
(1996) 12 PAT CK 0052
In the Patna High Court
Case No : Cr.W.J.C. No. 480 of 1986

R.K. Mandal and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 18-12-1996

Acts Referred:

Constitution of India, 1950 — Article 21
Penal Code, 1860 (IPC) — Section 109, 120B, 409, 420, 467
Prevention of Corruption Act, 1988 — Section 5(1), 5(2)

Citation : (1997) 1 PLJR 103

Hon'ble Judges : D.P. Wadhwa, C.J; Radha Mohan Prasad, J

Bench : Division Bench

Advocate : Gouranga Chatterjee, for the Appellant; B.P. Pandey, Anita Sinha and Poonam Singh, for the Respondent

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this writ petition the prayer on behalf of the Petitioners is for quashing of the entire criminal prosecution pending against them before the Special Judge, Vigilance, Patna, being Special Case No. 169 of 1983 arising out of vigilance PS. Case No. 53 of 1979.

2. The sole ground taken in the writ petition for quashing of the said criminal prosecution is its continuance for more than seven years allegedly infringing their fundamental rights of speedy trial guaranteed under Article 21 of the Constitution of India.

3. Earlier a Division Bench of this Court, vide judgment and order dated 29th June, 1995, had allowed the writ petition and quashed the impugned proceeding of Special Case No. 169 of 1983. Against the said judgment of the Division Bench of this Court, the State of Bihar preferred SLP (CRL.) 4203 of 1995 in the Supreme Court in which leave was granted and the said SLP was registered as Criminal Appeal No. 621 of 1996.

4. The writ petition was filed mainly in view of the Full Bench judgments of this Court in *Madheshwar Dhari Singh v. The State of Bihar* 1986 PLJR 767 and *State of Bihar v. Naksudan Singh* 1986 PLJR 38. Against the said judgment State had gone in appeal to the Supreme Court in which special leave was granted and until further orders, the operation of the judgment and order of this Court was stayed by the Supreme Court. In view of the said order, this Court, vide order dated 20th March, 1987, considered proper to stay its hands till the correctness of the ratio of the aforementioned two judgments of this Court had been tested in the final court. Accordingly, this Court directed that all the criminal writ jurisdiction cases shall await the judgment of their Lordships of the Supreme Court in the case of *State of Bihar v. Madheswardhari Singh and Dilip Kumar Dey*.

5. It appears that the Division Bench of this Court, while hearing this matter, quashed the impugned proceeding on the ground that it was stale relying upon the judgment of the Supreme Court in the case of *S.G. Nain Vs. Union of India*, . The Supreme Court, noticing the fact that even though the writ petition of the Respondents was to await the judgment in *Madheshwar Dhari Singh's* case--obviously for disposal in terms thereof--and that case had already been disposed of with Anr. batch of writ petitions *Abdul Rehman Antuley v. R.S. Nayak* 1992 1 SCC 255 : 1992(1) PLJR (SC) 41, neither of the parties brought these facts to the notice of this Court at the time of hearing of the writ petition as also the fact that the judgment in *Antuley's* case (supra) was delivered by a Bench of five Judges and that too after disposal of *Nain's* case (supra), set aside the impugned order and directed this Court to dispose of the writ petition in the light of the principles laid down in *Antuley's* case (supra). Accordingly, now this matter has been finally heard by us.

6. It is pertinent to note two facts giving rise to the special case in question. The said case was instituted against the Petitioners and Ors. on a written report of *Shri Sudarshan Prasad Singh*, Additional Superintendent of Police, Vigilance dated 18.9.1979 under Sections 420, 120B, 467, 468, 409 I.P.C. and 5(2) and 5(1)(d) of the Prevention of Corruption Act read with 109, I.P.C. on 19.9.1979.

7. The prosecution case, in brief, is that the Petitioners, who are Officers of the Irrigation Department, along with other Officer *Shri A.M.S. Zoha* in conspiracy with each other auction sold scrap iron from the *Yantrik Karamshala* of the Department at *Dehri-on-sone* to *Shri Ram Milan Singh* of *M/s. Pashupati Iron Stores, Varanasi* at a much lower price than the actual price. It is also alleged that instead of scrap iron useful irons were allowed to be taken out by the buyer from the said *Karamshala*, the weight of which was about 14.136 Metric Tonnes (M.T.) more than what was shown in the record. This way the accused persons caused illegal loss of about Rs. 1, lac forty thousand to the Government of Bihar and illegal gain to themselves. The investigation took about seven years, whereafter the charge sheet was submitted on 5.9.1986 against the Petitioners and said *Ram Milan Singh*, who was the auction purchaser. However, *Shri A.M.S. Zoha*, Superintending Engineer, Irrigation Department, who had approved the

auction, was not sent up for trial. On 20th September, 1986, the court took cognizance of the case under Sections 420, 120B, 467, 468, 409, I.P.C. and 5(2) and 5(2)(d) of the Prevention of Corruption Act.

