
(2017) 09 CAL CK 0025
In the Calcutta High Court
Case No : 701 of 2016

Kartick Ghosh @ Kartick Chandra Ghosh APPELLANT
Vs
The State of West Bengal RESPONDENT

Date of Decision : 08-09-2017

Acts Referred:

[Constitution of India](#), [Article 21](#) -
Amendment of the Schedule
[Code of Criminal Procedure, 1973](#), [Section 161](#),
[Section 227](#), [Section 239](#)

Citation : (2017) 09 CAL CK 0025

Hon'ble Judges : Siddhartha Chattopadhyay

Bench : SINGLE BENCH

Advocate : Arijit Ghosh, Debjani Sahu

Judgement

1. The present assiduous petitioner showed his extreme patience to face a "fair trial" for the

last two decades and for which he ran from pillar to post, when he experienced that "fair trial" is a

far cry he appeared before this Majestic Portal with a prayer to quash the proceedings of G.R.

Case No. 5329 of 1991 arising out of Barrackpore Police Station Case No. 92 dated 31st August,

1991.

2. Factual aspects is required to be restated in the interest of effective adjudication.

According to the accused petitioner, the alleged offence took place in 1985. The F.I.R. was lodged

nearly after six years i.e. in 1991. Investigation started pursuant to such F.I.R.

Thereafter

charge-sheet was submitted on 12.09.1996. In terms of Section 207 Cr.P.C. he was entitled to get

the copies of statements recorded so far and the documents on which the prosecution wants to

rely. In such circumstances, it was detected that the case diary was missing. However, the

prosecution has delivered copies containing 47 (forty seven) sheets. Curiously enough, in those

sheets there was no statement recorded under Section 161 Cr.P.C. When attention was drawn to

that effect before the Learned Court below, the said Court most evasively and unconvincingly

came to a decision that they ought to have raised that plea before the Learned A.C.J.M.,

Barrackpore. Before passing of that order, Learned Special Court did not notice that for the

purpose of getting the materials in case diary, he knocked at the door of this Hon"ble High Court

in two occasions and this Hon"ble Court directed the prosecution to serve copy and to conclude

the trial within a stipulated period. The said solemn order of this Hon"ble Court neither motivated the prosecution nor the Courts below. The case was committed to the Special Court

and when the said Court decided to go for trial with incomplete documents, the accused

petitioner prayed for discharge. While disposing of the said application Learned Additional

Sessions Judge, 3rd Court at Barasat observed "it is needless to mention that the different

accused persons moved before the Hon"ble High Court on repeatedly but till now there is no

direction upon the Court to decide as to whether accused persons should be discharged or not".

According to the petitioner, finding of that Special Court is absolutely baseless because the

accused petitioner prayed for a direction before the Hon"ble Court to supply copy of the

documents on which the prosecution relied.

3. It appears from the annexure of the instant petition, which is an order passed by this

Hon"ble Court in connection with C.R.R. 2680 of 2007, wherein P.S. Dutta, J., had given direction

in such fashion i.e. "I dispose of the application with the direction to the Learned Court to make

every endeavour to proceed with the case from day to day if not absolutely impossible and take a

special initiative so that the matter brook no further delay and gets disposed of preferably within

a period of six months from the date of communication of the order." The said order of the

Hon"ble Court was passed on 20th August, 2009. Challenging the said finding of the Learned

Court below the accused petitioner came before this forum contending inter alia that the Learned

Court below did not consider the order of the Hon"ble Court in its letter and spirit.

