

(1994) 08 CAL CK 0046
In the Calcutta High Court
Case No : Criminal Revn. No. 791 of 1990

Indubhusan Das Gupta

APPELLANT

Vs

State (Inspector of Police, C.B.I.)

RESPONDENT

Date of Decision : 22-08-1994

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 397, 401, 482
Prevention of Corruption Act, 1947 — Section 3, 4, 5, 5(1), 5(2)
West Bengal Criminal Law Amendment (Special Courts) Act, 1949 — Section 10, 13, 2, 4, 6

Citation : (1995) CriLJ 1180

Hon'ble Judges : A.K. Dutta, J

Bench : Single Bench

Advocate : Dipak Kr. Sengupta, Dipankar Dasgupta, for the Appellant; C.C. Mukherjee, Advocate; C.B.I., for the Respondent

Judgement

A.K. Dutta, J.—By this Revisional Application u/s 397, read with Sections 401 and 482 of the Code of Criminal Procedure (hereinafter referred to as Code) the petitioner-accused (hereinafter referred to as accused) has prayed the Court for setting aside the order dated 16th March, 1990 passed by the Learned Additional Special Judge of Burdwan at Asansol in Special Case No. 6 of 1977 before him, and also for quashing of the aforesaid proceedings on the grounds made out therein; mainly on the ground of delay in trial of the case and also on the ground that the F.I.R., as it is, and the materials disclosed by the prosecution do not make out any offence for proceeding against him.

2. It is contended by the petitioner-accused that he had been serving as Senior Stores Officer in Alloy Steel Plant at Durgapur during 1972-73. While discharging his official duties as such he had incurred the displeasure of some persons who had made complaints against him behind his back. On the basis of the complaints made, an enquiry was initially made against him, which had failed to establish any direct charge of corruption. The C.B.I. had thereafter started

investigation against him from a different angle that he was in possession of wealth, disproportionate to his known source of income. He was transferred from the Stores Department to the Purchase Department in the same rank at the instances of the C.B.I. to facilitate police investigation in the Stores Department where he was in charge of the custody nearly Rs. 40 Crores of materials, but no irregularity in transaction against him could be detected by the C.B.I. The case was eventually registered against him in the Court of the Judicial Magistrate at Durgapur in September 1975, marked as RC/41 of 1975, which is the F.I.R. in the relevant case. Upon due investigation the C.B.I. had submitted charge-sheet in the relevant case on the following allegations:

3. The accused started his career as Organiser in the National War Front, Bengal, and had worked in the said capacity from 1 -4-1943 to 12-3-1944. During the period from 13-3-1944 to 20-12-1948 he had worked as Clerk in the Ministry of food, Government of India, and from 21-12-48 to 18-12-49 under the Ministry of External Affairs, Government of India. Thereafter he was appointed as Assistant in the said Ministry, and had worked as such from 19-12-49 to 30-3-52. Again, he joined as Assistant in the Embassy of India, Moscow, and was attached there during the period from 31-5-1952 to 21-10-1954. Thereafter, he was posted as Assistant in the Ministry of External Affairs, Delhi, from 21-5-55 to 6-6-57. His services were transferred to the Ministry of Steel & Mines on 7-6-1957. He had joined the H.S.L., Ranchi, on 12-8-60 as Assistant Executive Officer and worked there in the said capacity till 24-8-62. He had finally joined Alloy Steels Plant, Durgapur, with effect from 25-10-62 and had worked there as Assistant Stores-cum-Purchase Officer till 1-4-65. From 25-10-65 to 30-11-69 he worked as Stores Officer, from 1 -12-69 to 31 -3-74 as Sr. Stores Officer, and from 18-11 -74 to 23-10-75 as Sr. Purchase Officer in the scale of Rs. 1250/- to 1550/- P.M. His service was terminated with effect from 14-10-75 vide Office Order No. ASP-PI. 6 (50-/270), dated 24-10-75.

4: During the period of his employment from 1 -6-57 to 31 -10-75 the accused had drawn a sum of Rs. 1,46,790.52 towards his total pay and allowances. He had also earned income of Rs. 1,52,216.52 from other sources as indicated in details therein. The total income earned by him on all heads as transpired during the check period from 1-6-57 to 3-10-57 amounted to Rs. 2,99,006.94.

5. The family of the accused consisted of himself, his wife, one son, and one unmarried daughter. During the check period of his service he had been posted at Delhi during the period 1-6-57 to September, 1960 and at Ranchi during the period 12-8-60 till the middle of August, 1962, and thereafter at Durgapur from 25-10-62 to 3-10-75. It had transpired during the investigation that he had spent a total sum of Rs. 1,27,060.70 only during the check period (from 1-6-57 to 3-10-75) as per the details given therein.

