

(2003) 11 CAL CK 0019
In the Calcutta High Court
Case No : C.R.R. No's. 2332 and 2333 of 1999

Naresh Chandra Joarda and Partha Sarathi Roychoudhury	APPELLANT
Vs	
State of West Bengal	RESPONDENT

Date of Decision : 28-11-2003

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure (West Bengal Amendment) Act, 1988 — Section 167(5)
Criminal Procedure Code, 1973 (CrPC) — Section 167(5), 482
Penal Code, 1860 (IPC) — Section 161, 165A
Prevention of Corruption Act, 1947 — Section 5(2)

Citation : (2004) 1 CHN 692

Hon'ble Judges : Rajendra Nath Sinha, J

Bench : Single Bench

Advocate : Prasun Kumar Dutta and L.M. Dutta, for the Appellant; Kasem Ali Ahmed, for the respondent No. 2 and Ashim Roy, for the respondent No. 3, for the Respondent

Final Decision : Allowed

Judgement

Rajendra Nath Sinha, J.—These two applications are u/s 482 of the Criminal Procedure Code filed by the petitioners respectively seeking to quash the proceeding including the FIR being Siliguri P. S. Case Nos. 24(4)85 dated 10.04.85 u/s 161/165A of the Indian Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947 (G. R. Nos. 292/85 and 294/85 respectively).

2. Petitioner in this petition was at the appointed time a Junior Accountant of the W. B. Essential Commodities Corporation at Siliguri. The petitioner in the other application (CRR 2333/99) had been working as Branch Manager, West Bengal Essential Supplies Commodities Corporation Ltd., Siliguri Branch since 26.11.1979. On 10.4.1985 one Sri G. Ghosh, Personal Manager, West Bengal Essential Commodities Supply Corporation Ltd. (hereinafter referred to as WBECSCLtd), a Government of West Bengal undertaking, lodged a written complaint registered as Siliguri P. S. case as stated above.

3. The allegation contained in the FIR in short is that the petitioner was posted at Siliguri since 26.11.1979. He together with the other accused Pradip Kumar Saha acted as handling-cum-storing agent for edible oil as per agreement under the Corporation for some years. Pradip Saha, accused No. 2 in the aforesaid case, was carrying on a business under the trade name of M/s. P. K. Traders. After termination of his agreement with the Corporation he still continued to be handling-cum-storing agent under the Corporation by virtue of an interim order of the Hon''ble Apex Court. The petitioner was supposed to supervise the work of the said Pradip Kumar Saha.

4. On 29.07.1982 one truck with 550 tins of R. S. oil with STC marketing was intercepted by the police at Bagdogra, P. S. Naxalbari on its way to Asansol from Siliguri pursuant to which Naxalbari P. S. Case. No. 20 dated 30.7.1982 u/s 7(1) (ii) of the Essential Commodities Act, 1955 was started against the said Pradip Saha. In course of investigation of the aforesaid case some incriminating documents were seized by the police which disclosed payment of some illegal gratification to the extent of Rs. 67,500/- and Rs. 60,500/-respectively to the petitioners on different dates between 20.1.81 to 16.4.82 on different instalments by the said Pradip Kumar Saha through his employees by bank drafts in favour of the next keens of the petitioner. The petitioner was allowed anticipatory bail by the Id. Sessions Judge at Darjeeling and had surrendered before the learned SDJM, Siliguri on 23.04.85 and bailed out and since then attending the Court. Despite that for the last 14 years (when the petition was filed as early as on 8th October, 1999) the investigating machinery failed to submit any report causing harassment, financial loss and mental anxiety and agony to the petitioner. As the aforesaid negligence on the part of the I.O. has resulted serious prejudice to the petitioner, hence the prayer for quashing.

5. On consent of the parties both are heard together. Mr. Prasun Dutta appearing on behalf of the petitioner has urged that since the date of filing of the FIR no action has been taken by the investigating machinery to start the investigating and keeping in view of Section 167(5) of the Code of Criminal Procedure one petition was filed before the learned SDJM on 25.8.95 but the learned Magistrate without hearing the same kept it with the record by order dated 25.08.1995. That the learned Magistrate allowed the prosecution agency to continue with the investigation of this case without assigning any specific reason for continuation of investigation for an indefinite period which is beyond the scope and ambit of criminal trial as laid down by the Hon''ble Supreme Court and lastly in case of Raj Deo Sharma v. State of Bihar, 1999 Calcutta Criminal Law Report Supreme Court 398, learned Lawyer for the petitioner has also highlighted that such a negligence given to the investigating agency without any cogent reason is violative of the provisions of Section 167(5) of Cr. P. C. wherein it is incumbent for the Court to stop investigation and discharge of the accused, nothing was done save and except latitude if not indulgence given to the I.O., for the purpose of investigation which could not be completed till date i.e., for nearly 18 years. Learned Counsel on the aforesaid grounds urges that speedy trial is the fabric of

the Constitution and delayed trial warranted amounting to denial of justice. Learned Counsel has also drawn the attention that in most of the reported decisions where at least the investigating agency has succeeded to submit a report but the trial was delayed, but in this instant case the investigation has not been started, far less completion of the same. Accordingly, he prays for quashing of the FIR.

