

(1995) 02 CAL CK 0025
In the Calcutta High Court
Case No : Criminal Rev. No. 1382 of 1989

Bijan Bihari Gupta

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 08-02-1995

Acts Referred:

Constitution of India, 1950 — Article 21
Penal Code, 1860 (IPC) — Section 120B, 420
Prevention of Corruption Act, 1947 — Section 5(2)

Citation : (1995) 1 CALLT 266 : 99 CWN 831

Hon'ble Judges : Gitesh Ranjan Bhattacharjee, J

Bench : Single Bench

Advocate : Pradip Kumar Ghosh and A.K. Pain, for the Appellant; B.R. Ghosal and Dipak Kumar Mukherjee, for the Respondent

Judgement

Gitesh Ranjan Bhattacharjee, J.—This revisional application has been filed for quashing the proceeding being case No. 3 of 1978 pending in the court of the Judge, Second Special Court, Calcutta under Sections 120B/420 I.P.C. and Section 5(2) of the Prevention of Corruption Act, 1947. The only point pressed before me on behalf of the petitioner at the time of hearing is the ground of prolonged pendency of the criminal proceeding. The petitioner Bijan Bihari Gupta was holding the post of Commercial Publicity Officer, South Eastern Railway at the relevant time, that is, between June 1968 and March 1976. On 27.1.78 a complaint was filed by Inspector of Police, C.B.I. in the court of the Additional Special Court, Calcutta against four accused persons including the present petitioner alleging commission of offences punishable under Sections 120B/420 I.P.C. and Section 5(2) of the Prevention of Corruption Act. Even earlier however the petitioner was suspended by the Railway Board on 15.10.77. Cognizance was taken by the learned court below on 16.2.78. Ultimately, charge was framed against the three accused, namely, the present petitioner Bijan Bihari Gupta, Purabi Gupta and Pranab Kumar Roy on 20.5.89 under Sections 120B and 420 I.P.C.

2. The gist of the charge is that the accused persons entered into a criminal conspiracy to cheat the South Eastern Railway and in pursuance of the said conspiracy illegally received and appropriated a total sum of Rs. 1,04,455.12 of South Eastern Railway as 15 per cent commission for certain advertisements as if those advertisements were procured for South Eastern Railway by certain canvassers/agents though in fact the concerned canvassers/agents did not procure the advertisements for the South Eastern Railway. The additional charge against the present petitioner, he being a public servant, has been framed u/s 5(2) of the Prevention of Corruption Act. It may be mentioned here that although the cognizance was taken against four accused persons the case against the accused No. 3 Ranjit Kr. Dutta was filed by the learned Court below on 6.2.96 as the said accused was absconding and thereafter the proceeding continued only against three accused persons already recorded above.

3. It is inter alia submitted before me by the learned Advocate for the petitioner that from the date of taking cognizance it took more than 11 years to frame charge only and out of 52 witnesses named in the list furnished with the petition of complaint only 31 witnesses have been examined before framing of charge. It is further submitted that a supplementary list of witnesses has been also submitted in the court below and the total number of prosecution witnesses comes to more than one hundred. It is submitted on behalf of the petitioner that if only 31 witnesses could be examined in 11 years it can well be presumed that going by that rate it may not be possible to examine the remaining witnesses within the life time of the accused persons apart from the question of tendering the witnesses who have been already examined for cross-examination after charge. There is no doubt that this aspect of the matter is really a very disturbing one which can not be ignored. The petitioner has filed the present revisional application on 18.8.89. We are now in 1995. But even excluding the period of pendency of this revisional application in the High Court we will find, as I have already discussed, that more than 11 years elapsed between the date of taking of cognizance by the learned court below and of framing of charge. If things going on at this rate it is anybody's guess as to when the trial will come to an end in the normal course, if at all. The order sheets of the proceedings of the learned court below have been placed before me and the same disclose a very sorry and pathetic state of affairs. The prosecution, it seems, did not take any interest to see or ensure that the trial comes to an end within a reasonable span of time. As we have seen cognizance was taken by the learned court below as far back as on 16.2.78. Instead of graphically describing as to how the proceeding continued thereafter and what were the lapses of the prosecution in conducting the proceeding I would only like to refer to order No. 45 dated 31.10.81 recorded by the learned court below in the following language:

".. .. It is clear from, the record that there are delays in examining witnesses causing prejudice to defence. This sort of misconduct should not be allowed but today hazira of five witnesses having been filed it would not be to expedient to close the evidence. The prosecution must be careful in future not to

delay the matter and complete the evidence without further delay. In case the prosecution fails to bring witnesses on any occasion the evidence will be closed then and there and no further adjournment would be allowed....."

