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The State of Maharashtra Vs R. Mahadevan Iyer

Criminal Application No. 2437 of 1991 in Criminal Application No. 508 of 1991 in Criminal Writ Petition No. 561 of 1988

Court: Bombay High Court

Date of Decision: Nov. 26, 1991

Citation: (1992) CriLJ 1008

Hon'ble Judges: M.F. Saldanha, J

Bench: Single Bench

Advocate: R.F. Lambay, app, for the Appellant; Vijay Pradhan, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. This is a criminal application presented by the State of Maharashtra at the instance of Inspector of Police, C.B.I., A.C.B. CDW, Bombay. The

respondent to this application is Mr. R. Mahadevan Iyer, who is the original accused in a set of prosecutions pending before the learned Additional

Chief Metropolitan Magistrate, 3rd Court, Esplanade, Bombay. These prosecutions are numbered as Criminal Cases Nos. 630/P of 1979 to

Criminal Case No. 636/P of 1979 and Criminal Cases Nos. 9/P, 10/P and 11/P of 1982.

2. The incidents giving rise to these prosecutions pertained to the year 1976-77. After the investigations were carried out, the charge-sheets were

filed in the years 1979 and 1982 and the proceedings have been pending before the Court since that point of time. One of the cases has been filed

before the Court of Session at Greater Bombay, which I shall deal with separately. It is alleged that the respondent-accused was doing business as

a clearing agent and that he committed certain irregularities in connection with the some documents, the total value of the same amounting to

approximately Rs. 75,000/-. In view of the fact that there were 10 such parties involved, the investigating authorities were required to split up the

prosecutions into 10 separate cases.

3. In the year 1988, an application was made to this Court for modification of the bank guarantee, at which time Sugla, J. passed his order dated

25-5-1988 observing that the proceedings were pending for a long time without any justification and the concerned Magistrate was directed to

dispose of the pending criminal cases expeditiously but not later than two years from the date of receipt of the writ. It is relevant to point out that

this order passed on 25-5-1988. Once again in April 1991, the State of Maharashtra applied to Sugla, J. for extension of the bank guarantee that

had by then expired. By his order dated 26-4-1991, Sugla, J. had very clearly observed as follows :-

Having heard the counsel, I am of the view that the Metropolitan Magistrate was certainly not justified in not completing the trial within the

stipulated time directed by this Court. The Public Prosecutor on behalf of the State submits that there were some difficulties. I am not impressed.

However, having regard to the nature of the proceedings, I allow a further period of six months from the date of the receipt of the writ of this Court

on the Cri.A. to the Metropolitan Magistrate to complete the trial. It is made clear to the Public Prosecutor who is present and to the Metropolitan

Magistrate through the order that in case the trial is not completed within the period of six months as stated above, the respondent shall be

acquitted honourably. As regards the fresh bank guarantee I am satisfied that the laches are no the part of the Metropolitan Magistrate and in that

sense the State Government cannot be absolved from its responsibility. It was for them to see that the trial is completed within the period of two

years and in any event not to allow the bank guarantee to lapse. Having not done so in time, I do not think a case has been made out before this

Court for directing the respondent to furnish a fresh bank guarantee. It may not be out of place to mention that the respondent, it is stated, is

allowed to carry on his business as clearing agent. In the circumstances, assuming he is found guilty on trial, I do not see in what way the case of

the prosecution will be jeopardised. Order accordingly.

It is essential for me to record that this Court had, in unequivocal terms, observed that a final time-limit of six months had been granted to the

prosecution for completion of the proceedings. This Court had also laid down that if the proceedings are not completed within that period, the

respondent-accused would stand acquitted. The mandate of the High Court"s order was very clear in so far as this Court had taken the view that

the long period of time that had elapsed was unjustified and that regardless of what the circumstances were it was not in the interest of justice to

continue with the proceedings and, therefore, by default, the accused would stand acquitted. It was shortly before expiry of this period that the

present application has been filed by the State on 4-10-1991.