8. The Petitioners claimed that they had all along been present in the court and did not cause any delay in the trial of the instant case. It is submitted by them that their continued prosecution for a long period of more than seven years from the date of the institution of the case is illegal and violative of Article 21 of the Constitution inasmuch as the Petitioners have fundamental rights to speedy trial and as such their continued prosecution for more than seven years is clearly an infringement of their fundamental rights.

9. Supplementary affidavit has been filed on behalf of the Petitioners in which true copies of the ordersheets of Vigilance Case No. 53/79 have been annexed as Annexure 3. An additional supplementary affidavit has also been filed on their behalf in which it is stated that the departmental proceedings were held against the Petitioners for the same allegations for which the aforementioned Vigilance P.S. case was instituted and in the said departmental enquiry the Petitioners have been absolved of the charges levelled against them by the enquiry officer as the same were not found proved. In the meantime, Petitioner No. 1, R.K. Mandal, died on 26.2.1988.

10. A counter affidavit has been filed on behalf of the Respondent in which the aforementioned facts have not been disputed. However, it is stated that the very nature of the offences against the high servant and high public officials took some longer time to investigate and the final progress report was ultimately submitted by the I.O. through proper charmer soliciting sanction for prosecution which was ultimately granted in the year 1986. It is further stated that there is paucity of hands with the investigating agency and in concluding the investigation in some other case the progress in the investigation of the present case suffered for some time which, according to the Respondent, was complete by the end of 1983. The sanction of the State Government was solicited, vide letter No. 492 dated 9.3.1984, whereafter the opinions of different departments, Ministers and other constitutional functionaries were obtained and ultimately the sanction was notified. It is also pleaded that to crown all these, the general election intervened in which all the police personnel, including the I.O., were on deputation. The culminating effect of all these resulted in delay in the submission of the final form before the court.

11. The other plea taken by the Respondent in the said counter affidavit is that an order of stay of this Court partly caused delay at the instance of the accused. Accordingly it is submitted that the allegation levelled in the present case against the high public official should not be allowed to go unprosecuted on the ground of systematic delay, particularly in the teeth of the fact that the court had found prima facie case against the accused and took cognizance long back. It is also submitted that there is nothing on the record to suggest that the investigation was not taken in good faith and that in order to do complete justice it would be

(sic) to issue a direction to the trial court to conclude the trial within a period of one year or any further reasonable time than to drop or quash the proceeding.

12. Mr. Gouranga Chatterjee, learned Counsel appearing for the Petitioners submitted that Petitioners No. 1, who has conducted that auction, died during the pendency of the writ application and the Superintending Engineer Shri Zoha, who had accorded approval to the matter, was not sent up for trial. In the meantime, in the departmental enquiry, the Petitioners have been absolved of the charges levelled against them by the enquiry officer as he found the allegations to be not proved. By now it is more than 17 years since the institution of the First Information Report against the Petitioners. As such, according to him, this case is squarely covered by the principles laid down by the apex Court in *Antuley's case* (supra) and the prosecution against the Petitioners is fit to be quashed on the sole ground of violation of the fundamental rights emanating from Article 21 of the Constitution for an early investigation and a speedy and fair trial.

13. On the other hand, Mr. B.P. Pandey, learned Counsel appearing for the Respondent submitted that according to the Supreme Court decision in *Antuley's case*, the nature of offence has got to be considered for invoking Article 21 of the Constitution of India, besides other factors like the number of accused involved, the number of witnesses in the case, the work load in the particular court, means of communication and several other circumstances have to be kept in mind. According to him, the delay in investigation has been reasonably explained. The allegations against the Petitioners are serious misappropriation and embezzlement of public fund by public servant and that the trial could not be completed because of the interim order granted by this Court on 16.12.1986.

14. There may be some substance in the submission of the learned Counsel for the Respondent with respect to delay in disposal of the trial after 16.12.1986 for which the Respondent may not be held responsible, but for the period prior to that which is seven long years in completing the investigation of the case, no reasonable explanation can be said to have been given by the prosecution.

15. Undisputed facts are that on 6.6.1976 the Executive Engineer sent proposal for auction of iron scraps to the Superintending Engineer. On 19.11.1975, Shri Zoha, Superintending Engineer accepted the proposal and accorded approval for holding of auction. On 22.9.1978 the auction was held at Patna and Rs. 221/- per metric tonne was decided to be the rate for auction in favour of Ram Milan Singh. Petitioner No. 1 was the Executive Engineer. No specific role has been alleged as against Petitioners No. 2 and 3. Petitioners No. 4 and 5 had merely submitted survey report on 14.10.1974 with respect to the auction. On 17.10.1978, the Executive Engineer constituted weighment Committee which included Petitioners No. 2 to 5. The contractor was allowed to take the material by truck between 30.1.1978 to 20.12.1978. However, in 13th trip being taken on 22nd December, 1978, it is alleged that the employee seized the truck and got the materials unloaded in a room in March, 1979 materials were weighed and 42 Kgs. were

found to be in excess out of 10 M.T. Thus, the difference was hardly 4%. The weighment was done by one ten machine. Without rebuttal 14.136 M.T. was allegedly recovered in excess of seizure, the value of which is about Rs. 4,200/-. Thereafter, as already mentioned above, the F.I.R. was lodged on 19.9.79, charge sheet was submitted on 5.9.1986 and the cognizance was taken on 20.9.1986.

