

(1995) 05 CAL CK 0013

Calcutta High Court

Case No: Criminal Rev. No. 867 of 1993

Sat Paul

APPELLANT

Vs

Inspector of Police and
AnotherRESPONDENT

Date of Decision: May 16, 1995**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 197, 395, 482
- Penal Code, 1860 (IPC) - Section 161
- Prevention of Corruption Act, 1947 - Section 5(1), 5(2), 6

Citation: (1995) 2 CALLT 256 : (1997) 1 RCR(Criminal) 444**Hon'ble Judges:** Arun Kumar Dutta, J**Bench:** Single Bench**Advocate:** Anjan Mukherjee, Prantosh Mukherjee and Pradip Mukherjee, B.R. Ghosal and Amit Talukdar, Ranjan Roy, for the Appellant;**Final Decision:** Dismissed

Judgement

Arun Kumar Dutta, J.

The petitioner-accused, Sat Paul, thereafter referred to as petitioner) by this Revisional Application under Sections 395 and 482(17) of the Code of Criminal Procedure, 1973 thereafter referred to as Code has prayed for quashing of the relevant proceedings, being Special Case No. 8 of 1987 pending (before the learned Judge, First Special Court, 24-Parganas,) on the grounds made out therein.

2. The petitioner contends that he was appointed as a Probationer in Indian Customs and Central Excise Services (Group-A), appointed as such by letter No. A-12025/3/84-AD. II dated July 11, 1984 after having passed the I.A.S. and Allied Services Examination in 1983. While posted as Assistant Collector of Central Excise, Calcutta, "E" Division, Calcutta, on probation, he has been involved in the relevant case on the allegations made in the F.I.R. It is alleged in the F.I.R. that on 23rd July, 1986 some officials of the Central

Excise, Preventive Department, had come to the Office of the Informant at M/s. Capital Electronics (Manufacturing Division), P. 161, V.I.P. Road, Scheme VII-N, Calcutta-700 054 and had seized some documents and detained some T.V. Sets pending investigation. The petitioner was the In-charge of the said team. While leaving the said Office, the Petitioner had asked the Informant to meet him at his Office at Bamboo Villa on the next date. The Informant had, accordingly, met him at his (petitioner's) Office on the next day, accompanied by a partner of M/s. Capital Electronics. The Petitioner told the Informant that he would not release the seized goods and continue to harass them if he is not paid the sum of Rs. 4,000/- only. The Informant had met the petitioner on 2.7.86 as well for release of the seized goods, and the petitioner had agreed to pass an order of the release goods on payment of Rs. 4,000/- only to him for the purpose. He had asked the Informant to meet him at his Office for the said purpose. On the basis of the written Complaint of the Informant about the demand made by the petitioner, a trap was laid on 29.7.86 in presence of two independent witnesses after observing necessary formalities. The Petitioner had demanded and accepted the said Rs. 4,000/- only at his Chamber from the Informant and the conversation between them was heard by the witnesses ; and the Petitioner was caught red handed while accepting the bribe of Rs. 4,000/- only. He has thus been prosecuted therefore.

3. The Petitioner was arrested in connection with the relevant case on 29th July, 1986 and was remanded to police custody. As a result thereof, he was placed under suspension. By order dated 17th February, 1987 the service of the petitioner was terminated without any departmental proceedings; the legality, validity and correctness of which was challenged by him (Petitioner) before the Central Administrative Tribunal at New Delhi. The said Tribunal by judgment and order dated 18th September, 1989, in the relevant case, being No. 361 of 1987, had set aside/quashed the termination order dated 17th February, 1987 passed by the concerned Authority. The Tribunal had further directed the preservation of status quo immediately before the date of the impugned order of termination passed in the matter, In view of the aforesaid order of the Tribunal, the concerned^ Authority by order dated 20th October, 1989 had directed the continuation of the suspension order of the Petitioner with effect from 29th July, 1986. While on suspension, the Petitioner had moved another application before the Administrative Tribunal, Calcutta, being No. 1142 of 1991. On receipt of the direction of the said Tribunal, the Authority concerned had issued an order dated 15th February, 1992 revoking the suspension order of the Petitioner, and had posted him back to Calcutta as Collector of Central Excise. Meanwhile, on completion of investigation of the case, the C.B.I, had submitted chargesheet against the Petitioner-accused dated 30.3.87 for the alleged offences punishable u/s 161, I.P.C. and Section 5(2), read with Section 5(1) (b) of the Prevention of Corruption Act, 1947 (hereinafter referred to as Act II of 1947). And, it appears from paragraph 7 of the Revisional Application that admittedly the examination-in-chief of 9, out of 10 chargesheet witnesses, had already been completed upto June 1992.

