

(2005) 03 CAL CK 0074
In the Calcutta High Court
Case No : C.R.R. No. 1855 of 2004

Central Bureau of Investigation	Vs	APPELLANT
Sunil Chandra Mazumdar and Another		RESPONDENT

Date of Decision : 18-03-2005

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 300, 309
Limitation Act, 1963 — Section 5
Prevention of Corruption Act, 1988 — Section 26A, 3

Citation : (2006) 4 CHN 559

Hon'ble Judges : Amit Talukdar, J

Bench : Single Bench

Advocate : Ranjan Roy, for the Appellant; M.A. Samad, for the opposite party No. 2, Subir Banerjee and Jayanta Banerjee for the opposite party No. 1, for the Respondent

Final Decision : Allowed

Judgement

Amit Talukdar, J.—Piece by piece, like a crossword puzzle, the entire sequence of events have to be restructured so as to get a clearer image of the whole-hog of the issue which ails the proceedings before the learned First Special Court, Alipore.

2. An initial order No. 37 passed on 08.3.94 by the learned First Special Court discharging the opposite party set in motion a flurry of reactions and cause of action before the learned First Special Court, Alipore, before this Court as well as the Highest Court of the land. It would be profitable to chart out the entire sequence so as to get a grip on the entire issue and it would be more easier to tackle the question at hand.

3. Pursuant to the said order, passed by the learned First Special Court, the Central Bureau of Investigation (hereinafter referred to as the CBI) moved a revisional application, being Criminal Revision No. 1749 of 1994, before a learned

Single Judge before this Court. A learned Single Judge of this Court by an order dated 31.8.94 "summarily rejected" the said application "in view of the decision in H.D. Barman v. State and Anr. reported in 1993(2) CHN 141...."

4. Preferring a SLP [SLP (Crl.) Nos. 1126-1127 of 1995] against the same the CBI moved the Hon"ble Supreme Court of India. Their

Lordships of the Hon"ble Supreme Court on 20.3.98 disposed of the said appeal by passing the following order:

In view of the order dated April 27, 1995 passed by this Court in SLP (Crl) No. 1732/95, no order need be passed in these special leave petitions which stand disposed of.

We, however, clarify that the period spent by the petitioners in prosecution of the petitions in this Court shall not, by itself, be put against the prosecution at the trial of the case.

5. It appears the said order was passed on a batch of special leave petitions on which earlier notice was issued by the Hon"ble Supreme Court on 06.2.98 where it was directed:

Issue notice returnable within four weeks. Tag with Crl. A. No. 907/94 and SLP (Crl) Nos. 1126-1127/95. We, however, make it abundantly clear that notwithstanding the issuance of notice, the connected trial should proceed.

6. The order disposing of batch of special leave petitions by the Hon"ble Supreme Court on 20.3.98 was on the basis of the order dated 27.4.95 passed in SLP (Crl) No. 1732 of 1995 which reads as follows:

Learned Counsel submits that the State shall take appropriate proceedings before the proper forum and the SLP may be dismissed as withdrawn. We record the statement of the learned Counsel and dismiss the petition as withdrawn.

7. This is the factual matrix.

8. It appears that against the order passed by this Court, the SLP was disposed of by the Supreme Court on the directions which have been quoted hereinabove.

9. One thing is clear that at the time of issuance of notice. Their Lordships of the Supreme Court had made it abundantly clear that notwithstanding the issuance of notice connected trial should proceed. While disposing of the batch of the special leave petitions it was also the directions of Their Lordships that "... the period spent by the petitioners in prosecution of the petitions in this Court shall not, by itself, be put against the prosecution at the trial of the case."

10. In the humble opinion of this Court it would be manifestly clear that at the proceedings cannot be understood to have said to be terminated. It would be deemed to be alive in view of the aforesaid position.

