounds to remand him to custody but if he is satisfied that further remand is necessary then he should act as provided under Section 167. It is at this stage sub-section (2) comes into operation which is very much relevant for our purpose. It lays down that the magistrate to whom the accused person is thus forwarded 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 he thinks fit for a term not exceeding fifteen days in the whole. If such magistrate has no jurisdiction to try the case or commit it for trial and if he considers further detention unnecessary, he may order the accused to be forwarded to a magistrate having such jurisdiction. The Section is clear in its terms. The magistrate under this Section can authorise the detention of the accused in such custody as he thinks fit but it should not exceed fifteen days in the whole. Therefore the custody initially should not exceed fifteen days in the whole. The custody can be police custody or judicial custody as the magistrate thinks fit. The words "such custody" and "for a term not exceeding fifteen days in the whole" are very significant. It is also well-settled now that the period of fifteen days starts running as soon as the accused is produced before the Magistrate.

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Now comes the proviso inserted by Act No. 45 of 1978 which is of vital importance in deciding the question before us. This proviso comes into operation where the magistrate

thinks fit that further detention beyond the period of fifteen days is necessary and it lays down that the magistrate may authorise the detention of the accused person otherwise than in the custody of the police beyond the period of fifteen days. The words 'otherwise than in the custody of the police beyond the period of fifteen days' are again very significant.

The learned Additional Solicitor General, appearing for the C.B.I., contended that a combined reading of Section 167(2) and the proviso therein would make it clear that if for any reason the police custody cannot be obtained during the period of first fifteen days yet a remand to the police custody even later is not precluded and what all that is required is that such police custody in the whole should not exceed fifteen days. According to him there could be cases where a remand to police custody would become absolutely necessary at a later stage even though such an accused is under judicial custody as per the orders of the magistrate passed under the proviso. The learned Additional Solicitor General gave some instances like holding an identification parade or interrogation on the basis of the new material discovered during the investigation. He also submitted that some of the judgments of the High Courts particularly that of the Delhi High Court relied upon by the Chief Metropolitan Magistrate do not lay down the correct position of law in this regard. In *Gian Singh v. State (Delhi Administration)*, 1981 Cr.L.J. 100 a learned Single Judge of the High Court held that once the accused is remanded to judicial custody he cannot be sent back again to police custody in connection with or in continuation of the same investigation even though the first period of fifteen days has not exhausted. Again the same learned Judge Justice M.L.Jain in *Trilochan Singh v. The State (Delhi Administration)*, 1981 Cr.L.J. 1773 took the same view. In *State (Delhi Administration) v. Dharam Pal and others*, 1982 Cr.L.J. 1103 a Division Bench of the Delhi High Court overruled the learned Single Judge's case and *Trilochan Singh's* case. The Division Bench held that the words "from time to time" occurring in the Section show that several orders can be passed under Section 167(2) and that the nature of the custody can be altered from judicial custody to police custody and vice-versa during the first period of fifteen days mentioned in Section 167(2) of the Code and that after fifteen days the accused could only be kept in judicial custody or any other custody as ordered by

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the magistrate but not in the custody of the police. In arriving at this conclusion the Division Bench sought support on an earlier decision in *State v. Mehar Chand*, 1969 Delhi Law Times 179. In that case the accused had been arrested for an offence of kidnapping and after the expiry of the first period of fifteen days the accused was in judicial custody under Section 344 Cr.P.C.(old code). At that stage the police found on investigation that an offence of murder also was prima facie made out against the said accused. Then the question arose whether the said accused who was in judicial custody should be sent to the police custody on the basis of the discovery that there was an aggravated offence. The magistrate refused to permit the accused to be put in police custody. The same was questioned before the High Court. Hardy, J. held that an accused who is in magisterial custody in one case can be allowed to be remanded to police custody in other case and on the same rule he can be remanded to police custody at a subsequent stage of investigation in the same case when the information

discloses his complicity in more serious offences and that on principle, there is no difference at all between the two types of cases. The learned Judge further stated as under:

