

(2002) 12 CAL CK 0023

Calcutta High Court

Case No: C.R.R. No. 82 of 1995

Dr. Pranab Kumar Mukherjee

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Dec. 3, 2002

Acts Referred:

- Constitution of India, 1950 - Article 21
- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 420, 468, 471

Citation: (2003) 2 CHN 418

Hon'ble Judges: Malay Kumar Basu, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Malay Kumar Basu, J.

This revisional application is directed against the criminal proceeding being G.R. Case No. 110/79 pending before the 2nd Court of Judicial Magistrate, Chandernagore arising out of Chandernagore P.S. Case No. 13/79 dated 14th February, 1979 under Sections 468/420 and 471 of the Indian Penal Code and also against the order dated 2nd March, 1994 passed by the said Judicial Magistrate in the said case. That case was filed against the petitioner on the basis of a written complaint to the fact that one Shri Ramayan Rout, Insurance No. 7886691 submitted Hospital Certificate along with a Regulation Certificate on 14th February, 1979 before the Insurance Company and claimed sickness benefit from 19th January, 1979 to 9th February, 1979, The said Hospital Certificate bore Serial No. 153 and Registration No. 162 of the Hospital named Employees' State Insurance, Gourhati, Hooghly. As the Hospital authority grew suspicious over that certificate they made an enquiry and it was confirmed that no such patient was admitted into the Hospital during the relevant period i.e. from 19th January, 1979 to 9th February, 1979 and no such Discharge Certificate was issued by the Hospital. Thereafter on further enquiry

the Hospital authority came to know that the said Shri Rout had taken such certificate from one doctor Shri Mukherjee who was not a doctor of that Hospital, and who took his seat in an outside chamber. Thus on the basis of this forged certificate the said employee Shri Rout was trying to make wrongful gain. Under such circumstances, this complaint was lodged against the accused doctor Shri Pranab Kumar Mukherjee under the abovementioned sections of the Indian Penal Code. On the basis of this complaint the police of Chandernagore P.S. started the abovementioned case and investigated into the same and after investigation was over submitted a charge sheet on 14th January, 1980 under Sections 468/420 and 471 of the Indian Penal Code before the 2nd Court, Judicial Magistrate, Chandernagore against the said Shri Ramayan Rout and doctor Shri Pranab Mukherjee. On the basis of the materials on record the learned Magistrate framed charge against the said two accused. u/s 468 of the Indian Penal Code on 21st December, 1983. Then trial commenced but it has not been concluded even after the passage of 15 years from that date, although the petitioner had no laches in the matter of attendance before the Court in connection with hearing of the case. Most of adjournments were taken by the prosecution and on some dates the trial could not be held due to want of Court's time. In view of such inordinate delay in the matter of disposal of the case the petitioner having been aggrieved has filed this revisional application praying for an order quashing the entire proceeding in view of the statutory provisions of Article 21 of the Constitution providing for the fundamental right of every citizen to get speedy trial having been violated.

2. Miss. Biswas has drawn my attention to the order sheets of the case record of the Court of Trial Magistrate which show that on 28 occasions it was the prosecution which took adjournments and on 7 occasions hearing could not be made due to want of Court's time and only on 14 occasions it was the accused who prayed for time.

3. Miss. Biswas refers to a good number of decisions in support of her contention that the prosecution having failed to effect speedy trial of the case or conclusion of trial within a reasonable period the criminal proceeding itself should no longer be insisted upon, and is liable to be quashed. These rulings are as follows:--

1. [T.J. Stephen and Others Vs. M/s. Parle Bottling Co. \(P\) Ltd. and Others](#), . In this case 20 years elapsed since the F.I.R. was lodged but the trial could be concluded and the Apex Court did not consider it proper to allow the Magistrate to proceed with the trial any longer.

2. Calcutta Criminal Law Reporter 1994 Cal. 359.

3. 2001 CLR (Cal.) 257 in this decision a Single Bench of this court held that as the prosecution took 27 adjournments since 1976 and the delay was found due to the prosecution's failure to get the trial expedited. It was found to be a fit case for quashing the proceeding.

