(2009) 11 MAD CK 0200

Madras High Court

Case No: Criminal R.C. No. 1020 of 2009

Intelligence Officer, Narcotics Control Bureau		APPELLANT
	Vs	
Gulam Mohammed alias Mohammad Bhai and Others		RESPONDENT

Date of Decision: Nov. 2, 2009

Acts Referred:

- Constitution of India, 1950 - Article 14, 19, 21
- Criminal Procedure Code, 1973 (CrPC) - Section 218, 233, 234(2), 235(1), 239
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 21, 25, 27A, 28, 29

Citation: (2010) CriLJ 1794

Hon'ble Judges: S. Tamilvanan, J

Bench: Single Bench

Advocate: R. Dhanapal Raj, Special Public Prosecutor, for the Appellant; Abudukumar Rajarathinam, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S. Tamilvanan, J.
This criminal revision petition has been filed against the order, dated 18.09.2009 made in Crl.M.P. No. 707 of 2009 in C.C. No. 283 of 2004 on the file of Special Judge, Additional Special Court under NDPS Act, Chennai.

2. The revision petitioner / complainant had filed the Crl.M.P. No. 707 of 2009 before the Court below, seeking an order for clubbing the case in C.C. No. 283 of 2004 with the original case filed in C.C. No. 126 of 2004 to be tried jointly and dispose the same.

3. Mr. R. Dhanapal Raj, learned Special Public Prosecutor for NCB cases appearing for the revision petitioner submits that the first respondent / accused was shown as A4, an absconding accused in C.C. No. 126 of 2004. While the case was pending in C.C. No. 126 of 2004 before the trial court, an order was passed to split up the case as against the absconding accused Gulam Mohammed alias Mohammed Bhai, the respondent herein. He has further contended that it is a sensitive matter involving nearly 10.420 Kgs. of heroine, hence, though the connected case is a part-heard one, in the interest of justice, joint trial is needed.

4. Mr. Abudukumar Rajarathinam, learned Counsel appearing for R2 and R3 / Al and A2 submitted that in C.C. No. 126 of 2004, split up case, 9 witnesses were examined and the prosecution evidence was closed and the case was posted for questioning the accused u/s 313 Cr.P.C. Then the case was posted for defence witness and the learned Counsel appealing for the R2 and R3 made an endorsement that there was no defence witness. Hence, the case has been posted at present for arguments. At that stage, the revision petition has been filed by the petitioner / complainant, seeking an order to club both the cases, prejudicial to the interest of the co-accused, Al and A2.

5. Learned Special Public Prosecutor has not disputed the fact that the evidence was over in C.C. No. 126 of 2004 and the case is posted for arguments. Further, it is brought to the notice of this Court that this Court, by order, dated 30.10.2006 made in Crl.O.P. No. 25367 of 2006 filed by the second respondent, has directed the Court below to expedite the trial and dispose the case on merits, in accordance with law, within the time limit, not later than six months from the date of receipt of a copy of the said order.

6. As contended by the learned Counsel appearing for R2 and R3, in spite of the direction given by this Court, by order, dated 30.10.2006, the case could not be disposed of within six months and now it has taken three years after the date of the aforesaid order. It is not in dispute that the respondents 2 and 3 are languishing in prison for more than six years.

7. Learned Special Public Prosecutor contended that the Court has to consider the gravity of the offence and if joint trial is not ordered, the first respondent, who was an absconding accused can take advantage of the lapses and the loop holes available in the evidence that was already recorded in his favour, which would not be in the interest of justice. In support of his contention, the learned Special Public Prosecutor cited the decision in Kadiri Kunhahammad Vs. The State of Madras, , wherein the Hon''ble Supreme Court has held as follows:

Offences and that the said offences prima facie appeal to have been committed in the course of the same transaction, their joint trial can and should be ordered. The point of time in the proceedings at which it is to be determined whether the condition that the offences alleged had been committed in the course of the same

transaction has been fulfilled or not is at the time when the accusation is made and not when the trial is concluded and the result known.