Decision with Reasons

4. Learned Counsel for the petitioner criticized the lackadaisical investigation, conduct of

the investigating agency, delaying tactics of the prosecuting agency and the impugned order. He

contended that there is no plausible explanation from the investigating agency as to why the

F.I.R. was lodged long after six years since the date of alleged offence. Delayed F.I.R. per se is not

fatal. Unexplained delay certainly raises serious doubt. He agitated over the issue as regards

manner of investigation. Investigation was concluded after a long delay i.e. in 1996 and the case

diary was missing. It appears from the Xerox copy of document that one Alokanda Basu,

Advocate, had received the case diary on 24.11.1999 by affixing seal of "Public Prosecutors Office,

High Court, Calcutta." It is submitted at the bar that the said Alokanda Basu is no more in the world. As per prosecution, she had handed over the C.D. containing pages 444 as is evident

from the endorsement of Alokanda Basu, State Penal Advocate. Curiously enough, at the time

of framing charge only 47 (forty seven) sheets were handed over to the accused petitioner and

Learned Special Judge, 3rd Court at Barasat in his impugned judgment had mentioned that.

Surprisingly enough, there is no statement recorded under Section 161 Cr.P.C. Learned Court

below also held that a good number of documents out of 47 (forty seven) sheets are of no

relevance. Learned Counsel categorically stated that how the accused would take their defence

unless it is made known to them that which witness will depose what part of prosecution case.

At the same time how the Learned Public Prosecutor-in-Charge would take evidence of charge-

sheeted PW's unless he knows what statement the witness had given before the Investigating

Officer. This apart, for the purpose of refreshing memory of the witness, statement under Section

161 Cr.P.C. is also required.

5. Learned Counsel appearing on behalf of the accused made a pincer movement contending inter alia that the impugned order passed by the Learned Court below is self-

contradictory. He referred to the finding of the Learned Court below which is under. "Till now it

is not clear as to why the accused petitioner is completely silent about the order dated

11.03.2011 wherein it has been observed in presence of all the accused persons as well as their

Learned Advocate that the provision of Section 207 of Cr.P.C. had been complied with. It is also

significant that save and except the said accused petitioner, the other accused persons have not

ventilated any grievances with regard to supply of copies after passing of the order dated

11.03.2011 of the Learned A.C.J.M., Barrackpore." Learned Counsel for the petitioner has

raised his voice that the Learned Court below lost sight of the fact that this accused petitioner

had filed another revisional application bearing No. C.R.R. 1385 of 2011 before the Hon"ble Court

and agitated the issue. The Learned Counsel for the petitioner submits that the prosecution has

supplied copy of documents as mentioned in paragraph 30 of the instant application. It is

contended that the statements of witnesses recorded under Section 161 of Cr.P.C. have not been

supplied. The contention of the Learned Counsel for the petitioner is that there is no material for

framing of charge and the proceeding should be quashed. He further contended that while disposing of the said revisional application the Hon"ble Court held "in view of the earlier direction

of this Hon"ble Court in C.R.R. 2680 of 2007 on 20.08.2009, I dispose of this application giving

direction to the Learned Court below to fix a date for hearing the parties. The petitioner herein is

granted liberty to urge before the Learned Trial Court all the points as to non-supply of all the

particulars of the police paper including the statements of the witnesses recorded under Section

161 of Cr.P.C. The petitioner herein will be at liberty to urge the points of law before the Learned

Trial Court." Referring the order of the Learned Special Judge he contended that the accused

petitioner was completely silent about the order dated 11.03.2011 does not lie.

According to him,

the finding of the Learned Special Judge, 3rd Court, is without any basis. Learned Special Court

fails to appreciate that the accused persons agitated their grievances in two successive occasions.

Learned Court below could not appreciate the direction passed by the Hon''ble Court in its letter

and spirit. It is the accused petitioner who prayed for early disposal and a fair trial. Hon''ble Court

in two successive occasions passed appropriate orders but this received a cold reception from the

prosecuting agency. They could not hand over the documents as per the case diary. On Perusal of

the record it appears that accused petitioner had no role for such inordinate delay. He is not

instrumental for delay. In spite of specific direction, the prosecuting agency remains stationary.

