

(2013) 01 AHC CK 0486

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 16472 of 2012, Application under Section 482 No. 33941 of 2012 and Transfer Application (Criminal) No"s. 403, 438 of 2012

Vinod Pal Singh Jadaun

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-01-2013

Acts Referred:

Citation : (2013) 3 ACR 3530 : (2013) 81 ALLCC 709

Hon'ble Judges : Dinesh Gupta, J;Amar Saran, J

Bench : Division Bench

Advocate : R.D. Singh and Mayank Singh, for the Appellant; Alok Ranjan Mishra, for the Respondent

Final Decision : Allowed

Judgement

Amar Saran and Dinesh Gupta, JJ.—This case reveals a sorry state of affairs. How by means of repeated applications on unsustainable grounds, in different jurisdictions and before the Trial Court, or the High Court or the Supreme Court, by bench and forum hunting the accused can stall the disposal of a murder trial of an incident which takes place in 1989 for almost 24 years. In this connection, Mukherjee, J., in Ganesh Narayan Hegde Vs. S. Bangarappa and Others, has aptly picked up the threads from Krishna Iyer, J. in Special Courts Bill, Re for looking at the problem of slow motion justice and how it is caused by interlocutory or initial orders at every step in appeals and revisions by supervisory courts:

With respect to the contention of the learned Counsel for the respondents that after a period of twelve years, the matter should not be allowed to be proceeded with we must say that the complainant is certainly not responsible for this delay. The learned Counsel did not even make such a suggestion. Moreover, this contention does not appear to have been raised before the High Court. (The judgment of the High Court is dated 16.6.1992). We do not know who is

responsible for this delay. As observed by Krishna Iyer, J., in In Re: The Special Courts Bill, 1978, :

(I) It is common knowledge that currently in our country criminal Courts excel in slow motion. The procedure is dilatory, the dockets are heavy, even the service of process is delayed and, still more exasperating, there are appeals upon appeals and revisions and supervisory jurisdictions, baffling and baulking speedy termination of prosecutions....

(emphasis supplied)

The slow motion becomes much slower motion when politically powerful or rich and influential persons figure as accused. FIRs are quashed. Charges are quashed. Interlocutory orders are interfered with. At every step, there will be revisions and applications for quashing and writ petitions. In short, no progress is ever allowed to be made. And if ever the case reaches the stage of trial after all these interruptions, the time would have taken its own toll: the witnesses are won over; evidence disappears; the prosecution loses interest--the result is an all too familiar one. We are sad to say that repeated admonitions of this Court have not deterred superior Courts from interfering at initial or interlocutory stages of criminal cases. Such interference should be only in exceptional cases where the interests of justice demand it; it cannot be a matter of course. In the circumstances, we cannot accede to the said contention.

2. For expeditious disposal, the aforesaid connected Division Bench and Single Judge matters which arise out of the same cause of action, have been nominated for hearing by a Division Bench headed by one of us (Amar Saran, J.), by the order of Hon'ble the Acting Chief Justice dated 19.12.2012, and they are being heard and disposed of together by means of this common order. In Crl. Writ Petition No. 16472 of 2012, preferred by the informant Vinod Pal Singh Jadaun a prayer for expeditious disposal of the trial has been made. In Crl. Misc. Application No. 33941 of 2012 Vijay Pal Singh v. State of U.P., u/s 482 Cr.P.C. preferred by the accused a prayer has been made for reconstructing 4 lost exhibits and for challenging an order dated 27.9.2012 passed by the Additional Sessions Judge, Court No.10 Agra. It may be mentioned that in section 482 Cr.P.C. application, further proceedings of S.T. No. 93 of 1991 State v. Ashok Srivastava and others, was directed to remain stayed by the order of the Single Judge dated 15.10.2012, which was subsequently extended.

3. Crl. Transfer Application Nos. 403 of 2012 and 438 of 2012 have been filed by the accused praying for transferring the trial to some place outside Agra. However although comments of the District Judge have been called for and received in these two transfer applications, and a counter-affidavit has also been filed by the informant, but there is no order staying the proceedings before the Trial Court.

