
(2000) 02 PAT CK 0140

Patna High Court

Case No: Criminal Miscellaneous No. 1598 of 2000

Rajdeo Sharma

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision: Feb. 2, 2000

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 311, 313

Hon'ble Judges: M.L. Visa, J

Bench: Single Bench

Advocate: Ashwani Kumar Singh and Vijay Shankar Shrivastav, for the Appellant; Rakesh Kumar, Arvind Kumar and Manoj Kumar for CBI, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M.L. Visa, J.

This is an application for quashing the order dated 7.12.99 passed by the Special Judge, CBI, South Bihar, Patna, allowing the prayer of CBI, the opposite party, to adduce evidence.

2. Before advertng to the discussion of rival contentions of the parties it is necessary to state the facts in brief giving rise to this application.

3. On 2.11.1982 Sri S. D. Jha, the then Deputy Superintendent of Police, CBI, Patna, lodged a First Information Report (FIR) against the petitioner u/s 5(2) read with section 5(1) (e) of the Prevention of Corruption Act, 1947, alleging therein that the petitioner while functioning as Development Officer in the Life Insurance Corporation of India, Branch-II, Patna during the period 1977 to 1988 amassed wealth disproportionate to his known sources of income by corrupt and illegal means. After investigation the CBI submitted charge sheet on 30.8.1985 in which the alleged disproptrionate assets as on 5.11.1982 were estimated at Rs. 9,10,932,41.

On 14.11.1986 cognizance of offence was taken against the petitioner u/s 5(2) read with section 5(1) (e) of the Prevention of corruption Act, 1947, and summons were issued fixing 2.12.1986 for appearance of the petitioner. On 24.4.1987 petitioner appeared and applied for bail and the same was granted to him. Thereafter the case was fixed for supply of police papers. On 4.3.1993 charges were framed and the prosecution was directed to produce the witnesses. On 5.12.1995 the petitioner filed a writ petition being Cr.W.J.C. No. 809 of 1995 before this Court praying, inter alia, for quashing of the entire criminal prosecution including FIR on the ground that in spite of lapse of a period of more than 13 years there had been no progress in the case and his right to speedy trial was being violated. The CBI opposed the prayer of petitioner in the writ petition on the ground that there was only one Special Court for CBI cases and a large number of cases were pending before it. On 7.12.1995 the writ petition of petitioner, was dismissed by this Court. On 11.3.1996 petitioner filed a SLP before the Supreme Court of India against the order dated 7.12.1995 and the Apex Court after hearing the parties in Cr. Appeal No. 1045 of 1998 passed judgment on 8.10.1998, [reported in [Raj Deo Sharma Vs. The State of Bihar](#),], and issued following directions for enforcement of the right of speedy trial:

(i) In cases where the trial is for an offence punishable with imprisonment for a period not exceeding seven years, whether the accused is in jail or not, the court shall close the prosecution evidence on completion of a period of two years from the date of recording the plea of the accused on the charges framed whether the prosecution has examined all the witnesses or not, within the said period and the Court can proceed to the next step provided by law for the trial of the case.

(ii) In such cases as mentioned above, if the accused has been in jail for a period of not less than one half of the maximum period of punishment prescribed for the offence, the trial Court shall release the accused on bail forthwith on such conditions as it deems fit.

(iii) If the offence under trial is punishable with imprisonment for a period exceeding 7 years, whether the accused is in jail or not, the court shall close the prosecution evidence on completion of three years from the date of recording the plea of the accused on the charge framed, whether the prosecution has examined all the witnesses or not within the said period and the court can proceed to the next step provided by law for the trial of the case, unless for very exceptional reasons to be recorded and in the interest of justice the Court considers it necessary to grant further time to the prosecution to adduce evidence beyond the aforesaid time-limit.

(iv) But if the inability for completing the prosecution within the aforesaid period is attributable to the conduct of the accused in protracting the trial, no court is obliged to close the prosecution evidence within the aforesaid period in any of the cases covered by clauses (i) to (iii).

(v) Where the trial has been stayed by orders of the court or by operation of law, such time during which the stay was in force shall be excluded from the aforesaid period for closing the prosecution evidence. The above directions will be in addition to and without prejudice to the directions issued by this Court in [Common Cause A Registered Society through its Director Vs. Union of India \(UOI\) and Others](#), as modified by the same Bench through the order reported in [Common Cause, A Registered Society Vs. Union of India \(UOI\) and Others](#), .

The Apex Court set aside the order passed by this court in Cr.W.J.C. No. 809 of 1995 and directed the Special Judge, CBI, South Bihar, Patna to pass appropriate orders in the case of petitioner in pursuance of the aforesaid judgment.

