

(2001) 11 GAU CK 0012

In the Gauhati High Court

Case No : Criminal Revision No. 10 (SH) of 2001

Rajagoplachari Narayanan and Another

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 20-11-2001

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 309, 311
Penal Code, 1860 (IPC) — Section 120, 420, 468, 471
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2002) 1 GLT 609

Hon'ble Judges : N.S. Singh, J

Bench : Single Bench

Advocate : N.K. Deb and D.S. Rothore, for the Appellant; B. Das and N. Upadhaya, for the Respondent

Final Decision : Dismissed

Judgement

N.S. Singh, J.—These 2 (two) cases involve common questions of facts and laws and, as such these were heard together and, accordingly, the same are finally disposed of on its own merit with the following common judgment and order.

2. The facts of the cases in a short compass are as follows:

These Petitioners were charge-sheeted by the Central Bureau of Investigation hereinafter referred to as CBI in connection with Special Case No. .2 of 1994 u/s 120/420/468, 471 I.P.C. and Section 13(2) read with 13(1)(d) of the prevention of Corruption Act, 1988 and, thereafter, the learned Special Judge framed charges against these Petitioners-accused persons on 11.. 10.1996 in connection with the said case and, thereafter, the case has been posted for examination of prosecution evidence, which has commenced and the first prosecution witness was tendered on 26.6.1997 and during the course of the proceeding, the accused persons filed petition on 24.11.2000 before the learned Special Judge for closing the prosecution evidence in view of the direction and observation made by the

Hon"ble Supreme Court in a case between Raj Deo Sharma Vs. The State of Bihar, However, the said petition was rejected by the learned Special Judge on 22.3.2001 and that being the position, the Petitioners filed these 2 (two) revision petitions.

3. Mr. N.K. Deb, learned senior counsel appearing for the Petitioners contended that the learned Special Judge should have followed the law laid down by the Apex Court in the case of Raj Deo Sharma v. State of Bihar (supra) but, the learned Special Judge totally ignored this settled law of the land while passing the impugned order dated 22.3.2001. It is also contended by Mr. N.K.. Deb, learned senior counsel that the learned Special Judge ignored the delay of the prosecution which was due to the fault of the prosecution. Mr. Deb, learned senior counsel supporting the case of the Petitioners has drawn my attention to the related grounds taken and highlighted by the Petitioners in these 2 (two) provision petitions. I have perused it.

4. Mr. B. Das, learned senior counsel appearing for the CBI-Respondent submitted that there is no in or illegality in the impugned order of 22.3.2001 and, apart from that, the accused Petitioners had completely lost the sight of the related legal issues settled by the Apex Court after Raj Deo Sharma Vs. The State of Bihar, i.e. the subsequent case reported in Raj Deo Sharma Vs. The State of Bihar,

5. Now this Court is to see and examine as to whether the impugned order passed by the learned Special Judge. Shillong is tenable in the eye of law or not.

6. Upon hearing the learned Counsel for the parties and also on perusal of the available materials on record. I am of the view that these 2 (two) revision petitions are devoid of merit for the following reasons:

(i) While dealing with the petition filed by. these accused Petitioners, the learned Special Judge examined the matter pros and cons and made the following observations :

On scrutiny of both the cases, the following important facts are emerged.

Charges against the accused persons were framed on 11.10.96.

On 3.2.97, the prosecution produced three witnesses. On 27.5.97, prosecution produced two witnesses. On 24.7.97 prosecution produced two witnesses. On 14.4.98 prosecution produced two witnesses. On 22.12.99 prosecution produced one witness and on 27.6.99 prosecution produced three witnesses. In the above mentioned dates the prosecution witnesses could not be examined as the defence filed adjournment petition due to absence of the accused.

In the same case the Apex Court observed in page 54 paragraph 4:

But if the inability for completing the prosecution within the aforesaid period is attributable to the conduct of the accused in protecting the trial, no Court is obliged to close the prosecution evidence within the aforesaid period in any of

the cases covered by Clauses (i) to (ii).

