

Diwan Naubat Rai and Others

Vs

State Through Delhi Administration and Another

Writ Petitions (Criminal) Nos. 315-318 of 1988

Diwan Naubat Rai and Others

Vs

State (Delhi Administration) and Others

Criminal Miscellaneous Petitions Nos. 3279-82 Of 1988 In Writ Petitions (Criminal) Nos. 359-362 of 1987)

(B. C. Ray, N. D. Ojha JJ)

02.12.1988

JUDGMENT

OJHA, J. –

1. The prayer in the writ petitions is for quashing of the proceeding in a case arising out of First Information Report No. 472 dated May 3, 1978 under Section 448 IPC P. S. Moti Nagar pending in the Court of Shri S. P. Singh Choudhary, Additional Sessions Judge whereas the prayer in the miscellaneous petitions is for initiating contempt proceeding against (1) State through Administrator, Delhi Administration, (2) Shri R. K. Sharma, Inspector general of Police, Goa and (3) Shri Ajai Chandha, Deputy Commissioner of Police (West Zone), New Delhi. On these writ petitions and criminal miscellaneous petitions notice was issued by this Court on August 23, 1988 confined to respondents 1 and 2.

2. The facts giving rise to these proceeding may be stated here in a nutshell. The petitioners are being prosecuted on the basis of the allegations made in the first information report referred to above in the Court of an Additional Sessions Judge. Writ Petition (Criminal) Nos. 359-362 of 1987 were filed by the petitioners before this Court for quashing all the proceeding in pursuance of the aforesaid first information report on various grounds. These writ petitions, however, were dismissed by this court on July 13, 1987 by the following order :

The writ petition is dismissed subject to the direction that the trial of the case will go on from day-to-day after the learned Addl. Sessions Judge fixes a date for commencement of the trial some time in the third week of August 1987. The prosecution agency will take every steps to summon every witnesses and have the case disposed of. If the copies of the documents have not been supplied to the accused so far they will be supplied forthwith.

3. The present writ petitions seem to have been filed on or about July 23, 1988 and the case of the

petitioners is that in view of the order of this court dated July 13, 1987 the criminal case pending against them ought to have been decided near about third week of August 1987 and since not only the case had not been decided till the filing of the writ petitions even charge had not been framed, even though about 110 dates were fixed in the case, the proceedings before the Additional Sessions Judge in the case aforesaid deserves to be quashed.

4. In the criminal miscellaneous petitions for initiating proceedings for contempt the case of the petitioners is that since the prosecution agency had not taken the required steps to summon the witnesses as directed by this court in its order dated July 13, 1987 they are guilty of disobedience of the aforesaid order.

5. The writ petitions as well as the criminal miscellaneous petitions have been contested by the respondents. Their case is that the prosecution is not responsible for the delay in the disposal of the case after the order of this Court dated July 13, 1987 nor has any of the respondents done any such thing for which proceedings for contempt may be initiated against him. As seen above, the petitioners had filed Writ Petition (Criminal) Nos. 359-362 of 1987 for quashing of the proceedings before the Additional Sessions Judge on various grounds but the writ petitions were dismissed. That order has become final and consequently none of those grounds can be considered again to constitute the basis for quashing the proceedings. Even otherwise, in the present writ petitions the grievance of the petitioners is with regard to the delay after the order of this Court dated July 13, 1987 in the earlier writ petitions.

6. The short question which, therefore, falls for our consideration is as to whether the proceedings before the Additional Sessions Judge deserve to be quashed on account of the case not being disposed of after the order dated July 13, 1987 and before the filing of these writ petitions. A copy of the running order sheet of the case from July 23, 1987 up to August 19, 1988 has been filed on behalf of the respondents and we have been taken through the said order sheet. Having gone through the same we find it difficult to agree with the submission made by Diwan Naubat Rai, petitioner 1 who has appeared in person and argued the case on behalf of the petitioners that the proceedings in the case deserve to be quashed on account of the non-disposal of the case after July 13, 1987 till the filing of the writ petitions. The order sheet indicates that the Additional Sessions Judge has made an effort to proceed with the case as far as possible from day to day and in this process in the period of about one year nearly 110 dates were fixed in the case. It, however, is apparent from the said order sheet that out of these 110 dates only on about 10 dates the case was adjourned at the instance of the prosecution.