"I see no insuperable difficulty in the way of the police arresting the accused for the second time for the offence for which he is now wanted by them. The accused being already in magisterial custody it is open to the learned magistrate under Sec. 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. All that he is required to do is to satisfy himself that a good case is made out for detaining the accused in police custody in connection with investigation of the case. It may be that the offences for which the accused is now wanted by the police relate to the same case but these are altogether different offences and in a way therefore it is quite legitimate to say that it is a different case in which the complicity of the accused has been discovered and police in order to complete their investigation of that case require that the accused should be associated with that investigation in some way."

The Division Bench in Dharam Pal's case referring to these observations of Hardy, J. observed that "We completely agree with Hardy, J. in

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coming to the conclusion that the Magistrate has to find out whether there is a good case for grant of police custody." A perusal of the later part of the judgment in Dharam Pal's case would show that the Division Bench referred to these observations in support of the view that the nature of the custody can be altered from judicial custody to police custody or vice-versa during the first period of fifteen days mentioned in Section 167(2) of the Code, but however firmly concluded that after fifteen days the accused could only be in judicial custody or any other custody as ordered by the magistrate but not in police custody. Then there is one more decision of the Delhi High Court in State (Delhi Administration) v. Ravinder Kumar Bhatnagar, 1982 Cr.L.J. 2366 where a Single Judge after relying on the judgment of the Division Bench in Dharam Pal's case held that the language of Section 167(2) is plain and that words "for a term not exceeding fifteen days in the whole" would clearly indicate that those fifteen days begin to run immediately after the accused is produced before the magistrate in accordance with sub-section (1) and the police custody cannot be granted after the lapse of the "first fifteen days". In State of Kerala v. Sadanadan, (1984) K.L.T.747, a Single Judge of the Kerala High Court held that the initial detention of the accused by the magistrate can be only for fifteen days in the whole and it may be either police custody or judicial custody and during the period the magistrate has jurisdiction to convert judicial custody to police custody and vice-versa and the maximum period under which the accused can be so detained is only fifteen days and that after the expiry of fifteen days the proviso comes into operation which expressly refers to police custody and enjoins that there shall be no police custody and judicial custody alone is possible when power is exercised under the proviso. The learned Single Judge stated that in the case before him the accused has already been in police custody for fifteen days and therefore he could not be remanded to police custody either under Section 167 or Section 309

Cr.P.C.

The learned Additional Solicitor General submitted that the observations made by Hardy, J. in Mehar Chand's case would indicate that during the investigation of the same case in which the accused is arrested and is already in custody if more offences committed in the same case come to light there should be no bar to turn over the accused to police custody even after the first period of fifteen days and during the period of ninety days or sixty days in respect of the investigation of the cases mentioned in provisos (a) (i) and (ii) respectively. It may be noted firstly that the Mehar

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Chand's case was decided in respect of a case arising under the old Code. If we examine the background in enacting the new Section 167(2) and the proviso (a) as well as Section 309 of the new Code it becomes clear that the legislature recognised that such custody namely police, judicial or any other custody like detaining the arrested person in Nari Sadans etc. should be in the whole for fifteen days and the further custody under the proviso to Section 167 or under Section 309 should only be judicial. In Chaganti Satyanarayana and others v. State of Andhra Pradesh, [1986] 3 S.C.C.141 this Court examined the scope of Section 167(2) provisos (a)(i) and (ii) and held that the period of fifteen days, ninety days or sixty days prescribed therein are to be computed from the date of remand of the accused and not from the date of his arrest under Section 57 and that remand to police custody cannot be beyond the period of fifteen days and the further remand must be to judicial custody. Though the point that precisely arose before this Court was whether the period of remand prescribed should be computed from the date of remand or from the date of arrest under Section 57, there are certain observations throwing some light on the scope of the nature of custody after the expiry of the first remand of fifteen days and when the proviso comes into operation. It was observed thus