6. It would, therefore, appear that the accused had earned a total mount of Rs. 2,99,006.94 from the different sources, and had spent a sum of Rs. 1,27,060.70 P., left with likely saving of Rs. 1,71,946.24 P. only. But during the said check

period he had acquired assets in his name and/or in the name of his dependent wife, daughter and son amounting to Rs. 2,90,407.37 P. only, which was highly disproportionate to his known source of income and savings, as indicated in details therein. He had thus been found to be in possession of assets/properties/pecuniary resources to the tune of Rs. 1,18,461.13 P., which was disproportionate to his known sources of the income during the check period (from 1 -6-57 to 3-10-75) for which he could not give satisfactory account in spite of opportunity given him. He has thus been prosecuted for having allegedly committed offences punishable u/s 5(1)(c)/5(2) of the Prevention of Corruption Act, 1947. The relevant proceedings is sought to be quashed on the following three grounds, as urged by the Learned Advocate for the petitioner-accused during the hearing :--

(i) that the F.I.R. and materials disclosed by the prosecution do not make out the alleged offence;

(ii) that the long delay in trial of the relevant case has affected the petitioner's right to speedy trial; and

(iii) that the Learned Special Judge trying the case has no jurisdiction to try the same.

7. To the first ground first. It had been waxed eloquent by the Learned Advocate for the petitioner-accused that the F.I.R. and the materials disclosed, such as they are, do not make out the alleged offence. It was contended that a major part of his earning from service prior to the check period from 1 -6-1957 to 31-10-1975 had been left out of consideration even though he had, admittedly, been serving in different capacities, starting his career as an Organiser in the National War Front in Bengal since 1-4-1943. It was further submitted, by referring to the Xerox copy of the Certified Copy of the judgment in Money Suit No. 49 of 1978 filed by the Plaintiff-accused before the Subordinate Judge at Burdwan that the Defendant-Steel Authority of India had contended that the Plaintiff-accused had accumulated money of over Rs. 5 lakhs, disproportionate to his normal income, but the said allegation of corruption was not pressed in evidence by it during the trial, amounting to abandonment of the said plea. The allegation of corruption against the petitioner-accused could not stand as such.

8. In support of the aforesaid contention, the Learned Advocate for the petitioner had referred to the decisions in *Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandojirao Angre and Others*, and *A.K. Khosla and Others Vs. T.S. Venkatesan and Others*, . The Learned Advocate had invited my attention to the following observations of the Supreme Court in the aforesaid decision :

The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made *prima facie* establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to

permit a prosecution to continue. This is so on the basis that the court cannot be utilised, for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at preliminary stage.

9. He had also cited the following observations in the aforesaid decision of a single Judge Bench of this Court:

Section 482 of the Criminal Procedure Code empowers the High Court to exercise its inherent power to prevent abuse of the process of the Court for ends of justice. It is well-settled that the exercise of the inherent power to quash the proceeding instituted on complaint is called for only where the complaint does not disclose any offence or is frivolous, vexatious or oppressive.

It is clear that while considering whether allegations in the complaint and the initial deposition and the documents relied upon by the complainant prima facie establish the offence alleged the Court is not bound to accept allegations which are even opposed to common sense and broad probabilities. In appropriate cases the High Court may look beyond the complaint and initial deposition of the complainant and his witnesses and the documents relied on by the complainant and take an overall view of all the surrounding and related facts and circumstances on the basis of the materials placed before it in order to ascertain whether the impugned proceedings are lame, frivolous, vexatious or mala fide commenced with a veiled object and whether the proceedings are likely to be generate into a weapon of harassment and prosecution so as to call for interference by the Court. Because of the special features in a case if the Court is of the opinion that chances of an ultimate conviction are bleak and no useful purpose is likely to be served by allowing a criminal prosecution to continue the Court while taking into consideration the special facts of a case may quash the proceeding even though at a preliminary stage.

