

(2003) 10 BOM CK 0029

In the Bombay High Court

Case No : Criminal Writ Petition No. 1011 of 2003

Suresh Govind Naik

APPELLANT

Vs

Central Bureau of Investigation and Another

RESPONDENT

Date of Decision : 14-10-2003

Acts Referred:

Constitution of India, 1950 — Article 141, 142, 21, 32

Citation : (2003) 10 BOM CK 0029

Hon'ble Judges : Ranjana Desai, J;P.V. Kakade, J

Bench : Division Bench

Advocate : Pravin Singhal, Addl. P.P., R.F. Lambey, P.P., V.M. Bhardwaj, for the Appellant;

Judgement

Ranjana Desai, J.—The petitioner was arrested for investigation purpose on the basis of an FIR filed by the Regional Manager, Union Bank of India against Branch Manager of its Wadla Branch. A criminal case was registered after the investigation was over and a charge-sheet was filed in the court in 1987. IT is the grievance of the petitioner that 17 years have elapsed after the arrest of the petitioner and that more than 16 years have passed after the filing of the charge-sheet and registration of the case, yet charges have not been framed. The inordinate delay in conducting the trial has caused great hardship to the petitioner. The said delay is oppressive and has resulted in violation of the petitioner's fundamental rights under Article 21 of the Constitution of India.

2. We have heard the learned counsel for the petitioner. He has filed in this court roznama of the trial court. The roznama indicates that the charge-sheet was filed on 28/3/1987. Thereafter, the proceedings seem to have started from 3/11/1997. The learned counsel made grievance firstly, about the time gap between 1987 to 1997. Mr. Lambey for the respondents contended that during this time, all corruption cases involving bank officers, were kept in abeyance because the Supreme Court was considering the question whether a bank officer is a public servant within the meaning of the Prevention of Corruption Act. It was

only after the Supreme court delivered its judgment on that issue that all the cases were reopened.

3. In view of this, in our opinion, no grievance can be made of the time gap between 1987 to 1997. It was argued by the learned counsel that in any case the further delay is oppressive and hence this court should dismiss the present case on the ground that the respondents have violated the fundamental right of the petitioner guaranteed under Article 21 of the Constitution of India.

4. Our attention has been drawn to a decision of the Supreme Court in Santosh De Vs. Archana Guha and others, where the charge-sheet was filed after a lapse of about eight years from the date of committal of case to the Sessions Court. The delay was not explained and, therefore, the Supreme Court maintained the order quashing the proceedings. The learned counsel for the petitioner contends that the ratio of that case is clearly applicable to the present case. We have also been taken through yet another judgment of the Supreme Court in P. Ramachandra Rao v. State of Karnataka, 2002 AIR SCW 1841.

5. The accused has a right to speedy trial. In Abdul Rehman Antulay Vs. R.S. Nayak and another etc. etc., , the Supreme Court dealt with this issue in depth. We may state the gist of the said judgment. The Supreme Court observed that fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. This right encompasses all the stages namely the stage of investigation, inquiry, trial, appeal, revision and retrial. There should be no unduly long incarceration prior to conviction. The anxiety resulting from a unduly prolonged trial should be minimal. It may impair the ability of the accused to effectively defend himself or at times may work to his benefit. The court must find out who is responsible for the delay. While determining whether the delay has resulted in violation of right of speedy trial one must have regard to all the attendant circumstances including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on. The systemic delays must be considered. A practical approach should be adopted in such cases instead of a pedantic one. Quashing of charges is not the only course open where a court comes to the conclusion that the right to speedy trial is infringed. It is neither advisable nor practicable to fix any time-limit for trial of offences. It is not possible in the very nature of things and present day circumstances to draw a time-limit beyond which a criminal proceeding will not be allowed to go. The Supreme Court made it clear that the nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case it is open to the court to make such other appropriate order including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded as may be deemed just and equitable in the circumstances of the case.

6. Thereafter, in Common Cause A Registered Society through its Director Vs. Union of India (UOI) and Others, ; Common Cause, A Registered Society Vs.

Union of India (UOI) and Others, ; Raj Deo Sharma Vs. The State of Bihar, and Raj Deo Sharma Vs. The State of Bihar, , the Supreme Court again considered the right of an accused to have a speedy trial. The Supreme Court prescribed outer limit for conclusion of criminal trials. Criminal trials were directed to be terminated after the lapse of the said period. Since the directions issued in these judgments ran counter to the Constitution Bench judgment in A.R. Antulay's case (supra) which states that it is neither advisable nor feasible to draw or prescribe an outer limit for conclusion of all criminal proceedings, a bench of seven judges in P. Ramachandra Rao's case (supra), considered whether the dictum aforementioned in A.R. Antulay's case (supra) still holds the fields: if not, whether the general directions of the kind given in the various judgments are permissible and should be upheld. The Supreme Court held that time-limits or bars of limitation prescribed in the said decisions could not have been so prescribed or drawn and are not good law. The relevant observations of the Supreme Court may be quoted.