4. On receipt of the copy of the aforesaid judgment the Special Judge, CBI, South Bihar, Patna, on 30.10.1998 closed the case of prosecution and fixed the case on 2.11.1998 for recording the statements of petitioner u/s 313 Cr.P.C. (Annexure-1). After the examination of petitioner u/s 313 Cr.P.C. the case was adjourned for hearing arguments which were finally heard on 9.4.1999 and thereafter the case was adjourned to 19.4.1999 for filing written arguments. In the mean time, CBI filed a petition before the Supreme Court for clarification/modification of the directions given earlier in the case of petitioner. This petition was numbered as Cr. Misc. Petition No. 2326 of 1999 and it was decided on 22.9.1999 [reported in [Raj Deo Sharma Vs. The State of Bihar](#),]. The Supreme Court in its subsequent judgment clarified the directions given in the previous judgment. For the purpose of this application the relevant directions are following:

6. We are inclined to state by way of clarification that the discretion of the courts in granting further time exercisable "for very exceptional reasons to be recorded and in the interest of justice" as for Direction (iii) above can be imported in respect of Direction (i) as well.

15. Shri Altaf Ahmed, learned Additional Solicitor General submitted that unless Directions (i) and (iii) are made prospective from the date of judgment in Rajdeo Sharma prosecution in many pending cases would be jeopardised. He pointed out that on the date of the said judgment the period concerned stood expired in many cases. We have bestowed our consideration on the said submission and we find force in it. Possibility of a miscarriage of justice resulting there from must be averted. We are, therefore, inclined to include a rider that an additional period of one year can be claimed by the prosecution in respect of prosecutions which were pending on the date of judgment in the main appeal, and the court concerned would be free to grant such extension if the court considers it necessary in the interest of administration of criminal justice. As we suspended the operation of the judgment from 14.5.1999 till today the said time of suspension will stand excluded from the aforementioned additional period of one year.

5. After aforesaid clarifications by Apex Court, the CBI filed a petition (Annexure-4) before the Special Judge, CBI, South Bihar, Patna, stating therein that by order dated 22.9.1999 the Supreme Court has issued a rider that an additional period of one year can be claimed by the prosecution and the court concerned would be free to grant such extension if the court considers it necessary in the interest of criminal justice. It prayed that in view of the aforesaid judgment of the Supreme Court prosecution be allowed to summon witnesses and adduce evidence of important witnesses in the interest of justice. The court below allowed this application by the impugned order which is now under challenge before this Court.

6. Learned counsel for the petitioner has vehemently argued that the learned Special Judge, CBI, South Bihar, Patna has erred in law and has misunderstood the subsequent judgment passed by the Supreme Court because it has wrongly held that directions for fixing time for prosecution to produce its witnesses are prospective from the date of passing the judgment in main appeal. It has further been argued that because the charges were framed on 4.3.1993 so the case of prosecution according to the direction of the Supreme Court must have been closed by 4.3.1995 because the case of petitioner falls within Direction No. (i).

7. On the other hand, learned counsel appearing on behalf of the CBI has argued that by subsequent clarifications the Apex Court permitted the prosecution for claiming an additional period of one year in respect of prosecutions which were pending on the date of judgment in the main appeal and left the court concerned free to grant such extension if it considers necessary in the interest of justice and has further been pleased to observe that the period from 14.5.1999 to 22.9.1999 during which the operation of the judgment passed in the main appeal remained suspended will stand excluded from the aforesaid additional period of one year and in view of these facts the prosecution made prayer for grant of additional time to produce its important witnesses and the court after considering its prayer and observing that the submission of the prosecution has force and further evidence appears to be essential for just decision of the case, has allowed the prayer of prosecution. An alternative argument has been advanced that the Apex Court has not put any restriction on the powers of the court below u/s 311 Cr.P.C. and in the impugned order because the court below has observed that further evidence appears to be essential for just decision of the case, so it can be treated as an order passed by invoking the provisions of section 311 Cr.P.C.

8. Learned counsel for the petitioner has submitted that after passing of the judgment in the main appeal when the case of prosecution was closed by the court below the prosecution did not challenge that order in any higher court and on the contrary it took part in the hearing of final arguments of the case but after clarifications by the Apex Court it made prayer for time for producing its witnesses. According to him, the additional time of one year granted to prosecution is not applicable to the case of petitioner because the CBI did not seek clarification in

respect of the case of petitioner but it sought clarification in respect of other general cases and the petitioner was not a party in the subsequent proceeding before the Apex Court in which earlier directions have been clarified. I am unable to accept this submission because the directions passed in the main appeal were in the case of petitioner and subsequently the CBI sought clarification of those directions which have now been clarified. The petitioner cannot separate his case from other cases because the directions and clarifications of directions are in respect of cases which were under consideration including the case of petitioner. The petitioner cannot take the stand that directions issued in his case are applicable but the clarifications subsequently made of those directions are not applicable to his case. It has been further submitted on behalf of the petitioner that because the prosecution had already closed its case, the petitioner was examined u/s 313 Cr.P.C. and arguments were heard, therefore, the case of petitioner stands on a different footing and the grant of additional period of one year is not applicable to the case of the petitioner. This argument also is not sustainable in view of the fact that prosecution has been permitted to claim an additional period of one year to produce its witnesses in respect of prosecutions which were pending on the date of judgment in the main appeal. There is no dispute that the case of the petitioner was also pending on the date of judgment in the main appeal.