As sub-section (2) of Section 167 as well as proviso (1) of sub-section (2) of Section 309 relate to the powers of remand of a magistrate, though under different situations, the two provisions call for a harmonious reading insofar as the periods of remand are concerned. It would, therefore, follow that the words "15 days in the whole" occurring in sub-section (2) of Section 167 would be tantamount to a period of "15 days at a time" but subject to the condition that if the accused is to be remanded to police custody the remand should be for such period as is commensurate with the requirements of a case with provision for further extensions for restricted periods, if need be, but in no case should the total period of remand to police custody exceed 15 days. Where an accused is placed in police custody for the maximum period of 15 days allowed under law either pursuant to a single order of remand or to more than one order, when the remand is restricted on each occasion to a lesser number of days, further detention of the accused, if warranted, has to be necessarily to judicial custody and not otherwise. The legislature having provided for an accused being placed under

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police custody under orders of remand for effective investigation of cases has at the same time taken

care to see that the interests of the accused are not jeopardised by his being placed under police custody beyond a total period of 15 days, under any circumstances, irrespective of the gravity of the offence or the serious nature of the case.

These observations make it clear that if an accused is detained in police custody, the maximum period during which he can be kept in such custody is only fifteen days either pursuant to a single order or more than one when such orders are for lesser number of days but on the whole such custody cannot be beyond fifteen days and the further remand to facilitate the investigation can only be by detention of the accused in judicial custody.

Having regard to the words "in such custody as such Magistrate thinks fit a term not exceeding fifteen days in the whole" occurring in Sub-section (2) of Section 167 now the question is whether it can be construed that the police custody, if any, should be within this period of first fifteen days and not later or alternatively in a case if such remand had not been obtained or the number of days of police custody in the first fifteen days are less whether the police can ask subsequently for police custody for full period of fifteen days not availed earlier or for the remaining days during the rest of the periods of ninety days or sixty days covered by the proviso. The decisions mentioned above do not deal with this question precisely except the judgment of the Delhi High Court in Dharam Pal's case. Taking the plain language into consideration particularly the words "otherwise than in the custody of the police beyond the period of fifteen days" in the proviso it has to be held that the custody after the expiry of the first fifteen days can only be judicial custody during the rest of the periods of ninety days or sixty days and that police custody if found necessary of fifteen days. To this extent the view taken in Dharam Pal's case is correct.

At this juncture we want to make another aspect clear namely the computation of period of remand. The proviso to Section 167(2) clearly lays down that the total period of detention should not exceed ninety days in cases where the investigation relates to serious offences mentioned therein and sixty days in other cases and if by that time cognizance is not

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taken on the expiry of the said periods the accused shall be released on bail as mentioned therein. In Chaganti Satyanarayan's case it was held that "It, therefore, stands to reason that the total period of 90 days or 60 days can begin to run from the date of order or remand." Therefore the first period of detention should be computed from the date of order or remand. Section 167(2A) which has been introduced for pragmatic reasons states that if an arrested person is produced before and Executive Magistrate for remand the said Magistrate may authorise the detention of the accused not exceeding seven days in aggregate. It further provides that the period of remand by the Executive Magistrate should also be taken into account for computing the period specified in the proviso i.e. aggregate periods of ninety days or sixty days. Since the Executive Magistrate is empowered to order detention only for seven days in such custody as he thinks fit, he should therefore either release the accused or transmit him to the nearest Judicial Magistrate together with the entries in the diary before the expiry of seven days. The Section also lays down that the Judicial Magistrate who is competent to make further orders of detention, for the purposes of computing

the period of detention has to take into consideration the period of detention ordered by the Executive Magistrate. Therefore on a combined reading of Section 167(2) and (2A) it emerges that the Judicial Magistrate to whom the Executive Magistrate has forwarded the arrested accused can order detention in such custody namely police custody or judicial custody under Section 167(2) for the rest of the first fifteen days after deducting the period of detention ordered by the Executive Magistrate. The detention thereafter could only be in judicial custody. Likewise the remand under Section 309 Cr. P.C. can be only to judicial custody interims mentioned therein. This has been concluded by this Court and the language of the Section also is clear. Section 309 comes into operation after taking cognizance and not during the period of investigation and the remand under this provision can only be to judicial custody and there cannot be any controversy about the same., vide Natabar Parida and other v. State of Orissa, [1975] 2 SCC 220.

