
(1995) 09 BOM CK 0029

In the Bombay High Court

Case No : Criminal Writ Petition No. 897 of 1993 with Criminal Applications No. 176 and 2115 of 1995,

Miss Smita Ambalal Patel

APPELLANT

Vs

Additional Director of Enforcement Directorate and others

RESPONDENT

Date of Decision : 01-09-1995

Acts Referred:

Constitution of India, 1950 — Article 21, 227
Criminal Procedure Code, 1973 (CrPC) — Section 154, 169, 172, 173, 482
Penal Code, 1860 (IPC) — Section 120, 467, 471
Prevention of Corruption Act, 1988 — Section 5(2)

Citation : (1996) CriLJ 32

Hon'ble Judges : V.P. Tipnis, J;M.L. Dudhat, J

Bench : Division Bench

Advocate : Miss Smita A. Patel in person and S.M. Shah, for the Appellant; J.C. Satpute, for the Respondent

Judgement

Dudhat, J.—This Writ Petition has been filed by the present petitioner for quashing show cause notices and memoranda No. T-3/371/Bom/74/32 dated 28th February 1978 issued by the Assistant Director of Enforcement Directorate, Bombay, and No. T-4/42-B-B/75 (S.C. Nos. 1 to 10 and 10A to 34) dated 27-12-1979 issued by the Additional Director of Enforcement Directorate, New Delhi. Secondly, the petitioner also prayed in the said petition compensation from respondents Nos. 1 to 3 for the mental, physical and financial harassment and torture she had undergone because of the procrastination of the proceedings. In the said petition, the petitioner has also sought other incidental reliefs. In the present petition, the petitioner has also claimed certain reliefs in favour of her deceased mother Mrs. Vidyaben Patel. Admittedly, the petitioner's mother Mrs. Vidyaben Patel is dead and, therefore, in this Writ Petition, we cannot consider prayer (d) of the present petitioner for direction u/s 169 of the Code of Criminal Procedure directing respondents Nos. 1 to 3 to file discharge application against Mrs. Vidyaben Patel.

2. It is pity that the present petitioner, along with her mother Mrs. Vidyaben Patel, was prosecuted from 1974 till the petitioner was discharged by this Court in Criminal Writ Petition No. 1106 of 1990 decided on 17-12-1991 virtually for no fault of theirs while the main accused in the alleged offences are virtually untouched as in spite of efflux of time of 21 years, neither a criminal case filed against them has made any progress nor the adjudication proceedings commenced against these persons.

3. Few facts which are material for the disposal of this Criminal Writ Petition are as under :-

Somewhere on 5th August 1974, respondents Nos. 1 and 2 filed a First Information Report u/s 154 of the Code of Criminal Procedure. In the said First Information Report, it was alleged that various persons named therein have committed offences punishable u/s 120-B read with Sections 467 and 471 of the Indian Penal Code and also u/s 8(3) of the Foreign Exchange Regulation Act, 1973 (hereinafter referred to, for the sake of brevity, as the "Act of 1973"). It was also alleged in the said First Information Report that some persons mentioned therein have committed offences u/s 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947. The allegation of the prosecution was that all these persons had entered into a conspiracy to evade various provisions of the Act of 1973 and forged certain documents for that purpose.

4. In pursuance of the aforesaid F.I.R., the present petitioner was arrested on 28-8-1974. At the time of arrest, the petitioner was about 18 years old, as her date of birth from the record appears to be 25-9-1956.

5. On 26th April 1978, the petitioner, her mother and other accused persons were committed by the Addl. Chief Metropolitan Magistrate to the Court of Session, Greater Bombay. On 26th April 1978, the C.B.I. filed its report before the Court of Sessions, Greater Bombay, u/s 173 of the Code of Criminal Procedure. On 3rd May 1978, the learned Special Judge issued the process to various accused persons, though the petitioner was on bail. Movements of the petitioner were restricted by the Metropolitan Magistrate as well as the Sessions Court on the ground that the petitioner was facing criminal trial with other accused. On certain occasions, the petitioner applied to the Court for grant of permission to travel abroad. However, every time, the prosecutors of the respondents used to oppose the application, with the result either the permission used to be refused or the permission used to be granted by imposing stringent conditions. The trial against all the accused had not commenced, though the accused were arrested sometime in the year 1974 and even the charges were not framed. During the course of the trial, three accused expired while the main five accused were absconding. The petitioner has also made applications for separating her trial from the other accused persons, but could not succeed.