4. It would, therefore, oddly appear from the record that the Petitioner had allowed the investigation of the relevant case, which was started on 29th July, 1986, to be completed and charge-sheet dated 30.3.87 to be submitted in the matter, and cognizance to be taken thereon by the court below on 6.4.87. He (Petitioner) had also allowed the examination-in-chief of 9, out of 10, charge-sheet witnesses to be completed upto June 1992. No Revisional Application appears to have been filed by him against the order of the court below dated 6.4.87 taking cognizance of the alleged offence, the order dated 3.9.87 wherein the Court below had held that sanction u/s 197 of the Code is not necessary for the reasons recorded therein, the order dated 26.4.88 whereby the court below had framed charges against the Petitioner-accused u/s 161, I.P.C. and Section 5(2) of the Act II of 1947 and fixing the case for trial in terms of the programme indicated therein, or any other order; and the Petitioner had thus allowed to trial to proceed according to law.

5. In his belated instant Revisional Application filed on 12th May, 1993 and moved before this Court on 13th May, 1993, the Petitioner had taken the following grounds for quashing of the relevant criminal proceedings :-

(i) that no sanction for prosecution, as required u/s 6 of the Act II of 1947 was obtained while taking cognizance of the alleged offence, as stated in paragraph 8,

(ii) that the cognizance taken by the court below u/s 161, I.P.C, is completely bad and without jurisdiction for the reasons stated in paragraph 10, and

(iii) that there has been flagrant violation of the petitioner's fundamental right to speedy trial, as enshrined in Article 21 of the Constitution of India, causing serious prejudice to him, for which the relevant proceedings are liable to be quashed, as stated in paragraphs 7, 11, 12 and 13 of the Revisional Application.

6. During the hearing, Mr. Anjan Mukherjee, the learned Advocate for the petitioner, did not, however, press the grounds (i) and (ii) mentioned above. The third ground as to delay was pressed by him very feebly. Mr. Mukherjee however, had very seriously challenged the correctness, legality and propriety of the order of the court below dated 3rd September, 1987 holding that "sanction as required u/s 197, Cr. P.C., is unessential", though the instant Revisional Application does not appear to be directed there against, and there is neither any prayer for setting aside the aforesaid order dated 3rd September 1987, presumably because the instant Revisional Application filed on 12th May, 1993 there against would clearly be barred by limitation. Mr. Mukherjee, in his usual wisdom, had waxed eloquent that sanction u/s 197 of the Code would be required for taking cognizance of the alleged offences, in the facts and circumstances of the instant case. He had thus submitted that the cognizance of the alleged offence taken by the court below in the absence of any such sanction is bad in law, though no such plea has been taken in the Revisional Application.

7. To the ground of absence of sanction u/s 197 of the Code first, Section 197 of the Code prescribe that :-

"When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction" in. terms thereof.

It would, however, be pertinent to refer to Section 4 of the Code in this context which reads as follows :-

