

(2015) 10 CAL CK 0043
In the Calcutta High Court
Case No : C.R.R. Nos. 1098 and 2773 of 2014

Prasanta Kumar Ray Mukherjee and Others	APPELLANT
Vs	
The State of West Bengal	RESPONDENT

Date of Decision : 07-10-2015

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 161, 207, 227, 239, 482

Citation : (2015) 10 CAL CK 0043

Hon'ble Judges : Siddhartha Chattopadhyay, J.

Bench : Single Bench

Advocate : Milon Mukherjee, Senior Advocate, Biswajit Manna and Suan De, for the Appellant

Final Decision : Allowed

Judgement

Siddhartha Chattopadhyay, J.—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 Mr. Milon Mukherjee 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 (forth 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 Mr. Milon Mukherjee 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 conducted 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 Bhattacharya Vs. The State of West Bengal, . 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 , Mahendra Lal Das Vs. State of Bihar & Ors. Mr. Mukherjee has also relied on a decision reported in Pankaj Kumar Vs. State of Maharashtra and Others, . 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 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 petitioner Prasanta Kumar Ray Mukherjee.

C.R.R. No. 2773 of 2014

13. In view of the judgment passed in 1098 of 2014 this revisional application is allowed.

14. 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 stands quashed in respect of the Petitioner Gopi Prosad Mukherjee.

15. Let a copy of this order be sent to the Learned Court below for information and taking necessary action in accordance with law.

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