6. Ultimately, the petitioner filed Criminal Writ Petition No. 1106 of 1990 on 15th October 1990 under Article 227 of the Constitution of India read with Section 482

of the Code of Criminal Procedure complaining serious invasion of her fundamental right to speedy and expeditious criminal trial embodied under Article 21 of the Constitution. On 17th December 1991, after hearing all the concerned parties, this Court partly allowed the said Criminal Writ Petition and quashed the criminal proceedings in Special Case No. 22 of 1978 pending before the Special Judge for Greater Bombay as far as the present petitioner was concerned. This Court further directed the Special Judge to proceed with the trial expeditiously and from day-to-day basis as against the other accused. In the aforesaid proceedings, though the present petitioner prayed for quashing the adjudication, proceedings, still this Court rejected the said plea of the petitioner on technical grounds. However, the High Court further observed, when the petitioner moved an application for speaking to minutes, as under :-

"It is hereby clarified that the challenge of the Petitioner to the adjudication proceedings was rejected by me on the technical ground that the said challenge could not be appropriately considered in a Petition where prosecution was sought to be quashed, and Section 482 of the Criminal Procedure Code was invoked. The said challenge was also rejected by me on another technical ground that no writ petition could lie to seek quashing of First Appeal No. 34 of 1988 pending before this Court. It is hereby clarified that the said rejection of challenge to the adjudication proceedings was not on merits or after examining merits of the controversy between the parties, As a matter of fact, it will be true to state that neither of the parties were heard on merits of the challenge in respect of these proceedings. If the Petitioner has any remedy available to her under the law of the land, to challenge the adjudication proceedings or the order passed in First Appeal No. 34 of 1988, the Petitioner can certainly pursue the same in accordance with law."

7. We may further mention that one of the accused Mrs. Victoria Rekha Anthony had also filed Criminal Writ Petition No. 513 of 1992 for quashing the criminal proceedings in Special Case No. 22 of 1978 and after hearing both the sides, we by our judgment dated 4th August 1993 quashed the said proceedings in Special Case No. 22 of 1978 with respect to the said Mrs. Victoria Rekha Anthony.

8. The petitioner has filed the present Criminal Writ Petition for quashing the adjudication proceedings pending against her and also for other incidental reliefs. The present Writ Petition is filed by the petitioner in person and she has also argued before us in person. The petitioner contended in her petition that even though there is no stay of criminal proceedings in Special Case No. 22 of 1978 against all the accused in any case from 4-8-1993 and since the Special Judge who is appointed for similar cases of the type pending against the other accused persons and is presently conducting the matters pending before him of the year 1989-90, Special Case No. 72 of 1978 pending against the other accused persons ought to have been commenced and finally disposed of if the respondents intended to finally dispose of the said matter. The petitioner also submits that this Court by its order dated 17-12-1991 directed the trial Court in Special Case

No. 22 of 1978 to expeditiously dispose of the said case from day-to-day basis. In spite of this, the petitioner contended that the respondents are not interested to start the proceedings pending against the other accused in Special Case No. 22 of 1978 or to start even the adjudication proceedings launched against the petitioner and other accused persons. By referring to certain documents mentioned more particularly in para 12 of the petition, the petitioner contended that by giving some vague excuses, the Enforcement Directorate is refusing to start the preliminary adjudication proceedings which are pending before it for two decades.