9. The next point argued on behalf of the petitioner is that the grant of additional period of one year means that this period will be added in the period fixed for cases falling under Direction nos. (i) and (iii). In other words, in respect of cases which were pending on the date of passing of the judgment in the main appeal, the case of prosecution has to be closed on expiry of 3 years for cases falling under Direction (i) and on expiry of 4 years for cases falling under Direction (iii). If the prosecution is granted this additional time of one year even then the time limit in the case of petitioner stands expired because the charges had been framed on 4.3.1993. This interpretation of clarification, in my opinion, does not appear to be correct because after passing of the judgment in main appeal the CBI filed petition for directions/modifications/clarifications of directions given in the judgment passed in the main appeal and one of the prayer of CBI was to make the directions (i) and (iii) prospective from the date of judgment passed in the main appeal on the ground that on the date of such judgment the period fixed by the Apex Court stood expired in many cases. The Apex Court found force in this submission and thereafter included a rider that in respect of prosecutions which were pending on the date of judgment in the main appeal, the prosecution can claim an additional period of one year and permitted the court concerned to grant such extension if the court considered it necessary in the interest of administration of criminal justice. If the argument advanced on behalf of the learned counsel for the petitioner is accepted it will mean that the additional period of one year was not granted in respect of those cases in which the period fixed by the Apex Court had already stood expired on the date of judgment in main appeal before one year. In such situation, only that much

time which remains in balance after subtracting the period between the date of expiry of original time limit and date of passing judgment in main appeal from one year can be claimed by prosecution in respect of only those cases in which the time limit fixed by the court expired within the period of one year only from the date of judgment in the main appeal. As stated above, the additional period of one year has been granted to prosecution considering the submission that on the date of judgment passed in main appeal the time-limit fixed by the Apex Court stood expired in many cases. The claim of additional period of one year is in respect of prosecutions which were pending on the date of judgment. No distinction by the clarifications has been made between cases in which time-limit had expired before one year from the date of judgment and cases in which this time limit had expired within one year from the date of judgment. The additional period has been granted in respect of all cases which were pending on the date of judgment passed in main appeal including the cases in which time-limit had expired irrespective of the fact when it expired. It is not that additional period of one year has been granted to prosecution without any condition. The clarifications state that in such type of cases the prosecution can claim additional period of one year and the court concerned would decide it whether it is necessary in the interest of administration of criminal justice. Unless the court concerned is satisfied that the extension of time is necessary in the administration of criminal justice the prosecution cannot get this additional period of one year. So I think that when the Apex Court by allowing the prosecution to claim an additional period of one year directed the court concerned to grant this period only when the court concerned considers it necessary in the interest of criminal justice, it did not make any difference between the cases in which time limit stood expired before more than one year or within one year perhaps because of the reason that it will be considered by the Court concerned while entertaining the claim of the prosecution for additional period to produce witnesses.

10. About the alternative submission advanced on behalf of the CBI that the impugned order can very well be treated as an order passed under the provisions of section 311 Cr.P.C. I find that the order has been passed on the petition of prosecution that it has been permitted to claim an additional period of one year to produce its witnesses and considering this prayer the impugned order has been passed. Court below in the impugned order has observed that earlier the case of prosecution was closed but after clarification the situation has changed. It is true that the court below has observed that further evidence appears to be essential for just decision of the case but then I find that this observation is the reason given by the court below for allowing the prayer of prosecution claiming additional period as granted by the clarifications of the directions given in the main appeal by the Apex Court. So this order cannot be said to be an order passed u/s 311 Cr.P.C.

11. Learned counsel for the petitioner has lastly argued that by allowing the prayer of prosecution the court below has given an indefinite liberty to bring its witnesses against the directions of the Apex Court fixing a time-limit for closing the case of

prosecution. Learned counsel appearing on behalf of CBI has submitted that the prosecution has prayed only that much additional time for which it has been allowed to claim by subsequent clarifications of the directions given in main appeal by the Apex Court and it is not going to make any prayer against the directions. By the judgment of the Apex Court passed in the main appeal the court below has been directed to pass appropriate order in the case of petitioner in pursuance of the judgment. The question of passing any order by the court below against the aforesaid directions does not arise. So the apprehension of petitioner appears to be unfounded.

12. In the result, I find no merit in this application and the same is dismissed.