

(1986) 03 AHC CK 0003

In the Allahabad High Court

Case No : Criminal Revision No. 1218 of 1982 and Cr. Miscellaneous Application No. 6093 of 1982

Bishambhar Nath Kanaujia

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 03-03-1986

Acts Referred:

Constitution of India, 1950 — Article 20(2)
Criminal Procedure Code, 1973 (CrPC) — Section 300, 386, 403, 482
Penal Code, 1860 (IPC) — Section 161
Prevention of Corruption Act, 1988 — Section 5(2), 6

Citation : (1986) 10 ACR 256

Hon'ble Judges : R.P. Shukla, J

Bench : Single Bench

Advocate : A.N. Srivastava, for the Appellant;

Judgement

R.P. Shukla, J.—Bishambhar Nath Kanaujia, the present applicant, was working as Chief Registration Clerk in the office of the District Registrar, Shahjahanpur, on 10-6-1976. He accepted a sum of Rs. 20/- as illegal gratification on that date. A case was registered against him u/s 161 of the Indian Penal Code and u/s 5(2), Prevention of Corruption Act. The case was investigated and a charge-sheet was submitted and the sanction was obtained for his prosecution. He was tried by the Additional Sessions Judge (Special Judge) Shahjahanpur, and was convicted and sentenced to one years RI u/s 161 of the Indian Penal Code and one years RI u/s 5(2), Prevention of Corruption Act. The sentences were ordered to run concurrently. He preferred an appeal against the aforesaid judgment and order of the Special Judge, Shahjahanpur, through Criminal Appeal No. 2858 of 1978 in this Court. The appeal was allowed solely on the ground that the prosecution of the applicant was without proper sanction and the defect (sic) the trial. The conviction and sentences were, therefore, set aside on 25-2-1981. Thereafter, the prosecution obtained fresh sanction and filed charge sheet before the Special Judge (District Judge) Shahjahanpur, who took the cognizance and transferred

the case to the Third Additional Sessions Judge (Special Judge). Shahjahanpur. The applicant moved an application before the trial Judge praying that he should not be tried for the second time. The prayer of the applicant was rejected by the trial Judge on 13-5-1982. The applicant has moved Criminal Misc. Application No. 1993 of 1982 u/s 482 of the Code of Criminal Procedure and has also preferred this Criminal Revision No. 1218 of 1982 against the same order. Both the Criminal Revision and the application u/s 482 of the Code of Criminal Procedure have been connected together I, therefore, propose to decide both of them by this judgment alone.

2. I have heard the learned Counsel for the applicant and the AGA and have perused the record.

3. The learned Counsel for the applicant has contended that the appellate Court has given no specific direction for the re trial u/s 386(b)(i) of the Code of Criminal Procedure and, therefore, the applicant cannot be retried. The High Court, while deciding the appeal, has observed:

The learned Counsel for the State contended that since the trial as well as conviction of the Appellant was vitiated the Appellant can be prosecuted again after obtaining valid sanction. This is a matter on which it is not necessary for this Court to express any opinion at this stage.

4. From the aforesaid observations it cannot be said that the appellate Court impliedly refused the re-trial. It has simply left this question untouched. In such a situation, the law has to take its own course. The law, on this point, is almost now settled. The order setting aside the conviction washes out the effect of the previous conviction. A conviction on re-trial is a conviction in the same prosecution. It is neither the second prosecution nor second punishment. Re-trial is the continuance of the same prosecution. It is not a fresh trial. Acquittal in certain circumstances, as in the instant case, takes place on account of technical reasons, and it may be very desirable in the circumstances of a particular case that the person be prosecuted after removing those technical defects in procedure. In *Baij Nath Prasad Tripathi Vs. The State of Bhopal*, , the Supreme Court has held that the whole basis of Section 403(i) of the Code of Criminal Procedure, now Section 300 of the new Code, is that the first trial should have been before the Court competent to hear and determine the case and to record a verdict of conviction or acquittal. If the Court is not so competent, as where the required sanction u/s 6, Prevention of Corruption Act for the prosecution was not obtained, the whole trial is null and void and, it cannot be said that there was any conviction or acquittal in force within the meaning of Section 300 of the Code of Criminal Procedure. Such a trial does not bar a subsequent trial of the accused under the Prevention of Corruption Act read with Section 161 of the Indian Penal Code after obtaining proper sanction. The earlier proceedings being null and void, the accused cannot be said to have been prosecuted and punished for the same offence more than once. Article 20(2) of the Constitution has no application.

