

Durgesh Chandra Saha

Vs

Bimal Chandra Saha and Others

Criminal Appeal No. 715 of 1994

(G. T. Nanavati, G. N. Ray JJ)

23.11.1995

ORDER

1. This appeal is directed against the judgment dated 18-3-1993, passed by a Single Bench of Calcutta High Court in Criminal Revision No. 1238 of 1992. By the impugned order, the learned Judge of the Calcutta High Court, inter alia, came to the finding that in view of amendment of Section 167(5) of the Code of Criminal Procedure by the West Bengal Amendment Act (Act 24 of 1988), the investigation of the entire case was required to be stopped by the trial court after expiry of three years from the first date of appearance of the accused and the court had also a duty to discharge all the accused after expiry of the said period of three years.

2. For the purpose of appreciating the rival contentions of the learned counsel appearing for the parties, some of the events may be noted. On 15-3-1984, a complaint was lodged by the appellant in Gaighata Police Station, North 24-Parganas, West Bengal and on such complaint police case No. 11 of 15-3-1984 was initiated. On 8-2-1988, the investigation was completed by the police and charge-sheet was filed under Sections 148/149/307/326/302 of IPC against Respondents 1-10 in the said case being numbered as GR Case No. 205 dated 16-3-1984. On 23-7-1988 the learned Sub-Divisional Magistrate, Bongaon took cognizance of the said offences in GR Case No. 205 of 1984. On 2-5-1989, Section 167(5) of CrPC was amended by the West Bengal Amendment Act 24 of 1986. Such Amendment Act got the President's assent and the amended provisions were enforced with effect from 2-5-1989.

3. Sub-section (5) of Section 167 CrPC as amended by the said West Bengal Act may be stated as hereunder :

167. (5) If in respect of -

(i) any case triable by a Magistrate as a summons case, the investigation is not concluded within a period of six months, or

(ii) any case exclusively triable by Court of Session or a case under Chapter XVIII of the Indian Penal Code (45 of 1860), the investigation is not concluded within period of three years, or

(iii) any case other than those mentioned in clauses (i) and (ii), the investigation is not concluded within period of three years,

from the date on which the accused was arrested or made his appearance, the

Magistrate shall make an order stopping further investigation into the offence and shall discharge the accused unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interest of justice the continuation of the investigation beyond the periods mentioned in this sub-section is necessary.

4. The respondent accused contended before the learned Sessions Court by making an application that in view of such amended provision of Section 167(5) of CrPC the trial of the said criminal case should come to an end by stopping investigation and discharging all the accused persons. Such application however was dismissed by the learned Additional Sessions Judge. The said order was challenged by making a revisional application before the Calcutta High Court and as aforesaid, the revisional application has been allowed by the High Court.

5. The learned counsel appearing for the appellant has submitted that the language of Section 167(5) as amended by the West Bengal Act clearly indicates that the provision of Section 167(5) will be made applicable where the investigation is still pending. It is only when the investigation has not been completed within a period of three years from the date of appearance of the accused in the criminal case, not only the criminal court was required to stop the investigation but also to discharge the accused. As in the instant case, the investigation had already been completed and a charge-sheet had been filed and as aforesaid, the court had also taken cognizance of the said charges filed against the accused persons. Section 167(5) (ii) of the CrPC had no manner of application and the High Court had gone wrong in allowing the claim of the accused in passing an order of discharge in favour of the said accused persons. The learned counsel has further submitted that Section 167(5) of CrPC as amended in West Bengal imposes a responsibility on the court namely to stop any further investigation and simultaneously to discharge the accused persons against whom the investigation was then pending. He has submitted that if the investigation had already been completed there was no occasion to stop the investigation. In such circumstance there would also be no occasion to discharge the accused, because according to the learned counsel, both the said actions namely stopping further investigation and discharging the accused form one and indivisible course of action.

6. Mr. Tapas Ray, learned counsel appearing for the State has submitted that the judgment of the High Court cannot be sustained because in the instant case, the investigation was completed and the court had taken cognizance of the charges made against the accused. He has submitted that in the facts of the case, there was no occasion to stop further investigation when investigation had been completed and to take other consequential action flowing from non-completion of investigation within specified time, namely discharging the accused.

7. Mr. Bijan Ghosh learned counsel appearing for one of the accused namely Respondent 7 has however submitted that the amendment of Section 167(5) of CrPC was made to give effect to the inviolable right of the accused under Article 21 of the Constitution. Such amended provision has been incorporated not only to stop the delayed investigation but also to discharge the accused against whom a criminal case was pending for a long time. He has submitted that if the beneficial purpose of amendment of Section 167(5) CrPC to safeguard the fundamental right against deprivation of personal liberty is kept in mind, it will be only appropriate to hold that under Section 167(5) CrPC the accused would be entitled to be discharged even if investigation has been completed but time more than that specified in Section 167(5) has elapsed from the date of first appearance of the accused in court and the filing of the charge-sheet on completion of investigation in the concerned criminal case. Mr. Ghosh has submitted that two actions are required to be taken by the court under Section 167(5) CrPC namely stopping of further investigation and discharging the accused are two separate actions, one not being dependent on the other. He has submitted that the

real purpose of amendment namely preventing the undesirable prolonging of the agony of a criminal case seriously prejudicing the right to personal liberty will be frustrated if the investigation is allowed to be completed leisurely exceeding a period of three years from the date of first appearance of the accused without any justification. Hence, the liberal construction of Section 167(5) CrPC is fully justified.

8. After giving our anxious consideration to the respective submission of the learned counsel appearing for the parties it appears to us that the language of Section 167(5) of CrPC as amended by the West Bengal Act is quite clear in indicating that the said section is applicable only in a case where the investigation was still pending but not in the case where investigation had been completed and the charge-sheet had been filed. It appears to us that Section 167(5) CrPC as amended, is intended to ensure speedy completion of investigation within the time frame specified therein otherwise to face an order of discharge of the accused against whom investigation without any just cause to the satisfaction of the court has been kept pending. Where investigation has been completed, a different situation, not contemplated under Section 167(5) CrPC emerges. We may indicate here that if a criminal case is kept pending for a very long time without any just cause thereby seriously affecting the guarantee under Article 21 against deprivation of personal liberty, the law is well-settled that the court, in an appropriate case may quash the criminal proceeding as indicated in the Constitution Bench decision of this Court in A. R. Antulay case. Hence, unnecessary liberal construction of Section 167(5) CrPC with a view to protect the right against deprivation of personal liberty as contended by Mr. Ghosh is not called for.

9. We therefore set aside the impugned order by allowing this appeal. As the matter is pending for long we direct the trial court to expedite the hearing of the criminal case.