9. By referring to the adjudication proceedings pending against her, it is contended by the petitioner more particularly in para 16 of her petition that the petitioner was arrested on 28-8-1974 and since then the petitioner has been facing the prosecution launched by respondents Nos. 2 and 3. In the meanwhile, on the same said one sequence of events, the adjudication proceedings were initiated by respondent No. 1 against the petitioner on the basis of memorandum No. 1-4/147-B/75 (S.C. Nos. I, II and III) dated 30-12-1974 issued by the Addl. Director Shri R. G. Gupta from New Delhi whereby the Enforcement Directorate imposed penalty of Rs. 12,000/- vide order dated 12-1-1978. Against the said order, the petitioner preferred appeal to the Appellate Board, but the same was dismissed and against which the petitioner preferred First Appeal No. 34 of 1988. The said First Appeal was also dismissed by the Division Bench of this Court on 29-1-1991. The petitioner contended that now she is in possession of some documents by which she can show that the proceedings taken against her as aforesaid are liable to be set aside as the order was passed in the said proceedings in violation of the rules of natural justice. According to our opinion, in the present Criminal Writ Petition, we will not be in a position to grant any relief, in view of the judgment and order passed by a Division Bench of this Court on 29-1-1991. The petitioner has also filed a Review Petition against the said judgment and order. The petitioner may ventilate her grievances in the said Review Petition or before the Supreme Court, if she desires to do so. However, we are considering the petitioner's claim in respect of two adjudication proceedings referred to in prayer clause (a) of her petition.

10. With reference to the aforesaid adjudication proceedings, in para 18 of her petition, the petitioner contends that the Assistant Director of Enforcement from Bombay had issued memorandum No. T-3/371-BOM/74/32 dated 28-2-1978 which is still pending for initiating adjudication proceedings since 28-2-1978. These proceedings are initiated in respect of 361-A forms. According to the petitioner, she alongwith 16 other persons were served with the said memorandum which pertains to 361-A forms. Though, as mentioned earlier, the aforesaid proceedings were initiated on 28-2-1978, even till today, no copies relied upon have been ever supplied as the originals are not traceable. According to the petitioner, the said fact that copies of the documents relied upon were not supplied as the originals are not traceable was admitted by the Enforcement Directorate as late as on 12-2-1993.

11. Similarly, in para 19 of her petition, the petitioner contended that the Additional Director Mr. Swaminathan from New Delhi has issued memorandum No. T-4/42-B/75 (S.C. No. 1 to 35) dated 27-12-1979 which is pending for initiating adjudication proceedings from 27-12-1979. However, since the documents relied upon by the Enforcement Directorate at annexure "B" to the said show cause notices Nos. 1 to 35 are not supplied as the same are not traceable, the said proceedings could not proceed. The fact that the documents relied upon by the Enforcement Directorate at annexure "B" to the said show cause notices 1 to 35 are not supplied as the originals are not traceable is, according to the petitioner, deemed to have been admitted by the Asstt. Enforcement Officer as early as 12-2-1993. In para 19 of the petition, the petitioner has given the details as to how in spite of best efforts on her part, on some pretext or the other, the adjudication proceedings in respect of the aforesaid show cause notices have not been commenced. The petitioner has also stated in the said para of her petition that as she was insisting upon the proceedings, she was even taken to the Cuffe Parade police station. In the said para 19 of her petition, the petitioner has also given certain details to show certain discriminative attitude shown by the respondents vis-a-vis the other accused in the case. However, since we dispose of this Writ Petition on the ground of undue delay under Article 21 of the Constitution of India, we are not expressing our opinion one way or the other as regards these allegations. The petitioner strenuously contended that the aforesaid adjudication proceedings are of quasi-criminal nature and has serious consequences. Therefore, the Enforcement Directorate cannot be permitted to keep the hanging sword of the said proceedings on the petitioner's head causing her mental anguish as already two decades have elapsed. The petitioner contended, and rightly, so, that the adjudication proceedings pending for years together without even the slightest semblance of progress demonstrates a stark reality of the impact of this shocking delay on the continuation of the proceedings making it abundantly clear about the violation of the fundamental right of the petitioner to have a speedy trial as enshrined under Article 21 of the Constitution of India. As held by the Supreme Court and other High Courts, she contended that right of speedy trial is implicit in the broad sweep and content of Article 21 of the Constitution of India. The said Article confers fundamental right on every citizen not to be deprived of his life or liberty except in accordance with the procedure prescribed by law. Such procedure absolutely should be reasonable, fair or just and if not, then there would be deprivation of liberty. A procedure prescribed by law for depriving a person of her liberty cannot be reasonable, fair or just, unless the procedure ensures a speedy adjudication of proceedings which are quasi-criminal in nature for determination of the guilt of such person. Thus, the procedure which does not ensure a reasonable and quick trial can be regarded as unreasonable, unfair and unjust and would fall outside Article 21. On the basis of the aforesaid principles, with reference to the facts and circumstances of these adjudication proceedings, the petitioner contended that it is apparent that the Enforcement Directorate is not interested to start or initiate adjudication proceedings and not even ready to

