

(2011) 11 DEL CK 0031
In the Delhi High Court
Case No : Criminal M.C. 1401 of 2010

Kamaldin and Others

APPELLANT

Vs

CBI

RESPONDENT

Date of Decision : 23-11-2011

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 173, 197, 258, 306(5), 309
Penal Code, 1860 (IPC) — Section 120(B), 420, 467, 468, 471
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2011) 184 DLT 692 : (2012) 1 JCC 51

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : B.S. Mor and Mr. Rahul Sejwal, for the Appellant; Narender Mann, Spl. PP for CBI, for the Respondent

Judgement

Suresh Kait, J.—Vide instant petition, the petitioner has prayed for quashing the charge sheet/report u/s 173 Cr.P.C. pursuant thereto and pertaining to FIR No. RC 7[A]/89-DL1 and RC 8[A]/89-DLI dated 30.03.1989.

2. The brief facts of the case is that in RC, 7(A)/89-DLI, it is alleged that in pursuance of criminal conspiracy, Sh. Vinod Kumar Toshniwal, Sh. Sanjeev Kumar Mundra (Approver) and Sh. Laxmi Narayan got prepared letter pads and rubber stamps of various Calcutta based non-existing firms. Sh. Vinod Kumar Toshniwal also got prepared a rubber stamp of RBI, Calcutta for preparing forged certificates showing therein that Income Tax has been deposited in RBI, Calcutta. By using the said letter pads and rubber stamps they prepared false/forged documents such as confirmation of Account letters, Certificate of deduction of Income Tax from interest paid in respect of 42 Income Tax Returns. In the false documents it was shown that Income Tax on interest has been deducted at source and deposited in RBI at Calcutta. Vinod Kumar Toshniwal, approver Sanjeev Kumar submitted all the 42 Income Tax Return in Range-V of Income Tax Department. Sh. Kamaldin, Incharge of Dak Receipt Section of Range-V

received these 42 false income tax returns in back dates and also put false receipt numbers on these income tax returns. Sh. Krishan Kumar, Sh. R.S. Rawat and Sh. Sadar Singh processed the said false income tax returns in their wards and prepared the refund orders which was got signed from Sh. Prahalad Singh, ITO, The said refund orders amounting to Rs. 1,02,919/- were handed over to accused Vinod Kumar Toshniwal by accused Krishan Kumar, R.S. Rawat and Sadar Singh, whereas the assessment orders were sent to this predetermined addresses by registered post, which were also received by accused Vinod Kumar Toshniwal and Sanjeev Kumar.

3. In RC.8(A)/89-DLI, investigation established that in pursuance of the said criminal conspiracy Vinod Kumar Toshniwal, approver Sh. Sanjeev Kumar and Sh. Laxmi Narayan got prepared letter pads and rubber stamps of various Calcutta based non-existing firms, Vinod Kumar Toshniwal also got prepared a rubber stamp of RBI, Calcutta for preparing forged certificates showing therein that Income Tax has been deposited in RBI, Calcutta and using the said letter pads and rubber stamps, they prepared false and forged documents such as confirmations of Account letter, certificate of deduction of income tax from interest paid in respect of 36 income tax returns. In these forged documents it was shown that income tax on income from interest has been deducted at source and deposited in RBI at Calcutta. Accused Vinod Kumar Toshniwal and approver Sanjeev Kumar submitted these 36 returns in Range V of Income Tax Department. Accused Kamaludin was Incharge of Dak Receipt Section of Range V who received all these 36 false returns in back dates and put false receipt numbers on these returns. Accused Om Prakash got these false income tax returns processed in their ward no. 5(7) and prepared the refund orders which they got signed from N.C. Sarbajana, ITO. The said refund orders amounting to Rs. 80,704/- were handed over to accused Vinod Kumar Toshniwal and Sanjeev Kumar by accused Om Prakash Man whereas the Assessment orders were sent to the predetermined addresses by registered post which were received by accused Vinod Kumar Toshniwal and Sanjeev Kumar.

4. Accused managed to deposit refund orders for Rs. 4,14,380/- in 53 bank accounts opened by them in fictitious names in various bank. Refund order for Rs. 84,247/- could not be deposited by the accused in their bank accounts as the forgery committed by them has come to light. An amount of Rs. 3,25,400/- out of Rs. 4,14,380/- was withdrawn by the accused from 53 bank accounts and the balance amount of Rs. 89,980/- and the initial deposit of Rs. 100/- in each account still lying in the said 53 bank accounts.

