1986 SCeJ 001

SUPREME COURT OF INDIA

Before : Justice S. Natarajan, Justice A. N. Sen.

CHAGANTI SATYANARAYANA AND OTHERS — Appellant

versus

STATE OF ANDHRA PRADESH — Respondent

Criminal Appeal No. 278 of 1986

08.05.1986

Criminal Procedure Code, 1973 - Section 167(2)

Cases Referred

1. Bashir and Others V. State of Haryana, AIR 1978 SC 55 : (1978) CriLJ 173 : (1977) 4 SCC 410 : (1978) 1 SCR 585 : (1977) 9 UJ 663
2. State of Uttar Pradesh V. Lakshmi Brahman and Another, AIR 1983 SC 439 : (1983) CriLJ 839 : (1983) 1 Crimes 797 : (1983) 1 SCALE 274 : (1983) 2 SCC 372 : (1983) 2 SCR 537

S. Madhusudan Rao and A. Subba Rao, for the Appellant; P. Ram Reddy, T.V.S.N. Chari and Varinda Grover, for the Respondent

JUDGMENT

S. Natarajan, J.—This appeal by special leave against an order of a learned Single Judge of the Andhra Pradesh High Court in a petition filed u/s 439(2) of the CrPC (hereinafter referred to as the 'Code') calls for a critical examination of the scope and effect of proviso (a) to Section 167(2) of the Code. Several High Courts have rendered decisions construing differently the terms of the proviso but a need for the examination of the terms of the proviso by this Court had not arisen till now.

2. The circumstances which form the prefactory for this appeal can be summarised as under.

3. The hamlet of Madigawada in Village Karamchedu in Andhra Pradesh was the scene of a horrendous riot on the morning of July 17, 1985. The riot culminated in a toll of human lives and huge destruction of property. Five persons were left dead, twenty others were victims of injuries of varying degrees, properties were looted and hutments were damaged or destroyed.

4. In connection with the macabre events the police authorities arrested 94 persons including the appellants herein and had them remanded to custody. The appellants were arrested in the forenoon of July 19, 1985 and were produced before the IIIrd Additional Munsif Magistrate, Chirala on the next day, i.e. July 20, 1985. They were initially remanded to judicial custody for a period of 15 days and thereafter the remand was extended from time to time till October 18, 1985.

5. The investigating officer filed a charge-sheet in the case at 10.30 A.M. on October 17, 1985, that being the 90th day of remand. Even so, the appellants filed a petition before the Magistrate and sought enlargement on bail in terms of proviso (a) to Section 167(2). The learned Magistrate, overruling the objection of the State, granted bail to the appellants on the ground that the period of 90 days stipulated in the proviso had to be reckoned from the date of arrest and not from the date of remand and so computed the charge-sheet had not been filed on the 90th day but on the 91st day and hence the accused were entitled to bail. The State challenged the order of bail before the High Court by means of a petition u/s 439(2) of the Code. A learned Single Judge of the High Court allowed the petition holding that the period of 90 days envisaged by the proviso to Section 167(2) has to be computed only from the date of remand and, therefore, cancelled the bail and directed the Magistrate to issue warrants of arrest for the appellants. It is the correctness of the order of the learned Judge which is challenged in this appeal.

6. Mr. Madhusudan Rao, learned Counsel for

the appellants, strenuously contended that the liberty of the citizen is the paramount factor for consideration while construing the terms of proviso (a) of Section 167(2) and as such the period of 90 days, in the case of grave offences, and the period of 60 days, in the case of other offences set out as outer limits for detention of accused persons should be computed from the very day the accused was arrested and taken into custody by a police officer and not from the day he was produced before the Magistrate and remanded to custody. In fact Mr. Rao went so far as to say, placing reliance on a decision rendered in Fakira Naik v. State of Orissa 1983 Crl. L.J. 1336 that even the detention during the fraction of a day should also be counted as detention for a day since a calendar day as a unit of time is the interval between one midnight and another. In support of his contention Mr. Rao placed reliance on some decisions where the time limits set out in the proviso have been held to run from the date of arrest itself.