7. It is the petitioners' own case that they applied before the Additional Sessions Judge for discharging them under Section 227 of the Code of Criminal Procedure. The said section contemplates that if upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution in this behalf the judge considers that there is no sufficient ground for proceeding against the accused he shall discharge the accused and record his reasons for so doing. It is only after such consideration and hearing as contemplated by Section 227 CrPC that the judge can frame charge if he is of opinion that there is ground for presuming that the accused has committed an offence.

8. At this place it will be useful to give a resume of the order sheet. It appears that after the order of this court dated July 13, 1987 the case was taken up on July 23, 1987 on which date notices were ordered to be issued to all the accused person to appear on August 5, 1987. The case does not appear to have been taken on August 5, 1987 for some reason which is not clear, there being no order sheet

of that date and was taken up on August 6, 1987. On that date petitioner 1 Diwan Naubat Rai moved an application for summoning a medical record of the accused. Another application was moved on behalf of the petitioners for summoning Diwan Naubat Rai under Section 311 CrPC and for summoning certain records of that purpose. Copies of these applications were directed to be given to the Assistant Public Prosecutor for replies being filed and the case was ordered to be put up on August 17, 1987. On that date an application was made for exemption on behalf of the petitioners along with medical certificate which was allowed and the case was ordered to be listed as prayed for further proceedings on August 24, 1987. The case could not be taken up for some reason which is not clear on August 24, 1987 and the Assistant Public Prosecutor was on leave on the next two dates. The case was then taken up on September 2, 1987. The order sheet of that date is reproduced hereunder inasmuch as on account of this order at a subsequent stage the case was transferred to the Court of another Additional Sessions Judge. It reads :

#Present : APP for State. All the accused in person. Accused Sham Lal states that he has engaged a counsel who is not available. Accused Om Prakash and Pramod Kumar have not engaged even a counsel. I direct them to engage a counsel. As the accused declined to get any amicus curiae appointed, they may think it over again in their own interest. Dewan Naubat Rai is shouting and stated that they could not engage any counsel. I asked him that in case he persists in this way, I may be forced to move against him for contempt of the court. I give him this last warning and adjourn the case. Case shall come up tomorrow. At this stage, Dewan Naubat Rai states, he would be busy before the High Court in connection with off-shoot of civil nature of this very matter and the case may not be taken up tomorrow. Case is adjourned to day after tomorrow i.e. September 4, 1987. Sd/- ASJ/September 2, 1987.##

9. Thereafter the case could not be taken up on various dates up to October 15, 1987 as either the Assistant Public Prosecutor or the presiding officer was on leave. On October 15, 1987, the case could not be taken up as one of the accused was ill and on October 21, 1987 as the lawyers were on strike and the Assistant Public Prosecutor was also not available. The case as requested was adjourned to October 26, 1987. On that date in view of the fact that some of the accused had not engaged an advocate and were simultaneously insisting that they will not like to have an amicus curiae, Shri S. N. Kapoor, the Additional Sessions Judge, in view of the provisions contained in Section 304(1) CrPC and the order dated September 2, 1987 directed the file of the case to be put up before the District Judge on October 28, 1987 for transferring the case to some other court.

10. On October 28, 1987 the District Judge transferred the case to the court of Shri V. S. Agarwal and as a request was made on behalf of the petitioners to fix some date after November 3, 1987 they were directed to appear before the transferee court on November 6, 1987. On that date the transferee court directed the court clerk to register the case and check up the file. He also directed the Assistant Public Prosecutor to supply the copies for which applications had been made by the petitioners or to file reply to the applications by November 13, 1987. On this date copy of an application dated July 25, 1987 was ordered to be sent to SHO Moti Nagar with a direction to appear and produce the concerned record on November 20, 1987. Four copies of DD entry were given to the accused on November 20, 1987 but they prayed for there more such copies to be given for which SHO Moti Nagar who was present in court prayed for some time and the case was adjourned for November 30, 1987. On that date a fresh application was moved on behalf of the accused for supply of certain documents and a statement was also made that barring the documents mentioned in the application filed on that date no other documents were required. Copy of the said application was supplied and the Inspector was directed to verify as to which of the documents mentioned at items 1 to 12 of the

application were available. It was also ordered that copies of the same may be supplied and the case may come up on December 2.

