
(2007) 09 CAL CK 0066

Calcutta High Court

Case No: C.R.R. No"s. 1599 and 1778 of 2004

Radhe Shyam Pandey

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision: Sept. 7, 2007

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 107, 116(6)

Citation: (2008) CriLJ 890

Hon'ble Judges: Tapan Mukherjee, J

Bench: Single Bench

Advocate: O.P. Dubey, Pinaki Bhattacharyya and Ataz A. Sanwarwala, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Tapan Mukherjee, J.

Both the revisions have been taken up together for hearing.

2. Heard the learned Counsel for the petitioner and the opposite party in both the cases. State remains unrepresented.

3. It has been contended by the learned Counsel for the petitioner in C.R.R. 1599 of 2004 that in view of the mandatory provision of Sub-section (6) of Section 116 of the Code of Criminal Procedure, the enquiry is to be completed within a period of six months unless for "special reasons" to be recorded in writing, the proceeding is continued beyond the said statutory period of six months and obviously the enquiry started u/s 116 of the Code of Criminal Procedure was not completed within the period of six months. No special reasons were assigned for extension of the period and the proceeding on expiry of the period of six months is terminated and the order of executions of bond passed by the learned Executive Magistrate on 27-11-2003 is illegal and abuse of process of the Court and the same is, to be

quashed.

4. The learned Counsel for the petitioner has further contended that challenging the said proceeding, a revisional application was moved before the learned Additional Sessions Judge, Howrah and the learned Additional Sessions Judge after hearing the revision set aside the order of the learned Executive Magistrate asking the son of the petitioner-Chandra Prakash Pandey to execute the bond but affirmed the order of the learned Executive Magistrate in respect of the petitioner. The learned Additional Sessions Judge failed to consider the mandatory provision u/s 116 of the Code of Criminal Procedure and passed the impugned order which has occasioned in failure of Justice.

5. The learned Counsel for the petitioner in C.R.R. 1778/04 and the O.P. in C.R.R. 1559/04 has supported the order of the learned Additional Sessions in respect of the petitioner-Radhe Shyam Pandey Taut challenged the said order so far it relates to Chandra Prakash Pandey. He has contended that Chandra Prakash Pandey also took active role in the matter. There were allegations against him and there was an overt act on his part so as to bring him under the mischief u/s 116 of the Code of Criminal Procedure and the learned Additional Sessions Judge was not justified in setting aside the order of the learned Executive Magistrate in respect of Chandra Prakash Pandey.

6. The learned Counsel for the petitioner in C.R.R. 1599/04 has supported the judgment of the learned Additional Sessions Judge in respect of the O.P. Chandra Prakash Pandey. The learned Counsel for the petitioner has placed his reliance upon the ruling reported in (1985) 89 C.W.N.1110 (Bhairab Paul v. Gora Chand Kundu) and 1993 Cal Cri LR 402 (Ananda Prasad Ghosh v. Om Prakash Agarwal).

7. The impugned order of the learned Executive Magistrate arises out of a proceeding u/s 107 of the Code of Criminal Procedure brought against Radhe Shyam Pandey, the petitioner in C.R.R. 1599 of 2004 and his son Chandra Prakash Pandey. The said order of the learned Executive Magistrate was challenged in revision and the learned Additional Sessions Judge, Howrah maintained the order in respect of the petitioner-Radhe Shyam Pandey but set side the order in respect of his son Chandra Prakash Pandey.

8. The proceeding in this case was initiated and started u/s 116 of the Code of Criminal Procedure. In view of the mandatory provision of Sub-section (6) of Section 116 of the Code of Criminal Procedure, the enquiry shall be completed within a period of six months from the date of its commencement and if such enquiry is not completed, the proceeding shall on the expiry of the said period stand terminated unless for "special reasons" to be recorded in writing the Magistrate otherwise directs. So, the statutory provision is that the enquiry u/s 116 of the Code of Criminal Procedure must be completed within the period of six months and if it is to be continued beyond the said period of six months, the concerned Magistrate is to

record "special reasons" in writing.

9. In the ruling reported in 1993 Cal Cri LR 402, cited supra, it has been laid down by this Court that the date of commencement of the enquiry will be at least the date when one of the opposite parties show cause and the enquiry has to be completed within six months from that date. If the Magistrate for special reasons think it prudent enough to extend the continuance of the proceeding beyond the period of six months with due application of mind, he should make it prior to the expiry of the period of six months from the date of commencement i.e. from the date of actual show cause by one of the second parties of proceeding u/s 107 of the Code Of Criminal Procedure.

10. In the decision reported in [Bhairab Paul Vs. Gora Chand Kundu and Others](#), , cited supra, the terms "special reasons" has been defined. It has been held that the "special reasons" contemplated in Section 116 of the Code of Criminal Procedure should be confined to reasons explaining the circumstances under which the enquiry could not be completed within the statutory period. It was held in that case that the date on which the present petitioners as opposite parties submitted their written statement showing cause should be taken to be the date on which the proceeding commenced and the Magistrate concerned was to conclude the proceeding within a period of six months from the said date.

11. In this particular case, the proceeding u/s 116 of the Code of Criminal Procedure was started on 17-4-2000. The O.Ps. appeared on 19-6-2000. On 4-8-2000 they filed show cause. The evidence was started on 30-4-2001. Then the enquiry was completed and the O.Ps. were asked to execute bond on 27-11-2003. So, it is clear that the enquiry continued not only for six months but for a number of years and almost on all the dates no reasons for adjourning the enquiry were recorded by the learned Magistrate and also for extending the period of enquiry.

On 2-2-2001 the extension was allowed up to 30-4-2001. No "special reasons" for extension are recorded. On 29-6-2001, 8-8-2001, 31-8-2001, 7-12-2001, 11-1-2002, 13-2-2002, 12-3-2002, 12-4-2002, 6-5-2002, 5-6-2002, 12-7-2002, 25-7-2002, 5-8-2002, 7-8-2002, 19-8-2002, 12-9-2002, 29-9-2002, 22-11-2002, 13-2-2003, 26-2-2003, 13-3-2003, 9-4-2003, 29-4-2003, 2-5-2003, 5-6-2003, 12-6-2003, 20-6-2003, 30-10-2003, 6-11-2003, 7-11-2003, 24-11-2003, 25-11-2003 no "special reasons" for extension of the period of enquiry were recorded by the learned Magistrate. It is clear that the enquiry which was to be completed within a period of six months was extended beyond the said statutory period without recording "special reasons" in writing in violation of the provision of Sub-section (6) of Section 116 of the Code of Criminal Procedure and consequently, the enquiry stood terminated on the expiry of the period of six months and the impugned order dated 27-11-2003 cannot stand against the O.Ps. and the same is liable to be quashed. The learned Additional Sessions Judge was not justified in setting aside the order in part with respect to Chandra Prakash Pandey only. He should have also quashed that order in respect of

the petitioner-Radhey Shyam Pandey.

12. The revision being C.R.R. 1599 of 2004 is allowed. The impugned order of the learned Executive Magistrate, Howrah in Misc. Case No. 70 of 2000 u/s 107 of the Code of Criminal Procedure passed on 27-11-2003 against the petitioner is hereby set aside. The order of the learned Additional Sessions Judge, Howrah passed in Criminal Revision No. 230 of 2003 stands set aside so far it relates to the petitioner-Radhey Shyam Pandey. The C.R.R. 1778 of 2004 stands dismissed. This order will govern in both the cases.

Send back the L.C.R. to the concerned learned Magistrate along with a copy of this order for and necessary action.