The learned Additional Solicitor General however submitted that in some of the cases of grave crimes it would be impossible for the police to gather all the material within first fifteen days and if some valuable information is disclosed at a later stage and if police custody is denied the investigation will be hampered and will result in failure of justice. There may be some force in this submission but the purpose of police custody

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and the approach of the legislature in placing limitations on this are obvious. The proviso to Section 167 is explicit on this aspect. The detention in police custody generally disfavoured by law. The provisions of law lay down that such detention can be allowed only in special circumstances and that can be only be a remand granted by a magistrate for reasons judicially scrutinised and for such limited purposes as the necessities of the case may require. The scheme of Section 167 is obvious and is intended to protect the accused from the methods which may be adopted by some overzealous and unscrupulous police officers. Article 22 (2) of the Constitution of India and Section 57 of Cr.P.C give 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 the arrest to the court of the magistrate and no such person shall be detained in the 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 the detention of the accused in police custody. Section 167(3) requires that the magistrate should give reasons for authorising the detention in the custody of the police. It can be thus seen that the whole scheme underlying the Section is intended to limit the period of police custody. However, taking into account the difficulties which may arise in completion of the investigation of cases of serious nature the legislature added the proviso providing for further detention of the accused for a period of ninety days but in clear terms it is mentioned in the proviso that such detention could only be in the judicial custody. During this period the police are expected to complete the investigation even in serious cases. Likewise within the period of sixty days they are expected to complete the investigation in respect of other offences. The legislature however disfavoured even the

prolonged judicial custody during investigation. That is why the proviso lays down that on the expiry of ninety days or sixty days the accused shall be released on bail if he is prepared to and does furnish bail. If as contended by the learned Additional Solicitor General a further interrogation is necessary after the expiry of the period of first fifteen days there is no bar for interrogating the accused who is in judicial custody during the periods of 90 days or 60 days. We are therefore unable to accept this contention.

A question may then arise whether a person arrested in respect of

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an offence alleged to have been committed by him during an occurrence can be detained again in police custody in respect of another offence committed by him in the same case and which fact comes to light after the expiry of the period of first fifteen days of his arrest. The learned Additional Solicitor General submitted that as a result of the investigation carried on and the evidence collected by the police the arrested accused may be found to be involved in more serious offences than the one for which he was originally arrested and that in such a case there is no reason as to why the accused who is in magisterial custody should not be turned over to police custody at a subsequent stage of investigation when the information discloses his complicity in more serious offences. We are unable to agree. In one occurrence it may so happen that the accused might have committed several offences and the police may arrest him in connection with one or two offences on the basis of the available information and obtain police custody. If during the investigation his complicity in more serious offences during the same occurrence is disclosed that does not authorise the police to ask for police custody for a further period after the expiry of the first fifteen days. If that is permitted then the police can go on adding some offence or the other of a serious nature at various stages and seek further detention in police custody repeatedly, this would defeat the very object underlying Section 167. However, we must clarify that this limitation shall not apply to a different occurrence in which complicity of the arrested accused is disclosed. That would be as different transaction and if an accused is in judicial custody in connection with one case and to enable the police to complete their investigation of the other case they can require his detention in police custody for the purpose of associating him with the investigation of the other case. In such a situation he must be formally arrested in connection with other case and then obtain the order of the magistrate for detention in police custody. The learned Additional Solicitor General however strongly relied on some of the observations made by Hardy, J. in Mehar Chand's case extracted above in support of his contention namely that an arrested accused who is in judicial custody can be turned over to police custody even after the expiry of first fifteen days at a subsequent stage of the investigation in the same case if the information discloses his complicity in more serious offences. We are unable to agree that the mere fact that some more offences alleged to have been committed by the arrested accused in the same case are discovered in the same case would by itself render it to be a different case. All these offences