11. Shri Ranjan Kumar Roy, learned Special Counsel for the CBI has submitted

that per se the impugned order and for that matter the entire chain of orders passed earlier are totally bad in law. Shri Roy submitted that once charge has been framed against the opposite party the question of discharging them did not arise. This was not the correct legal position adopted by the learned Special Court at the very first instance ie, on 08.3.94. That was an error apparent on the face of it which had since been perpetuated by successful order by successor-in-office of the learned First Special Court.

12. Shri Roy submitted that the order of the Hon'ble Supreme Court was not understood correctly by the learned First Special Court and he further submitted that although no order was passed on the special leave petitions which were disposed of, however, Their Lordships clarified that the periods spent by the petitioners (CBI) in prosecution of the petitions before the Supreme Court shall not by itself be put against the prosecution at the trial of the case. Shri Roy submitted by virtue of the said directions it could not be said that the Trial of the Special Court case came to an end.

13. Lastly, Shri Roy submitted that in view of the decision passed by the Supreme Court in *State of W.B. v. Sadan K. Bormal and Anr.* 2004 SCC 1739, there was no difficulty in proceeding with the case as the core area of dispute about the appointment of Special Judges under the Prevention of Corruption Act of 1947 have been clarified and they were competent to try offences under the Prevention of Corruption Act of 1988. He submitted that the State Amendment of Prevention of Corruption Act, 1988 absolutely made the position clear and removed all difficulties created by the decision of H.D. Barman (supra) and on the basis of his submission he prayed for setting aside the said order which has been impugned. He also submitted that since an order of discharge could not be treated as an order of acquittal in terms of the proviso to Section 300 of the Code of Criminal Procedure there was no question of res judicata and the learned First Special Court ought to have taken cognizance on the basis of the fresh chargesheet.

14. Shri Roy also laid much emphasis on the fact that there was no delay caused on the part of the CBI in the matter and the delay, if at all that has been caused, cannot be said to be delay affecting the right of the opposite party for a speedy trial in terms of Article 21 of the Constitution.

15. Summing up his submission Shri Roy prayed for setting aside the impugned order and restoring the proceeding.

16. Shri Utpal Rudra for the opposite party No. 2 submitted that the present application was not maintainable as it in effect was a review petition of the earlier order passed by this Court in Criminal Revision No. 1749 of 1994 which is not permissible under the law; and that apart, the entire prayer of the CBI was barred by limitation. He submitted that once the order of this Court in Criminal Revision No. 1749 of 1994 reached its finality and the direction of the Hon'ble Supreme Court in the SLP was passed the learned First Special Court has rightly

passed the impugned order which should not be interfered with. He has submitted further that opposite parties have been suffering for a long length of time and their right to a speedy trial has been breached. Accordingly, he prayed for dismissing the said application.

17. Shri Rudra referred to a decision of the Nagpur Bench of the Bombay High Court in K.K. Kapse v. State of Maharashtra 2002 All MR 676 and submitted that on the ground of delay the application should be dismissed.

18. Shri Subir Banerjee appearing for the opposite party No. 1 has taken a preliminary question of res judicata by referring to the decision of Sulochana Amma Vs. Narayanan Nair, and submitted that once the order of the High Court reached its finality which affirmed the initial order of discharge passed by the learned First Special Court on 08.3.94 this application was not at all maintainable. He submitted that the opposite parties were suffering for a long length of time. He further submitted that it was only a sum of Rs. 600/- for which they have suffered the ordeal for so long and it is required in the interest of justice to quash the entire proceeding.

19. Shri Banerjee stressed with great emphasis on the order of 20.9.99 passed by the learned First Special Court rejecting the prayer of the CBI for restoring the proceeding, which according to Shri Banerjee was not challenged before this Court and as the same again became final the fresh chargesheet submitted in the present instance was not maintainable and the learned First Special Court rightly refused to take cognizance on the basis of the earlier order. Shri Banerjee showed from the said order that as the CBI did not prefer to move against the order of 20.9.99 in effect by filing a fresh chargesheet and coming up before this Court at this instance it is not only breached the law of limitation but asking the Court to review its earlier order.