10. The decisions referred to by the Learned Advocate for the petitioner relate to quashing of proceedings at the initial/preliminary stage. It would, however, be pretend to note that the relevant proceedings sought to be quashed here-under is not at the initial stage, but almost of the concluding stage. The relevant case was registered in September 1975 being RC-41/75. After detailed investigation, the Investigating Agency had submitted charge-sheet on 24-8-77 finding prima facie case against the accused. 78 prosecution witnesses had already been examined by the prosecution. And, the Learned Trial Judge upon consideration of the record of the case and documents submitted therewith and after hearing the submissions of the accused and the prosecution in that behalf is of opinion that there is ground presuming that the accused has committed the alleged offence for which he has framed charge in writing against him by his order dated 9-3-94. The aforesaid order the Learned Judge framing charge against the accused for the alleged offence and the charge framed against him do not appear to have

been challenged by him as yet. The same stand as such. It would thus now be futile to urge at this stage that the FIR and the materials disclosed by the prosecution do not make the alleged offence. It would not be for this Court to embark upon an enquiry at this stage in this proceeding as to whether the Investigating Agency was justified in submitting charge-sheet and whether the Learned Trial Judge was justified in framing charge against the petitioner-accused, as they did, requiring appreciation of materials to support or dislodge the accusation. The accused having participated in the trial before the court below all-throughout, allowing 78 P.Ws. to be examined, it would not lie in his mouth to say now that the FIR does not make out the alleged offence. The relevant proceedings cannot clearly be allowed to be quashed at this concluding stage when the case has almost reached the final stage of trial, only to stall it in view of this belated application. In the aforesaid facts and circumstances, it seems to me that the trial of the relevant case should be allowed to be concluded for the reasons discussed above. The first submission made on behalf of the petitioner fails as such.

11. To the second ground of delay next. The Learned Advocate for the petitioner had referred to the decisions in *Ranjit Kumar Pal Vs. The State*, and *Santosh De Vs. Archana Guha and others*, in support of his contention.

12. It was in 1979 that the Hon'ble Supreme Court had declared in *Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna*, that right to speedy trial is implicit in the broad sweep and content of Art. 21 of the Constitution of India. A series of decisions had since thereafter reaffirmed the said principle and there seems to have never been a dissenting note therefrom. A Division Bench of this Court in *Ranjit Kumar Pal Vs. The State*, had held about eleven years thereafter that the broad interpretation of the fundamental rights guaranteed under Art. 21 of the Constitution includes the right of an accused to have speedy trial, further observing therein that the prosecution cannot have the luxury of dragging a case in a court of law for years together. It had further been held therein that long delay in the disposal of criminal proceeding prejudicially affects the defence of an accused. Administration of justice requires that the accused is entitled to have as much protection as the prosecution is entitled to. A single Bench of the Bombay High Court in *Shyam Lachmandas Ajwani Vs. The State of Maharashtra and another*, , had as well held that inordinate delay and laches in the prosecution without any progress of a criminal proceedings amounts to harassment of the accused warranting interference under inherent powers of the Court. In another single Bench decision of the Bombay High Court in *R. Mahadevan Iyer Vs. State of Maharashtra and another*, , it had been held that Criminal proceedings not completed even after a lapse of 12 years heavily prejudiced the accused in his defence in respect of the incidents extremely old in point of time. It had been held therein that the High Court is justified in quashing prosecution exercising its powers u/s 482 of the Code if the right to speedy trial is violated. The Orissa High Court in the decision in *Rabindranath Rout Vs. State of Orissa*, , had also quashed a criminal proceedings on the ground of delayed

trial holding that the same constitutes denial of justice. In a writ petition, being No. 268 of 1987, and a few other Criminal Appeals, before a Division Bench of the Supreme Court, it was further urged on behalf of the accused that a time limit should be fixed for concluding all criminal proceedings as without such a time limit, the guarantee of right to speedy trial would remain a mere platitude. The Division Bench was of the opinion that the said contention raised a very important constitutional question which is likely to arise more often in many cases and that the decision on the question would have far-reaching consequences in a large number of criminal cases pending in Courts all over the country. The Bench had accordingly directed the cases to be placed before a Constitution Bench. Before the Constitution Bench of the Supreme Court in *Abdul Rehman Antulay Vs. R.S. Nayak and another etc. etc.*, it was contended that no fundamental right flows from Art. 21. It was argued, it was only a facet of a fair and reasonable procedure guaranteed by Art. 21 and nothing more. It was also argued that violation of this right does not result in quashing of the charge and/or conviction. It was submitted that the right, if at all there is one, is an amorphous one, a right which is something less than other fundamental rights guaranteed by our Constitution. On the other hand, proponents of the right wanted the Court to go a step forward and prescribe a time limit beyond which no criminal proceeding should be allowed to go on. Without such a limit, they submitted the right remains a mere illusion and a platitude. The Hon'ble Supreme Court in the aforesaid decision had held "Fair, just and reasonable procedure implicit in Art. 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is also in public interest or that it serves the societal interest also, does not make it any-toeless the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances". The Court had further observed that "the provisions of the Code of Criminal Procedure provide for an early investigation and for a speedy and fair trial. If only the provisions of the Code are followed in their letter and spirit, there would be little room for any grievance. The fact, however, remains unpleasant, as it is, that in many cases, these provisions are honoured more in breach. Be that as it may, it is sufficient to say that the Constitutional Guarantee of speedy trial emanating from Art. 21 is properly reflected in the provisions of the Code". Their Lordships in the aforesaid decision had issued certain guidelines in regard to speedy trial some of which are set out below :--

