(2011) 09 CAL CK 0036

Calcutta High Court

Case No: C.R.R No. 4138 of 2007

Kanti Prasad Khaitan	APPELLANT
Vs	
The State of West Bengal	RESPONDENT

Date of Decision: Sept. 26, 2011

Acts Referred:

- Constitution of India, 1950 - Article 21
- Penal Code, 1860 (IPC) - Section 120B, 320, 420, 468, 471

Citation: (2012) 4 CHN 117

Hon'ble Judges: Kanchan Chakraborty, J

Bench: Single Bench

Advocate: Y.J. Dastoor, for the Appellant; K.V. Vishwanathan, for O.P. No. 3 and Himangshu Dey, for C.B.I., for the Respondent

Judgement

Kanchan Chakraborty, J.

In order to try his luck again, this application has been filed by Kanti Prasad Khaitan, praying for quashing of the criminal prosecution under Sections 120B/420/468 and 471 of Indian Penal Code pending against him before the learned Judicial Magistrate, 4th Court, Alipore, 24 Parganas (South). On two occasions earlier, his efforts, however, was proved futile. The number allotted to this application indicates unmistakably that it was filed long back in the year 2007. The earlier applications were taken out in the year 1989 and 1998. During this long passage of time, neither the applicant/accused lost his hope of exoneration from the charges without being tried nor the Ld. Court of Magistrate could able to proceed with the trial owing to the orders of stay passed by this Court time to time on the prayer of the applicant/accused.

2. It is not necessary to refer to the factual aspects in details. Suffice it to state that the applicant/accused and another indulged themselves in corrupt practice and fraudulent activities and thereby dealt with public exchequer to the tune of Rs.

6,00,000/- in clandestine manner. However, before the C.B.I could place the charge-sheet before the court on 30.5.1989 against them on conclusion of the investigation into the allegations and aspersions put forth in the F.I.R. lodged by the Bank of Baroda, the money they allegedly cheated was paid with interest and the Bank of Baroda accepted the same in writing as well as returned the money paid in excess. This happened on 05.9.1988, i.e., before the charge-sheet was filed and the earlier Revision application being No. CRR 952 of 1998 was filed and disposed of. While rejecting the prayer for quashing, this Court in C.R.R.- 952 of 1998 had the occasion to consider the factum of payment made by the applicant/accused, acceptance of the same by the bank and returning of the excess money. There is, in fact and substance, no change in the circumstance enabling the applicant/accused to agitate the same issue again and afresh. However, being aware of rejection of the earlier application, Mr. Dastoor, the Ld. Counsel for the applicant/accused put much stress on ? Right to speedy trial ? this time. He advanced two-fold contention :- firstly, the Bank of Baroda is having no scope for further grievance in view of the fact that the money allegedly cheated has been deposited in the bank by his client and that too with interest and secondly, more than two decades have been passed since initiation of the proceeding without any trial and progress in the prosecution resulting in gross violation of ?Right to speedy trial? which is an essential component of Article-21 of the constitution of India.

3. Mr. Himanghsu De, Ld. Counsel for the C.B.I./O.P. opposed both the contentions of Mr. Dastoor and submitted that subsequent deposit by the applicant /accused has no impact, whatsoever, on the offence allegedly committed. Subsequent deposit, in a case of like nature, does not minimize either the gravity of the offence or the criminality of the perpetrators. Mr. De contented further that the Petitioner cheated the bank in respect of huge public money and that has been established prima facie. So, the question of quashing of the prosecution does not arise. Mr. De contented further that the Petitioner himself contributed liberally to the delay in the criminal proceeding. One who himself caused delay in the proceeding, can not shout after words that his right to speedy trial is denied. One must suffer and bear the pain for his own fault and deliberate attempts to stall the criminal prosecution.