4. We have heard Sri R.D. Singh, learned Counsel for the petitioner, the informant in Crl. Writ Petition No. 16472 of 2012 and also in opposition to the

two transfer applications and section 482 petition filed by the accused. Sri Nirvikar Gupta, represented the accused applicant in Crl. Misc. Application No. 33941 of 2012 and Sri G.S. Chaturvedi, learned Senior Counsel appeared for the accused applicants in Crl. Transfer Application Nos. 403 and 438 of 2012. The comments of Addl. District and Sessions Judge (Court No. 10), Agra and the counter-affidavit filed by the informant were also perused by us which were called for in Crl. Transfer Application No. 403 of 2012.

5. The contention of Sri R.D. Singh, learned Counsel for the complainant-petitioner in Crl. Writ Petition No. 16472 of 2012 was that the brother of informant namely Jitendra Pal @ Pappu Jadaun was murdered by a gang headed by Ashok Srivastava on 10.8.1989. The report of that incident was lodged against seven persons under sections 147, 148, 149 and 302 I.P.C. at Case Crime No. 388 of 1989 at P.S. Shahganj, district Agra on 10.8.1989. The charge sheet was submitted on 22.8.1989.

6. In 2004, the charges were framed against the accused persons. As the trial did not proceed thereafter and it had taken 16 years for framing of the charges after the submission of the charge sheet, directions were obtained by the informant in Crl. Misc. Application No. 3022 of 2006, Vinod Pal Singh Jadaun v. State of U.P., on 24.3.2006 to conclude the trial of S.T. No. 93 of 1991 within four months of the receipt of the certified copy of the order by the Trial Court.

7. However, the Trial Court's record thereafter disappeared and a report was made on 26.7.2006 by Sri Shiv Kumar Sankhwar the Office Clerk in the Court of Additional District and Sessions Judge (Court No. 10), Agra where the sessions trial was pending mentioning that the record had been removed from the office either on the preceding Saturday or on Sunday night by some unknown persons after breaking the locks of the doors and that criminal action be taken against the offenders. Thereafter a report was registered at Case Crime No. 476 of 2006, u/s 457/380 I.P.C. at the instance of the Trial Judge in S.T. No. 93 of 1991. After some efforts after the order of the then presiding officer dated 27.11.2006 the record of the Court was got reconstructed which was noted in the order of the then Sessions Judge, Agra dated 2.12.2006.

8. In this connection it was submitted by Sri R.D. Singh, learned Counsel for the petitioner, that the accused, who were very interested in delaying the trial would be more interested in making the record disappear for delaying the disposal of the trial, rather than the complainant who was at all times trying to get the trial of the said Sessions trial concluded at an early date, by filing repeated applications and petitions before this Court as also the Apex Court.

9. During the years 2006-2007, the accused filed two Transfer Applications, being Cr. Misc. Transfer Application No. 663 of 2006 and Crl. Misc. Transfer Application No. 708 of 2007, two Crl. Misc. Applications bearing Nos. 10452 of 2007 and 13637 of 2007. Thereafter, the informant filed Crl. Writ Petition No. 4978 of 2008 in which an order was passed by this Court directing the Trial Court

to conclude the trial of S.T. No. 93 of 1991 within a stipulated period of time. It was also observed in the said order that as the record of the Trial Court had been reconstructed, hence there was no need for again summoning the PW-1 and PW-2 for further cross examination and the petitioner's writ petition was allowed.