"Prescribing periods of limitation at the end of which the trial Court would be obliged to terminate the proceedings and necessarily acquit or discharge the accused, and, further, making such directions applicable to all the cases in the present and for the future amounts to legislation, which, cannot be done by judicial directives and within the arena of the judicial law-making power available to constitutional Courts, however, liberally Court may interpret Articles 32, 21, 141 and 142 of the Constitution. The dividing line is fine but perceptible. Courts can declare the law, they can interpret the law, they can remove obvious lacunae and fill the gaps but they cannot entrench upon in the field of legislation properly meant for the legislature. Binding directions can be issued for enforcing the law and appropriate directions may issue, including laying down of time limits or chalking out a calendar for proceedings to follow, to redeem the injustice done or for taking care of rights violated, in a given case or set of cases, depending on facts brought to the notice of Court. This is permissible for judiciary to do. But it may not, like legislature, enact a provision akin to or on the lines of Chap. XXXVI of the Code of Criminal Procedure, 1973."

7. All this leads us to conclude that the decision of the Supreme Court in A.R. Antulay's case (supra) still holds the field. Criminal Proceedings cannot be ordered to be terminated by courts of law by creating bars of limitation. In case of delay in holding a trial, quashing of proceedings is not the only course open to the court. It could be done in an extreme case of oppressive delay. But while coming to the conclusion whether delay has affected an accused's right to a speedy trial attendant circumstances will have to be considered. In a given case, the court can lay down a time-frame within which a trial can be ordered to be concluded.

8. In the present case, by its order dated 29/7/2003, this court had directed the Registrar to call for a report from the Principal Judge of the City Sessions Court, Mumbai as to the number of cases under the Prevention of Corruption Act,

pending in the said court as on 1/7/2003 and the number of Special Judges appointed for dealing with such cases. The report submitted by the Principal Judge reads thus:

Information regarding Prevention of Corruption Act as on 1st July 2003.

i) Number of cases under the Prevention of Corruption Act pending in this Court as on 1st July 2005.

a) Under State A.C.8. b) Under C.B.I/A.C.B. 367 387

Total 754

ii) Number of Special Judges appointee! for dealing with such cases.

a) Under State A.C.B. b) Under C.B.I/A.C.B. 3 4

Total 7

iii) A) total Number of Special Cases Stayed by Hon''ble Supreme Court of India.

a) Under State A.C.B. b) Under C.B.I/A.C.B. 11 9

Total 20

B) Number of Special Cases Stayed by Hon''ble Supreme Court of India.

a) Under state A.C.B. b) Under C.B.I/A.C.B. - 1

Total 1

9. The report shows huge pendency of cases and abysmally low number of Special Judges appointed to try these cases. This circumstance will have to be considered by us because delay caused on account of less number of judges cannot be attributed to the prosecution. Besides, we are told that from 1987 to 1997 the cases under the Prevention of Corruption Act were kept in abeyance as the Supreme Court's judgment was awaited on the question whether bank officers are public servants or not. That period therefore will have to be excluded. Apart from this, there is one more circumstances which, in our opinion, is of utmost significance. We are informed that the petitioner is earlier convicted for a similar offence. This statement made by the learned counsel for the petitioner. He has only stated that the petitioner has appealed against the said order of conviction. In such circumstances, though from the roznama we find that the petitioner is reasonably consistent in attending the court, we are not in a position to quash the proceedings. We, however, feel that it is necessary to direct the trial court to dispose of the case in a time-frame laid down by us. It is also necessary for the State Government to appoint more judges so that on account of oppressive delay in disposal of criminal cases the High Court is not compelled to quash the proceedings. Hence, we direct the Principal Judge of the City Civil & Sessions Court at Greater Bombay to ensure that Special Case No. 18 of 1987 is heard and disposed of within a period of six months from the date of receipt of

this order by him or by the Judge to whom he assigns the case. We expect the petitioner to co-operate and we also expect the prosecution to be more diligent and to ensure that the case is disposed of within the time-limit set down by us."

10. Petition is disposed of in the aforestated terms.

11. All concerned to act on ordinary copy of this order duly authenticated by the Sheristedar of this Court.