7. Mr. Ram Reddy, learned Counsel for the State of Andhra Pradesh, advanced arguments to the contrary and submitted that the period of detention contemplated under the proviso is exclusively referable to the detentions ordered by a Magistrate and there is no scope for tagging on to this period any anterior period of custody by a police officer, who is permitted u/s 57 of the Code to detain in custody a person arrested without warrant for a maximum period of 24 hours. Alternately, it was contended that a significant change in the terms of the proviso has been made by the Legislature under Amendment Act 45 of 1978 and by reason of that change the periods of 90 days/60 days prescribed under the proviso are to be computed solely within the framework of the proviso and not with reference to any other provision in the Code. Besides these submissions the learned Counsel also placed reliance on another set of decisions wherein the calculation of the total number of days of custody under remand has been made with reference to the date of remand.

8. Before making a scrutiny of the terms of the proviso in question it will be of use to have a glimpse of the historical background of this legislative provision. Originally, the Code provided only a period of 15 days for remand. As the period was too short for investigation in cases of serious nature the police were forced to resort to filing before the Magistrates a preliminary or incomplete report and seek extension of remand u/s 344 of the Old Code. This device was resorted to as an inevitable necessity, even though Section 344 of the Old Code could be invoked only after a Magistrate had taken cognizance of an offence which in turn could be only after a report u/s 173 had been received and not while the investigation was in progress. The course followed for obtaining orders of remand beyond 15 days very often led to lethargy in the investigation of cases resulting in scores of accused persons languishing in custody for long periods. To remedy the situation the Legislature deemed it fit to put a time limit on the powers of the police to obtain remand while the investigation was in progress after taking care to provide a longer period of remand so that investigations are not affected. Consequently, a time limit of 60 days with a provision for its extension under certain circumstances was fixed by adding proviso (a) to Sub-section (2) of Section 167 of the Code of 1973. In the working of the provision it came to be realised that a ceiling limit of 60 days for completion of investigation in all cases including serious cases involving sentence of death, imprisonment for life etc. was hampering full and effective investigation in serious cases and affected the interests of the State. Consequently, certain amendments were effected to the proviso to Section 167(2) by means of Act 45 of 1978. By reason of the amendment the ceiling limit for remand period for cases, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years was raised to 90 days, while in other cases the earlier limit of 60 days was retained. Apart from this, another significant change made was that instead of the words "under this section" occurring in the old proviso, the words "under this paragraph", were substituted. A third change was the addition of Explanation 1 to the proviso to highlight the position that the statutory right of bail under Clause (a) of the proviso will stand restricted only to those accused persons who are in a

position to furnish bail. Another important change made by the Amendment Act is the provision of Section (2A) whereby Executive Magistrates, on whom the powers of a Judicial Magistrate have been conferred, have also been empowered to order remand for a term not exceeding 7 days in the aggregate, wherever Judicial Magistrates are not available.

9. Our reference to the historical background of the proviso is for two reasons. The first reason is for presenting a perspective of the proviso in its entire conspectus; the second reason is to focus attention on the fact that the proviso has been enacted to not only safeguard the liberty of the citizens but also to safeguard the interests of the State or in other words the public. We feel it necessary to advert to this feature because some of the decisions cited before us have proceeded on the basis that the only factor underlying the legislative provision is the anxiety of the Legislature to safeguard the liberty of the citizen by providing for the restoration of his liberty at the earliest possible moment after the maximum period of custody is over.

10. Besides a reference to the historical background of the proviso and the objective underlying it we must also refer to another notable feature falling within the field of relevance. The right of bail granted to remand prisoners at the end of 90 days or 60 days as the case may be does not have the effect of rendering the subsequent period of detention ipso facto illegal or unlawful. This is evident from the fact that the right to bail conferred under the proviso is subject to the condition that the accused in custody should furnish bail. For clearance of doubts in the matter, Explanation 1 has been expressly provided and the Explanation obligates the accused being detained in custody in spite of the expiry of the prescribed period of 90 days or 60 days as the case may be so long as he does not furnish bail. It will thus be seen that the anxiety of the Legislature to secure to the remand prisoners their release from custody is circumscribed by its concern in equal measure to safeguard the interests of the State as well.