supply documents which they have relied upon in the show cause notices which they have issued as they have lost the original documents and/or not traceable by them and for these, according to the petitioner, she cannot be deprived of her constitutional guarantee under Article 21 of the Constitution of India.

12. In her fervent appeal, the petitioner contended that she was involved by the respondents in criminal cases sometime in the year 1974. It is the case of the petitioner that her mother was conducting an advertisement business and in the year 1974, she was hardly 18 years old when she joined her mother's business. She further contended that her mother had office where she allowed Deepak Shantilal Shah alias Surti to use her office. It appears from the prosecution case that the said Surti was involved in breach of foreign exchange transactions. She contended that neither herself nor her mother had any concern with the said Deepak Surti's business as her mother and herself were engaged in advertisement business and, according to her, even at that time, they had about Rs. 60 lakhs in Bank. She further submitted that all the amount was shown to Income Tax. However, according to her, unfortunately, they got involved because of Deepak Surti's involvement in foreign exchange. She further contended that neither her mother nor herself did anything wrong or illegal. In spite of this, because of the attitude of the respondents, there was devastating effect on her mother's life as well as her life. She contended that sometime in the year 1966, her mother wanted to take her to South Africa for fixing her marriage, but because of the objection taken by the respondents, she could not get the permission to go to South Africa. Because of that and because of the said criminal proceedings pending against her, till today she is unmarried. She further contended that her mother went through the trauma and due to tension, developed into a series of problems and, ultimately, she succumbed to cancer. To reiterate her claim as to how the enforcement machinery harasses poor and petty persons, she referred to the case of the accused William Jerry D'sena. According to the petitioner, he was hardly 18 years old and was a peon working for Deepak Surti. As a peon, he was doing the duties. He was involved in the said case and was in custody for few months. He was granted bail in the sum of Rs. 4,000/-, but the poor person could not produce surety and, therefore, he remained in jail. Thereafter, in a year or so, this young boy of 18 years died in the prison. She also referred to one of the accused Miss Rekha Joseph Almedia. She was just a clerk working for Deepak Surti. She was less than 18 years old and was getting Rs. 110/- per month. Because of the said criminal proceedings, her family life also got devastated. On the other hand, she referred to in her petition certain instances which will go to show that the main culprits in the criminal case are enjoying life without any difficulty. In para 29 at page 40 of her petition, she contended that the main star accused No. 1 Deepak Shantilal Shah alias Surti involved in this case was arrested, but he was released on bail. Subsequently, on 30th September 1990 in Special Cases Nos. 20 and 22 of 1978, an application was made for cancellation of his bail. His bail was cancelled and the surety was discharged and the said accused was sent to magisterial custody

as per the order of the trial Court. Surprisingly, the said accused No. 1 ran away from police custody on the same day i.e. 30th September 1980 and even till today he is untraceable. She also referred to the other accused Harakchand B. Nahata who on some pretext or the other is evading Court proceedings. As regards her contention in respect of the said Harakchand Nahata, we will deal with it separately when we deal with the reply given by the respondents in reply to the main petition. We have only taken few main instances given by the petitioner in her petition and arguments. But as pointed out earlier, since we are disposing of this petition on the ground of delay, we are not dealing with these instances in detail.