10. Thereafter as the trial was again being delayed as the Court was lying vacant, the informant petitioner had filed another Crl. Misc. Application No. 11049 of 2010 u/s 482 Cr.P.C. which was disposed of on 28.4.2010 with a direction to the Sessions Judge to either conclude the trial of S.T. No. 93 of 1991 himself or to transfer it to some other Court, as the Court concerned was lying vacant. The case was then transferred to the Court of the 4th Additional Sessions Judge, Agra, who passed an order on 4.8.2010 that in view of direction of the High Court to conclude the trial within a stipulated period of time, 20 days time was being allowed to the defence to produce its witnesses. Again when the trial was not concluded, the petitioner filed Crl. Misc. Application No. 37622 of 2010 Vinod Pal Singh Jadaun v. State of U.P. and others, which was disposed of with a direction to conclude the trial within two months from the date of production of a certified copy of the order.

11. On account of the accused-respondents seeking repeated adjournments, the petitioner filed another Crl. Misc. Application No. 7450 of 2011 which was disposed of on 10.4.2011 with a direction to the Trial Court to conclude the trial without granting any unnecessary adjournments to the parties.

12. It was further submitted by the petitioner's Counsel, Sri R.D. Singh that without there being any proper legal justification the accused appear to have been able to prevail upon the DGC to move an application u/s 311 Cr.P.C. on 13.3.2012, 23 years after the submission of the charge-sheet, for again summoning two prosecution witnesses Mahendra Singh and Shiv Singh, whose evidence had already been recorded on 15.4.2004. However, as the prosecution failed to produce the said witnesses, on 15.5.2012 in compliance of the earlier order of the Trial Judge dated 15.3.2012, the Addl. Sessions Judge (Court No. 10), Agra passed an order on 15.5.2012, that in view of the direction of the High Court dated 29.11.2010 in Crl. Misc. application No. 37622 of 2010 to conclude the trial within two months, the order summoning the said witnesses was being recalled looking to the gravity of the matter and the fact that the disposal of the case had already been unduly delayed and the prosecution and defence witnesses had all been examined. Thereafter 21.5.2012 was fixed for recording statements of the accused u/s 313 Cr.P.C.

13. The said order dated 21.5.2012 was challenged by the accused Vijay Pal Singh by means of Crl. Writ Petition No. 6340 of 2012, in which an order was passed by the Single Judge on 24.5.2012 setting aside the order dated 15.5.2012 passed by the Addl. District and Sessions Judge and remitting the matter back to the Addl. Sessions Judge (Court No. 10), Agra to reconsider the application u/s 311 Cr.P.C. and to pass an order within four months. The petitioner/informant then filed a Special Leave to Appeal (Crl.) No. 506 of 2012

before the Apex Court against the order dated 24.5.2012, passed in Crl. Writ Petition No. 6340 of 2012. After hearing the Counsel for both the parties, the Apex Court passed an order on 27.7.2012 directing the Trial Court to complete the trial as expeditiously as possible and in any case not later than the time fixed by the High Court. No further relief was given to the accused who were seeking a direction for examination of two witnesses Mahendra Singh and Shiv Singh.

14. The respondent Vijay Pal Singh then moved an application for modification of the order of Supreme Court dated 27.7.2012 and for seeking extension of time to conclude the trial. However, the Apex Court passed the following order on 4.10.2012:

Learned Counsel for the petitioner has brought to our notice that the trial is at an advanced stage of final arguments. In fact vide order dated 27.9.2012, the learned Additional Sessions Court No. 10, Agra had listed the case for final arguments on 1.10.2012 and the arguments are going on a day to day basis. In that view of the matter, no ground is made out for extension of time as prayed for in this application. Accordingly, the application is dismissed.

15. It appears that thereafter, on 15.10.2012, the accused Vijay Pal Singh has preferred Crl. Misc. Application u/s 482 Cr.P.C. No. 33941 of 2012 contending that exhibits 4, 6, 7, 9 and 10 are missing from the file and that an application had been filed by the applicant before Sessions Judge who declined to entertain the same and held that same would be considered at the time of arguments. However, the learned Single Judge was pleased to stay further proceeding of S.T. No. 93 of 1991 as already mentioned above.