"(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences",

8. The aforesaid provision being, what it is, there could be little mistaking that no sanction u/s 197 of the Code would be required in the matter of investigation, inquiry, trial, etc. in respect of offences punishable u/s 161, I.P.C. and Section 5(2) of the Prevention of Corruption Act, 1947 in view of the specific provision of sub-section "(2) of Section 4 of the Code, which would be regulated by the said Act II of 1947 in terms thereof. The said conclusion would all the more be confirmed by the decision of the Punjab and Haryana High Court in Rajinder Kumar Sood v. The State of Punjab, 1982 Cr. LJ 1718, wherein it has been held that "sanction u/s 6 is not necessary for the prosecution of an accused public servant u/s 5(2) P.C. Act (and allied offences u/s 161 etc. Penal Code) where such accused person has ceased to be a public servant on the date of taking of cognizance of the offence by the Special Judge. Nor, is sanction u/s 197, Cr. P.C, necessary for such prosecution as Section 197 is not applicable to prosecutions before Special Judge. Section 8(3) of Criminal Law Amendment Act, 1952 makes it clear that the P.C. Act is a special legislation with regard to bribery and corruption both with regard to its substance and procedural aspects and therefore the special provisions of sanction u/s 6 of the P.C. Act, would exclude the application of the general provisions of Section 197, Cr. P.C. This is clear from the provisions of Section 5, Cr. P.C. also. Therefore, Section 197, Cr. P.C, is not attracted to trials of offences before a Special Judge". I completely concur with the said view. That being so, I cannot persuade myself to accept the submission of Mr. Mukherjee that the cognizance of the offence taken by the court below is bad in law in the absence of sanction u/s 197 of the Code.

9. Even though a plea had been taken by the petitioner in paragraph 8 of the Revisional Application that the taking of cognizance of the offence by the court below in the absence

of sanction required u/s 6 of the the Act II of 1947 is bad in law, the said ground, as already noted, had not been pressed by Mr. Mukherjee during the hearing. Nor, could he, in the facts and circumstances of the relevant case and the settled principles of law on the point. Undisputedly, the petitioner was placed under suspension and from 7th August, 1986 and his services had been terminated on 17th February, 1987. The court below had taken cognizance of the alleged offence on 6th April, 1987. On that date the petitioner had ceased to be a public servant. The petitioner contends that the Central Administrative Tribunal at New Delhi had, by order dated 18th September, 1989, set aside the order of his termination and had directed status-quo to be maintained immediately before the date of his termination when he was already under suspension. It is also contended by him that the Authority concerned by order dated 15th February, 1992 had revoked the order of his suspension, and he was posted back to Calcutta as Collector of Central Excise, Calcutta. But that is of little consequence in view of the series of decisions of the different High Courts and the Apex Court on the point, some of which are cited below :-

[S.A. Venkataraman Vs. The State](#), ; [K.S. Dharmadatan Vs. Central Government and Others](#), ; Rajinder Kumar Sood v. State of Punjab, 1982 Cr. LJ 1718 and [R.S. Nayak Vs. A.R. Antulay](#), .

10. In view of the catena of decisions on the point, it is now a settled principle of law that the relevant date with reference to which a valid sanction is sine qua non for taking cognizance of an offence committed by a public servant as required by Section 6 is the date on which the Court is called upon to take cognizance of the offence of which he is accused; and that the terminus a qua for a valid sanction is the time when the Court is called upon to take cognizance of the offence. If, therefore, when the offence is alleged to have been committed the accused was a public servant but by the time the Court is called upon to take cognizance of the offence committed by him as public servant, he has ceased to be a public servant, no sanction would be necessary for taking cognizance of the offence against him. No sanction u/s 6 of the Act II of 1947 would thus be required for taking cognizance of offence by a Special Judge when the accused has ceased to be a public servant on being dismissed from service, as in the instant case. The subsequent setting aside of the dismissal order during the pendency of a criminal case could neither nullify the cognizance taken by the Special Judge.

11. The learned Advocate for the petitioner, Mr. Mukherjee, had referred to the decisions in the State of Maharashtra v. Dr. Budhikota Subharao, Judgment Today 1993(3) SC 397, [Supriya Basu Vs. Babulal Agarwal](#), and [Supriya Basu Vs. Babulal Agarwal](#), to contend that the alleged act had allegedly been done by the Petitioner "in the discharge of his official duty". But in view of my discussions above, the question as to whether the Petitioner-accused had acted or purported to act "in the discharge of his official duty" is of little moment, in the aforesaid facts and circumstances of the instant matter, and is entirely academic. It is, therefore, not necessary for me to go into the said question.