He further contended that Learned Court below has failed to appreciate the position of law. He

referred to the finding of the Learned Court below wherein Learned Special Judge contended that

since High Court did not discharge them, so the charge would be framed. Learned Counsel

submits that the Learned Court below has totally forgotten the scope or ambit of Section 239 and

227 of Cr.P.C. By ventilating his such grievances, he has submitted that this is a fit case where

jurisdiction under Section 482 of Cr.P.C. has to be exercised by this Court. He has also referred

to the ruling reported in Aswini Kumar Bhattacharyya -Vs.- State of West Bengal (2002) 3 CHN

670. In this case F.I.R. was lodged in February 1981. Charge-sheet has been submitted under

Section 409 of the Indian Penal Code in 1985 since then for about 21 years there was no

progress. This Hon'ble High Court quashed the proceeding and relied on the decision reported in

(2002) 1 SCC 149, Mahendra Lal Das -Vs.- State of Bihar & Ors. Learned Counsel for the

petitioner has also relied on a decision reported in Pankaj Kumar -Vs.- State of Maharashtra & Ors. (2008) 16 SCC 117. According to the Learned Counsel that speedy trial is a right and it has

been acknowledged by our Constitution. Learned Counsel appearing on behalf of the accused

petitioner also referred to a judgment reported in (2009) 3 SCC 355 Vakil Prasad Singh -Vs.-

State of Bihar. Referring this judgment, Learned Counsel submitted that when the Constitutional

right has been infringed in view of spirit of Article 21 of our Constitution, High Court should come

in aid of the petitioner.

6. Learned Counsel appearing for the state did not dispute the factual aspects. He submitted that the prosecution is to supply those documents on which they rely. Therefore,

according to him, the accused petitioner will not be prejudiced in any way.

7. After hearing rival submissions of both sides and after going through the materials on

record, I find that the alleged offence took place in 1985, F.I.R. was lodged in 1991 this is nearly

after six years. Charge-sheet has been submitted in 1996. There is no lawful excuse for causing

delay in lodging the F.I.R. and also for completion of investigation. Admittedly, the case diary was

missing. There is nothing on record that the accused petitioner was in any way instrumental for

such delay.

8. It shocks my conscience that the case is pending for about two decades. In spite of this

Court's two successive order, the colour and flavour of the case was not changed. It is submitted

at the bar that in the mean time some of the accused petitioner retired from their service but for

pendency of this case retiral benefits have not been given to them. Statement recorded under

Section 161 Cr.P.C. has not been given and that is admitted by the Learned Counsel appearing

on behalf of the State. How the prosecution will go for evidence and how the accused petitioner

will defend themselves is a big question to be addressed. This apart, the case is pending for the

last two decades and order of this Hon''ble Court in connection with C.R.R. 1385 of 2011 and

C.R.R. 2680 of 2007 had not been complied with.

9. Framers of our Constitution was not oblivious of the right of life and liberty of a citizen.

Accordingly Hon''ble Apex Court recognized and acknowledged speedy trial to come under Article

21 of our Constitution. With a view to giving a meaningful shape to our administration of

Criminal Justice Delivery System, it would be legal obligation of all who are associated with this system. If prosecution takes the role of second monstrous brother of Ravana, who as per the epic,

awakes for a day after sleeping for six months at a stretch then High Court must rise to the

occasion to "secure ends of justice" and also to "prevent abuse of process of Court." Sword of

Damocles should not be allowed to remain on the neck of an accused for an indefinite period.

10. Having regard to the facts and circumstances, manner of investigation and snail like

movement of the case I am of the view it is a fit case where the extraordinary jurisdiction under

Section 482 of Cr.P.C. should be invoked.

11. Therefore, I have no option left with except to set aside the impugned order passed by

the Learned Special Judge, 3rd Court at Barasat. The prayer for quashing of the proceeding being

Special Case No. 3 of 2011 corresponding to G.R. Case No. 5329 of 1991 arising out of

Barrackpore Police Station Case No. 1992 dated 31.08.1991 is allowed.

12. In the result, the revisional application is allowed. Special Case No. 3 of 2011 corresponding to G.R. Case No. 5329 of 1991 stands quashed in respect of the petitioners.

13. Let a copy of this order be sent to the Learned Court below for information and taking

necessary action in accordance with law.

14. Urgent certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.