4. At the Bar, the following decisions have been referred to:

a) Inspector of police C.B.I. v. B. Raja gopal reported in 2003 SCC (Cri) 1238,

b) Modan Mohan Abbot v. state of Punjab reported in (2008) 2 SCC (Cri) 464,

c) C.B.I. v. A. Ravishankar Prasad and Ors. reported in (2009) 2 SCC (Cri) 1063,

d) Rumi Dhar v. State of West Bengal and Anr. reported in (2009) 2 C. Cr. L.R. (SC) 418,

e) Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Mohan Singh and Others,

f) Phiroze Dinshaw Lam and Others Vs. Union of India (UOI) and Others,

g) C.B.I. v. Duncan Agro Industries Ltd, Calcutta, reported in 1996 C. Cr. L.R. (S.C.) 320,

h) Dilip Kumar Mukherjee v. C.B.I. reported in (2007) 2 C. Cr. L.R.(Cal) 342,

i) Nalini Shankaran and Others Vs. Neelkanth Mahadeo Kamble and Others,

j) Nikhil Merchant v. C.B.I. reported in (2008) 3 S.C.C. (Cri) 858,

k) Vakil Prasad Sing v. State of Bihar reported in (2009) 2 SCC (Cri) 95.

5. The principle that emerges from the ratio of the decisions in the Duncan Agro (Supra), Nikhil Marchant (supra) and B.N. Joshi(supra), Madan Mohan Abbot (Supra), Rumi Dhar (Supra), is that, court, in appropriate cases, especially in matrimonial disputes and commercial transactions between two private parties, may ignore the bar u/s 320 0f the Code and quash a criminal prosecution in order to extend justice where the parties thereto amicably settled the disputes between them. The court is not supposed to encourage litigations which the parties do not want to proceed with owing to changed circumstances. This does not, however, suggest that in grave offences like murder, rape, dacoity, counterfeiting of currency, cheating of public money, corruption by public servants ------this principle ordinarily be followed. There is no single instance where court quashed prosecution wherein the nature of the offence is that serious as to touching public interest. In Inspector of Police, C.B.I. Vs. B. Rajagopal (Supra), the accused deposited the amount allegedly cheated and the bank concerned and the accused reached at a compromise. The Apex court, however, held that fact alone would not justify quashing of the proceedings. In C.B.I. v. A. Ravishankar Prasad (supra), in a more or less similar factual backdrop, the Apex court was pleased to decline quashing of the proceeding. The Hon''ble Court while expressing its view in that case, was pleased to take into consideration its earlier decisions in Rumi Dhar (Supra), Nikhil Marchant (Supra), Madan Mohan Abbot (Supra), B.S. Joshi (2003) SCC (Cri) 848, Duncan Agro Industries Ltd (Supra), referred to by Mr. Dastoor. The factual backgrounds of the cases in Phiroza Dinshaw Lam etc. (Supra) and in Hari Mohan Barman and Ors. v. State of Assam reported in (2008) 1 S.C.C. (Cri) 161 are significantly different from that of the present case.

6. In the case in hand, no doubt, a strong prima facie case is made out by the prosecution against the Petitioner and another. In fact, that prima facie case has been, to some extent, strengthened by the accused herein who ultimately deposited the money wrongfully acquired by them by way of malpractice and in fraudulent manner. Therefore, this is not just a common or ordinary case where despite existence of a strong prima facie case, court is supposed to quash the proceeding merely because of the fact that the cheated money is deposited. This Court is also fortifies with a decision a Division Bench of this Court in Pranati Textiles and Others Vs. State of West Bengal and Another, wherein it was observed.

We do not think that we can subscribe to such a view which would set the rigours of these beneficial provisions almost at naught. As we observed during the course of arguments, to accept such a contention might amount to accept the allied contention that a person who has stolen or misappropriated any amount is not to be prosecuted, if he returns the stolen or the misappropriated amount at any time before the prosecution is initiated against him. As we have already indicated, such delayed payment might be a mitigating consideration, but not a factor to debar prosecution.

7. It is true that the prosecution against the petitioner could not be proceeded materially for last twenty (20) years. Mr. Dastoor put much stress on ?Right to speedy Trial?. In support of this contention, Mr. Dastoor referred to the decision of this Court in Dilip Kumar Mukherjee (Supra) wherein the Hon''ble Single Judge of this Court observed, ? It cannot be denied that right to speedy justice is an essential component of Article 21 of the Constitution which deals with the right to life. Such ?life? certainly speaks of right to live with dignity. It essentially suggests that a person is entitled to have a life freedom from hunger, exploitation and oppression. It also cannot be denied that there are innumerable circumstances where in view of inordinate delay caused due to intentional laches on the part of the prosecution, the accused person is put into serious hardship. Our Constitution does not permit this Court to remain indifferent to this nor can it turn a blind eye. But while ascertaining this, it is necessary to adopt a cautious approach. ?