(1) One cannot ignore the fact that it is usually the accused who is interested in delaying the proceedings. As is often pointed out, "delay is a known defence tactic". Since the burden of proving the guilt of the accused lies upon the prosecution, delay ordinarily prejudices the prosecution. Non-availability of witnesses, disappearance of evidence by lapse of time really work against the interest of the prosecution. Of course, there must be cases where the prosecution, for whatever reason, also delays the proceedings. Therefore, in every case, where the right to speedy trial is alleged to have been infringed, the

first question to be put and answered is--who is responsible for the delay?

(2) Each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of accused will also be a relevant fact. The prosecution should not be allowed to become a prosecution. But when does the prosecution become prosecution, again depends upon the facts of a given case.

(3) It is neither advisable nor practicable to fix any time-limit for trial of offence. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of Right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the Court to weigh all the circumstances of a given case before pronouncing upon the complaint. The Supreme Court of U.S.A. too has repeatedly refused to fix any such outer time limit in spite of the Sixth Amendment. Nor it can be said that non-fixing any such outer limit in effectuates the guarantee of Right to speedy trial.

(4) Ordinarily speaking, where the Court comes to the conclusion that Right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the Court to make such other appropriate order -- including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded -- as may be deemed just and equitable in the circumstances of the case.

13. True it is, there has been quite some delay in the trial of the relevant proceedings before us. But while posing the question which of the parties is responsible for the delay, it would oddly appear, on scrutiny of the lower court records, that both sides are almost equally responsible for whatever delay has been caused in the trial of the relevant case. The record being, what it is, it could not be said that the prosecution is solely responsible for the delay and that the accused has no hand/contribution to the delay, as sadly sought to be urged on this behalf. Since the accused as well appears to have partly contributed to the delay in the trial of the relevant case, the delay caused cannot be held to be presumptive proof of prejudice to him, amounting to his prosecution, in the facts and circumstances of the matter. It appears from the record that 78 prosecution witnesses have already been examined and the trial of the case is almost at the closing stage. That being so and having regard to the nature of the alleged offence, quashing of the relevant proceedings, to my judgment, would not be in the interest of justice. Since the trial has proceeded to a great extent by examination of as many as 78 P.Ws., the court below may better be directed to conclude the trial within a specified time, instead of the quashing the same at

this belated stage. The second submission on behalf of the petitioner-accused must as well fail.

14. Realising the difficulty somewhat tardily, the learned Advocate for the petitioner-accused had strongly urged, though no such ground had been taken in the Revisional Application, the learned Special Judge trying the case has no jurisdiction to entertain and try the same. In support of his said contention the learned Advocate (for the petitioner) had learned long and relied too heavily upon the decision of a single Judge of this Court in *H.D. Barman v. CBI/SPE/ Calcutta through State of West Bengal* 1993 (2) CHN 141. While fully agreeing with the aforesaid decision that Judges of the Special Courts appointed under the West Bengal Special Courts Act, 1949 cannot take cognizance and try offence punishable under the Prevention of Corruption Act, 1988, for much the same reasons discussed therein, I would like to note with a minute of dissent that the aforesaid decision has no bearing or application whatsoever to the facts and circumstances of the relevant proceedings before us. The question in the relevant case discussed in the aforesaid decision was whether Judges of the Special Courts appointed under the West Bengal Special Courts Act, 1949 can take cognizance of and try offence under the Prevention of Corruption Act, 1988. But the said question does not clearly arise, in the facts and circumstances of the relevant proceedings before us. The learned Special Judge has been trying the relevant case for alleged offence punishable u/s 5(1)(c)/5(2) of the Prevention of Corruption Act, 1947, and not offence punishable under the Prevention of Corruption Act, 1988. Being upon the aforesaid decision, it could hardly, therefore, be held that the learned Special Judge trying the relevant case has no jurisdiction to try the same, as the learned Advocate for the petitioner-accused wanted this Court to hold.