6. Mr. Kasem Ail Ahmed together with Mr. Ashim Roy appeared for the State and opposed the same vehemently. Learned A. P. P.-in-charge has drawn the attention of the Court to the report submitted by the Inspector of Police, Intelligence Branch, West Bengal, dated 29.03.03 which states in short that he took up the investigation of the case but it was found that the incriminating documents which was already seized in connection with Naxalbari P. S. Case No. 20 dated 30.07.82 (as stated above) were required for perusal but by an order of this Court dated 21.3.83 in matter No. 296 of 1983 those documents were placed in a sealed box under lock and key in the custody of Sri Milan Sarkar, Advocate, Siliguri Court, being the special officer appointed by this Court. The I.O., together with his predecessors tried to get the order vacated/modified through Sri P. R. Mondal who had been appointed as State Advocate in the matter so that the investigation can proceed but without any result. It is stated that Legal Remembrancer to the Government of West Bengal was apprised of the fact a number of times requesting him to issue appropriate instruction to the State Advocate so that the matter may be taken up but nothing yielded therefrom.

7. Mr. Kasem AH, learned A. P. P.-in-charge has urged further that for want of all those documents the investigation could not proceed. He has drawn the attention of another report dated 6.4.03 be Krishna Chandra Banerjee the successor of the earlier I.O. in the same direction as that of the earlier one, simply the order of the Hon"ble Court in connection of matter No. 296/83, has been tagged herewith. Mr. Ali, learned Counsel for the State, has urged that for lack of cohesion in the administrative sphere the investigation could not proceed for want of leave of the Court wherein those documents were kept as per order in matter No. 296/83. Mr. Ali has urged that this Court may pass appropriate direction for taking leave of this Court for proceeding with the investigation.

8. I have gone through the FIR which is dated 10.04.85. In short it is stated that the first named accused i.e., the petitioner in course of his employment had shown favour to the other accused Pradip Saha and on different dates in between 20.1.81 and 16.4.82 paid illegal gratification/bribe for Rs. 60,500/- (in respect of the other petitioner Partha Sarathi Roychoudhury was paid Rs. 67,500/- by way of illegal gratification) to different relations of the petitioner. On perusal of the enclosure, names of some Ghosh, Dasgupta and Chakraborty stated to be employees of the other accused P. K. Saha, purchased some demand drafts and paid it to different relations of the petitioner. It is nowhere shown that the aforesaid Ghosh, Dasgupta, Chakraborty are in any way connected with the other

accused P. K. Saha and/or his employee. The FIR is silent as to how and in what manner any favour not to speak of any undue favour was bestowed on other accused, Pradip Kumar Saha.

9. On perusal of the entire materials on record I am of the view that the speedy trial and investigation have been repeatedly emphasised by the Hon''ble Apex Court from time to time and that it has been recognised that though the speedy trial is not a fundamental right in the Constitution but the same is implicit in the spectrum of Article 21 of the Constitution of India.

10. In *Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna*, , held inter alia that the Apex Court laid stress upon the need for enactment of a law to ensure reasonable, just and fair procedure which has creative connotation after *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and Another, , in the matter of criminal trials.

11. In the latest case (*Raj Deo Sharma v. State of Bihar*) it has been referred about the *Kartar Singh*'s case wherein the Apex Court observed :

"The concept of speedy trial is laid into Article 21 as an essential part of fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted. In this context, it may be noted that the Constitutional guarantee of speedy trial is properly reflected in Section 309 of the Code of Criminal Procedure....."

12. Section 167(5) of the Cr. P. C. (W. B. Amendment Act of 1988) provides for stoppage of investigation and essential discharge which was not ordered.

13. Be that as it may, here I find a "Damocles Sword" is hanging over the petitioners for last 18 years, where even investigation has not been completed, not to speak of the trial.

14. The anguish expressed by the Hon''ble Apex Court and High Courts in different judgments for toning up the stages of administration of criminal justice, has not yet been percolated down to the appropriate authority.

15. The ground realities as we find from the argument of learned P.P. -in-charge, that for lack of cohesion and appropriate action the seized documents could not be taken custody by the I.O. after obtaining leave of this Court in matter No. 296783. This appears to be an utter disregard of the norms, and contrary to the principles of natural course of behaviour on the part of the concerned Government department. These petitioners nowhere took recourse of any delaying tactics as that they were parties to matter No. 296/83.

16. Keeping in view of the aforesaid discussion as above, I am inclined to allow the petition. The aforesaid FIR are quashed, petitioner be discharged from their respective bail bonds.

17. Urgent xerox copy, if applied for, be given to the parties at the earliest.