11. It is in the light of the contours set out above we have to examine Section 167 and proviso (a) to Sub-section (2). The marginal note for Section 167 is as under :

Procedure when investigation cannot be completed in twenty-four hours.

12. On a reading of the Sub-sections (1) and (2) it may be seen that Sub-section (1) is a mandatory provision governing what a police officer should do when a person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of 24 hours fixed by Section 57. Sub-section (2) on the other hand pertains to the powers of remand available to a Magistrate and the manner in which such powers should be exercised. The terms of Sub-section (1) of Section 167 have to be read in conjunction with Section 57. Section 57 interdicts a police officer from keeping in custody a person without warrant for a longer period than 24 hours without production before a Magistrate, subject to the exception that the time taken for performing the journey from the place of arrest to the Magistrate's Court can be excluded from the prescribed period of 24 hours. Since Sub-section (1) provides that if that investigation cannot be completed within the period of 24 hours fixed by Section 57 the accused has to be forwarded to the Magistrate along with the entries in the Diary, it follows that a police officer is entitled to keep an arrested person in custody for a maximum period of 24 hours for purposes of investigation. The resultant position is that the initial period of custody of an arrested person till he is produced before a Magistrate is neither referable to nor in pursuance of an order of remand passed by a Magistrate. In fact the powers of remand given to a Magistrate become exercisable only after an accused is produced before him in terms of Sub-section (1) of Section 167.

13. Keeping proviso (a) out of mind for some time let us look at the wording of Sub-section (2) of Section 167. This sub-section empowers the Magistrate before whom an accused is produced for purpose of remand, whether he has jurisdiction or not to try the case, to order the detention of the accused, either in police custody or in judicial custody, for a term not exceeding 15 days in the whole. It was argued

by Mr. Rao that the words "in the whole" would govern the words "for a term not exceeding 15 days' and, therefore, the only interpretation that can be made is that the detention period would commence from the date of arrest itself and not from the date of production of the accused before the Magistrate. Attractive as the contention may be, we find that it cannot stand the test of scrutiny. In the first place, if the initial order of remand is to be made with reference to the date of arrest then the order will have retrospective coverage for the period of custody prior to the production of the accused before the Magistrate, i.e. the period of 24 hours' custody which a police officer is entitled to have u/s 57 besides the time taken for the journey. Such a construction will not only be in discord with the terms of Section 57 but will also be at variance with the terms of Sub-section (2) itself. The operative words in Sub-section (2) viz. "authorise the detention of the accused ... for a term not exceeding 15 days in the whole" will have to be read differently in so far as the first order of remand is concerned so as to read as "for a term not exceeding 15 days in the whole from the date of arrest". This would necessitate the adding of more words to the section than what the Legislature has provided. Another anomaly that would occur is that while Sub-section (2) empowers the Magistrate to order the detention of an accused "in such custody as such Magistrate thinks fit, for a term not exceeding 15 days in the whole" the Magistrate will be disentitled to placing an accused in police custody for a full period of 15 days or in judicial custody for a full period of 15 days if the period of custody is to be reckoned from the date of arrest because the period of custody prior to the production of the accused will have to be excluded from the total period of 15 days.

14. Apart from these anomalous features, if an accused were to contend that he was taken into custody more than 24 hours before his production before the Magistrate and the police officer refutes the statement, the Magistrate will have to indulge in a fact finding inquiry to determine when exactly the accused was arrested and from what point of time the remand period of 15 days is to be reckoned. Such an exercise by a Magistrate ordering remand is not contemplated or provided for in the Code. It would, therefore, be proper to give the plain meaning of the words occurring in Sub-section (2) and holding that a Magistrate is empowered to authorise the detention of an accused produced before him for a full period of 15 days from the date of production of the accused.

