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Abani Mohan Biswas and Others Vs State

C.R.R. No. 1850 of 1993

Court: Calcutta High Court

Date of Decision: July 28, 2004

Acts Referred:
Constitution of India, 1950 â€" Article 21#Criminal Procedure Code, 1973 (CrPC) â€" Section 317, 401, 482#Penal Code, 1860 (IPC) â€" Section 147, 324, 379, 447

Citation: (2005) 2 CHN 195

Hon'ble Judges: P.N. Sinha, J

Bench: Single Bench

Advocate: Sunirmal Nag, for the Appellant;Prabir Chatterjee, for the Respondent

Judgement

P.N. Sinha, J.
This revisional application u/s 401 read with Section 482 of the Code of Criminal Procedure (hereinafter called the Code)

has been preferred by the petitioners praying for quashing the criminal proceeding being G.R. Case No. 1246/76 arising out of Karimpur P.S.

Case No. 9 dated 4.7.1976 under Sections 147/447/379/324 of the Indian Penal Code (hereinafter called the IPC) now pending in the Court of

the learned Judicial Magistrate, 1st Court at Krishnagar in Nadia.

2. Learned Advocate for the petitioners contended that the G.R. Case No. 1246 of 1976 arose out of Karimpur P.S. Case No. 9 dated 4.7.1976

under Sections 147/447/379/324 of the IPC and after completing investigation the police submitted chargesheet in the said case on 10.2.1977.

Copies of relevant papers were served to the accused persons on 23.3.1977. For the last 27 years the trial has not been completed. It amounts to

violation of Article 21 of the Constitution as the said Article guarantees fundamental right of speedy trial. In the meantime some of the accused

persons have expired and some have become old and it causes inconvenience to them to attend Krishnagar Court from long distance of Karimpur

for so many years. Continuance of the proceeding after so many years is an abuse of the process of the Court and accordingly in view of the

guarantee of fundamental right of speedy trial as enshrined under Article 21 of the Constitution, the present proceeding should be quashed, In

support of his contention he cited the decisions in Rajendra Kumar and Others Vs. State of Madhya Pradesh, Mihir Kumar Ghosh v. State of

West Bengal, reported in 1990 Cr. LJ 26 and Ranjit Kumar Pal Vs. The State, .

3. Learned Advocate appearing for the State contended that already 11 witnesses have been examined by the prosecution. Only three witnesses

are left to be examined and the learned Magistrate tried his best to secure attendance of witnesses and warrant was also issued against doctor

witness. Ordersheet reveals that accused persons were irregular in attending Court and the delay, if any, was not for the fault of prosecution but for

the fault of accused persons. There cannot be any direction for quashing of the criminal proceeding. The Court may direct the learned Magistrate

to expedite the trial within a very short time.

4. After perusing the revisional application and annexures and considering the submissions made by the learned Advocates for the parties I find

from the materials on record that the G.R. Case No. 1246 of 1976 now pending in the Court of the learned Judicial Magistrate, 1st Court,

Krishnagar, Nadia arose out of Karimpur P.S. Case No. 9 dated 4.7.1976 under Sections 147/447/379/324 of the IPC. Certified copy of the

ordersheet annexed with the revisional application reveals that after completing investigation the police submitted chargesheet which was received

in Court on 10.2.1977. The ordersheet further reveals that copies of relevant papers were served to the accused persons on 23.3.77 and the case

was transferred to Sri A. K. Banerjee, learned Judicial Magistrate for disposal. Scrutiny of the ordersheet makes it clear that the accused persons

were very irregular in attending Court and negligence of the accused persons to attend Court is apparent on the face of the ordersheet. I find that

on several dates all the 12 accused persons remained absent and, on some dates 2/3 accused persons remained present and others remained

absent and, on some dates 6/7 accused persons remained present and others remained absent. It is also clear from the ordersheet that out of 14

witnesses already 11 witnesses have been examined by the prosecution. As doctor Swadesh Saha did not appear learned Magistrate has issued

bailable warrant against the said witness. On 26.7.93 for the first time learned Advocate for the accused persons prayed for closing the

prosecution case which was rejected by the learned Magistrate. Challenging the said order the accused petitioners moved the instant revisional

application and a Division Bench of this Court by order dated 24.9.93 stayed further proceeding of the said case. It is clear, therefore, further

delay of 11 years from 24.9.93 was caused due to the effect of order of this Court as this Court directed stay of further proceeding on the basis of

prayer of these petitioners in this revisional application.