20. Shri Banerjee further submitted this application is devoid of any merit as it is not accompanied by any prayer for condonation of delay u/s 5 of the Limitation Act.

21. Written Notes have been exchanged.

22. From an analysis of the entire matter the basic structure of the issue revolves around the decision of H.D. Burman's case (supra). Now, after the decision of State of W.B. v. Sadan K. Bormal and Anr. (supra) the entire position changes as the Supreme Court has held:

19. We have, therefore, no doubt that the West Bengal Amendment Act, 1994, by inserting Section 26A in the Act of 1988 has created a legal fiction whereby a Special Judge appointed under the West Bengal Special Courts Act, 1949 even before the commencement of the Act of 1988, or thereafter, but before the commencement of the West Bengal Amendment Act, 1994, is deemed to be a Special Judge appointed u/s 3 of the Prevention of Corruption Act, 1988 and consequently empowered to continue to deal with all the proceedings pending

before him on the relevant date in accordance with the provisions of the Act. Section 4 of the West Bengal Amendment Act, 1994 saves and validates all actions taken by such Special Judges purporting to act under the provisions of the Prevention of Corruption Act, 1988 as if the West Bengal Amendment Act, 1994 was in force when such order was passed or such evidence was recorded or such action was taken. So view, the provisions of the West Bengal Amendment Act, 1994, provide a complete answer to the contentions raised before us by the learned Counsel for the respondents.

20. In view of the provisions of the West Bengal Amendment Act of 1994, we have no doubt that the Special Judge trying the accused-respondents and who was appointed under the West Bengal Special Courts Act, 1949 and purported to act under the Act of 1988, is now vested with jurisdiction to try cases under the Prevention of Corruption Act, and by operation of law all actions taken by him purporting to act wider the Act of 1988 are saved and validated as if the Amendment Act of 1994 were in force when such an order was passed or such evidence was recorded or such action was taken by him. Giving effect to the legal fiction we must imagine that Section 26A stood incorporated in the Act of 1988 when it came into effect.

23. Once the said position is understood in its true impact there can be no difficulty. The entire spectre of the proceeding before the learned First Special Court which remains guided by the decision of H.D. Burman (supra) has to be freed from its effect and the position would at once be clear -- the initial order of 08.3.94 passed by the learned First Special Court and the subsequent dismissal of the revisional application, preferred on behalf of the CBI, by this Court in Criminal Revision No. 1749 of 1994 were all based on ratio of the decision of H.D. Burman (supra) and the subsequent laying of the fresh chargesheet was spurned by the learned First Special Court by her impugned order that the order of this Court was in force. But as seen earlier the decision of State of W.B. v. Sadan K. Bormal and Anr. (supra) clarifies the entire position.

24. In view of the aforesaid position the submissions made at the Bar supporting the order impugned cannot be sustained.

25. Shri Rudra's argument that the order passed by this Court earlier in Criminal Revision No. 1749 of 1994 attains its finality and any order passed contrary thereto would amount to review of the same cannot be accepted in view of the position that both the orders of the learned First Special Court and this Court were based on the ratio of the decision of H.D. Burman's case (supra). But, as the Supreme Court in State of W.B. v. Sadan K. Bormal and Anr. (supra) has clarified the said position in the light of the West Bengal Amendment of the said Act the situation is quite different and the previous position can neither act as a res judicata nor operate as a bar in accepting the fresh chargesheet and taking cognizance on the basis of the same.

26. The decision cited by Shri Banerjee in Sulochana Amma (supra) in the

humble view of this Court has no manner of application in the fact situation as discussed hereinabove.

27. The agony of both Shri Rudra and Shri Banerjee touching on the questions of the amount and the delay have to be understood in its realistic position. True, the proceeding in the Special Court was initiated a long time back and many years have passed in the meantime when in the midst of the trial the learned First Special Court wayback in 1994 ordered the discharge of the opposite parties and the sum in the trap was Rs. 600/-, that way, the amount was a paltry sum.

