
(2002) 08 CAL CK 0003

Calcutta High Court

Case No: C.R.R. No. 2794 of 2001

Pradip Mitra

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: Aug. 9, 2002

Acts Referred:

- Constitution of India, 1950 - Article 21
- Penal Code, 1860 (IPC) - Section 120B, 420, 467, 468, 471
- Prevention of Corruption Act, 1988 - Section 5(1)(d), 5(2)

Citation: 108 CWN 204

Hon'ble Judges: Debiprasad Sengupta, J

Bench: Single Bench

Advocate: Joy Sengupta, Ranjan Kr. Roy, for the Appellant;

Final Decision: Allowed

Judgement

Debiprasad Sengupta, J.

In the present application the petitioner has prayed for quashing of a proceeding being Special Court Case No. 8 of 1987 arising out of case No. R.C. 8 of 1982 dated 4.6.1982 under Sections 120B/420/467/468/471 of the Indian Penal Code and Sections 5(2), 5(1)(d) of the Prevention of Corruption Act, now pending before the learned Judge, 5th Special Court, Calcutta. The aforesaid case was registered on 4.6.1982 on an allegation that the petitioner having entered into a criminal conspiracy with others issued a document in July 1979 for Rs. 92,880/- which was reported to be missing and the same was issued on the basis of a British Airways document which was found to be fictitious. After issuing the said document the petitioner handed over the same to a co-accused who accepted the said document for the purpose of accounting, knowing fully well that the said document had been declared to be missing. It was further alleged that on the basis of the said document Air India Tickets were issued to some persons causing huge loss to Air India

amounting about Rs. 92.880/-.

2. By an order dated 19.3.1982 passed by the Division Bench of this court the petitioner was granted anticipatory bail. On 4.6.1982 the petitioner appeared before the learned Chief Metropolitan Magistrate, Calcutta and was granted regular bail. Thereafter by an order dated 23.5.1984 the learned C.M.M., Calcutta discharged the petitioner for non-submission of report in final form. However, on completion of investigation charge sheet was submitted before the learned Judge. 5th Special Court, Calcutta on 30.7.1987. Cognizance of offence was taken by the learned Special Judge on 28.8.1987 and summons were directed to be issued upon the accused persons. Thereafter on a prayer for calling for the records from the court of the learned C.M.M., Calcutta, this court was informed by a memo dated 8.9.1987 that the records had been destroyed according to law. The accused persons were allowed to be released on bail.

3. It appears from the order sheet of the court of the learned Special Judge that it took about 2 years, from 17.12.1987 to 1.11.1989 for supply of copies of documents, which the prosecution wanted to rely upon, to the accused persons. After such copies of documents were supplied the matter was taken up for consideration of charge on 8.1.1992. The learned Judge on being satisfied regarding the prima facie case framed charge under sections 420/467/468/471 I.P.C. and Sections 5(2) and 5(1)(d) of Prevention of Corruption Act against the petitioner only and adjourned the matter till 18.2.1992 for framing of formal charge. It may be mentioned here that in the present case since 18.2.1992 till the date of filing the present application formal charge could not be framed. The other accused persons were discharged by the learned Judge by his order dated 8.1.1992.

4. From the ordersheet it appears that from 18.2.1992 to 17.6.1992 the prosecution went on praying for time for moving the higher court challenging the order of discharge of other accused persons. It further appears that this court was moved by the prosecution in 1992 (C.R.R. No. 1007 of 1992) and such revisional application was kept pending before this court for 8 years and ultimately it was dismissed for default on 16.3.2000. After the revisional application was dismissed for default the records were received by the learned Judge. Special Court on 28.4.2000. After such records were received the prosecution went on praying for adjournment. On almost all occasions the case was adjourned at the instance of the prosecution.

5. Placing the entire ordersheet of the court below it is submitted by the learned Advocate of the petitioner that the accused petitioner Is not at all responsible for the delay caused in the present proceeding. On most of the occasions the case was adjourned at the instance of the prosecution. The matter was brought to this court by the prosecution by filing a revisional application, which after long pendency was dismissed for default. It is further submitted by the petitioner's learned Advocate that the petitioner is suffering from mental agony since 1982 due to pendency of the present proceeding, which should be quashed on this score alone.

6. The learned Advocate of the petitioner relies on a judgment of the Hon"ble Apex Court reported in 2002 SCC (Cri) 830 (P. Ramchandra Rao vs. State of Karnataka). Relying upon the judgment of the Constitution Bench of the Hon"ble Supreme Court in the case of [R.S. Nayak Vs. A.R. Antulay and Others](#),) it was held say the Hon"ble Apex Court as follows:

"Having placed on record the exposition of law as to right to speedy trial flowing from Article 21 of the Constitution, this Court held that it was necessary to leave the rule as elastic and not to fix It in the frame of defined and rigid rules. It must be left to the judicious discretion of the court seized of an individual case to find out from the totality of circumstances of a given case If the quantum of time consumed up to a given point of time amounted to violation of Article 21, and if so. then to terminate the particular proceedings, and if not. then to proceed ahead. The test Is whether the proceedings or trial has remained pending for such a length of time that the inordinate delay can legitimately be called oppressive and unwarranted, as suggested in A.R. Antulay."

