
(1999) 10 PAT CK 0054
In the Patna High Court
Case No : Criminal W.J.C. No. 32 of 1993

Krishna Kumari Verma and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 05-10-1999

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 227
Penal Code, 1860 (IPC) — Section 468, 499, 504
Protection of Civil Rights Act, 1955 — Section 5, 7
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3, 4

Citation : (1999) 3 BLJR 2392

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Katriar, J.—This writ petition under Articles 226 and 227 of the Constitution of India at the instance of the two petitioners is directed against the order dated 19-12-92, passed by the learned SDJM, Bikramganj at Sasaram, in Special Case No, 40/93, arising out of Bikramganj P.S. Case No. 188/92, whereby cognizance has been taken of the alleged offences under Sections 499 and 504, I.P.C., Sections 5(b) and Section 7(g) of the Protection of Civil Rights Act, 1955 (hereinafter referred to as 1955 Act), as well as and Section 3(x) and 4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 1989 Act), and the petitioners have been summoned to stand their trial.

2. According to the allegations in the FIR, petitioner No. 1 was at the relevant point of time posted in the Girls School, Bikramganj, and her husband, petitioner No. 2, was posted as a Junior Engineer at Bikramganj for about ten years. Petitioner No. 1 has been treating the students of the school with contempt and discrimination on the grounds of untouchability and caste. The further allegation is that one Jyoti Jwala, a Scheduled Caste girl, was insulted at the time of her

admission in the school. According to the further allegations. The petitioners have constructed a temple on Government land at a fairly high expense which is disproportionate to their known sources of income, On these allegations, the aforesaid Bikramganj P.S. Case No. 188/92, dated 27-12-92, was registered under Sections 499 and 504, I.P.C., Sections 5-B and 7-G of the 1955 Act, as well as under Sections 7 and 13 of the 1988 Act. A copy of the FIR with a number of enclosures thereto is marked Annexure-1 to the writ petition.

3. The police conducted investigation in the allegations and submitted final report dated 18-9-98 (Annexure-A), whereby it sent up the petitioners herein to stand their trial under the aforesaid sections. The police did not file any material to send them up for trial under the provisions of the Prevention of Corruption Act. In view of the materials on record including the final report (Annexure-A), the learned SDJM passed the impugned order dated 19-12-92.

4. Let it be recorded that the writ petition was originally filed with the prayer to quash the FIR and investigation. As stated above, the police submitted a belated charge-sheet dated 18-9-98 (Annexure-A) under the aforesaid sections. The learned SDJM passed the impugned order of cognizance dated 19-12-92, which is a pendente lite development. The petitioners have filed an application for amendment of the pleadings seeking to challenge the impugned order of cognizance. I have heard learned Counsel for the parties and allowed the application. Let the amendment be incorporated in the writ petition, and the petitioners are hereby permitted to challenge the impugned order of cognizance dated 19-12-92.

5. While assailing the validity of the impugned order of cognizance, learned Counsel for the petitioners first of all submitted that the main allegation against petitioner No. 2 was under the Prevention of Corruption Act. The police during course of investigation has found this part of the allegation to be incorrect and has, therefore, not been incorporated in the final report. Learned Counsel for the petitioners is, therefore, right in his submission that no case at all is made out against petitioner No 2. Learned S.C. Ill with his usual fairness conceded this part of the submission.

6. Learned Counsel for the petitioners next submitted that the impugned order of cognizance is fit to be set aside on the ground of delay, laches, and harassment to the petitioners. He submitted that the offence within the meaning of Section 499, I.P.C. is punishable with imprisonment up to a maximum period of two years, offence u/s 504 is punishable up to the maximum period of two years, the offence u/s 5 of the 1955 Act is punishable with a maximum period of six months and that of Section 7 is punishable with a maximum period of six months. In his submission, therefore, cognizance under Indian Penal Code as well as 1955 Act are hit by delay in terms of Section 468 of the Code. Section 468(2) reads as follows:

468. Bar to taking cognizance after lapse of the period of limitation.-(1)...

(2) The period of limitation shall be-

(a) Six months, if the offence is punishable with fine only ;

(b) One year, if the offence punishable with imprisonment for a term not exceeding one year ;

(c) Three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

6.1. As stated above, the FIR is dated 27-12-92, and the impugned order of cognizance is dated 19-12-98. Learned Counsel for the petitioner is, therefore, right in his submission that insofar as offences within the meaning of Sections 499 and 504, I.P.C. and Sections 5 and 7 of the 1955 Act are concerned, it hit by delay and is hereby set aside.