15. We may also refer to another provision in the Code, viz. the first proviso to Sub-section (2) of Section 309 for construing the period of 15 days referred to in Sub-section (2) of Section 167. Section 309, while prescribing expeditious conduct of enquiries and trials also provides for adjournments of cases for valid reasons and for remanding the accused if he is in custody. The first proviso restricts the period of remand to 15 days and is worded as under :

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding 15 days at a time.

16. 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 in so far 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 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.

17. Thus in the light of our discussion and conclusions reached we do not find merit or force in the contention of the appellants' counsel that the words 'for a term not exceeding 15 days in the whole" occurring in Sub-section (2) of Section 167 should be so construed as to include also the period of custody of the accused from the time of arrest till the time of production before the Magistrate. A Magistrate can, therefore, authorise the detention of the accused for a maximum period of 15 days from the date of remand and place the accused either in police custody or in judicial custody during the period of 15 days' remand. It has, however, to be borne in mind that if an accused is remanded to police custody the maximum period during which he can be placed in police custody is only 15 days. Beyond that period no Magistrate can authorise the detention of the accused in police custody.

18. Further remands, to facilitate the investigation, can only be for the detention of the accused in judicial custody. The restriction of the Magistrate's powers in this behalf is to be found in the words "otherwise than in the custody of the police beyond the period of 15 days" in proviso (a).

19. Now coming to proviso (a) itself, the proviso authorises a Magistrate to order further detention of an accused person, otherwise than in police custody which as already stated means that the maximum period under which a Magistrate can place an accused in police custody is only 15 days. A. limitation to the powers of further remand is, however, placed by interdicting the Magistrate from authorising the detention of an accused person in custody beyond a total period of 90 days where the offence is punishable with death, imprisonment for life or for a term of not less than 10 years and beyond a total period of 60 days in other cases. The interdiction will, however, operate only in those cases where the accused persons are in a position to furnish bail.

20. The words used in proviso (a) are "no Magistrate shall authorise the detention of the accused person in custody", "under this paragraph", "for a total period exceeding i.e. 90 days/60 days". Detention can be authorised by the Magistrate only from the time the order of remand is passed. The earlier period when the accused is in the custody of a police officer in exercise of his powers u/s 57 cannot constitute detention pursuant to an authorisation issued by the Magistrate. It, therefore, stands to reason that the total period of 90 days or 60 days can begin to run only from the date of order of remand.

21. Approaching the matter from another angle also we find it necessary to construe the proviso in the manner set out above. We have earlier referred to Sub-section (2A) newly introduced by Act 45 of 1978 to Section 167. This sub-section has been introduced for pragmatic reasons. In order that the production of an accused, arrested u/s 57, before a Magistrate is not delayed on account of the non-availability of a Judicial Magistrate, the Legislature has deemed it necessary to confer powers of remand on such of those Executive Magistrates on whom the powers of a Judicial Magistrate have been conferred. The sub-section states that if an arrested person is produced before an Executive Magistrate for remand the said Magistrate may authorise the detention of the accused "for a term not exceeding 7 days in the aggregate". It is further provided that the period of remand ordered by an Executive Magistrate should also be taken into account for computing the period specified in paragraph (a) of the proviso to Sub-section (2). Let us assume a case where a person arrested u/s 57 on the previous day is produced before an Executive Magistrate on the next day, but within the expiry of 24 hours and the remand order is obtained for a period of 7 days. How is the Judicial Magistrate, who is competent to make further orders of detention to calculate the period of detention so as to conform to the requirements of proviso (a)? As per Sub-section (2A) he is obliged to take into consideration only the period of detention actually undergone by the accused pursuant to the orders of remand passed by the Executive Magistrrate. The earlier period of custody till the production of the accused before the

Executive Magistrate is not directed to be taken into consideration by Sub-section (2A). Such being the case, there cannot be different modes of computation of the period of remand depending upon whether the accused person is forwarded to a Judicial Magistrate or an Executive Magistrate for purposes of remand.

22. The intention of the Legislature can also be gathered by comparing proviso (a) of Sub-section (5) of Section 167. Sub-section (5) of Section 167 is in the following terms :

If in 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 beyond the period of six months is necessary.