13. The respondents in their reply have mainly contended that because of the injunction order from the High Court of Calcutta, they could not proceed with the criminal cases as well as the adjudication proceedings. We will deal with this aspect in greater detail in the subsequent portion of our judgment. However, we wish to point out that except the aforesaid contention, there is no reply to all the averments made by the petitioner in her petition and all the other averments made by her in the petition have gone untraversed. As regards the main contention of the respondents as to how they were helpless in proceeding with the criminal cases as well as the adjudication proceedings in view of the order of the High Court of Calcutta, one Mr. D. R. Sindhal, Assistant Director of Enforcement and an authority under the Act of 1973 in para 6 of his affidavit contended that one Harakchand Nahata challenged the issuance of show cause notice dated 27th December, 1979 by filing Writ Petition under Article 227 of the Constitution of India in the Calcutta High Court. In the said Writ Petition, show cause notice dated 27-12-1979 was issued wherein the Calcutta High Court passed ad interim order of injunction restraining the respondents from continuing the criminal proceedings and adjudication proceedings. It is further contended that against the said decision, the respondents preferred appeal, but the said decision was confirmed. It is because of this order of the Calcutta High Court, according to the respondents, that they could not take effective steps to start the criminal proceedings as well as the adjudication proceedings. To reiterate the aforesaid contention, Mr. S. L. J. Gallyot, Assistant Director of Enforcement, and Mr. M. H. Khan, Assistant Director of Enforcement, have also filed their affidavits along with annexures and by relying on the aforesaid replies, Mr. Shah, learned counsel appearing on behalf of respondents Nos. 1 and 3, strenuously contended that there is no delay or inaction on the part of the respondents to take effective steps to start the criminal as well as adjudication proceedings. After going through the said replies and annexures, we are of the opinion that there is no much substance in the contentions of the respondents.

14. It is an admitted position that the alleged offences are of the year 1974. It is true that one Mr. Nahata had filed a Writ Petition and obtained ad interim relief on 24-1-1980 and the rule was made returnable six weeks hence. However, at the time of confirming the said order on 12-2-1980, in the second para, the Calcutta High Court observed :-

"The proceedings initiated under the impugned show cause notices annexed with writ petition are stayed till further orders. The respondents are at liberty to apply for vacation or variation of the interim order on notice to the petitioner."

From the aforesaid order, it appears that the respondents were given liberty to move the Court to apply for vacation or variation of the order. Even presuming as stated in the affidavits of the respondents that the respondents went in appeal and the appellate Court confirmed the order, in any case, in our opinion, the respondents could have moved the High Court for delinking the criminal case as well as the adjudication proceedings in respect of other accused because admittedly from record, the petition was filed by only one accused, viz., Mr. Nahata and not by other accused and, therefore, there is definitely undue delay for initiating the present adjudication proceedings against the present petitioner. Apart from that, on 30th November, 1994, the High Court of Calcutta passed the following order in the said Writ Petition :-

"Nobody appears on behalf of the petitioners. In my view, these two writ applications should not have been entertained in the Court. The application is without merit and accordingly dismissed."

It is pertinent to note that all the proceedings in this matter took place within the jurisdiction of this Court and no part of any transaction as alleged by the prosecution has taken place in Calcutta and, therefore, the Calcutta High Court by its order dated 30-11-1994 dismissed the said two writ petitions on the ground that they should not have been entertained and the application is without merit. It is also pertinent to note that on the said occasion, the petitioner Nahata was absent and no steps were taken by Mr. Nahata. If the fact that all the proceedings are in respect of transactions which took place in Bombay would have been placed before the Calcutta High Court, the order which was passed on 30-11-1994 would have been passed much earlier. Apart from that, in such an important matter, the respondents could have gone to the Supreme Court for appropriate relief. In any case, the aforesaid Writ Petitions were filed by accused Nahata, though in one of their affidavits filed on behalf of the respondents, it is stated that the present petitioner and the said Mr. Nahata filed the Writ Petitions in the Calcutta High Court and obtained reliefs. Still it is an admitted position that the aforesaid Writ Petitions were filed only by Mr. Nahata and the present petitioner was not even added as party-respondent. Therefore, the present petitioner has rightly pointed out that she has not done anything to thwart the process of prosecution as well as adjudication. On the contrary, from the record it appears that every time she appeared before the concerned authorities and was, in fact, insisting that these adjudication proceedings should proceed immediately. It is the case of the present petitioner that the respondents allowed the said Mr. Nahata to procrastinate the proceedings by inaction. We are not giving our finding on this aspect one way or the other, but we are certain that, in the present case, the petitioner had done nothing to thwart the criminal as well as adjudication proceedings. From the facts and circumstances of the present