5. In the instant petition, the petitioners are as under :-

1 Kamaludin, Head Clerk, Range V(Already superannuated)

2 V.K. Anand, Tax Assistant, Ward No. 5[5](Going to be superannuated)

3 Man Chand, Record Keeper/LDC, Ward 5[5] (Already superannuated in February,2006)

- 4 R.S. Rawat, UDC, Ward 5[3] (Going to be superannuated next year)
- 5 Sadar Singh, LDC, Ward 5[3] (Going to be superannuated next year)
6. Admittedly, the FIR in the instant case was registered on 30.03.1989 and the Charge-sheet was filed on 26.05.1992.
7. It is pertinent to note that after the registration of the case, accused O.P. Maan had died on the year 2002 and accused Krishan Kumar had died on 13.02.2001.
8. It is stated in the petition that the speedy trial is a fundamental right of the petitioners under Article 21 of the Constitution of India warranting reasonable expeditious trial under the provisions of Criminal Procedure Code. Therefore, it would be neither expedient nor in the ends of justice to allow the prosecution to continue ever for a day after such a long delay of more than 22 years specially when charges have not yet been framed against the petitioners. Even if the charges are framed now, the conclusion of the trial would take another several years.
9. In support of the above stated ground, learned counsel for the petitioner has relied upon a judgment passed in Vakil Prasad Singh Vs. State of Bihar, , wherein Hon"ble Supreme court has dealt the similar issue.
10. It is recorded in the said judgment that time and again the Supreme Court has emphasised the need for speedy investigations and trial as both are mandated by the letter and spirit of the provisions of CrPC [in particular, Sections 197, 173, 309, 437(6) and 468, etc.] and the constitutional protection enshrined in Article 21 of the Constitution. Inspired by the broad sweep and content of Article 21 the Supreme Court has observed that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty, except according to procedure established by law; that such procedure is not some semblance of a procedure but the procedure should be "reasonable, fair and just" and there from flows, without doubt, the right to speedy trial. Inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of the accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case.
11. In the above referred judgment, case of Abdul Rehman Antulay Vs. R.S. Nayak and another etc. etc., was quoted referring to a number of decisions of this Court and the American precedents on the Sixth Amendment of their Constitution, making the right to a speedy and public trial a constitutional guarantee, the Court formulated as many as eleven propositions with a note of caution that these were not exhaustive and were meant only to serve as guidelines. The gist thereof is as under:-
- (i) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily;

(ii) Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial;

(iii) In every case where the speedy trial is alleged to have been infringed, the first question to be put and answered is -- who is responsible for the delay?;

(iv) While determining whether undue delay has occurred (resulting in violation of right to speedy trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the work-load of the CrI.M.C.1401/2010 Page 7 of 17 court concerned, prevailing local conditions and so on--what is called, the systemic delays;

(v) 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 persecution. But when does the prosecution become persecution, again depends upon the facts of a given case;

(vi) Ultimately, the court has to balance and weigh several relevant factors--"balancing test" or "balancing process"--and determine in each case whether the right to speedy trial has been denied;

(vii) Ordinarily speaking, where the court comes to a 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 and having regard to the nature of offence and other circumstances when the court feels that quashing of proceedings cannot be in the interest of justice, it is open to the court to make appropriate orders, including fixing the period for completion of trial;

(viii) it is neither advisable nor feasible to prescribe any outer time-limit for conclusion of all criminal proceedings. 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;

(ix) An objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in the High Court must, however, be disposed of on a priority basis.

12. It was also observed that notwithstanding elaborate enunciation of Article 21 of the Constitution in Abdul Rehman Antulay (supra), and rejection of the fervent plea of proponents of right to speedy trial for laying down time-limits as bar beyond which a criminal trial shall not proceed, pronouncements of Hon'ble Apex Court in Common Cause A Registered Society through its Director Vs. Union of India (UOI) and Others, ; Common Cause A Registered Society Vs. Union of India