5. The second contention of the learned Counsel for the applicant is that the occurrence took place on 10-6-1976 and the applicant was convicted on 6-10-1978 and his appeal was decided on 25-2-1981. The prosecution thereafter obtained fresh sanction and the charges were framed against the applicant on 13-5-1982. Then the applicant filed this revision and the application u/s 482 of the Code of Criminal Procedure which have come up for hearing in this year of 1986. This delay coupled with the fact that the applicant is a petty clerk and the amount involved is only Rs. 20/- and, therefore, the re-trial is not expedient in the interest of justice.

6. There is no doubt that the long delay in the prosecution of the case militates against the expediency of the prosecution, but the delay in prosecution depends upon a number of factors. The number of litigation has increased enormously due to the increase in population and awareness of the people with regard to their rights and due to the paucity of judicial officers at all levels. Also the technical benefits at times accrue due to change in Regulations and Rules of Services etc. as we are in developing stage, as in the instant case. The District Registrar, was the appointing authority of the applicant, but, by notification No. SR-2997/A-218(56)78 dated 12-5-1978, the Inspector General of Registration became the appointing authority of the Chief Registration clerk. The offence, in this case, was committed prior to the date of notification and the chargesheet against the applicant was submitted before the learned Special Judge, but the learned Special Judge took cognizance of the case on 27-6-1978 i.e. after coming into force of the above notification and, therefore, the sanction granted by the District Registrar became invalid and the sanction from the Inspector General of Registration became necessary. There are delays both due to prosecution and the defence. In the instant case, it cannot be said that the delay is only due to prosecution. Bribery and corruption by public servants has so enormously increased that it poses-danger to the welfare of the society in general. It is therefore, a prima need to curb this evil with iron hands. The corruption is not to be weighed in terms of coins or status of the individual indulging in corrupt practices.

7. The applicant has preferred this revision and the application u/s 482 of the Code of Criminal Procedure against the very commencement of his trial and he himself is responsible for the delay of trial for these four years. The applicant has not been able to show that he is, in any manner, being prejudiced He has all along been on bail. In the circumstances of the present case it cannot be said that the applicant has been denied the right of a speedy trial. If there is any delay on the part of the prosecution it is unintentional. Reliance has been placed on State of Maharashtra Vs. Champalal Punjaji Shah, , wherein the Supreme Court has observed that there will be no jurisdiction to quash the conviction on the ground of delayed trial only unless the accused is round to have been prejudiced in his defence. The learned Counsel for the applicant has placed reliance on The State Vs. Maksudan Singh and Others, and I have given my anxious consideration to the facts of that case which differ from the facts of this

case. In that case, delay of ten years or more was occasioned entirely by prosecution default and, therefore, the delay itself was held to be prejudicial to the accused. In the instant case, I have already pointed out that the delay is not entirely by prosecution default.

8. Thus, considering the totality of the circumstances attending the present case, I am of the view that both, the revision and the application u/s 482 of the Code of Criminal Procedure fail. They are dismissed. The interim order of stay of further proceedings in S.T. No. 5 of 1981 (Special Case) State v. B.N. Kanaujia, pending in the Court of (Special Judge) Distt. Judge Shahjahanpur, is hereby vacated. The trial Court is directed to conclude the trial expeditiously.