12. As already indicated, Mr. Mukherjee did not press the second ground taken for quashing of the relevant proceedings, as stated in paragraph 10 of the Revisional Application, during the hearing. Nor, could he, entirely ill made, as it is.

13. To the ground of delay next, which was feebly submitted by Mr. Mukherjee by referring to the decision of the Supreme Court in [Ramanand Chaudhary Vs. State of Bihar and others](#). In that case of bribery, the relevant proceedings was delayed as no action was taken by the prosecution for six years after a raid was conducted and it was the consistent opinion of the Public Prosecutor that no criminal case was made out against the accused. The sanctioning authority, on independent consideration, had initially refused to grant sanction. But later on, on the asking of the D.I.G., the Sanctioning Authority had changed his view and had accorded sanction, as a result of which the relevant case stood pending for more than 13 years. The Supreme Court, in the aforesaid facts and circumstances, had held that it was a fit case for quashing of the proceedings. The facts here are entirely different. The relevant case here was started on 29th July, 1986. The Investigating Agency, on completion of the investigation, had submitted chargesheet dated 30th March, 1987 on 6th April, 1987, much within one year from the date of the starting of the case. The court below had taken cognizance of the offence on 6th April, 1987, and entire copies had been supplied to the accused on 2nd March, 1988. The court below had also framed charge against the accused on 26th March, 1988. And, as stated by the petitioner himself in paragraph 7 of the Revisional Application, the examination-in-chief of 9 out of 10 charge-sheet witnesses had already been completed by June 1992. That being so, there seems to have been no unreasonable delay in the trial of the relevant case, till the stay granted by this Court herein. The certified copies of the order sheets on record would further indicate that the prosecution was neither responsible for whatever little delay had been caused in proceeding with the relevant case. Some delay was caused due to nonappearance of some prosecution witnesses for which warrants of arrest had to be issued against them for compelling their attendance before the Court. In the aforesaid circumstances, it does not seem to me that there has been any unreasonable delay in proceeding with the relevant case; and prosecution does neither appear to be responsible for whatever little delay that may have been caused in the trial of the relevant case. In this context, it would be pertinent to bear in mind some of the guidelines issued by the Supreme Court in [Abdul Rehman Antulay Vs. R.S. Nayak and another etc. etc.](#), which are set out below :-

(1) While determining whether undue delay has occurred (resulting in violation of Right to Speedy Trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the work-load of the court concerned, prevailing local conditions and so on-what is called, the systematic delays. It is true that it is the obligation of the State to ensure a speedy trial and State includes judiciary as well, but a realistic and practical approach should be adopted in such matters instead of a pedantic one.

(2) Each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case.

(3) Ultimately, the Court has to balance and weigh the several relevant facts-"balancing test" or "balancing process"-and determine in each case whether the right to speedy trial has been denied in a given case.

(4) Ordinarily speaking, where the court comes to the conclusion that Right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the Court to make such other appropriate order-including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded-as may be deemed just and equitable in the circumstances of the case.

14. As already indicated above, there has been no unreasonable delay in the trial of the relevant case before us. Even most charitably assuming for the, sake of argument that there has been some delay in trial of the case, the nature of the alleged offence, the manner in which the alleged offence had allegedly been committed by a responsible Government official at the beginning of his service career, and other relevant facts and circumstances indicated above, it seems to me that quashing of the relevant proceedings on the ground of alleged delay would not be in the interest of justice. It has already been indicated above that the trial of the relevant case had proceeded to a great extent and the examination-in-chief of 9 out of 10 chargesheet witnesses had admittedly been completed upto June 1992. In the circumstances, I would rather feel inclined to direct the court below to conclude the trial within a reasonable period.

15. Upon the premises above, I find little ground to quash the relevant proceedings, as prayed for by the petitioner. The Revisional Application should clearly fail, as it must, for the reasons amply and appallingly made clear above.

16. In the result, the Revisional Application fails and be rejected. The interim order passed in the matter and extended from time to time be all vacated. The court below is directed to conclude the trial, as early as possible, preferably within a period of 6 months from the dated of communication of this Order; if necessary, by proceeding with the trial on day-to-day basis.

Let this copy of this order be sent down to the Court below for its information and compliance.