4. Mr. Lambay, the learned A.P.P. appearing in support of the application, has drawn my attention to the order of the trial Court and has also

canvassed a strong submission at the Bar that the record of the case very clearly shows that both the Investigating Officers and for that matter the

learned trial Magistrate had tried their best to complete the proceedings within the prescribed time. He submits the the accused had been asking for

time and that if the trial was not completed within the deadline of six months that neither the State nor the Prosecuting Authorities should be held

responsible. It is unnecessary for this Court to investigate into the question as to whether anybody is responsible because the position that emerges

in law is very clear and it is not at all permissible for this Court to either review or modify the order of Sugla, J.

5. The judgment dated 26-4-1991 is an oral judgment which has not been appealed against. It is a final order passed by this Court and it is not

permissible for such an order to be either amended or reviewed. Though the present application has been presented in the form of an application

for extension of time, in actual substance it is an application for review of that order because what is sought is an amendment to the final judgment

in question whereby the applicant desires that the time-limit prescribed by Sugla, J. should be modified and, furthermore, that the all important

clause whereby the accused was to stand acquitted should be set aside. I have had an occasion to consider the legal position in detail in the case of

Shri Suresh T. Kilachand v. Sampat Shripat Lambate (Criminal Application No. 2123 of 1991 in Criminal Appeal No. 398 of 1980). I have had

occasion to examine the legal position threadbare and in the course of that judgment, I have taken the view that it is not permissible for this Court,

in view of the relevant provisions of the Code of Criminal Procedure, to either review, or alter or modify a final judgment. The same principle

applies to a situation where an application for the recall of a final judgment is made. Having regard to the position in law, I have pointed out to the

learned A.P.P. that regardless of what the merits of the case may be that the judgment dated 26-4-1991, which has now become final, cannot be

modified in the least.

6. It was thereafter submitted by Mr. Lambay, the learned A.P.P., that the aforesaid judgment will not apply because he contends that the

judgment dated 26-4-1991 was not a final judgment and that it was only an interim order. A simple reading of that judgment will indicate that it

was a final judgment in Criminal Application No. 508 of 1991 and there can be no dispute with regard to the fact that it can under no

circumstances be categorised as an interim order or a judgment in an interim proceeding.

7. Mr. Pradhan, learned Counsel appearing for respondent-accused, has drawn my attention to the affidavit that has been filed in which he has

pointed out that through the long period since the date of the commission of the alleged offences and the present point of time, which is

approximately 16 years, that even the Investigating Officer has passed away and several of the witnesses have died. I shall have occasion to deal

with this aspect of the matter while disposing of the petitions, filed by the respondent-accused wherein he has prayed for quashing of the

proceedings instituted against him which is an independent relief prayed for and is not dependent on the orders in the present application.

8. The prayers in the present application as indicated by me read as follows :-

(a) That the order in Criminal Application No. 508 of 1991 be modified and further time of one year from the date of receipt of the writ of the

order passed in this application to complete trial in Cases Nos. 630/P/79 to 636/P/79 and 9-11/P/82 be granted.

(b) Any other order which may deem just and proper be passed.

A perusal of prayer (e) will indicate that the modification prayed for cannot be granted for the reasons that have already been set out by me. As a

necessary consequence, the time period for disposal of the cases, which has expired on 30-10-1991, cannot be extended and by necessary

implication, in view of the orders passed by Sugla, J. on 26-4-1991, the accused will stand acquitted in all those proceedings. I had, in the course

of the hearing of this application on 31-10-1991, passed on interim order staying the further proceedings before the trial Court. That order was

necessary because the proceedings could not have been continued with after 31-10-1991. The interim order is no longer necessary in view of the

final order passed by me.

9. In the light of what has been pointed out by me above, the criminal application fails and is accordingly dismissed and the rule discharged.

10. Rule discharged.