15. In this context, I would like to note that Sections 3 and 4 of the Prevention of Corruption Act, 1988 read together clearly show that an offence punishable under the said Act can be tried only by a Special Judge appointed u/s 3 of the said Act and not by any other Court, notwithstanding anything contained in any other law for the time being in force.

16. The Prevention of Corruption Act, 1947 was enacted making more effective provision for the prevention of bribery and corruption. Section 5 of the said Prevention of Corruption Act, 1947 defined criminal misconduct of public servant in discharge of official duty and provided for punishment of the same. There was, however, no provision in the said Act regarding the Court empowered to try the said offence or for that matter, the offences punishable under Sections 161, 162, 163, 164, 165 and 165A of the Indian Penal Code. Subsequently, the State of West Bengal enacted a State Legislation called the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 (West Bengal Special Courts Act, 1949, for short) for the purpose of making provision for "speedy trial and more effective punishment" of certain offences specified in the Schedule to the Act. The offences punishable under Sections 161, 162, 163, 164, 165 and 165A, IPC,

Sections 409, 417 and 420, IPC, committed by a public servant or other persons mentioned therein, an offence punishable u/s 5 of the Prevention of Corruption Act, 1947 as well as any offence of conspiracy, attempt or abetment in respect of any such offence are included in the Schedule. Section 4 of the West Bengal Special Courts Act, 1949 provides that offences specified in the Schedule to the Act shall be triable by Special Courts only and when trying any such case the Special Court may also try any other offence with which the accused may, under the Code of Criminal Procedure, be charged at the same trial. Section 2 of the West Bengal Special Courts Act, 1949 empowers the State Government to constitute by notification in the official gazette one or more Special Courts and to appoint a Judge to preside over a Special Court.

17. In 1952 the Parliament enacted the Criminal Law (Amendment) Act, 1952 with the object of amending the Indian Penal Code and the Code of Criminal Procedure and of providing for a more speedy trial of certain offences. Section 6 of the said Act empowered the State Government, to appoint, by notification in the Official Gazette, Special Judges to try the offences punishable under Sections 161, 162, 163, 164, 165 and 165A, IPC and Section 5 of the Prevention of Corruption Act, 1947 as well as any offence, of conspiracy, attempt or abetment in respect of any such offence. Section 7 of the Criminal Law (Amendment) Act, 1952 provided that the offences specified in Section 6 would be triable by Special Judges only and when trying any such case a Special Judge could also try any other offence with which the accused could, under the Code of Criminal Procedure, be charged at the same trial.

18. Section 13 of the West Bengal Special Courts Act was inserted in 1953 wherein, it is provided, as the Section now stands, that Sections 6, 7, 8, 9 and 10 of the Criminal Law (Amendment) Act, 1952 shall not apply and shall be deemed never to have applied to West Bengal. The result of introducing Section 13 in the West Bengal Special Courts Act in the year 1953 is virtual exclusion of the Criminal Law (Amendment) Act, 1952 from West Bengal in the matter of its application to this State. As a matter of fact, the Government of West Bengal by notification u/s 2 of the West Bengal Special Courts Act, 1949 constituted special courts and also appointed Judges to preside over such special courts for trying offences mentioned in the Schedule to the said Act. Since by Section 13 of the West Bengal Special Courts Act, the operation of Section 6 of the Criminal Law (Amendment) Act, 1952 was excluded, there was no question of appointing any Special Judge under the said Section of the Criminal Law (Amendment) Act, 1952 by the State Government in West Bengal for trying an offence u/s 5 of the Prevention of Corruption Act, 1947.

19. It was not disputed during the hearing that the learned Special Judge trying the relevant case had been appointed under the provisions of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949, commonly known as West Bengal Special Courts Act, 1949. It cannot, therefore, be said that he has no jurisdiction to try the alleged offence punishable u/s 5 of the Prevention of

Corruption Act, 1947. In view of the discussions above, the third ground urged on behalf of the petitioner-accused also appears to be extraordinary anemic.

20. Upon the discussions above, there seems no point whatsoever for quashing of the relevant proceedings, the way sought for by the petitioner-accused. The Revisional Application should clearly fail, as it must.

21. In the result, the Revisional Application fails and is rejected. But in view of the delay already occasioned in the trial of the relevant case, which had remained stayed for quite some time in view of the stay granted by this Court, the learned Trial Judge is directed to expedite the trial, and he shall seek to dispose of the same, as early as possible, preferably within a period of six months from the date of receipt of the lower court records. Both the parties should co-operate with the learned Trial Judge in expediting the disposal of the case, in terms of this order.

22. Let a copy of this order as also the lower court records, called for, be sent down to the court below forthwith.

Order accordingly.

ILR