case, we are of the opinion that though the proceedings commenced from the year 1979, no effective steps has been taken by the respondents to start the said proceedings. There is a delay of more than 16 years. One cannot say that in the present case, the said delay was inevitable, having regard to the nature of the case. Further, in the present case, the delay is not caused on the part of the petitioner, but was caused by the inaction on the part of the respondents. Therefore, we are of the opinion that this is a fit case where the adjudication proceedings are liable to be quashed. Right of speedy and expeditious criminal trial is one of the most valuable and cherished fundamental rights guaranteed to our citizens under the Constitution. The said right is an integral part of right to life and liberty and necessary concomitant of fundamental right guaranteed under Article 21 of the Constitution. As held by the Supreme Court, fundamental rights are not a teasing illusion to be mocked at but are meant to be enforced and made reality in practice. The Supreme Court and the High Courts are enjoined to enforce the fundamental rights promptly and expeditiously whenever the aggrieved citizen establishes the infringement or invasion thereof to the satisfaction of the Court. In this Writ Petition, the petitioner has successfully established the invasion of her fundamental rights to speedy and expeditious trial guaranteed under Article 21 of the Constitution of India and, therefore, we make the rule absolute in terms of prayer clause (a) of the petition.

In prayer clause (e), the petitioner has prayed for compensation from respondents Nos. 1 to 3 for causing anguish resulting into the death of the petitioner's mother Mrs. Vidyaben Patel and also compensation for mental, physical and financial harassment and torture caused from time to time to the present petitioner. While arguing, Miss Smita Patel in person has prayed for grant of compensation of Rs. 1 crore. In our opinion, the type of compensation as claimed by the petitioner cannot be granted in this Criminal Writ Petition as it involves evidence. However, if the petitioner desires to do so, she may take appropriate proceedings for the said damages as claimed by her.

15. However, from the facts discussed by us in the earlier part of this judgment, we are of the opinion that there is total inaction and casual approach on the part of respondents Nos. 1 and 3 due to which, in spite of colossal delay of 16 years, the adjudication proceedings could not commence and this has definitely resulted in mental, physical and financial harassment to the present petitioner and, therefore, we are inclined to award heavy costs on respondents Nos. 1 and 3. We, therefore, direct respondents Nos. 1 and 3 to pay costs of Rupees 15,000/- to the present petitioner within one month from the date of this judgment.

16. In this petition, by filing Criminal Application No. 176 of 1995, the petitioner has also prayed in prayer clause (b) for appropriate action for perjury against Mr. D. R. Sindhal for his affidavit dated 22-9-1993 and against Mr. S. P. Srivastava for his affidavit dated September 19, 1994 and against Mr. S. L. J. Gallyot for his affidavit dated 19-12-1994. We have gone through the affidavits referred to by the petitioner in her prayer clause (b) as mentioned aforesaid. It is true that in

the said affidavits, at some places, there are factual mistakes. Mr. Shah, learned counsel appearing for respondents Nos. 1 and 3 submitted that the aforesaid mistakes crept in through inadvertence and there was no deliberate intention on the part of the deponents to mislead the Court. Mr. Shah also tenders unconditional apology for the aforesaid mistakes. In our opinion, the aforesaid factual mistakes are not deliberate and are through inadvertence and, therefore, prayer (b) of Criminal Application No. 176 of 1995 taken out in the present Writ Petition is rejected.

17. The petitioner has also filed Criminal Application No. 2115 of 1995 wherein she prayed that respondent No. 2 - the Central Bureau of Investigation - be directed to produce case diary maintained u/s 172 of the Code of Criminal Procedure during the investigation. In our opinion, the petitioner wanted the aforesaid diary to show her innocence. In view of the fact that we are quashing the proceedings, no order is necessary on this Criminal Application.

18. In view of the aforesaid discussion, Criminal Writ Petition No. 897 of 1993 is allowed as indicated above and the rule is made absolute in terms of prayer clause (a) of the petition. Respondents Nos. 1 and 3 are directed to pay the costs of Rs. 15,000/- to the petitioner within one month from today. In view of the aforesaid order, the Writ Petition is finally disposed of.

Certified copy expedited.

19. Petition allowed.