16. Learned Counsel for the petitioner further submitted that the application u/s 482 Cr.P.C. No. 33941 of 2012 had been filed in a mala fide manner inasmuch as the parties had extensively been heard when the record was being reconstructed and an order was passed by the Addl. District and Sessions judge (Court No. 10) on 27.11.2006. It was specifically observed in the said order that the accused had been heard in opposition and that the inquest and others papers had been prepared on the basis of the case diary. It was apparent that the prosecution had not engaged in any manipulation of the record of the same. In this connection, the then Readers, Sri Satish Chandra Sharma and Sri S.C. Agrawal had been summoned for proving the evidence of PWs-1 to 7 as well as the exhibits that had been recorded on the dictation of the Presiding Officer. The verification certificate was present on record. So far as letter for R.I. and letter for C.M.O. were concerned, their reconstruction was not possible and so far as the inquest was concerned, the same had been copied out by the I.O. from the case diary. On that basis said documents had been prepared. The accused themselves had failed to furnish correct copies of said exhibits despite being given opportunity for this purpose. Moreover, it is clear that the Court had left it open in its order for considering the value and import of the original documents not being on record, or in some case missing, at the stage of arguments in the trial.

17. Learned Counsel for the petitioner submitted that the accused has resorted to unfair practice inasmuch as they had not cared to bring on record two orders, passed by the Apex Court on 27.7.2012 and 4.10.2012 in the Cr. Misc. Application No. 33941 of 2012 and in both the Transfer Applications No. 403 of 2012 and 438 of 2012. We find considerable force in these submissions of the learned Counsel for the petitioner.

18. We therefore, find no force in CrI. Misc. Application No. 33941 of 2012 and it is accordingly dismissed. The interim order passed in this application u/s 482 Cr.P.C. staying proceedings of S.T. No. 93 of 1991 are vacated forthwith.

19. So far as CrI. Transfer Application No. 403 of 2012 and 438 of 2012 are concerned Sri G.S. Chaturvedi argued that there was considerable rivalry between the parties and the accused had a long criminal history and the Counsel at Agra were supportive of the petitioner, the Court was prejudiced against the accused persons hence it was in the interest of justice that the trial be transferred to any district other than Agra. We do not find any substance in these arguments. As all the witnesses have been examined and the evidence has been recorded and the case was fixed for arguments, hence there was no substance in the argument of Sri Chaturvedi that there would be any impediment in the trial proceeding or being concluded at Agra. As pointed out by the informant in his counter-affidavit and the Trial Judge in his comments to the transfer applications that the accused persons have been moving repeated transfer applications on similar frivolous grounds making allegations against the various presiding Trial Judges who have been conducting proceedings in this case. Criminal Transfer Application No. 663 of 2006 was dismissed by a Division Bench of this Court on 27.8.2007. Likewise Criminal Transfer Application No. 708 of 2007 was dismissed by the same Division Bench of the High Court on 19.8.2009. The grounds in the present transfer applications were Very similar to the grounds in the earlier transfer applications. Most importantly it has been held by the Apex Court in its order dated 4.10.2012 refusing to allow time on the modification application moved by the accused Vijay Pal Singh and others to the direction obtained by the informant, petitioner Vinod Pal Jadaun in Special Leave to Appeal (CrI.) No. 506 of 2012 before the Apex Court against the order dated 24.5.2012, passed by this Court in CrI. Writ Petition No. 6340 of 2012. It was observed that as the trial was at an advanced stage and the learned Sessions Judge had even fixed 1.10.2012 for final arguments, hence no ground was made out for extension of time as prayed for.

20. Therefore, no ground for allowing the transfer of this case to any other district outside Agra. Consequently, the CrI. Transfer Application Nos. 403 of 2012 and 438 of 2012 are dismissed. CrI. Writ Petition No. 16472 of 2012 is allowed. The Trial Court is now directed to complete the Trial of S.T. No. 93 of 1991 with utmost expedition within a very short span of time as already directed by this Court by its earlier orders, which have been directed to be followed by the Apex Court in its orders dated 27.7.2012 and 4.10.2012.