28. But, however, the fact remains that the passage of time was on account of some legal hitch for which neither the prosecution nor the defence could be held responsible. Here, the question of application of Article 21 of the Constitution of India for speedy trial, in the most humble view of this Court, would not be applicable as there has been a halting proceeding which has been put on and off the hook by virtue of the aura of H.D. Burman's case (supra) which can no longer hold the field in view of State of W.B. v. Sadan K. Bormal (supra). Moreover, the question of Article 21 of the Constitution of India has to be appreciated in the light of the latest decision of the Supreme Court in State of Rajasthan v. Iqbal Hussain 2004(4) AICLR(SC) 664, where the Supreme Court relying on the earlier Constitution Bench decision in P. Ramchandra Rao v. State of Karnataka 2002 (3) AI Cr. LR (SC) 370 and the decision of Abdul Rehman Antulay Vs. R.S. Nayak and another etc. etc., had outlined certain categories of delay which has to be totally ignored in giving effect to the plea of speedy trial amongst several directions in the said decision Clause "C" speaks of:

Delay caused by orders, whether induced by the accused or not of the Court, necessitating appeals or revision or other appropriate actions or proceedings.

29. As such, by that reckoning the plea under Article 21 of the Constitution for denial of right to speedy trial under Article 21 of the Constitution of India can no longer be available in favour of the opposite party.

30. Further, the objection of Shri Banerjee that the order dated 20.9.99 passed by the learned First Special Court rejecting the prayer of the CBI for reviving the proceeding also having attained its finality on account of that that there was no challenge thrown against the order and subsequent laying of a fresh chargesheet could attract the provisions of the Limitation Act as even the same if it is allowed to be agitated is hopelessly barred by limitation.

31. This objection of Shri Banerjee cannot be a very sustainable ground as on the first occasion there cannot be any estoppel against the law and as seen hereinabove by virtue of the ratio of the decision of the Supreme Court in State of W.B. v. Sadan K. Bormal (supra) which took into account the West Bengal Amendment of the said Act which was not considered earlier, this question does not deserve any consideration and that apart a wrong whether perpetuated knowingly or unknowingly continues and it can be rectified at any point of time by the Court in exercise of its inherent jurisdiction and the question of limitation

does not arise.

32. This Court shares the agony expressed at the Bar with regard to the paltry sum and the time spent, for whatever reasons it may be, after all little does the opposite party, who is going to be listed afresh in the array of the accused, understand what is the reason for delay what he understands is that months and years have passed by in his life span and a criminal case pending, suspended, discharged and again restored -- all these situations must have tolled on their financial as well as mental equilibrium. This Court cannot lose sight of the same. Yet it feels that simply on ground of the said position. It cannot come to the conclusion that the proceeding should be quashed having found as to what had ailed the proceeding before the learned First Special Court and after making preparations for recuperation of the said process it is only logical that the proceeding, after being restored, should reach its logical conclusion in accordance with law.

33. Keeping in mind the aforesaid position the proceeding before the learned First Special Court is restored to the rails and the impugned order No. 17 dated 15.2.03 passed by the learned First Special Court is set aside and the learned First Special Court is directed to proceed from the stage when the said order was passed and proceed as if the opposite parties were not discharged and the chargesheet was very much before it. Since, as noticed, that time has rolled past contributing to the agony and uncertainty of the opposite parties, although no outer limit for conclusion of a criminal trial should be passed as held by the Constitution Bench decision in A.R. Antulay's case (supra) and P. Ramachandra Rao (supra) yet this Court feels that whatever the gravity or the merit of the case the opposite parties must have been torn mentally and crumbled with the looming shadow of the proceeding.

34. As such, it would be advisable that there should be utmost speed in conclusion of the trial and the learned First Special Court is accordingly requested to hold the Trial in accordance with the mandate of Section 309 of the said Code and proceed on and from the stage when the opposite parties were discharged by virtue of the Order No. 37 dated 08.03.1994 on a day to-day basis and seek to conclude the Trial in utmost expedition.

35. Application accordingly allowed.