

Radhe Shyam Pandey Vs State and Others

Court: Calcutta High Court

Date of Decision: Sept. 7, 2007

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” 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 aside 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.