(emphasis supplied)

23. The Legislature has consciously referred to the date of arrest in Section 167(5) but has made no such reference in Section 167(2) or proviso (a) thereto. If it was the intention of the Legislature that the period of remand of 15 days in the whole envisaged in Sub-section (2) or the total period of 90 days/60 days prescribed in proviso (a) should be calculated from the date of arrest then the Legislature would have expressly said so as it had done u/s 167(5).

24. Turning now to the alternate argument of Mr. Ram Reddy, the contention is that even if there is scope for contending that the total period of detention should be reckoned from the date of arrest there is no room at all for any such contention being raised after the amendment of the proviso by Act 45 of 1978. We have already referred to the fact that the amending Act has substituted the words "under this paragraph" for the words "under this section" in proviso (a). We have also adverted to Explanation 1 and Sub-section (2A) which also refer to "the period specified in paragraph (a)". The change of wording in the proviso has to be given its due significance because the Legislature would not have effected the change without any purpose or objective. We must bear in mind that significant changes have been made in Section 167 as well as to the proviso by Act 45 of 1978 such as increasing the period for investigation in grave cases from 60 to 90 days, conferring of powers of remand on Executive Magistrates in certain situations etc. Therefore, it can be legitimately contended that the words occurring in proviso (a) should be construed within the frame work of the proviso itself without any reference to Section 167(2). If such a construction is made, it may be seen that the proviso forbids the extension of remands only beyond a total period of 90 days under Clause (i) and beyond a total period of 60 days under Clause (ii). Thus if proviso (a) is treated as a separate paragraph it necessarily follows that the period of 90 days or 60 days as the case may be, will commence running only from the date of remand and not from any anterior date in spite of the fact that the accused may have been taken into custody earlier by a police officer and deprived of his liberty.

25. Thus in any view of the matter i.e. construing proviso (a) either in conjunction with Sub-section (2) of Section 167 or as an independent paragraph, we find that the total period of 90 days under Clause (i) and the total period of 60 days under Clause (ii) has to be calculated only from the date of remand and not from the date of arrest.

26. We may now consider the decisions cited before us by the learned Counsel for the appellants and the respondent.

27. The judgments relied upon by Mr. Rao in support of his contentions are the following :

Mohd. Shafi and Anr. v. The State 1975 Crl. L.J. 1309, State of Rajasthan v. Bhanwaru Khan and Ors. 1975 Crl. L.J. 1981, Khinvdan v. The State of Rajasthan ,1975 Crl. L.J. 1984 Prem Raj and Anr. v. State of Rajasthan 1976 Crl. L.J. 455, Gyanu Madhu Jamkhandi and Ors. v. The State of Karnataka 1977 Crl. L.J. 632, State of Haryana v. Mehal Singh and Anr. (FB) 1978 Crl. L.J. 1810, Fakira Naik and Ors. v. State of Orissa 1983 Crl. L.J. 1336.

