
(2011) 03 CAL CK 0060
In the Calcutta High Court
Case No : CRR No. 265 of 2010

Nonigopal Mondal and Others

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 16-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 483
Penal Code, 1860 (IPC) — Section 147, 323, 379, 447, 448

Citation : (2011) 5 CHN 528

Hon'ble Judges : Mrinal Kanti Sinha, J

Bench : Single Bench

Advocate : Soumen Kumar Dutta, for the Appellant; Tirthankar Ghosh, for the Respondent

Final Decision : Allowed

Judgement

Mrinal Kanti Sinha, J.

Heard learned Counsel appearing for the parties.

1. This revisional application u/s 483 of the Code of Criminal Procedure has been filed by the Petitioner praying for an order and direction for disposal of G.R. Case No. 297 of 1991 under Sections 147/447/323/379 of the Indian Penal Code pending before the Court of learned Judicial Magistrate, 3rd Court, Contai, as expeditiously as possible, that is within a period of six months from the date of order.

2. It is the case of the Petitioners that a complaint was lodged by the complainant, namely, Shambhunath Jana on 11th April, 2009, u/s 156(3) of the Code of Criminal Procedure, 1973, before the learned Chief Judicial Magistrate, Midnapore, alleging thereby that the Petitioners/accused persons and some others forcibly entered into the land of the father of the complainant on 4th March, 1990, and cut down 17 Bamboos, and on 3rd April, 1991, the Petitioners/accused persons forcibly went to the land of the father of the complainant and

cut down certain trees valued about Rs. 1,500/-2000/-respectively, and on 4th April, 1991, the Petitioners/accused persons entered into the pond of the complainant and caught fish valued about Rs. 4,000/-, and on 5th April, 1991, the Petitioners/accused persons cut down one neem tree on the land of the father of the complainant and on protest by the complainant they assaulted the complainant by fist, blow and slap, for which he was brought to the hospital, and G.R. Case No. 297 of 1991 under Sections 147/448/323/379 of the Indian Penal Code was initiated thereby. After investigation charge sheet was submitted in the said case by the Investigating Officer on 7th June, 1991. In the year 2002 the Petitioner No. 1 made an application before the court below for expeditious trial, mention of which has been made in the order dated 17th May, 2002, of the learned Court below. Since 1991 the proceeding is going on and the case was fixed for evidence, and till today more than 17 years have been passed but the learned Court below did not take any step to dispose of the case, for which the Petitioners/accused persons have been compelled to move the present application before this Court. The delay in the trial of the said case has caused serious prejudice to the Petitioners/accused persons to their fundamental right and the action on the part of the Respondents are otherwise bad in law and so this application has been made for the ends of justice.

3. The opposite party, State of West Bengal has appeared, but has not filed any affidavit-in-opposition.

4. It is to be considered as to whether the learned Judicial Magistrate, 3rd Court, Contai, was correct and justified in conducting the trial of the said G.R. case No. 297 of 1991 in the way as alleged by present Petitioners or not.

5. It has been submitted by Mr. Soumen Kumar Dutta, learned Counsel for the Petitioners that the trial of the case has not been proceeded with since the date of consideration of charge on 1.3.96 and fixing date for evidence of C.S witnesses, and more than 14 years have elapsed since the date fixed for evidence of C.S. witnesses and the Petitioners/accused persons are being harassed as the trial of the case is not being expedited, and long delay is being caused in the trial of the case against them, and as per the provision of Section 483 of the Code of Criminal Procedure, 1973, there should be expeditious trial of criminal case and it is within the fundamental right of a litigant to get expeditious trial of the litigation pending against him.

6. On the other hand Mr. Tirthankar Ghosh, learned Counsel for the State has submitted that delay in the trial of the case may be caused for various reasons, but trial of the case is to be expedited for the interest of justice as every litigant is legally entitled to get speedy justice and every litigant has a fundamental right to get expeditious trial of his litigation.

7. It appears from the certified copy of order of the learned Sub-Divisional Judicial Magistrate, Contai, that the original First Information Report of Contai P.S. case No. 103 of 91 dated 11.4.91 u/s 147/447/323/379 of the Indian Penal

Code was seen by the learned Sub-Divisional Judicial magistrate concerned. In the said case charge sheet No. 121 of 91 dated 7.6.91 was received vide order dated 18.7. 91 against 5 accused persons. Thereafter vide order dated 18.6.93 copy was supplied to the Petitioners/accused persons and the case was transferred on 14.12.93 to the Court of Learned Judicial Magistrate, 3rd Court, for disposal. In the mean time all the five accused persons appeared before the Court and were released on bail. Learned Judicial Magistrate, 3rd Court, fixed 7.5.94 for appearance of the accused persons, on which date out of five accused persons on bail 4 were present and other accused Gobinda Mondal was absent without any step, but on that date the Court was lying vacant. Then date was fixed on 30.4.1994 for appearance of all the accused persons. Thereafter dates were fixed on 30.7.94, 3.1.95 and 5.8.95 for appearance and 1.3.96 was fixed for consideration of charge. In the meantime case against accused Gobinda Mondal was filed as he died. On 1.3.96 charges under Sections 147/447/323/379 of the Indian Penal Code were framed against all the 4 accused persons and the same was read over and explained to them, who pleaded not guilty and claimed trial, and the next date was fixed on 11.11.1996 for evidence of C.S. witness No. 1 and order was passed for issuance of summons accordingly and thereafter several dates or about 25 dates were fixed for evidence from 11.11.96 to 20.7.2010 and even summons was sent, but evidence was not taken for one reason or other or perhaps for non-appearance of the witnesses and even some times the Court was lying vacant.

