
(1998) 02 MAD CK 0163

In the Madras High Court

Case No : Criminal O.P. No. 202 of 1998 and Criminal M.P. No. 120 of 1998

K. Sadasivam

APPELLANT

Vs

Enforcement Officer, Enforcement Dte

RESPONDENT

Date of Decision : 23-02-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 309, 309(1), 309(2), 313, 482
Foreign Exchange Regulation Act, 1973 — Section 52, 57

Citation : (1999) 105 ELT 269

Hon'ble Judges : S.M. Sidickk, J

Bench : Single Bench

Advocate : R. Loganathan, for the Appellant; K. Kumar, Special Public Prosecutor "FERA", for the Respondent

Final Decision : Allowed

Judgement

S.M. Sidickk, J.—This is an application filed by the petitioner/accused u/s 482 of Cr. P.C. to set aside the order dated 22-12-1997 in CrI.

M.P. No. 989 of 1997 in C.C. No. 881/93 on the file of Additional Chief Metropolitan (E.O. II) Egmore, Madras.

2. The petitioner/accused filed an application u/s 309 of Cr. P.C. in CrI. M.P. No. 907/97 in C.C. No. 881/93 before the lower Court by stating

as follows :-

The petitioner/accused earlier filed an application for adjournment on producing the stay order dated 20-11-1997. This Hon"ble Court has

dismissed the said application. The petitioner/accused wants to get clarification of the position and effect of the stay order. Hence the matter may

be adjourned to some other date. Hence it is just and necessary to adjourn the above case to some other date to cross-examine the P.W. 1

examined in the case today.

Hence it is just and necessary to adjourn the above case for cross examining the Witness P.W. 1 and thus render justice.

3. After hearing the learned Counsel, the lower Court passed the following order on 22-12-1997 in Crl. M.P. No. 989/97 as follows :-

... It appears from the records that the Counsel for the accused has been seeking adjournment saying some reason or other.... Leaving all those

proceedings to the discretion of the complainant i.e. the Department, the accused has been sleeping over the matter, and after the complaint being

filed the accused is repeatedly filing applications after applications seeking adjournment. I find no reason in this application also to adjourn the

case...

4. Aggrieved against the said order the petitioner/accused filed this application u/s 482 of Cr. P.C. to set aside the order dated 22-12-1997

passed in Crl. M.P. No. 989/97 in C.C. No. 881/93. There is no other prayer set out in this petition except to set aside the order passed by the

learned Magistrate negating the prayer of the petitioner to adjourn the case to another date.

5. Section 309 of Cr. P.C. under which the petition in Crl. M.P. No. 989/97 was filed before the lower Court reads as follows :-

309(1) : In every enquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses

has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the

adjournment of the same beyond the following day to be necessary for reasons to be recorded.

6. A perusal of Section 309(1) of Cr. P.C., which was invoked by the petitioner/accused in this case to adjourn the case, shows that for reasons

to be recorded in writing the case can be adjourned to a particular date, and no other relief can be granted u/s 309 of Cr. P.C. So also Section

309(2) of Cr. P.C. states that if the Court after taking cognizance of an offence or commencement of trial, finds it necessary or advisable to

postpone the commencement, of, or adjourn, the trial, it may from time to time for reasons to be recorded, postpone or adjourn the same for such

time as it considers reasonable. Therefore there is no question of absolute or

limited stay being granted either u/s 309(1) or u/s 309(2) of Cr. P.C., and reasonable adjournment till such time for reasons to be recorded can be granted, and the case has to be adjourned to a particular date and not indefinitely for unspecified period or till the disposal of the appeal before FERA Board at Delhi as in the present case. The words ""for such time"" in Section 309(2) of Cr. P.C. emphasises the fact that there should be specified time or time limit for adjournment or postponement of the trial and not an indefinite period or unspecified time limit for adjournment of trial in the criminal case.

7. The learned Senior Counsel for the petitioner Mr. B. Kumar contended that a Division Bench of Madras High Court in the decision reported in

The Assistant Director, Enforcement Directorate and Another Vs. Hameed Jahuffer alias S.A. Hameed and Another, considered all these aspects

and stated that when an order of stay has been passed by the FERA Board, it is expeditious to postpone the trial till the disposal of the appeal

before the FERA Board. He also distinguished the judgment of His Lordship Mr. Justice Pratap Singh, J. reported in A.I. Shamsdeen and Ors. v.

The Special Director, Enforcement Directorate, New Delhi and Ors., 1994 MLJ 636 by pointing out to Para 4 of the said judgment wherein it is

stated by the Special Public Prosecutor for the respondent that no stay of the operation of the adjudication order was passed by the Appellate

Board, whereas in the present case the stay order has been passed by the FERA Board viz., Appellate Board, and in those circumstances the

decision reported in 1994 MLJ 636 will have no application. Even admitting that there is stay order in this case and the decision of Justice Pratap

Singh, J., reported in 1994 MLJ 636 will have no application to the facts of the present case, even then the Division Bench of our High Court in

the decision reported in The Assistant Director, Enforcement Directorate and Another Vs. Hameed Jahuffer alias S.A. Hameed and Another, has

not stated that the criminal case should be postponed indefinitely for an unspecified period, and instead the Division Bench of our High Court

reported in The Assistant Director, Enforcement Directorate and Another Vs. Hameed Jahuffer alias S.A. Hameed and Another, has only stated

that the criminal court shall be within its rights to judicially deal with the situation as pointed out by the Supreme Court in the decision reported in P.

Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, .

8. The Apex Court in the said decision reported in P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, held as follows :-

It may be that in an appropriate case the criminal Court may adjourn or postpone the hearing of a criminal case in exercise of its discretionary

power u/s 309 of the Code of Criminal Procedure if the disposal of any proceeding under the Act which has a bearing on the proceedings before it

is imminent so that it may take into consideration the order to be passed therein. Even before the discretion should be exercised judicially in such a

way as not to frustrate the object of the criminal proceedings. There is no rigid rule which makes it necessary for a criminal court to adjourn or

postpone the hearing of a case before it indefinitely or for an unduly long period because some proceedings which may have some bearing on it is

pending elsewhere. But this however has no relevance to the question of maintainability of the prosecution. The prosecution in those circumstances

cannot be quashed on the ground that it is a premature one

9. Following this decision of the Supreme Court, the Division Bench of our Madras High Court in the decision reported in The Assistant Director,

Enforcement Directorate and Another Vs. Hameed Jahuffer alias S.A. Hameed and Another, stated as follows :-

Whatever may be the course that might be adopted by the criminal court on entertaining a complaint u/s 57 of the Act in exercise of its

discretionary powers to await or postpone the proceedings before it pending disposal of the Appeal proceedings under the FERA Act, which may

have a bearing on the proceedings before the criminal court, the pendency of such proceedings u/s 52 of the Act does not affect in any manner the

maintainability of the prosecution launched cannot be interfered with either on merit or on the ground that it is a pre-mature move ... Similarly in a

case like the one on hand, if in the appeal preferred u/s 52 of the Act, the order of adjudication is set aside, it will have a bearing on the

prosecution launched u/s 57 of the Act and criminal court cannot ignore such a finding and in an appropriate case it may even drop the proceedings

in the light of the order passed in the appeal preferred u/s 52 of the Act against the order of adjudication on the basis of which the prosecution is

launched ... We make it more clear that criminal court shall be within its right to

judicially deal with the situation as pointed out by the Supreme

Court in P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, and the observations made in this judgment...

10. Therefore nowhere in the decision of the Division Bench of Madras High Court reported in The Assistant Director, Enforcement Directorate

and Another Vs. Hameed Jahuffer alias S.A. Hameed and Another, it is stated that the trial of criminal case should be kept pending disposal of

appeal before the FERA Board and in view of the stay granted by the FERA Board, the trial should be postponed or adjourned indefinitely or till

the disposal of the appeal before the FERA Board. At the best following the decision of the Supreme Court reported in P. Jayappan Vs. S.K.

Perumal, First Income Tax Officer, Tuticorin, , in an appropriate case the criminal court can adjourn or postpone the hearing of the criminal case in

exercise of its discretionary power u/s 309 of Cr. P.C. if the disposal of any proceeding pending under the FERA Act will have a bearing on the

proceedings in the criminal court.

11. Realising this difficulty of the decision of the Supreme Court reported in P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, ,

which was followed by a Division Bench of Madras High Court in The Assistant Director, Enforcement Directorate and Another Vs. Hameed

Jahuffer alias S.A. Hameed and Another, , the learned Senior Counsel Mr. B. Kumar appearing for the petitioner has brought to my notice a

decision of a Single Judge of Madras High Court viz., His Lordship Justice T.S. Arunachalam, J. reported in Plasticraft Industries Vs. Assistant

Collector of Central Excise, wherein it was laid down as follows :-

There is no rigid rule which makes it necessary for a criminal court to adjourn or postpone the hearing of case before it indefinitely or for an unduly

long period, only because some proceedings which may have some bearing on it is pending elsewhere. Though the prosecution cannot be quashed

on this ground in the pending proceedings before the Judicial Magistrate, the facts narrated leading to this prosecution certainly portray this is an

appropriate case where the proceedings in the criminal court could be stayed for a certain period to facilitate disposal of the appeal preferred by

the petitioners before the CEGAT.

12. Placing reliance on this decision of single Judge of Madras High Court the

learned Senior Counsel for the petitioner requested for reasonable time to postpone or adjourn the case in C.C. No. 881/93 so as to enable the petitioner/accused to get a verdict in the appeal preferred by him before the FERA Board to New Delhi.

