

The State of U. P.

Vs

K. K. Gupta

Criminal Appeal No. 221 of 1967

(A. N. Ray, I. D. Dua JJ)

10.03.1970

JUDGMENT

RAY, J. -

1. This is an appeal by special leave from the order, dated 18th April, 1967, passed by the High Court at Allahabad.
2. The High Court quashed the proceedings in case No. 24 of 1961.
3. The order was made on the petition of the respondent under Section 561-A of the Criminal Procedure Code. The respondent made an application on 20th March, 1967 to the High Court at Allahabad. The respondent was charged with an offence under Section 161 of the Indian Penal Code, read with Section 5(2) of the Prevention of Corruption Act. The incident in question was alleged to have taken place on 6th August, 1960. The respondent alleged that the charge-sheet was submitted in the month of March, 1961 and during six years only four witnesses were examined and the examination of 16 more witnesses would therefore take 20 years. It was also alleged that 40 dates had been fixed for hearing of the case but to no useful purpose. The High Court quashed the proceedings without giving any reason therefor.
4. At the outset it may be said that it is difficult and embarrassing for this court to discern the reasons which weighed with the High Court in making the order.
5. The State made an application under Article 134(i)(c) of the Constitution for leave to appeal to this Court against the order quashing the proceedings. In dismissing that application the High Court said that since the submission of the charge-sheet in the year 1961, the case was not proceeded with either because of non-availability of Special Judge or because of adjournment taken by the prosecution or of the prosecution filing a Criminal Revision in the High Court resulting in stay of proceedings and further that the contentions had been controverted in the counter-affidavit with the result that it was a disputed matter which could not be decided in a summary application.
6. The State in the application for special leave filed in this Court made the following allegations. The respondent was charged with the offence of receiving illegal gratification. The alleged occurrence was on 6th August, 1960. The Charge-sheet after investigation was filed on 29th April, 1961. The case was fixed for the statement of the respondent in the months of January, 1962 after copies of documents upon which the prosecution wanted to rely had been furnished to the respondent. The respondent in the month of January, 1962 moved an application before the High Court for quashing the proceedings on the ground that the investigation was not legal and there was

a stay of proceedings. On 10th May, 1962 the High Court at Allahabad dismissed the application by stating that the legality of investigation could be decided only after examining such witnesses as the prosecution might like to produce. On 28th July, 1962 the prosecution applied before the Magistrate for examination of witnesses. The respondent then moved a transfer application before the High Court and the proceedings were again stayed. On 9th August, 1962 the order for stay of proceedings was received by the Trial Court. Transfer application was ultimately rejected by the High Court on 30th November, 1962 and the order was received in the Trial Court on 5th December, 1962. The respondent again moved two applications for transfer of the case to Allahabad. The applications were rejected and the case was fixed for hearing on 31st July, 1963. The respondent obtained an adjournment on the ground that his counsel had gone to Allahabad. The case was adjourned till 28th August, 1963. The respondent on that date asked for an adjournment on medical ground. The case was fixed for hearing on 10th September, 1963. Three prosecution witnesses were examined on that day. The respondent raised an objection as regards the validity of the investigation but the same was disallowed. The case was fixed for hearing again on 21st October, 1963 when the respondent was to be examined. The respondent did not turn up on medical ground. He was examined on 2nd December, 1963 and the charge under Section 161 of the Indian Penal Code read with Section 5(2) and Section 5(i)(d) of the Prevention of Corruption Act was read over to the respondent.

7. The examination of the prosecution witnesses commenced on 9th March, 1964. Cross-examination of the witnesses was deferred at the request of the defence counsel. The Special Judge trying the case died meanwhile. The case was again taken up on 26th October, 1964. A witness was produced on that date. The respondent asked for the report from the prosecution. The prosecution claimed privilege under Section 124 of the Evidence Act. The Trial Court held that it was not a privileged document and allowed the request of other respondent by its order, dated 10th December, 1964. Two more witnesses were thereafter examined.

8. The State Government filed a revision application against the order of the trial Judge, dated 10th December, 1964 and the proceedings were stayed. The respondent moved an application for transfer of the case to the Lucknow Bench of the Allahabad High Court. The revision application filed by the State Government is still pending in the High Court, though the High Court passed an order for hearing the case with expedition as soon as the record arrived at the High Court. The respondent then moved an application in the High Court under Section 561-A of the Criminal Procedure Code for quashing the proceedings. That is the application which resulted in the order forming the subject matter of the present appeal. The State filed an affidavit in answer to the application of the respondent for quashing the proceeding. The State narrated the sequence of events which took place. The respondent in the application did not disclose all the facts relating to the various application made by the respondent. It is apparent that the respondent, from time to time, made application for staying the proceedings, preventing the case from being proceeded with. It is true that there has been delay but that it caused mainly by applications made by the parties mostly by the respondent and once by the State at different stages for transfer of the case, stay of proceedings, revision of orders and quashing of proceedings.

9. The ground given by the respondent in the application that only four witnesses were examined and it would take 20 years to examine the 16 witnesses is not supported by facts.

10. It is noticeable that the High Court made an order for stay of proceedings on the revision application filed by the State challenging the order, dated 10th December, 1964 passed by the Trial Court requiring the State to disclose the report sent to obtain sanction of the prosecution. Though the said application is still pending in spite of an order of the High Court to hear the application with

expedition after arrival of the record, the High Court passed an order quashing the proceedings without consideration of these features.

11. The High Court was wrong in quashing the proceedings. The order of the High Court is set aside. The High Court will dispose of the revision application which is pending and then send the records to the Trial Court as quickly as possible for expeditious trial of the case.

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