5. It appears to me that, if the accused persons did not move this Court in the instant revisional application the aforesaid G.R. Case i.e. criminal

proceeding could have been disposed of much earlier. Be that as it may, long pendency is not the crux for consideration for quashing a criminal

proceeding. The decision of the Apex Court in "" Common Cause, A Registered Society Throough its Director Vs. Union of India and others, and

also AIR 1996 SC 1619 and also the case of Raj Deo Sharma Vs. The State of Bihar, and also Raj Deo Sharma Vs. The State of Bihar, are no

more good law in view of the decision of the Apex Court in P. Ramachandra Rao Vs. State of Karnataka, and State Through C.B.I. v. Narayan

Waman Nerukar and Anr., reported in AIR 2002 SCW 3484 . In this connection the decision of the Apex Court in Abdul Rehman Antulay Vs.

R.S. Nayak and another etc. etc., has been held by the Supreme Court as still holds the field and correct proposition of law. The Constitutional

Bench of Supreme Court in P. Ramachandra Rao''s case (supra) made it clear that there cannot be any prescribed period of limitation for disposal

of a criminal case. In State through C.B.I. (supra) it has been observed by the Supreme Court that, ""While considering the question of delay the

Court has a duty to see whether the prolongation was on account of any delaying tactics adopted by the accused and other relevant aspects which

contributed to the delay. Number of witnesses examined, volume of documents likely to be exhibited, nature and complexity of the offence which is

under investigation or adjudication are some of the relevant factors. There can be no empirical formula of universal application on such matters.

Each case has to be judged in its own background and special features, if any. No generalization is possible and should be done.

6. In the instant case I find that the delay, if any, has been caused due to the negligence and irregular attendance of the accused persons in Court as

the ordersheet clearly reveals that seldom all the accused persons attended Court on dates of evidence. Ordersheet reveals that the learned

Magistrate even had examined witnesses on different dates applying provisions of Section 317 of the Code in absence of the accused persons.

Considering the entire background of the case, nature and circumstances and conduct and attendance of the accused persons, I am constrained to

observe that, it is not a fit case for quashing the criminal proceeding. It is not such a case in which quashing should be done in view of the guarantee

of fundamental right of speedy trial as enshrined in Article 21 of the Constitution. However, considering that it is a very old case, I direct the

learned Judicial Magistrate concerned to take effective steps and measures to secure attendance of the remaining witnesses as early as possible

and to dispose of the case within 4 months from the date of communication of this order without granting any undue adjournment to either of the

parties. If in spite of his best efforts, even issuing warrants, the learned Magistrate fails to secure attendance of the remaining witnesses and fails to

examine the remaining witnesses within the time fixed by this Court, the prosecution evidence shall stand closed, and thereafter, the learned

Magistrate shall dispose of the case in accordance with law on the basis of evidence on record. If the said Court is vacant learned Chief Judicial

Magistrate shall withdraw the case from the Court of Judicial Magistrate, 1st Court, Krishnagar and transfer the case to any other Court of Judicial

Magistrate in which Magistrate is posted and, this order empowers the learned Chief Judicial Magistrate to withdraw the case from the Court of

learned Judicial Magistrate, 1st Court, Krishnagar if the said Court is vacant.

7. The revisional application is disposed of accordingly in the light of the observations made above.

8. Send a copy of this order to the learned Chief Judicial Magistrate, Krishnagar, Nadia and to the learned Judicial Magistrate, 1st Court,

Krishnagar, Nadia for information and necessary action.

9. Urgent xerox certified copy be given to the parties, if applied for, expeditiously.