SUPREME COURT OF INDIA

State Through CBI

Vs.

Dr. Narayan Waman Nerukar

Crl.A.No.858 of 2002

(Arijit Pasayat J.)

26.07.2002

JUDGMENT

Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of the Delhi High Court whereby the proceedings against the respondent no.1 were quashed, primarily on ground that there was unnecessary delay in conclusion of the trial by court. Reliance was placed on a decision of this Court in "Common Cause" A registered Society through its *Director vs. Union of India and Ors.*[1] as modified in "Common Cause" A registered Society through its *Director vs. Union of India and Ors.*[2] to hold so. A brief reference to the factual aspects would suffice.

3. According to the prosecution, respondent no.1 committed offences under Sections 3 and 5 of the *Official Secrets Act 1923* (in short 'Secrets Act') and Section 120-B of the Indian Penal Code, 1860 (in short 'IPC') read with the aforesaid provisions. The Chief Metropolitan Magistrate by his order dated 16.8.1999 took cognizance and issued processes against the accused persons including the respondent no.1 herein. Respondent no.1 approached the High Court under Section 482 of the *Code of Criminal Procedure, 1973* (in short 'Cr.PC') for passing an order against the cognizance taken by the Chief Metropolitan Magistrate. The High Court quashed the proceedings, inter alia, on the ground that there has been unnecessary delay in the proceedings. Stand of the prosecution before the High Court was that the case is of very serious nature and the respondent no.1, who at the relevant time, was Adviser in the Department of Electronics, Government of India parted with a copy of a sensitive secret document namely "User Evaluation Trial Report on RATAC-S Battle Field Surveillance Radar (BFSR) Phase-I", which was being evaluated by the Army Authorities with reference to certain specific parameter required by the Army Authorities and the same was dispatched to an expert in Paris, France through courier service, who brought it to the notice of the police. As such the case involved offences which relate to security of the State. A large number of documents were to be exhibited. There was no unusual delay. But the High Court did not accept the same. Placing reliance on a decision of this Court in *Abdul*

Rehman Antulay and Ors. vs. R.S. Nayak and Anr.[3], it was held that the right of speedy trial has been infringed. It was noted that merely because about 100 witnesses spread all over the India were to be examined, that cannot be a relevant ground justifying the delay. Maximum punishment for the alleged offence is 3 years and the respondent no.1 has suffered custody of about 2 years in addition to agony of facing prosecution for about 12 years.

4. Mr. Harish N. Salve, learned Solicitor General submitted that the approach of the High Court is clearly erroneous. It cannot be said to be a rule of universal application that whenever there is delay, whatever be the justification for the same, the proceedings are to be quashed. Additionally there was no material before the High Court to come to the conclusion that the maximum sentence is 3 years and not 15 years. It was not the case of the respondent no.1 before the High Court that his case would fall under sub- section (3) of Section 5 of the Secrets Act. In any event that was a matter for trial to be determined on consideration of the materials which are to be placed.

5. Per contra Mr. K. Ramamoorthy, learned senior counsel for the respondent submitted that the right to speedy trial is inbuilt in Article 21 of the Constitution of India, 1950 (in short 'the Constitution') and, therefore, the High Court had committed no error in directing the proceedings to the quashed. According to him, it was specifically pleaded before the High Court as to how the alleged offence was covered by sub-section (3) of Section 5 of Secrets Act.

6. Recently a 7-Judges Bench of this Court in *P. Ramachandra Rao vs. State of Karnataka*[4] held as under:

> "No person shall be deprived of his life or his personal liberty except according to procedure established by law declares Article 21 of the Constitution. 'Life and liberty', the words employed in shaping Article 21, by the founding fathers of the Constitution, are not to be read narrowly in the sense drearily dictated by dictionaries; they are organic terms to be construed meaningfully. Embarking upon the interpretation thereof, feeling the heart-throb of the Preamble, deriving strength from the Directive Principles of state policy and alive to their constitutional obligation, the courts have allowed Article 21 to stretch its arms as wide as it legitimately can. The mental agony, expense and strain which a person proceeded against in criminal law has to undergo and which, coupled with delay, may result in impairing the capability or ability of the accused to defend himself have persuaded the constitutional courts of the country in holding the right to speedy trial a manifestation of fair, just and reasonable procedure enshrined in Article 21. Speedy trial, again, would encompass within its sweep all its stages including investigation, inquiry, trial, appeal, revision and re-trial in short, everything commencing with an accusation and expiring with the final verdict the two being respectively the terminus a quo and terminus ad quem of the journey which an accused must necessarily undertake once faced with an implication. The constitutional philosophy propounded as right to speedy trial has though grown in age by almost two and a half decades, the goal sought to be achieved is yet a far off peak. Myriad fact-situations bearing testimony to denial of such