11. Copies of some entries were supplied on December 2 and an order was passed directing SHO of P. S. Moti Nagar to appear on the next day, namely, December 3 so that other copies may be supplied. The case was adjourned on December 3 at the instance of the petitioner Diwan Naubat Rai and on December 4 copies of some more entries were supplied and a direction was given to produce the DO letters mentioned in the personal search memo on the accused on December 5. On this date it was stated that the Rojnamcha B of May 3, 1978 had been destroyed. A direction was, however, issued on that day that the personal search articles insofar as Diwan Naubat Rai, accused is concerned "including the mentioned 2 letters" be produced on December 7. On this date MHC(M) from Police Station Moti Nagar was present but had not brought the 2 DO letters. He was directed to appear on December 8 to state specifically about those letters. Even on this date the DO letters were not produced and SHO of P. S. Moti Nagar and SI Ramesh Pal Singh were called for December 9. On that date due to strike of the doctors in the area a request was made for adjournment and December 10 was fixed. A statement was made on December 10 that investigation was conducted by Inspector Om Dutt and that there was no mention of the 2 DO letters in Register No. 19. Inspector Om Dutt as well as Inspector Ramesh Pal Singh were directed to appear on December 11 on which date copies of the DO letters were supplied and the case was ordered to come up on December 14 for arguments on the applications under Section 311 and the other application as also for consideration of charge. The case could not be taken up on December 14 as the presiding officer was busy in recording evidence in another case and was adjourned for December 16. On that date the original FIR was summoned for December 17. But this could not be produced on that date. Arguments on the application were, however, commenced and the original FIR was directed to be summoned on December 18. On this date the original FIR register was produced. A photostat copy of the FIR was got prepared in the presence of the accused and supplied to them and the case was directed to come up on December 19 for arguments on the pending applications and on the point of charge. The matter was argued on December 19 also and was adjourned for January 2, 1988 to enable the Assistant Public Prosecutor to make an application under Section 311 CrPC. The application was made on January 2, which was not opposed and was allowed and the case was ordered to come up on January 4. On this date the case was again heard and ordered to be put up on January 16. It appears that a cross case was also pending in the court of Shri K. P. Verma, Additional Sessions Judge and a request was made on January 16 to transfer this case also to the same court. In view of this request the file was ordered to be put up before the Sessions Judge on January 18. The presiding officer being on leave on January 18 the case was ordered to be put up on January 20. On this date the Sessions Judge in place of transferring the case to the court of Shri K. P. Verma withdrew the cross case from his court and transferred the same to the court of Shri V. S. Agarwal and the file of this case also was sent back. The accused were directed to appear before Shri V. S. Agarwal on January 29. The case was registered on that date in the court of Shri V. S. Agarwal and was ordered to be put up on February 1 for arguments. On this date one of the accused was unwell and an application was filed for exemption along with a medical certificate indicating that he had been advised rest till February 10. The case was consequently directed to come up on February 11 for arguments. On February 11, however, an application was again made stating that the said accused continued to be unwell. The case was, therefore, ordered to come up on February 15. On this date on a prayer being made in this behalf the case was ordered to come up on February 16. At the request of the accused, however, the case was ordered to come up on February 17. On this date arguments were heard in part. Thereafter arguments continued on the next several dates the last of such dates being March 2. On this date it was pointed out by the