8. There is no dispute as to the settled principle of law that ?Right to Speedy Trial? is an essential component of Article -21 of the Constitution of India and Court should not remain indifferent to this right. But, in the case in hands, no delay was caused by the prosecution side at all. In this case, the charge sheet was filed on 30.5.1989, on completion of investigation, u/s 120B, 420, 468 and 471 of Indian Penal code. The Petitioner filed one Revisional application in that year being No. CRR 1750 of 1989. It was finally disposed of on 8.8.1995. Six (6) years were, thus, conveniently consumed in getting that revision application disposed of. Soon thereafter, the Petitioner filed another revisional application in the year 1998 which was disposed of on 4.8.1999. The learned Magistrate despite its best effort could not brought another accused on record. A warrant of arrest was issued and a considerable period of time was spent in chasing the said accused. The Petitioner, thereafter has taken out this application in the year 2007. All along, order of stay was followed in the event of filing of each revisional application. When the record itself shows that the present Petitioner had significant role in causing delay in the trial of the case, he can not take advantage of such delay. This will perhaps not set a good precedent and will, no doubt, embolden many others to approach Court in seeking quashing of the proceeding on that ground.

9. Mr. Dastoor used the word ?JUSTICE? frequently in course of his submission. Justice -that is what his client has sought for. What is Justice? What does it mean in

legal perspective? The word ?JUSTICE? has not been defined in any codified law. Someone may say that it means the quality of being fair and reasonable. Another may describe it as fair trial. It may be said that it connotes providing reliefs one deserves in a given circumstance. In more broad sense, it can be said that Justice means fair treatment for all by an impartial judiciary, in a legal system which protects mutual respect of each other? dignity and differences in order to secure substantive equality for all. To me, Justice is a conception having elasticity to bend in a given situation, which may, if required, travel beyond the rigid procedural codified law in order to provide right and reasonable relief. The Preamble of the Constitution of India guaranteed ?JUSTICE, social, economical and political?. What type of Justice the client of Mr. Dastoor wants? As far as payment of alleged cheated money is concerned, this Court is of view that it would probably be incorrect to say that by doing so, he has able to erase his criminality which is, prima facie, established. Exoneration on that ground would not secure Social, economical and political justice at all --- either to him or anybody. Such a dealing with public exchequer in clandestine manner is exposer of a shameless greedy character who has neither respect for himself nor for the public. Banks especially nationalized banks are commonly trusted by people. Majority of general public prefer nationalized banks to private banks in the matters of investments, savings, loans etc. Nationalized banks, on the other hand are entrusted to deal with that public money, obviously, with great care, caution and effectively. It is not banks? personal money they deal with but public money for which they are entirely responsible and accountable. So, when one laundered bank money, he actually laundered public money. There can not be any transaction in personal capacity by a bank with any individual----when a loan is sanctioned or overdrawal of credit is allowed. Therefore, when one cheats banks he virtually cheats public in general. On that analogy, when public money is cheated, bank can not possibility ask for exoneration of the cheater on the ground it has no further grievance. Bank can not do it on principle. In the instant case, however, Mr. Viswanathan, Ld. Counsel for the Bank of Baroda has made it clear that the bank is not at all interested to compromise the prosecution allegedly committed by the applicant/accused.

10. Therefore, the grounds taken by the Petitioner are not at all worthy of consideration and this Court having regard to the facts and circumstances of the present case, finds it in expedient to appreciate the grievance as ventilated by Mr. Dastoor. This does not appear to be a fit case where this Court in exercising its extraordinary power u/s 482 of Code, should quash the prosecution on the ground of depositing of cheated money and delay in proceeding.

11. Accordingly, the application stands rejected. The revision application is disposed of. The learned Magistrate is directed to ensure attendance of the petitioner on a date to be fixed by the Court. In doing so, the learned Magistrate can invoke relevant provisions of the code without any hesitation. It is further directed that the learned Magistrate should commence the trial without further ado upon

communication of the order.

12. Mr. De be given a plain copy of this order duty attested by the Court officer, so that he can place it before the learned Magistrate. Learned Magistrate is directed to act on the plain copy in order to avoid delay. Interim order of stay, if any, stands vacated.