It has been further held that when there is scope for conspiracy and offences committed in pursuance of the said conspiracy, joint trial of persons concerned is permissible. In the Judgment, at paragraph number 5, it has been held as follows:

Whereas Section 239(d) allows a joinder of persons at a criminal trial, Section 235(1) allows joinder of barges (charges) subject to the conditions mentioned respectively in the said two provisions. In other words, these provisions constitute an exception to the provisions of Section 233 as well as those u/s 234(2). There is, therefore, no doubt that, in a case of conspiracy, if specific offences are committed in pursuance of the said conspiracy, all persons who are parties to that conspiracy and are also concerned in the specific offences thus committed can be lawfully tried jointly at the same trial.

8. Learned Special Public Prosecutor also drew the attention of this Court to the decision, Dhurvasalu Naidu Vs. State, , wherein this Court has held that when there is charge of criminal conspiracy u/s 218 of the Code of Criminal Procedure, 1974, joint trial is held as necessary.

9. Per contra, learned Counsel appearing for R2 and R3 drew the attention of this Court to the decision in Supreme Court Legal Aid Committee Representing Undertrial Prisoners Vs. Union of India (UOI) and Others, , wherein the Hon''ble Supreme Court has held as follows:

It is equally true that similar is the objective of Section 309 of the Code. It is also true that this Court has emphasised in a series of decisions that Articles 14, 19 and 21 sustain and nourish each other and any law depriving a person of "personal liberty" must prescribe a procedure which is just, fair and reasonable, i.e., a procedure which promotes speedy trial.

The Hon''ble Supreme Court, referring Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, , Raghubir Singh and Others Vs. State of Bihar, , Kadra Pahadiya v. State of Bihar, AIR 1981 SC 939 has given the ruling that right to speedy trial is a fundamental right guaranteed under Articles 14, 19 and 21 relating to personal liberty.

10. In the instant case, it is clear that the prosecution cannot be blamed for the delay caused, similarly, the alleged offence is a heinous crime and the case has been registered under Sections 21, 25, 27A, 28 and 29 of NDPS Act and the quantity of the seized contraband is 10.42 Kgs of heroin, however, right to speedy trial is a constitutional mandate. It is not in dispute that the respondents 3 and 4/A1 and A2 are in duress for about 6 1/2 years. Learned Special Public Prosecutor gave assurance that if the case C.C. No. 283 of 2004 is clubbed with the other main case in C.C. No. 126 of 2004, wherein the respondents 3 and 4 are A1 and A2, both the cases

could be disposed of within one month from the date of receipt of the copy of this order, but the assurance given by the Special Public Prosecutor cannot be accepted because even the earlier order, dated 30.10.2006 made by this Court in Crl.O.P. No. 25367 of 2006, to dispose the matter within six months by the Court below could not be complied with, due to various factors, neither the prosecution nor the Court below can decide the disposal of the case within the time frame. In such circumstances, the assurance given by the learned Public Prosecutor for disposing the case within one month cannot be accepted.

11. When the connected case in C.C. No. 126 of 2004 relating to the respondents 3 and 4/A1 and A2 is posted for arguments, after the evidence was over, clubbing the present case in C.C. No. 283 of 2004 that had been split up since the accused / A4 was shown as absconding accused will not meet the ends of justice, when speedy trial is a guaranteed fundamental right, under Article 21 of the Constitution, which includes free, fair and speedy trial of any criminal case. It is also not in dispute that one more accused is still an absconding accused and if he is apprehended again, similar order for joint trial cannot be ordered.

12. The respondents 3 and 4/A1 and A2 are under trial prisoners for more than six years. Though speedy trial is a fundamental right under Article 21 of the Constitution, in spite of the earlier order of this Court, dated 30.10.2006 to dispose the case within six months, the Court below could not dispose the same on merits, even after 2 years. Hence, clubbing the case in C.C. No. 126 of 2004, which is posted for arguments after the evidence was closed to be tried with the split up case in C.C. No. 283 of 2004 will not meet the ends of justice.

13. On the aforesaid facts and circumstances, this criminal revision petition is dismissed. Consequently, connected miscellaneous petition is also dismissed. However, it is made clear that the Court below should dispose both the cases solely on the merits uninfluenced by the finding of this Court in the revision, based on evidence, according to law. The Court below is further directed to dispose the case in C.C. No. 126 of 2004 pending on its file within a period of two months from the date of receipt of a copy of this order, without causing further delay.