28. Though in all these decisions there are expressions to the effect that for computing the

total period of detention prescribed in proviso (a) to Section 167(2) the period will start running from the date of arrest itself, we find that excepting in Fakira Naik's case (supra) the question as to how the total period of detention should be computed had not directly arisen for consideration. In fact except in the last mentioned case there is no discussion about this question. The controversies in all those cases pertained to other matters. In Shaif's case (No. 2) the matter for consideration was whether when an application for bail was made under proviso (a) to Section 167(2) the Court can reject the application on the ground it was not a fit case for grant of bail u/s 439 of the Code. In Bhanwaru Khan's Case (No. 3) the matter for decision was whether proviso (a) to Section 167(2) contained a mandatory provision or not. In Khinvdan's case (No. 4) the issue for consideration was whether an accused person entitled to bail under proviso (a) can be validly kept in detention by an order of remand made u/s 309(2) of the Code. In Gyanu's Case (No. 6) what fell for consideration was whether after charge-sheet had been filed on 6.9.76 the accused can be kept in custody pursuant to an earlier order of remand which expired on 10.9.76. In Mehal Singh's case (No. 7) the Full Bench was called upon to decide whether a police report in terms of Section 173(2) of the Code will constitute a valid report only if it is accompanied by such documents and statements as are referred to in Section 173(5). It was only in Fakira Naik's case (No. 8) a debate similar to the one before us was raised for consideration. A Division Bench of the Orissa High Court has taken the view that the intention of the Legislature in enacting the proviso was to prevent accused persons suffering the deprivation of liberty on account of dilatory investigation and hence the period of detention would start running from the date of arrest itself. In reaching such a conclusion the Court has taken the view that the decision of this Court in Hussainara Khatoon and Ors. v. Hone Secretary, State of Bihar 1979 Crl. L.J. 1052, Patna contains an obiter that on the expiry of 90 days or 60 days as the case may be from the date of arrest the accused is entitled to be released on bail under proviso (a) of Section 167(2). We will be presently showing that this Court has not made such a pronouncement by way of an obiter. Apart from that we find that there has been no critical analysis in the judgment of the several relevant provisions which have been examined by us in this case. We, therefore, find that the decisions relied on by Mr. Rao cannot advance the case of the appellants in any manner. In view of the findings rendered by us the decisions of the various High Courts will stand disapproved.

29. We will now deal with the other set of cases cited by Mr. Ram Reddy to fortify his arguments. These decisions are to be found in :

Rajoo alias Raj Kishore Singh and Anr. v. State of Bihar and Anr. ILR 1976 Pat 1021, Raj Kumar v. The State of Punjab AIR 1979 Punjab & Haryana 80, Batna Ram v. State of Himachal Pradesh 1980 Crl. L.J. 748, Jagdish and Ors. v. State of Madhya Pradesh 1984 Crl. L.J. 79, N. Sureya Reddy and Anr. v. State of Orissa 1985 Crl. L.J. 939.

30. In these decisions, even though a contrary view has been taken we find the conclusions are not based on the reasoning taken by us. In Rajoo alias Raj Kishore Singh's case (No. 10) it has been held that the words used in the proviso are "a total period not exceeding 60 days' and not "within 60 days" and hence the Legislature has intended to provide a clear 60 days for purposes of investigation. In Raj Kumar's case (No. 11) it has been held that the day of arrest is not to be included for calculating the total period but there is no discussion. In Batna Ram's case (No. 12) it has been laid down that Section 57 should be given full effect to and as such a Magistrate is entitled to grant police custody for a total period of 15 days without taking into consideration the period of custody from the time of arrest till the time of production before a Magistrate. In Jagdish's case (No. 13) it has been held that the date of arrest is to be excluded in computing the total period of detention by application of Section 9 of the General Clauses Act and by bearing in mind Section 12 of the limitation Act. In Sureya Reddy's case (No. 14) the view taken is that Section 10 of the General Clauses Act would be attracted for interpreting the proviso if the last day happens to be a Sunday or holiday and even

otherwise the principle enunciated therein should be invoked on considerations of justice and expediency. In that case the 90th day from the date of arrest happened to be a Sunday and hence the Court was of the view that Section 10 of the General Clauses Act would be attracted.

31. Some of the decisions cited on either side have been rendered prior to the amendment of proviso (a) by Act 45 of 1978 and some have been rendered after the amendment. Mr. Ram Reddy sought to make a distinction of the earlier decisions by contending that they ceased to have relevance because of the amendment to proviso (a) making it an independent paragraph all by itself. Since we have held that in whichever way proviso (a) is construed i.e. with reference to Section 167(2) or without reference to it the periods of 90 days and 60 days prescribed by the Legislature can be reckoned only from the date of remand the distinction sought to be made between the decisions rendered prior to Amendment Act 45 of 1978 and subsequent to it does not have much of significance.

32. As the terms of proviso (a) with reference to the total periods of detention can be interpreted on the plain language of the proviso itself we do not think it is necessary to invoke the provisions of the General Clauses Act or seek guidance from the Limitation Act to construe the terms of the proviso.