and others, ; Raj Deo Sharma Vs. The State of Bihar, ; and Raj Deo Sharma Vs. The State of Bihar, gave rise to some confusion on the question whether an outer time limit for conclusion of criminal proceedings could be prescribed where after the trial court would be obliged to terminate the proceedings and necessarily acquit or discharge the accused. The confusion on the issue was set at rest by a seven-Judge Bench of the Hon''ble Supreme Court in P. Ramachandra Rao Vs. State of Karnataka, . Speaking for the majority, R.C. Lahoti, J. (as his Lordship then was) while affirming that the dictum in A.R. Antulay's case (supra) as correct and the one which still holds the field and the propositions emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down as guidelines in the said case adequately take care of right to speedy trial, it was held that guidelines laid down in the A.R. Antulay's case (supra) are not exhaustive but only illustrative. They are not intended to operate as hard and fast rules or to be applied as a strait-jacket formula. Their applicability would depend on the fact-situation of each case as it is difficult to foresee all situations and no generalization can be made. It has also been held that it is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. Nonetheless, the criminal courts should exercise their available powers such as those under Sections 309, 311 and 258 of Cr.P.C. to effectuate the right to speedy trial. In appropriate cases, jurisdiction of the High Court u/s 482 Cr.P.C. and Articles 226 and 227 of the Constitution can be invoked seeking appropriate relief or suitable directions. The outer limits or power of limitation expounded in the afore noted judgments were held to be not in consonance with the legislative intent.

13. Further it was held that the right to speedy trial in all criminal persecutions is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in court but also includes within its sweep the preceding police investigations as well. The right to speedy trial extends equally to all criminal prosecutions and is not confined to any particular category of cases. In every case, where the right to speedy trial is alleged to have been infringed, the court has to perform the balancing act upon taking into consideration all the attendant circumstances, enumerated above, and determine in each case whether the right to speedy trial has been denied in a given case. Where the court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction, as the case may be, may be quashed unless the court feels that having regard to the nature of offence and other relevant circumstances, quashing of proceedings may not be in the interest of justice. In such a situation, it is open to the court to make an appropriate order as it may deem just and equitable including fixation of time frame for conclusion of trial.

14. In para 20 of the above discussed judgment it is further recorded as under:-

For the sake of brevity, we do not propose to reproduce all the said propositions and it would suffice to note the gist thereof. These are: (i) fair, just and

reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily; (ii) right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial; (iii) in every case where the speedy trial is alleged to have been infringed, the first question to be put and answered is -- who is responsible for the delay?; (iv) while determining whether undue delay has occurred (resulting in violation of right to speedy trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the work-load of the court concerned, prevailing local conditions and so on--what is called, the systemic delays; (v) 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 persecution. But when does the prosecution become persecution, again depends upon the facts of a given case; (vi) ultimately, the court has to balance and weigh several relevant factors--"balancing test" or "balancing process"--and determine in each case whether the right to speedy trial has been denied; (vii) Ordinarily speaking, where the court comes to a 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 and having regard to the nature of offence and other circumstances when the court feels that quashing of proceedings cannot be in the interest of justice, it is open to the court to make appropriate orders, including fixing the period for completion of trial; (viii) it is neither advisable nor feasible to prescribe any outer time-limit for conclusion of all criminal proceedings. 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; (ix) an objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in the High Court must, however, be disposed of on a priority basis.

15. In para 27 of the said judgment, it is recoded that it is manifest from the facts narrated above that in the first instance investigations were conducted by an officer, who had no jurisdiction to do so and the appellant cannot be accused of delaying the trial merely because he successfully exercised his right to challenge an illegal investigation. Be that as it may, admittedly the High Court vide its order dated 7th September, 1990 had directed the prosecution to complete the investigation within a period of three months from the date of the said order but nothing happened till 27th February, 2007 when, after receipt of notice in the second petition preferred by the appellant complaining about delay in investigation, the Superintendent of Police, Muzaffarpur directed the Deputy Superintendent of Police to complete the investigation.

16. Admittedly, in this case also vide order dated 26.04.2011, this court directed the trial court to hear the arguments on charge on day to day basis and pass an appropriate order.

17. It is pertinent to note that on the basis of receipt of the said order the trial court issued notice to both the sides to appear for considering the matter for arguments and pursuance to the direction, hearing in the matter was preponed and inspite of the matter being taken up on 27.07.2011, the date already fixed for hearing, was taken up on 09.05.2011 at 3pm. The date of hearing i.e. 27.07.2011 already fixed, was cancelled. The Trial court attempted to take the matter on day to day basis as is stated in the report dated 29.09.2011, filed in pursuance to the order dated 15.09.2011 of this court.

18. It is also recorded that accused No. 1 and 2 did not turn up and the process of NBWs and the process u/s 82 and Section 83 Cr.P.C. was resorted to. Since the process under Sections 82/83 Cr.P.C. required mandatory period of one month and also the fact that accused No. 1 and 2 were residents of Rajasthan and Kolkata, on request of special PP for CBI, the matter was adjourned by giving some time to the Agency to execute the process for appearance of the accused No. 1 and 2.