For a period of more than 3 1/2 years what was the role of the prosecution, we get an idea of the same from the above observations of the learned trial court. Even as far back as in 1981 the learned court below clearly observed that the delay in examining the prosecution witnesses caused prejudice to the defence. The learned trial court also branded such inaction on the part of the prosecution unequivocally as "misconduct". The learned court below also recorded a clear warning that the prosecution must be careful in future not to delay the proceeding and failure to bring the witnesses on any occasion would result in closing the evidence and no further adjournment would be allowed. Such observations and directions of the learned trial court lamentably fell into deaf ears, else the prosecution would not have taken another 8 years even thereafter to examine some of its witnesses, although not all, before inviting the learned trial court to take up the consideration of framing of charge. Even after such observations of the learned trial court as recorded above, the case could not proceed on 1.2.82 and 16.4.82 because of absence of the learned public Prosecutor. There are also a number of dates on which the case could not proceed because of inaction on the part of the prosecution. The proceeding however continued and continued. On 2.8.88 the prosecution prayed for an adjournment and it appears from the order sheet that the defence raised objection regarding further adjournment in the pending case. The learned trial court however granted the prayer for adjournment as "a last chance" fixing 9.9.88 for further evidence and for framing of charge. A study of the order sheets of the learned court below reveals that even earlier there were "last chances" and warnings galore. On 9.9.88 the prosecution again prayed for an adjournment but this time the learned court below rejected the petition for adjournment with the observation that no case was made out for granting further adjournment. The learned court below fixed 1.12.88 for consideration of charge.

4. We would have naturally expected that after all these long years and after all those observations of the learned court below regarding the manner in which the proceeding was being conducted the prosecution would be vigilant and active at least to address their verbal argument before the court regarding framing of charge which did not involve examination of witnesses or the production of any document. But unfortunately from the order sheets it appears that on 1.12.88 the learned Public Prosecutor filed a petition praying for adjournment on the ground that for want of copies of deposition he could not prepare himself for argument in the case (regarding consideration of charge). The learned trial court granted the adjournment fixing 25.1.89. But curiously enough the learned Public Prosecutor on that date again filed a petition praying for time on the ground of non-supply of copies of the deposition by the court. Again the learned trial court granted, time and the matter was adjourned to 1.3.89. But on 1.3.89 the learned Public Prosecutor again filed a petition praying for adjournment on the same

ground and the learned trial court inter alia observed thus :

"As regards the certified copies, it is not known when such copies will be ready. Hence if I adjourn the hearing on account of non-supply of copies, there will be no limit of adjournment. In view of the prevailing condition regarding preparation of copies, the learned Public Prosecutor should have taken notes of the deposition and documents for argument regarding charge. More than a month has rolled by since the last adjournment on the same ground. Learned Public Prosecutor should have fully utilised this long period by taking notes of the depositions and the documents. However, I adjourn the hearing as last chance though the prayer for adjournment has been objected to by the learned defence counsel....."

He fixed 17.3.89 as the next date with the clear direction that this was the last chance to the prosecution. Even on a number of occasions thereafter the prosecution side was absent as it would appear from the order sheets of the learned court below although the defence argument continued. It is submitted by the learned advocate for the petitioner that the total period lost on account of adjournments taken by accused petitioner is only about three months and the total period lost on account of the absence of the absconding accused No. 3 Ranjit Kr. Dutta during 1982 and again during 1985 to 1986 is one year one month twelve days only. It is also to be noted in this connection that this is the first time the petitioner has come up before this court in connection with criminal proceeding. On the other hand it was the prosecution who came up before this court at an earlier stage.