4. 2001 CCRLR (Cal.) 69, here it was held by another Single Bench of this court that continuance of the proceedings any further would act the sufferings of the accused as there was no possibility of the hearing being concluded within a near future and on this ground the accused was discharged.

4. On a careful perusal of the facts and circumstances of the abovementioned rulings I am inclined to hold that they are not identical with those of the instant case.

5. Mr. Moitra, learned Additional Public Prosecutor has emphatically argued that in this case prosecution was not to be blamed at all for the delay that has crept in. According to him here it was the Court of Magistrate which suo motu passed an order for re-examination of witnesses(vide order of the Trial Court being No. 61 dated 24.3.93) even though the prosecution had already closed its evidence. According to him, at that point of time the petitioner did not draw the Court's attention to the delay and allowed it to prolong and at this late stage he is coming with such a prayer in order to take advantage of the same to which his contribution was also not to be ignored. Mr. Moitra in support of his contention refers to a very recent judgment of the Apex Court reported in 2002 CLR 497(SC) wherein Their Lordships has been held that to quash a proceeding on the ground of delay will enable the offender to have a easy exit and also it will provide an enabling clause empowering the judiciary to legislate--a course which is impermissible under the law. It has been further held in this leading judgment that courts cannot entrench upon the field of legislation which is a basically meant for the legislature and courts can only declare a law, can interpret a law and at the most they can also remove obvious lacunae of the law and fill the gaps, but they cannot create the law. Further, in this case Their Lordships have also opined that the time-limit or bar of limitation that was prescribed in the Common Cause cases or in Rejdeo Sharma's case was not a good law. According to Mr. Moitra, the Apex Court in this judgment sends a new message, a new sermon for the courts below and the legal position which has been enunciated during the last few years has not been given a go-by and it has been enjoined in this ruling that simply because there has been delay, the accused cannot be given a blank cheque. Mr. Moitra argues that in such a case, considering the circumstances, a time-frame would be fixed within which the concerned criminal case must be disposed of without fail. Otherwise, in serious criminal cases where the alleged offence is fraught with extreme gravity, if for simple passage of time, the accused persons are given an exit, then the society will suffer in the ultimate analysis, hardened criminals passing with impunity and imparting the future of the society of the peace-loving citizens.

6. Be that as it may, considering the facts and circumstances of this case, while accepting the logic of Mr. Moira's argument, I am inclined to rely upon the principles enunciated by the Apex Court in [Abdul Rehman Antulay Vs. R.S. Nayak and another etc. etc.,](#) , in which Their Lordships have spelt out a number of

alternative remedies in such an exigency and one of such remedies is a direction to be given to the Trial Court to expedite the hearing of the case, and if possible, to specify a time limit within which the trial of the case is to be completed I do not accept the contention of Miss. Biswas that under the said ruling of the Apex Court since the petitioner's right to speedy trial as envisaged under Article 21 has been infringed, she is entitled to get quashment of the proceeding and acquittal of the accused in view of the verdict given therein and also strengthened under the latest rulings of the Apex Court referred to above. Considering the nature of the offence alleged namely granting of forged and false discharge certificate by the accused-doctor to enable the recipients to make wrongful gain by placing such false certificates before the insurance companies. I am of the considered view that it would be fit and proper in such a case to follow the middle course instead of putting an end to the criminal prosecution in question and thereby enabling the offender of such a heinous crime to pass with impunity by quashing the proceeding.

7. In view of the foregoing reasons, I am not prepared to agree with the contentions advanced by Miss. Biswas and accordingly the revisional application be dismissed. However, the Trial Court be hereby directed to take up further trial of this case forthwith and to finally dispose of the matter within a period of four months from the date of receipt of the Lower Court records along with a copy of this order. If any of the parties fails to cooperate in this behalf, then the learned Magistrate will proceed according to law notwithstanding such non-cooperation or non-participation, in order to comply with this direction.

8. Interim order, if any, be vacated.

9. Xerox certified copies, if applied for by any party, may be supplied without delay.