7. Insofar as the allegations u/s 4 of the 1989 Act is concerned, the same reads as follows:

Punishment for neglect of duties.-Whoever being a public servant but not being a member of Scheduled Caste or a Scheduled Tribe wilfully neglects his duties required to be performed by him under this Act, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend up to one year.

7.1. Learned Counsel for the petitioners is right in his submission that there is no material on record whatsoever prima facie, constituting an offence within the meaning of Section 4 of 1989 Act. I, therefore, set aside the cognizance u/s 4 of the 1989 Act.

8. This takes me on to the cognizance taken u/s 3(x) of the 1989 Act which reads as follows:

3. Punishments for offences of atrocities.-(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

(x) intentionally insults or intimidates with intend to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view.

9. Learned Counsel for the petitioners very fairly submitted that a case is undoubtedly made out within the meaning of Section 3(x) of the 1989 Act, and is also not hit by the provisions of Section 468 of the Code. He, however, submitted that the small area of allegations like the present one which primarily centered in and around the school in question has taken six years to complete investigation, the charge-sheet to be submitted, and the order of cognizance to be passed. The Courts have strongly deprecated continuance of such a prosecution if it has really turned down to be a prosecution to the petitioner. He placed reliance on the judgment of the Supreme Court in the case of Biswanath Prasad Singh Vs. State of Bihar, , wherein the FIR was lodged on 10-12-87, and the charge was framed

on 5-12-93, i.e. after a lapse of five years. Even taking note of the fact that the Courts are required to take stricter view in cases relating to misappropriation of public funds, the Supreme Court found a period of five years very unreasonable to investigate the case and, therefore, quashed the prosecution.

9.1. Learned Counsel has also relied on the judgment of a learned Single Judge of this Court reported in 1998 BCCR 774, Baidyanath Prasad v. State of Bihar Paragraphs 6 and 7 of which are relevant in the present context and are set out hereinbelow for the facility of quick reference : "6. Admittedly, the Criminal case was registered against the petitioners on the basis of report on 22-1-1991, and cognizance was taken on 31-1-1992 on the basis of the charge-sheet submitted by the Railway Police Force personnel. It is also admitted fact that till date charge has not been framed although about 7 years have passed and the case is pending for the last seven years. There is nothing on the record to show that the delay in proceeding with the case has been caused due to laches on the part of the petitioners. In such circumstances, in my opinion, for the ends of justice, the instant proceeding against the petitioners should not continue any further. In this connection, reference may be made to a decision of the Supreme Court in A.R. Antulay's case. Relevant portion of the observation of the Apex Court reads as under:

(1) Fair, just and reasonable procedure implicit in .Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the societal interest also, does not make it any-the-less 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.

(2) Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely, the stage of investigation, inquiry, trial, appeal, revision and retrial. That is how this Court has understood this right and there is no reason to take a restricted view.

7. In another case of Santosh De. v. Archana Guha, the Supreme Court following the principles laid down in A.R. Antulay's case (supra) held that this unexplained delay of 8 years in commencing the trial by itself infringes the right of the accused to speedy trial. The proceeding in that case against an accused, who was a public servant allegedly possessing disproportionate assets, was quashed. Similarly in another case of misappropriation of public fund, the apex Court quashed the proceeding for the reason that there was inordinate delay in the trial of the case. Reference may be made to the case of Bishwanath Prasad v. State of Bihar. A Division Bench of this Court in the case of R.K. Mandal v. State of Bihar, has followed the principles laid down by the Supreme Court and quashed the criminal proceeding registered under the Prevention of Corruption Act on the ground of its pendency for more than seven years.

10. In such circumstances, I am convinced that on account of the tardy pace of

investigation and the lapse of time covering the period of six years, it has really turned down to be a persecution for the petitioners. No explanation is forthcoming for this extraordinary delay. Calling him upon to enter defence at this stage may not be right and reasonable. Further more, Mr. B.P. Pandey, Sr. Counsel informs that petitioner No. 1 was placed under suspension on account of the ongoing investigation. In such circumstances, this Court is of the view that the prosecution ought to be terminated, inasmuch as the petitioners have been fairly harassed on account of the combined effect of the time taken so far as well as the suspension.

11. In the result, this writ petition is allowed, the impugned order of cognizance dated 19-12-98, passed by learned S.D.J.M. Bikramganj, in Bikramganj P.S. Case No. 188/92, is hereby set aside.