16. It is difficult to accept the aforementioned explanation given in the counter affidavit for meeting the charge against the prosecution in causing delay in investigation. In the instant case, it is not alleged that prior to 1986 the delay had occurred on account of any laches on the part of the accused Petitioners. The only explanation for the delay of seven years in the counter affidavit is paucity of hands with the investigating agency and the suffering of the present case due to investigation in Bokaro Steel city Case No. 24(7) 76 which was to be positively concluded by 15.4.1982 as per the direction of the Ranchi Bench of this Court. The other explanation is delay in getting the sanction for prosecution of the public servant.

17. None of the aforementioned circumstances has been considered by the apex Court to be not to invoke the right to speedy trial flowing from Article 21 of the Constitution. The Supreme Court held that the proceeding taken by either party in good faith to vindicate their rights and interest, as perceived by them, is not to be treated as delaying tactics nor the time taken in pursuing such proceeding is to be counted towards delay. In the instant case, I find that the Petitioners had approached this Court in the present writ petition on account of the law laid down by the Full Bench of this Court with respect to according sanction of such prosecution after lapse of seven years. Thereafter the matter went to the Supreme Court and the same was finally disposed of and decided by the apex Court on 10.12.1991 in the case of Abdul Rehman Antulay Vs. R.S. Nayak and another etc. etc., .

18. From the record there is nothing to indicate that any effort was made at the instance of the prosecution for early disposal of this matter. As such, it is difficult to hold that the Petitioners had not been vindicating their rights and interest in this proceeding in good faith. After such a long lapse of time even the prosecution may have difficulties in presenting the witnesses on their behalf which naturally would cause further delay especially in view of the work load of the court concerned.

19. In the case of Santosh De Vs. Archana Guha and others, the Supreme Court following the, principles laid down in Antuley case held that unexplained delay of eight years in commencement of the trial by itself infringes the right of the accused to speedy trial The accused in the said case was a public servant alleged to have possessed disproportionate assets to the tune of Rs. 2,00,000/-. Delay was not attributed to the accused. As such, the proceeding quashed against the accused was upheld. In the case of Biswanath Prasad Singh v. State of Bihar 1994 Suppl. (3) SCC 97, the apex Court was dealing with a case relating to

misappropriation of public fund for which F.I.R. was filed on 10.12.1977 and charge sheet was filed on 5.2.1983. The court framed the charges on 25.4.1989 but thereafter not much progress was made in the case. Appellant had already been dismissed from service. The Supreme Court, noticing that in such a case stricter view should be taken as indicated in the Constitution Bench decision in Antuley's case (supra), interfered in the matter mainly on the ground that even though F.I.R. was issued on 10.12.1977, the charge sheet was filed on 5.2.1983, i.e., after lapse of five years, no explanation was forthcoming for the extraordinary delay. The apex court held that may be, this being a case of misappropriation of public fund, the investigation may have taken a longer time but cannot certainly take five years, having regard to the facts and circumstances of the case. Accordingly, it was held that calling upon the accused to enter upon defence after 16 years, in all the facts and circumstances of the case, is bound to cause prejudice to him. In the present case, nothing has been pointed out by the learned State Counsel to justify the delay of seven years in completing the investigation, except the aforementioned plea taken in the counter affidavit.

20. In the present case which is also relating to alleged misappropriation of public funds, the investigation took seven years to be completed. The explanation aforementioned for the delay is virtually no explanation in the eye of law. In any view of the matter, it is now difficult to get over the facts that the prosecution against the Petitioners has been pending for more than 17 years and Petitioner No. 1 died during the pendency of the writ application in the year 1988 and the Superintending Engineer, who accorded the approval for the auction purchase, has not been sent up. Further, the Petitioners have been exonerated of the charge in the departmental enquiry. It is, thus, impossible to arrange a fair trial after lapse of long time and, in my opinion, it would be sheer waste of public time and money, apart from causing harassment to the Petitioners.

21. For the aforementioned reasons, I am of the opinion that the Petitioners' right to speedy trial has been infringed in this case and the prosecution launched against them is, thus, liable to be quashed.

22. In the result, the writ application is allowed and the impugned proceeding of Special Case No. 169 of 1983 pending in the court of Special Judge, Vigilance, Patna is quashed.

D.P. Wadhwa, C.J.

23. I agree.