13. Opposing this request, the learned Counsel for the respondent Mr. K. Kumar contended that the case is tried under the summons procedure, and the respondent has completed the examination of his witnesses and the questioning of the accused u/s 313 of Cr. P.C. has been completed and the case is posted for hearing the arguments, and several adjournments were given, and there is no justification to grant further adjournment or postponement of the trial of the case in C.C. No. 881 /93. No doubt several adjournments were given and the case is posted for final stage of the trial. It is equally true that the stay order of FERA Board will be confined to its proceedings and it cannot extend its arms to the criminal case.

14. Mere expectation of success in some proceeding in appeal cannot come in the way of the institution of the criminal proceedings or the continuation of the trial, and Section 57 of the FERA Act punishes the persons, who failed to pay the penalty within 45 days prescribed for the payment of the penalty imposed by the adjudicating authority, and the offence is complete on non-payment of penalty within the period of 45 days.

A criminal prosecution was an independent proceeding and not depending upon the validity of the order of adjudication, nor was it a continuation of that adjudication proceedings and under the FERA Act, there is no prohibition which directly prohibits the filing of the complaint u/s 57 of the FERA Act during the pendency of the appeal before the FERA Board at New Delhi, and that an appeal before the FERA Board against

Adjudication proceeding would not be a bar for the criminal proceeding to be proceeded with, since the criminal Court will have to decide the issues arising out of the criminal proceedings on the evidence let in before the criminal Court. It is for the accused to take efforts to expedite the hearing of the appeal before the FERA Board at New Delhi and to get a Judgment at New Delhi as early as possible to put forward as a defence in the criminal case. No such effort was made by the petitioner herein since the appeal is pending for more than six years. Merely because the petitioner herein filed an appeal before the FERA Board in Appeal No. 171 of

1993 which is pending adjudication for more than six years, it cannot be said that an order can be passed u/s 482 of Cr. P.C. not to proceed or u/s 309 of Cr. P.C. to adjourn the trial till the disposal of the petitioner's appeal pending before the FERA Board at New Delhi. If such an order of adjournment or postponement of the trial till the disposal of the appeal before FERA Board is given, then the petitioner will very well take shelter under the said order and will not make any effort to get the disposal of the appeal before the FERA Board in which event there will be statement and the completion of the trial in C.C. No. 881 of 1993 will be postponed or adjourned for ever till the disposal of the appeal before FERA Board. Suppose the petitioner can get an adjournment for one reason or other in the appeal before FERA Board, then there will be no end of the matter in the criminal case. It is absolutely essential that persons accused of offences should be speedily tried as pointed out by the Supreme Court in Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, .

15. However it cannot be denied that the decision in the appeal before the FERA Board in Appeal No. 171 of 1993 will have a hearing in the Criminal case in C.C. No. 881 /93. Even I can say that the judgment of the FERA Board in the appeal that will be preferred by the petitioner/accused in the event of not succeeding before the Magistrate Court can also be filed as an additional document on the side of the accused in the appeal that may arise in the criminal case in C.C. No. 881 /93 in future. Having waited so long, I am of the view that some reasonable time must be given to enable the petitioner accused to move the FERA Board to dispose of his appeal as expeditiously as possible within shortest possible time and get a verdict one way or the other before the FERA Board. Keeping in view this factor in mind I am of the opinion that a reasonable time must be given as held by His Lordship Mr. Justice T.S. Arunachalam, J., in the decision reported in Plasticraft Industries Vs. Assistant Collector of Central Excise, and the reasonable time may be only six months and not more than that. Hence I hold that this petition is allowed and the order of the learned Additional Chief Metropolitan Magistrate (E.O. II) Egmore, Madras in CrI. M.P. No. 989/97, dated 22-12-1997 in C.C. No. 881/93 is set aside, and the case in C.C. No.

881/93 on the file of Additional Chief Metropolitan Magistrate

(E.O. II) Egmore, Madras is adjourned or postponed till 31-8-1998, and thereafter no further adjournment or postponement of the trial in C.C.

No. 881/93 shall be given or extended by any one of the courts, and I answer this point accordingly.

16. In the result this petition is allowed. The order dated 22-12-1997 in Crl. M.P. No. 989/97 in C.C. No. 881/93 passed by the learned

Additional Chief Metropolitan Magistrate (E.O. II) Egmore, Madras is set aside. The case in C.C. No. 881/93 is adjourned or postponed till 31-

8-1998 u/s 309 of Cr. P.C. to enable or facilitate the petitioner/accused to get a disposal of the appeal preferred by him before the FERA Board

at New Delhi in Appeal No. 171/93 as expeditiously as possible, and thereafter no further extension of adjournment or postponement of the trial in

C.C. No. 881/93 pending on the file of Additional Chief Metropolitan Magistrate (E.O. II) Egmore, Madras shall be given or extended by any one

of the Courts on the ground of pendency of appeal or stay order before FERA Board. Consequently the stay petition in Crl. M.P. 120 of 1998 is

dismissed as unnecessary.

17. The Registrar is directed to send a copy of this order to FERA Board at 4th Wing, "B" Wing, Janpath Bhavan, Janpath, New Delhi-110 001

by Registered Post with Acknowledgement Due with reference to Appeal No. 171 of 1993 pending before it.