5. Be that as it may having regard to the totality of the picture it is evident that the main chunk of the responsibility for the delay of more than 11 years from the date of cognizance till the date of framing of charge is clearly attributable to the lapses on the part of the prosecution. The order sheets also indicate that the petitioner was always ready and eager that the proceeding may continue expeditiously and come to a conclusion and even after a lapse of 11 years from the date of cognizance the scenario now is that only charge has been framed. Expectingly, all the 31 witnesses who have been already examined before charge will be required to be cross-examined after charge. The prosecution will also possibly want to examine a large fleet of its remaining witnesses who could not be examined before charge. Past experience regarding the agility of the prosecution, if accepted as an index, only indicates that the trial will perhaps never come to an end during the life time of the accused persons. Such prolonged and oppressive pendency of a criminal proceeding for which not the accused but the prosecution is squarely responsible is not only a travesty of justice causing prejudice to the defence itself as observed in this case as far back as in 1981 by the learned trial court but is also a blatant denial of the right to speedy trial of the accused, such right being itself a part of one's fundamental right emanating from Article 21 of the Constitution of India. In *Santosh Dey v. Archana Guha* 1992(1) CHN 366 ,1992(2) HC 1 it was observed by this court in

connection with the question of prolonged pendency of prosecution that, if the delay in any particular case is found to be systematic for which the complainant cannot be made responsible or the delay is caused by any other reason for which neither the complainant nor the accused is responsible, certainly that fact would ordinarily constitute valid ground for allowing the proceedings to continue, but different consideration even in such a case may however arise where the offence is a minor one, not being economic offence and the delay is not caused by the accused and that different considerations may also arise where the accused has already suffered prolonged detention or is rotting in custody for a shockingly long period or has been suffering some substantial unfavourable consequence due to the pendency of the proceeding such as suspension or dismissal from service, denial or withholding of increment or promotion in service, etc. As we have seen in the present case the petitioner is under suspension since October, 1977, that is, for more than 17 years and the criminal trial is only at the half way of its procedural journey. In *Sailenpra Nath Majumdar Vs. The State*, the accused was suffering suspension for 15 years and was all through ready for facing the trial but in spite of that there was no much headway in the trial. In the circumstances of the case the proceeding was quashed. In the recent decision of the Supreme Court in *Biswanath Prasad Singh v. State of Bihar* 1994 Cri LJ 244 the Supreme Court had to consider the question whether the proceeding relating to charge framed u/s 408/428 I.P.C. and section 7 E.C. Act was fit to be quashed on account of prolonged pendency. In that case the F.I.R. was lodged on 10.12.77. The accused surrendered in court in January 1978 and was enlarged on bail. In that year he was dismissed from service and the provident fund and gratuity due to him was also forfeited. Charge-sheet was filed on 9.2.83 after a lapse of more than 5 years. Thereafter, the prosecution evidence was adduced and charges were framed on 25th April, 1989 after another 6 years. At that stage the appellant approached the court for quashing the criminal proceeding. The Supreme Court in paragraph 5 of that decision observed thus :-

"5. It is true that the charges against the appellant relate to misappropriation of public funds. In such a case, we should take a more stricter view as indicated in the Constitution Bench decision in *Abdul Rehman Antulay Vs. R.S. Nayak* and another etc. etc., But there are certain circumstances in this case which induce us to interfere in the matter. The most glaring one is that even though the F.I.R. was issued on 10th December, 1977, the charge-sheet was filed only on 9th February 1983, that is, after a lapse of 5 years. No explanation is forthcoming for this extraordinary delay. May be, this being a case of misappropriation of public funds, the investigation may have taken a longer time but it cannot certainly take more than 5 years, having regard to the facts and circumstances of the case. Added to the said circumstance is the fact that even though there was no stay in this special leave petition/criminal appeal, the case has not progressed much as stated above. Moreover, the appellant has been dismissed from service on these very allegations. His provident fund and gratuity amounts have been forfeited and he has crossed the age of superannuation. Calling upon him now to

enter upon defence, after 16 years, in all the facts and circumstances of the case, is bound to cause prejudice to him."

6. It was observed by the Supreme Court that the appellant's right to speedy trial had been infringed in that case and for that reason, the prosecution launched against the appellant was liable to be quashed. In our present case also in view of the predominantly glaring features which I have already discussed it will be unfair now to subject the petitioner to further continuance of the trial which has no prospect of coming to an end in normal course in any foreseeable future. Accordingly this is a fit case where this court should exercise its inherent power u/s 482 Cr. P.C for quashing this long pending proceeding. Accordingly the impugned proceeding in the learned court below is hereby quashed. It is however made clear that this order shall not operate as quashing the proceeding so far as the absconding accused Ranjit Kr. Dutta is concerned in respect of which the proceeding has already been filed by the learned court below which tantamounts to splitting up of the proceeding so far as that absconding accused is concerned from the proceeding relating to the other three accused.