fundamental right to the accused persons, on account of failure on the part of prosecuting agencies and executive to act, and their turning an almost blind eye at securing expeditious and speedy trial so as to satisfy the mandate of Article 21 of the Constitution have persuaded this Court in devising solutions which go to the extent of almost enacting, by judicial verdict bars of limitation beyond which the trial shall not proceed and the arm of law shall lose its hold. In its zeal to protect the right to speedy trial of an accused, can the court devise and almost enact such bars of limitation though the Legislature and the statutes have not chosen to do so is a question of far-reaching implications which has led to the constitution of this bench of seven-judge strength."

7. It was held that the decisions in the two "Common Cause" cases and *Raj Deo Sharma v. State of Bihar*[5] *and Raj Deo Sharma (II) v. State of Bihar*[6], were not correctly decided on certain aspects. It is neither advisable nor feasible, nor judicially permissible or draw or prescribe an outer limit for conclusion of all criminal proceedings. The time-limits or bars of limitation prescribed in the several directions made in the aforesaid four cases could not have been so prescribed or drawn and, therefore, are not good law. Criminal courts are not obliged to terminate trial of criminal proceedings merely on account of lapse of time, as prescribed by the directions made in the aforesaid cases. As was observed in P. Ramchandra Rao's case (supra), at the most periods of time prescribed in those decisions can be taken by the Courts in seisin of the trial or proceedings to act as reminder when they may be persuaded to apply to their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration several relevant factors as pointed in A.R. Antulay's case (supra) and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time limits cannot and will not be treated by any court as a bar to further trial or proceedings and as mandatorily obliging the court to terminate the same and acquit or discharge the accused.

8. While considering the question of delay the court has a duty to see whether the prolongation was on account of any delaying tactics adopted by the accused and other relevant aspects which contributed to the delay. Number of witnesses examined, volume of documents likely to be exhibited, nature and complexity of the offence which is under investigation or adjudication are some of the relevant factors. There can be no empirical formula of universal application in such matters. Each case has to be judged in its own background and special features if any. No generalization is possible and should be done. It has also to be borne in mind that the criminal courts exercise available powers such as those under Sections 309, 311 and 258 of the Cr.P.C. to effectuate right to speedy trial.

9. These aspects have not been considered by the High Court while quashing the proceedings. On that score the judgment under challenge is vitiated. Additionally while dealing with the question as to the proper provision applicable to the case, the Court has come to a definite finding about maximum sentence. Normally, these aspects are to be left to be decided by the trial court. In the case at hand we find that the High Court came to the conclusion about applicability of a particular provision. Mr. Ramamoorthy has rightly submitted that the court can, in a given case, where factual aspects and the law applicable are

clear, come to the conclusion about the provision applicable to the facts. But for coming to such conclusion the factual position must be clear and no doubt should exist about the applicability of a particular provision to the factual scenario. The complex nature of the offence should be deterrent to the courts while going into the question of applicability of a provision.

10. Be that as it may, in view of the conclusion that order of the High Court is to be quashed, we do not think it necessary to bestow our attention to the question as to which provision is applicable to the facts of the case.

11. Accordingly the judgment of the High Court is quashed and the matter is remitted back to the High Court. The High Court shall hear the matter afresh, permit the parties to place materials which according to it will be relevant for the purpose of determination of the dispute before it, and take a fresh decision in accordance with law. As mentioned above, we are not expressing any opinion on the merits of the case.

12. The appeal is allowed to the extent indicated above.

[1]*(1996) 4 SCC 33)*
[2]*(1996) 6 SCC 775*
[3]*(1992) 1 SCC 225*
[4]*JT 2002 (4) SC 92*
[5]*JT 1998 (7) SC 1*
[6]*JT 1999 (7) SC 317*