7. The learned Advocate of the petitioner also relies upon a Judgment of the Hon"ble Supreme Court reported in 2002 SCC (Cri) 110 (Mahendralal Das vs. State of Bihar & Ors.). In the said Judgment it was held by the Hon"ble Apex Court as follows:

This Court in Abdul Rahaman Antulay vs. R. S. Nayak while interpreting the scope of Article 21 of the Constitution held that every citizen has a right to speedy trial of the case pending against him. The speedy trial was considered also in public interest as it serves the social interest also. It is in the interest of all concerned that guilt or innocence of the accused is determined as quickly as possible in the circumstances. The right to speedy trial encompasses all the stages, namely, stage of investigation, enquiry, trial, appeal, revision and retrial. While determining the alleged delay, the court has to decide each case on its facts having regard to all attending circumstances including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions etc. Every delay may not be taken as causing prejudice to the accused but the alleged delay has to be considered in the totality of the circumstances and the general conspectus of the case. Inordinate long delay can be taken as a preventive proof of prejudice."

8. In the said judgment it was further held by the Hon"ble Supreme Court that in cases of corruption the amount involved is not material, but speedy justice is the mandate of the Constitution being in the interest of the accused as well as that of the society. Cases relating to corruption are to be dealt with swiftly, promptly and without delay.

9. Next judgment relied upon by the learned Advocate of the petitioner is reported in 2002 SCC (Cri) 114 (Ramanand Chowdhury vs. State of Bihar & Ors.). From a perusal of the said judgment it appears that sanction for prosecution was obtained about 11 years after the offence. The prosecution against the appellant was pending

for over a period of 13 years. In such circumstances it was held by the Hon"ble Supreme Court that it would be a travesty of justice to permit the prosecution at this stage which would mean that appellant would suffer trial/appeal for another decade. The prosecution against the appellant was quashed.

10. In the judgment relied upon by the learned Advocate of the petitioner reported in 1992 SCC (Cri) 33 (Abdul Rahaman Antulay & Ors. vs. R. S. Nayah & Anr.) it was held by the Hon"ble Supreme Court as follows:

"Now, can it be said that a law which does not provide for a reasonably prompt investigation, trial and conclusion of a criminal case is fair, just and reasonable? It is both in the interest of the accused as well as the society that a criminal case is concluded soon. If the accused is guilty, he ought to be declared so. Social interest lies in punishing the guilty and exoneration of the innocent but this determination (for guilt or innocence) must be arrived at with reasonable despatch, reasonable in all the circumstances of the case. Since it is the accused who is charged with the offence and is also the person whose life and/or liberty is at peril, it is but fair to say that he has a right to be tried speedily. Correspondingly, it is the obligation of the State to respect and ensure this right. It needs no emphasis to say, the very fact of being accused of a crime is cause for concern. It affects the reputation and the standing of the person among his colleagues and in the society. It is a cause for worry and expense. It is more so, at he is arrested. If it is a serious offence, the man may stand to lose his life, liberty, career and all that he cherishes.

11. Relying upon the aforesaid judgments of the Hon"ble Supreme Court. It is submitted by the petitioner's learned Advocate that the alleged offence took place in 1979. Case was registered in 1962 and chargesheet was submitted in the year 1987 and since then there is absolutely no progress in the proceeding. Even the formal charge could not be framed till today. The ordersheet of the court below sufficiently indicate that the delay was mainly caused by the prosecution. The petitioner is suffering from mental agony for about 20 years and the present proceeding should be quashed on this score alone.

12. Mr. Ranjan Roy, learned Advocate appearing for the opposite party/ C.B.I. submits that although the present proceeding is continuing for about 20 years, such delay was not only caused by the prosecution. On some occasions the case was adjourned at the instance of the defence also. It is further submitted by Mr. Roy that considering the nature of the offence and other circumstances one more chance should be given to the prosecution to proceed with the matter.

13. I have heard the learned Advocates of the respective parties. I have perused the judgments referred in above as also the entire ordersheet of the court below. After going through the ordersheet it becomes clear how the prosecution dealt with this matter in a lackadaisical manner. Prosecution was very much reluctant to conduct the case before the learned trial Judge. Excepting few days, on each and every

occasion the matter was adjourned at the instance of the prosecution. It is equally surprising to see that the learned trial Judge also did not take any effective step to ensure the attendance of the learned lawyers and to conclude the proceeding. Save and except adjourning the matter time to time, he could not progress any further in the matter.

14. The offence took place in the year 1979. The case was registered in 1982 and after a long lapse of five years chargesheet was submitted and cognizance of offence was taken by the learned Judge in 1987. On 8.1.1992 the learned Judge fixed the date for framing of formal charge on 18.2.1992. On the said date P.P. prayed for time to move the higher court. Prosecution brought the matter to this court and kept it pending for 8 years and no attempt was made on their behalf to get the matter heard and after 8 years the revisional application was dismissed for default. The petitioner has been suffering from mental agony and anxiety for the last 20 years because of the pendency of this proceeding.

15. In the present case the formal charge could not be framed till today and if at this stage the prosecution is permitted to proceed with the matter, it will not be proper and desirable to give further opportunity to the prosecution for the purpose of causing further harassment to the petitioner. In view of the fundamental right of speedy trial as enshrined under Article 21 of the Constitution of India, the present proceeding should be quashed on this score alone. In the result, the present application succeeds and the same is allowed. The impugned proceeding being Special Court Case No. 8 of 1987 pending before the learned Judge, 5th Special Court, Calcutta is hereby quashed.

Let urgent xerox certified copy of this order, if applied for, be supplied to the respective parties at an early date.