It is also emerged from the record that on 25.11.96, 7.3.97, 14.10.98, 8.10.98 and 2.5.2000 hearing was adjourned as presiding officer was on leave.

In R.D. Sharma case it was also held that delay caused due to absence of the Presiding Officer can be extended from time fixed.

From the above revelations it is abundantly established that delay in completing the prosecution evidence are among Ors. attributable to the absence of the Presiding Officer and adjournment of the hearing on the prayer of the defence.

In this regard it is worthwhile to mention the observation of the Hon''ble Supreme Court in the same case reported in 1999(4) Page 53:

The judgment has clearly provided that if the inability for completing prosecution evidence was attributable to the conduct of the accused, the Court is not obliged to close the prosecution-evidence at all.

On my foregoing discussion, I am of the considered view that the aforesaid petitions has no substance and I am constrained to observe that these petitions are filed with intent to out from the case on some pretext.

6A. It is well settled that the right to speedy trial flows from Article 21 of the Constitution and encompasses the stages right from the date of registration of the ejahar/FIR and onwards. In Raj Deo Sharma(I) case Raj Deo Sharma Vs. The State of Bihar, , the Apex court made directives for effective enforcement of right to speedy trial under Article 21 and the power of the Court to close prosecution evidence on completion of two years in case of offences punishable with imprisonment for a period not exceeding 7 (seven) years and on completion of three years in case of offences punishable with imprisonment for a period exceeding 7 (seven) years. But the Apex Court in the same case namely, Raj Deo Sharma (II) (supra) Raj Deo Sharma Vs. The State of Bihar, clarified the said directions as sought for by CBI and the Apex Court held that the following period can be executed from the prescribed period of 2/3 years for completion of prosecution evidence (1) period of pendency of appeal or revision, against interim orders, if any preferred by the accused to protract the trial, (2) period of absence of Presiding Officer in the trial Court, (3) period of 3 months in case the office of the Public Prosecutor falls vacant (for any reasons other than expiry of tenure) for enabling the Government to appoint the successor in that office and, apart from it, the Apex Court observed that Courts have discretion to grant further time to prosecution to adduce evidence both in cases where the offences are punishable with imprisonment for a period not exceeding 7 (seven) years as well as for a period exceeding 7 (seven) years, and even the power of the Courts u/s 311 Code of Criminal Procedure can be invoked by the prosecution even after closure of the trial in compliance with the said direction of the Supreme Court and the provisions of Section 309 Code of Criminal Procedure is to be strictly followed. The Apex Court in that case further held that it would not be just and

fair to society and the victims to close the prosecution evidence after the said prescribed periods without considering the nature of offence and the other causes for delay such as dilate-procedure, large pendency of cases, insufficient strength of judges or non-availability of counsel - if allowed, law would loss its deterrence and would affect rule of law - it would affect smooth functioning of society in accordance with law and finally the Constitution.

7. From the available materials on record, it has been revealed that the case was adjourned from the end of the prosecution as well as the defence on some or other, grounds and also non-availability of the Presiding Officer thus, causing the delay of the proceedings. These existing facts and circumstances were properly examined by the learned Special Judge while passing the impugned order which according to me, is in consonance with the decision of the Apex Court in the same case of Raj Deo Sharma Vs. The State of Bihar,

8. In view of the above position, there is no infirmity or illegality in the impugned order dated 23.3.2001.

9. For the reasons, observations and discussions made above, these accused Petitioners could not make out a case to interference with the impugned order passed by the learned Special Judge at Shillong.

10. In the result, these 2 (two) revision petitions are dismissed thus, affirming the impugned order dated 22.3.2001 passed by the learned Special Judge at Shillong in Special Case No. 2 of 1994. The earlier interim order if any, stands vacated.

Let a copy of this order be communicated to the learned Special Judge at Shillong who is further directed to dispose of the case expeditiously in accordance with law.