19. On 16.08.2011, accused No. 1 and 2 appeared along with order dated 10.08.2011 passed by learned ASJ whereby the proceedings under Sections 82/83 Cr.P.C. were set aside against them by learned ASJ and the matter was posted for arguments on charge with directions to CBI to file verification report in respect of the addresses of the accused No. 1 and 2 after getting these verified from Kolkatta and Rajasthan. Thus, learned Judge adopted the long route without realising the consequences.

20. The verification reports were not filed by CBI despite directions and coercive steps were taken against the agency. On 06.09.2011, while the court was about to hear the submissions on framing of charges, Ld. counsel for accused No. 1 and 2 (not the petitioner herein) moved an application u/s 306(5) Cr.P.C. for committing the case to the court of learned CMM. On 28.09.2011, CBI filed reply to the application and this Court heard submissions on the application disclosing legal point which was to be considered first and fixed the case for the orders on the application for 30.09.2011.

21. The case could not be taken up due to aforesaid circumstances on day-to-day basis. Therefore, till date even the arguments on charge, have not been started.

22. In spite, it is submitted in the said report that every endeavour to expedite the case within the time line as directed and would make every effort to implement the order of this court.

23. I note that in the instant petition, both the accused No. 1 and 2 are not the petitioners herein.

24. The respondent/CBI has filed has filed reply to the petition and has stated in

para 8 that on filing of the Charge-sheet, the trial court issued summons for appearance of the accused persons vide order dated 26.05.1992, but some of the accused persons did not turn up in the court. However, on 28.08.1992, all the accused had attended the court and proceedings could not take place as defence filed petition for supply of deficient copies of documents. The copies of documents were supplied on 24.08.1993.

25. It is further stated, thereafter upto 14.08.2001, the case remained pending for the purpose of evidence as approver of Sh. Sanjeev Kumar, Evidence of Sh. Sanjeev Kumar could not be completed due to various reasons such as on the some of the dates court remained on leave, lawyers were on strike, non appearance of accused persons, non appearance of Sh. Sanjeev Kumar, Trial court on several occasions issued warrant of arrest against Sanjeev Kumar.

26. It is further submitted that the trial court for the reasons of completing the process of evidence of approver Sh. Sanjeev Kumar, committed the case to the court of CMM for further proceedings. Thereafter, arguments on charge could not be heard as the original documents could not be received by the trial court on 27.01.2004 from the court of MM, Patiala House Courts, New Delhi. Further the arguments on charge could not be concluded as accused V.K. Toshniwal (not petitioner herein) did not attend the court for a long period. Court has issued warrant of arrest against him on several occasions. Trial court ordered for the process of Section 82/83 CRPC against accused V.K. Toshinwal.

27. Further, it is stated that counsel for accused V.K. Toshniwal appeared and submitted before the trial court that Sh. V.K. Toshniwal will appear in the court. Now, efforts were made to get the process of arguments on charge completed at the earliest.

28. Learned counsel for the petitioner submits whatever stated in the report i.e. against the main accused persons but nothing is stated against any of the petitioners except in para 09 that sufficient evidence to proof the allegations levelled against the accused persons are on record. It is further submitted that by taking large numbers of adjournments, the petitioners have themselves largely contributed to the delay.

29. Learned counsel for the petitioners submits that the petitioners continue to appear in the court regularly and such delay has not been caused due to their alleged absence.

30. Learned Standing counsel for CBI, Mr. Narender Mann submits that if the delay is caused due to the absence of co-accused, the system cannot be blamed.

31. Admittedly, FIR was lodged on 30.03.1989. The charge-sheet in the matter was filed in the year 1992. In the year 1993, the process for procurement of presence of accused Sanjeev Kumar, approver started and finally, this process was concluded in year 2001. This process alone took 08 years. As on date more than 22 years have passed till date, the charges against the petitioners have not

been framed yet.

32. Keeping the above discussion into view and the law settled in Vakil Prasad (supra), I am of the view, in this case also the petitioners are being harassed due to the long delay of 22 years and still charges have not been framed. The petitioners are charge-sheeted under Sections 120B read with Sections 420/467/471 & 477A of Indian Penal Code, 1860, whereas the FIR was filed under Sections 420/467/468/471/477A of IPC and 13(2) read with 13(1)(d) of P.C. Act, 1988.

33. In view of the above discussion, and keeping in view the fact that after lapse of more than 22 years, the charges in this case has not yet been framed, I quash the FIR No. RC 7(A)/89-DLI and RC8[A]/89-DLI dated 30.03.1989 and all the proceedings emanating there from, qua the petitioners only.

34. No order as to costs.

35. Criminal M.C. 1401/2010 stands allowed and disposed of.

36. Dasti.