33. We are lastly left with three decisions of this Court which were also placed before us for consideration. The first case is Bashir and Others V. State of Haryana, . What fell for consideration in that case was whether the grant of bail to an accused under proviso (a) to Section 167(2) was tantamount to a release on bail u/s 437(1) of the Code so as to entitle the accused person to contend that his re-arrest cannot be ordered except by means of an order u/s 437(5) of the Code. The second case is Hussainara Khatoon (supra) where the Court was dealing with a public interest litigation case pertaining to the detention of undertrial prisoners for such long periods which even exceeded the Maximum term for which the accused could have been sentenced if they had been convicted. In the course of the judgment a passing observation has been made that the Court was very doubtful whether on the expiry of 90 days or 60 days, as the case may be, from the date of arrest, the attention of the undertrial prisoners was drawn to the fact that they were entitled to be released on bail under proviso (a) of Sub-section (2) of Section 167. It was not a pronouncement of the Court either expressly or by way of obiter that the maximum periods of detention set out in the proviso commence to run from the very date of arrest. On the other hand the following sentence in the judgment will appropriately reflect the view expressed by the Court :

When an undertrial prisoner is produced before a Magistrate and he has been in detention for 90 days or 60 days, as the case may be, the Magistrate must, before making an order of further remand to judicial custody point out to the undertrial prisoner that he is entitled to be released on bail.

34. If this Court had intended to lay down, even by way of an obiter that the period of detention is to commence from the date of arrest, then it would not have said in the very next breath that an accused is entitled to be told by the Magistrate, at the end of the period of detention for 90 days or 60 days as the case may be that he has a right to seek enlargement on bail. The last of the cases is State of Uttar Pradesh V. Lakshmi Brahman and Another, . That was a case where the Allahabad High Court held that in a case exclusively triable by a Court of Sessions a Magistrate has no jurisdiction or authority to remand an accused to custody after the charge-sheet is submitted and before the commitment order is made, and hence the accused are entitled to be released on bail after being in detention as remand prisoners for 90 days. The view of the Allahabad High court was upheld by this C6urt a casual observation has been made that the admitted position was that the accused did not apply to the Magistrate for being released on bail on the expiry of 60 days from the date of arrest. This statement of fact can never constitute a pronouncement as to how the total period of detention should be reckoned.

35. From what we have stated above it is obvious that this Court has not expressed itself

in any of the three decisions, either directly or indirectly, upholding the proposition that for computing the total periods of detention prescribed in Clauses (i) and (ii) of proviso (a) to Section 167(2) of the Code, the date of arrest and not the date of production of the accused before the Magistrate should be taken as the starting point. In the light of our findings we are clearly of the view that the contentions of the appellants cannot be sustained. The learned Singh Judge, it must therefore be held, has acted correctly in allowing the petition filed by the State for cancellation of the bail granted to the appellants. As the Munsif Magistrate has granted bail to the appellants before the expiry of 90 days of remand period allowed under law, the order of the Magistrate will not tantamount to one passed under the provisions of Chapter XXXIII of the Code and hence there is no scope for contending that re-arrest of the appellants can be ordered only in terms of Sub-section (5) of Section 437. We, however, make it clear that after the appellants surrender themselves to custody or are taken into custody by re-arrest, they will not stand precluded from seeking enlargement on bail by filing applications under Sub-section (1) of Section 437 of the Code and satisfying the Court that they deserve to be enlarged on bail.

36. In the result, the judgment of the High Court is upheld and the appeal is dismissed accordingly.

(1986) AIR(SC) 2130 : (1986) AllCrlRulings 521 : (1986) AllWC 901 : (1986) 1 APLJ 60 : (1986) BBCJ 85 : (1986) BLJR 609 : (1986) CalCriLR 179 : (1987) 1 ChdLR 163 : (1986) CriAppR(SC) 159 : (1986) CriLR 256 : (1986) 2 Crimes 678 : (1986) ECrC 713 : (1987) 1 RCR(Criminal) 40 : (1986) 1 SCALE 1037 : (1986) 3 SCC 141 : (1986) SCC(Cri) 321 : (1986) 2 SCR 1128