accused that some documents had been filed by them and the Assistant Public Prosecutor may be required to admit them. The Assistant Public Prosecutor prayed for some time to get instructions and the case was ordered to come up on March 9. On March 9 and 16 the assistant Public Prosecutor was unable to admit or deny the documents as he had not received instructions and the case was adjourned for March 29. On this date also the Assistant Public Prosecutor showed his inability to admit or deny the documents in the absence of instructions. In view of the order of this Court direction the hearing of the case to be expedited the Additional Sessions Judge took the view that the case could not be adjourned any further for the said purpose and directed it to be taken up on April 2 for further arguments. Arguments on the point of framing charge were thereafter heard on April 2, 5 and 6. The Assistant Public Prosecutor prayed for some time to give his reply and the case was ordered to come up on April 12. Arguments on behalf of the State were heard on April 12 and April 15 and the case was ordered to come up on April 18 for further arguments. On various dates between April 18 and April 21 admission and denial of documents was done on some dates for 2 hours and on others for 1 1/2 hours. Arguments were again heard on April 28 and the case was ordered to come up on May 5 for further arguments. In the meantime, however, the case was transferred to the court of Shri S. P. Singh Chaudhary, Additional Sessions Judge and the parties appeared before him on the date fixed namely May 5. May 12 was fixed in the case on the request of the petitioners as they were reluctant to get any earlier date. On May 12 the case could not be taken up as the case diary had not been received and also because the court clerk wanted some further time for checking the papers. The case was, therefore, ordered to come up on May 17. On this date a statement was made on behalf of the petitioners that connected case had been transferred to the court of Shri K. S. Gupta and so this case may be sent to the learned Sessions Judge so that both the cases may be transferred to one court. On that very day the Sessions Judge directed the case pending in the court of Shri K. S. Gupta to be transferred to the court of Shri S. P. Singh Chaudhary and the parties were directed to appear before him on May 26. On that date one of the accused was ill and the case was ordered to come up on May 27 for hearing the pending applications as also with regard to framing of charge. On May 27, however, it transpired that the case diary had not been received till that date. The Additional Sessions Judge pointed out that there appeared to be some slackness on the part of the prosecution and issued a direction that it should be ensured that the case diary was available on May 30. The case diary was received on May 30 but it was pointed out by the Assistant Public Prosecutor that some of the entries were in Urdu and he would require the help of some other person as he did not know Urdu. On his request, therefore, the case was ordered to be put up 4 days later on June 3. On that date the case could not be taken up as electricity was not available for the last several hours and it was ordered to be put up on June 8. On that date the Assistant Public Prosecutor concluded his arguments regarding the charge in about 30 minutes and thereafter argument on behalf of the petitioners were heard for about 50 minutes. The case was thereafter adjourned for further arguments on June 9. The Additional Sessions Judge on June 8, however, observed that on June 9 he shall give 1 1/2 hours more for finishing the arguments. On June 9 the petitioner Diwan Naubat Rai made an application purporting to be under Section 408(2) CrPC and the following order was passed on that application :

Accused Naubat Rai has moved an application purporting to be under Section 408(2) CrPC. Heard. It appears that application is in the nature of peshbandi. In view of the order of the Hon'ble Supreme Court and in the circumstances of this case expeditious hearing of this case is necessary. The case has been received presently by transfer in this Court. I have impressed upon the accused persons in this case that there should be no delay in the proceedings of this case. I have also impressed upon the accused persons that arguments regarding pending applications of accused and also regarding

the question of charge be advanced and the necessary orders regarding charge and regarding the applications pending of the accused will be passed, according to law. I do not find any justification to send the file as prayed in the application for the transfer of this case. But if the accused persons are interested in the transfer of this case, they can approach the competent court according to law. This application be kept on record and is decided accordingly.

12. After the said order had been passed arguments on behalf of the petitioners were heard for 11/4 hours but could not conclude and the case was ordered to come up on June 10. On this date also the petitioner Diwan Naubat Rai was heard for about 15 minutes and no more time could be given by the court as it was busy in other cases. The case was ordered to be put up for remaining arguments on July 6. On this date further arguments were heard for about 45 minutes and since there was no further time left the case was ordered to be put up on July 7 in the afternoon as prayed on behalf of the petitioners. On July 7 arguments on behalf of the petitioners were again heard for about one hour but were yet not concluded and the following order was passed :

Heard further arguments for about one hour. Arguments continued. No time left. In this month I shall not be available from July 11, 1988 to July 27, 1988 as I shall be attending the course about Crime and Justice. Fixed August 1, 1988 for further arguments.

13. On August 1 the petitioner Shri Diwan Naubat Rai pointed out that an application had already been made on behalf of the petitioners for transfer of the case in the Court of Sessions Judge and August 17 was fixed before him and that the hearing of the case may accordingly be adjourned till August 17. The Additional Sessions Judge, however, did not consider it proper to stay the hearing of the case inasmuch as no order of stay had been passed by the Sessions Judge. Further arguments on behalf of the petitioners were accordingly heard for about 30 minutes and thereafter the following order was passed :

When I had heard the arguments of the learned counsel for the accused persons for 30 minutes, I had impressed upon the learned defence counsel that he has already advanced lengthy arguments and it will be proper that he should complete his arguments at the earliest so that further proceedings may be done. I inquired from him as to how much time he will take to conclude his arguments but he is not in a position to give even the approximate time which he will take for concluding his arguments. I again impressed upon the learned defence counsel that he should be brief and he should try to finish the arguments at the earliest. Now to come up for further arguments on August 2, 1988.