8. Apparently more than 25 dates from 11.11.96 to 20.7.2010 elapsed as per the learned Counsel for the Petitioners even after consideration of charge, but no witness was examined though the case was repeatedly fixed for evidence of charge sheet witnesses and order was passed for issuance of summons upon the witnesses and more than 14 years have elapsed since when the case was fixed for evidence of the prosecution witnesses, yet no witness has been examined, and the trial of the said G.R. case has not been proceeded with and no progress has been made in the trial of the said G.R. case. It also appears that the present revisional application has been filed by the Petitioner on 9.9.2010, but as per the learned Counsel for the Petitioners still now not a single witness has been examined in the said G.R. case, for which the accused persons of said G.R. case are suffering much.

9. It is an established principle of law that speedy and expeditious justice should be rendered to the litigant public so that litigant public members do not feel deprived and can repose trust upon the judicial system, and for that reason provisions of Section 483 of the Code of Criminal Procedure, 1973, have been enacted whereby every High Court has been entrusted with the duty to exercise continuous superintendence over the Courts of Judicial Magistrates, so that the cases pending before the Courts of learned Judicial Magistrates are disposed of properly and expeditiously and every High Court has been entrusted with the duty of exercising continuous superintendence over the Courts of Judicial Magistrates, so that expeditious and proper disposal of cases by Magistrates are

ensured under the superintendence of every High Court.

10. The Provision of Section 483 of the Code of Criminal Procedure should be looked into in this regard which reads thus:

S. 483. Every High Court shall so exercise its superintendence over the Courts of Judicial Magistrates subordinate to it as to ensure that there is an expeditious and proper disposal of cases by such Magistrates.

11. In the instant case it appears that though about 20 years have elapsed since the initiation of the proceeding on 13.4.1991 and more than 25 dates and about 14 years have elapsed since the fixing up of the said G.R. case No. 297 of 1991 for evidence after framing of charge, yet no witness has still been examined and there has been no progress in the disposal of the said G.R. case and the same still is pending for evidence of the witnesses. As such the prosecution should be vigilant enough and the court concerned should ensure that the evidence of the witnesses of the said G.R. case is taken without any further delay and trial of the case is expedited and is not delayed any further as long more than 25 dates and about 20 years have already elapsed and the trial should be concluded as early as possible so that the party who initiated the proceeding as well as the party against whom the said proceeding has been initiated do not feel that they are being deprived of justice. As per the provisions of Section 483 of the Code of Criminal Procedure, 1973, also it is the duty of every High Court to exercise continuous superintendence over the Courts of Judicial Magistrates subordinate to it so as to ensure that there is expeditious and proper disposal of cases by such Magistrates, and as High Court this Court is also duty bound to see that the said provision of Section 483 of the Code of Criminal Procedure, 1973 is honoured, and speedy and expeditious disposal of cases are ensured to the litigant public, and the High Court should exercise its superintendence over the Courts of Judicial Magistrates subordinate to it so that the cases pending before the Courts of learned Judicial Magistrates subordinate to it are disposed of properly and expeditiously. So the learned Judicial Magistrate concerned was not correct and justified in causing unnecessary delay in conducting the trial of the said G.R. case No. 297 of 1991 by not ensuring disposal of the same properly and expeditiously.

12. Having regard to the submissions of the learned Counsels for the parties, materials on record and other circumstances, it appears that the interest of justice is being hampered as because frequent adjournment is being given in the said G.R. case even after fixing date for evidence of the witnesses after consideration of charge, and so learned Judicial Magistrate concerned should not give any unnecessary adjournment to any party at the time of taking evidence in the said case, as otherwise the present Petitioners might suffer much due to frequent adjournments and consequent delay in the trial of the said G.R. case and the learned Judicial Magistrate should try to dispose of the said case according to law as expeditiously as possible. In view of the provisions of Section 483 of the Code of Criminal Procedure, 1973, this Court has also been entrusted

with the duty to exercise continuous superintendence over the Courts of Judicial Magistrates and to exercise its superintendence over the Courts of Judicial Magistrates subordinate to it so that there is expeditious and proper disposal of cases by the learned Judicial Magistrates subordinate to it and as such there is no other alternative but to interfere for the ends of justice with the aforesaid process of the learned Judicial Magistrate concerned of conducting the trial of the said case by giving frequent adjournments.

13. Accordingly the revisional application bearing CRR No. 265 of 2010 is allowed with the direction to the learned Judicial Magistrate, 3rd Court, Contai, to dispose of the said G.R. case No. 297 Of 1991 according to law as expeditiously as possible after receipt of the copy of this judgment.

14. A copy of this judgment be sent to the learned Judicial Magistrate, 3rd Court, Contai, immediately for information and compliance.

15. Urgent Photostat certified copy of this Judgment, if applied for, be given to the parties on usual undertaking.