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including the so-called serious offences discovered at a

later stage arise out of the same transaction in connection with which the accused was arrested. Therefore there is a marked difference between the two situations. The occurrences constituting two different transactions give rise to two different cases and the exercise of power under Section 167(1) and (2) should be in consonance with the object underlying the said provision in respect of each of those occurrences which constitute two different cases. Investigation in one specific case cannot be the same as in the other. Arrest and detention in custody in the context of Sections 167(1) and (2) of the Code has to be truly viewed with regard to the investigation of that specific case in which the accused person has been taken into custody. In *S. Harsimran Singh v. State of Punjab*, 1984 CrL. L.J. 253 a Division Bench of the Punjab and Haryana High Court considered the question whether the limit of police custody exceeding fifteen days as prescribed by Section 167(2) is applicable only to single case or is attracted to a series of different cases requiring investigation against the same accused and held thus:

"We see no inflexible bar against a person in custody with regard to 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 S.167(2) of the Code for investigation another offence. Therefore, a rearrest or second arrest in a different case is not necessarily beyond the ken of law".

This view of the Division Bench of the Punjab & Haryana High Court appears to be practicable and also conforms to Section 167. We may, however, like to make it explicit that such re-arrest or second arrest and seeking police custody after the expiry of the period of first fifteen days should be with regard to the investigation of a different case other than the specific one in respect of which the accused is already in custody. A literal construction of Section 167(2) to the effect that a fresh remand for police custody of a person already in judicial custody during investigation of a specific case cannot under any circumstances be issued, would seriously hamper the very investigation of the other case the importance of which needs no special emphasis. The procedural law is meant to further the ends of justice and not to frustrate the same. It is an accepted rule that an

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interpretation which furthers the ends of justice should be preferred. It is true that the police custody is not the be-all and end-all of the whole investigation but yet it is one of its primary requisites particularly in the investigation of serious and heinous crimes. The legislature also noticed this and permitted limited police custody. The period of first fifteen days should naturally apply in respect of the investigation of that specific case for which the accused is held in custody. But such custody cannot further held to be a bar for invoking a fresh remand to such custody like police custody in respect of an altogether different case involving the same accused.

As the points considered above have an important bearing in discharge of the day-to-day magisterial powers contemplated under Section 167(2), we think it appropriate to sum up briefly our conclusions as under :

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. If Judicial Magistrate is not available, the police officer may transmit the arrested accused to the nearest Executive Magistrate on whom the judicial powers have been conferred. The Judicial Magistrate can in the first instance 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 day 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 the first period of fifteen days the 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 in the same transaction come to

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light 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. Even if he is in judicial custody in connection with the investigation of the earlier case he can formally be arrested regarding his involvement in the different case and associate him with the investigation of that other case and the Magistrate can act as provided under Section 167(2) and the proviso and can remand him to such custody as mentioned therein during the first period of fifteen days and thereafter in accordance with the proviso as discussed above. If the investigation is not completed within the period of ninety days or sixty days then the accused has to be released on bail as provided under the proviso to Section 167(2). The period of ninety days or sixty days has to be computed from the date of detention as per the orders of the Magistrate and not from the date of arrest by the police. Consequently the first period of fifteen days mentioned in Section 167(2) has to be computed from the date of such detention and after the expiry of the period of first fifteen days it should be only judicial custody.

We may, however, in the end clarify that the position of law stated above applies to Section 167 as it stands in the Code. If there are any State amendments enlarging the periods of detention, different consideration may arise on the basis of the language employed in those amendments.

The appeals are accordingly dismissed.

V.P.R.

Appeals dismissed.

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