Sd/- August 1, 1988 ASJ, Delhi.##

At this stage, the learned defence counsel pointed out that he will not be available tomorrow as he has to go to Supreme Court and the case be taken up on August 3, 1988. In these circumstances, now to come up for hearing further arguments on August 3, 1988. Date August 2, 1988 is cancelled.

Sd/- August 1, 1988 ASJ, Delhi.##

At this stage, Shri Naubat Rai became in an angry mood and talked in a loud voice. I have impressed upon him that he should not talk loudly and the proceedings should be conducted

peacefully.

Sd/- August 1, 1988 ASJ, Delhi.##

14. On August 3 the petitioner, Diwan Naubat Rai wanted the case to be adjourned for August 5 and his request was granted. When the case was taken up on August 5 three applications were moved on behalf of the petitioners and the following order was passed :

Three applications have been moved today on behalf of the accused. Heard argument. During argument Shri Naubat Rai advocate started arguing loudly. I had impressed upon him that it will be better that the loud argument may be avoided and the argument regarding charge and pending applications may be concluded at the earliest. Now he has pointed out that he has got some heart trouble and he wants to sit. He has seated now on a chair and has said that he has concluded the arguments. Argument concluded. At this stage Shri Naubat Rai says that he has not concluded his argument. In the interest of justice he is given further opportunity to argue.

Sd/- August 5, 1988 Atirikt Zila Avam Satra Nyayadish Delhi##

Now Shri Naubat Rai advocate says that he is mentally upset and he wants some other date and as he is not in the position to argue. In the interest of justice now to come up for further argument/hearing on August 8, 1988.

Sd/- August 5, 1988 ASJ, Delhi.##

15. On August 8 an application was made on behalf of the petitioners for exempting the attendance of the petitioner Naubat Rai who was arguing the case on behalf of the petitioners and the case was fixed for August 10 for further arguments. On August 10 again a request was made for adjournment of the case on the ground that Shri Naubat Rai and Shri Sham Dass, two of the accused were ill. The case was thereupon adjourned for August 12. On this date also the accused Naubat Rai and Sham Dass were absent and a prayer was made on behalf of the remaining accused for adjournment because the petitioner Naubat Rai who was arguing the case was ill. Since the court was closed on August 13, 14 and 15 and the presiding officer had applied for casual leave on August 16, 17 and 18 the case was adjourned for August 19. By that date an order from the Sessions Judge saying further proceedings had been received and the case was ordered to come up for further orders on September 14, 1988. In the meantime as seen above, notice was issued by this Court in the present proceedings on August 23, 1988.

16. A perusal of the running order sheet, therefore, indicates that on account of about 10 adjournments taken on behalf of the prosecution referred to above the hearing of the case was delayed for about 30 days only from December 4 to 10 that is for about a week, from March 9 to 29, that is for about 20 days and on May 27 and 30. In this view of the matter it is not possible to agree with the sub-mission made on behalf of the petitioners that the prosecution was responsible for the case not being decided between July 13, 1987 and the date of filing of the writ petitions and the proceedings in the case do not, therefore, deserve to be quashed on this ground.

17. Coming to the criminal miscellaneous petitions made for initiating proceedings for contempt on the ground that "every step to summon every witness" had not been taken on behalf of the prosecution as directed by this Court on July 13, 1987, suffice it to point out that since final orders could not be passed on the applications made on behalf of the petitioners under Sections 207 and

311 of the Code of Criminal Procedure as a result of which the charge could not be framed, the stage for summoning the witnesses really did not reach. In this connection as regards respondent 2 it may further be pointed out that, as is apparent from his counter-affidavit filed before this Court, he was transferred from Delhi Police to Government of Goa and relieved from Delhi Police on the afternoon of June 26, 1987. He joined as Inspector General of Police, Goa on the forenoon of July 9, 1987 that is 4 days before the order of this Court dated July 13, 1987 was passed in Writ Petition Nos. 359-362 of 1987. Apparently, therefore, he was in no position to delay the disposal of the case pending in the court of Additional Sessions Judge, Delhi. Consequently, no case for initiating proceedings for contempt has been made out.

18. In the result the writ petitions as well as the criminal miscellaneous petitions are dismissed. The Additional Sessions Judge, if the order staying further proceedings passed by the Sessions Judge has been vacated, shall now proceed to decide the case as expeditiously as possible. We hope the prosecution as well as the petitioners will cooperate and give every assistance for the expeditious disposal of the case.

</html