

SUPREME COURT OF INDIA

Siva Vallabhaneni

Vs.

State of Karnataka

(Ranjana Prakash Desai and N.V. Ramana JJ.)

03.09.2014

JUDGMENT

1. One Nithya Dharmananda @ Lenin filed F.I.R. No. 112 of 2010 on 4/3/2010 at P.S. Central Crime Branch, Tamil Nadu for the offences punishable Under Sections 295A, 376, 377, 420, 506(1) r/w. Section 120B of the Indian Penal Code ("the Indian Penal Code") against Nithyananda Swamy @ Tiru Rajashekaran ("A1"), Gopal Reddy Sheelum @ Nithya Bhaktananda ("A2"), Siva Vallabhaneni @ Nithya Sachitananda ("A3"), Dhanashekar @ Nithya Sadananda ("A4"), Ragini @ Ma Nithya Sachitananda w/o. Siva Sachidananda ("A5") and others. As the incident had occurred in Karnataka, the case was transferred to Karnataka for investigation. On 26/11/2010, Final Report in C.C. No. 204 of 2010 was filed by Bidai Police Under Sections 376, 377, 420, 417, 201, 114, r/w. Sections 415, 506(1) and 120B of the Indian Penal Code On 4/12/2010, the Chief Judicial Magistrate, Ramanagara District took cognizance of the offences against the Petitioners. Four criminal petitions came to be filed in the High Court of Karnataka by the Petitioners. Criminal Petition No. 957 of 2011 was filed by A3 praying that order dated 4/12/2010 passed in C.C. No. 204 of 2010 taking cognizance of offences Under Sections 376, 377, 420, 114, 201, 417 r/w. Sections 415, 506(1) and 120B of the Indian Penal Code be set aside and further proceedings pursuant thereto be quashed. Criminal Petition No. 4582 of 2012 was filed by A1 for setting aside order dated 18/6/2012 passed in C.C. No. 204 of 2010 on the application filed by the prosecution Under Section 53A r/w. Section 173(8) of the Code of Criminal Procedure ("Cr.P.C.") directing A1 to give his blood for test, his voice sample for analysis and subject himself to medical examination. Criminal Petition No. 4090 of 2011 was filed by A4 and A5 and Criminal Petition

No. 234 of 2011 was filed by A2 praying for quashing the charge-sheet filed in C.C. No. 204 of 2010 and for setting aside order dated 4/12/2010 taking cognizance of offences Under Sections 376, 377, 420, 201, 417 r/w. Sections 419, 506(1) and 120B of the Indian Penal Code.

2. All the above petitions were disposed of by the Karnataka High Court by the impugned order. Being aggrieved by the said order, the accused have filed the present special leave petitions. As these special leave petitions challenge the same order and arise out of the same case, we are disposing them of by this common order.

3. Dealing with the aforesaid criminal petitions filed by the Petitioners, the High Court opined that if at all the statements of the charge-sheet witnesses and other documents are not supporting the charges framed against the accused-Petitioners, they are at liberty to take advantage of the same for seeking their discharge in the pending criminal proceedings.

4. While dismissing the criminal petitions, the High Court directed A1 to cooperate with the investigating officer to get his blood samples drawn from qualified doctors and also to take his voice samples for the purpose of investigation. He was further directed to voluntarily appear before the qualified doctors identified by the investigating officer to subject himself to medical test on the day and date fixed by the said qualified doctors to conduct such test on him as the doctors deem fit pursuant to the order dated 18/6/2012 passed by the trial judge in C.C. No. 204 of 2010. The High Court made it clear that if A1 fails to comply with the said order, the investigating officer shall be at liberty to take A1 into custody for the limited purpose of taking his blood samples, voice test and subjecting him to medical test and shall release him after completion of the tests.

5. The High Court also dismissed the application filed by one Smt. Arathi Rao, a complainant for impleading her in each of the four criminal petitions, observing that the presence of impleading applicant is not necessary at this stage and granted her liberty to make an application before the learned Magistrate in C.C. No. 204 of 2010. Finally, the High Court observed:

"While dismissing the aforesaid criminal petitions and impleading application filed by the alleged complainant seeking permission to come on record, this Court observe that the proceeding in C.C. No. 204/2010 is sufficiently old. Though the charge sheet is filed in the year 2010 even after four years, there is no progress and it is still at the stage of prosecution seeking further investigation in to this June, 2012 matter. Hence, this Court direct the Court of CJM, Ramanagara to proceed with the matter without further delay. This Court would fix the next date of hearing in C.C. No. 204/2010 on 28.7.2014 in the presence of counsel appearing for accused 1 to 5 therein. The Registry shall communicate a copy of this order to learned CJM, Ramnagar to take up C.C. No. 204/2010 for hearing on 28.7.2014."

6. We have heard learned Counsel for the Petitioners and learned Counsel for the Respondents. We have been taken through the relevant documents by the learned Counsel.

7. The first and perhaps the main submission of learned Counsel for the Petitioners is that the High Court did not give the Petitioners a fair opportunity of hearing which has resulted in miscarriage of justice. Mr. Mohan Parasaran, learned senior Counsel submitted that the matter was listed by the High Court on a motion made by the Respondents without serving a copy or notice on the Petitioners; that the High Court rejected the prayer for adjournment made by the Petitioners' advocate on record; that the High Court did not even pass over the matter and the impugned order came to be passed mechanically behind the back of the Petitioners and their counsel and, therefore, it is necessary to remand the matter to the High Court for fresh hearing. This submission was adopted by all the learned Counsel appearing for the Petitioners.

8. This submission was strenuously opposed by Mr. M.N. Rao, learned senior Counsel appearing for the State. He submitted that the petitions deserve to be dismissed. Affidavit in reply is filed by Deputy Superintendent of Police, Special Enquiries Squad, CID, to which our attention is drawn by Mr. Rao. In the affidavit, it is stated that the above allegations are totally malicious; that the High Court had time and again given full audience to the senior advocates and advocates on record of the Petitioners and informed the Petitioners that the matter

is stuck at admission stage for last so many years and, therefore, it intends to decide the petitions. In the affidavit, the deponent has set out the manner in which according to him the Petitioners have delayed the disposal of the matters. It is pointed out that even appointment of public prosecutor was challenged and stay order was obtained which was operating for a considerable time.

9. It is pointed out that the accused filed Criminal Petition Nos. 4547 of 2014 and 4560 of 2014 before the High Court and voluntarily gave an undertaking that they would appear before the Chief Judicial Magistrate, Ramanagara. On the basis of this voluntary undertaking, the High Court by its order dated 1/8/2014 set aside the order issuing non-bailable warrants against the accused and A1 was directed to appear before the Superintendent, Victoria Hospital, Bangalore on 6/8/2014. All the accused were directed to appear before the Chief Judicial Magistrate on 18/8/2014. The said order is not challenged by the accused and, therefore, the contentions raised by the accused that they were not heard and that the impugned order was passed mechanically, must be rejected. In support of his submissions, counsel relied on the judgment of this Court in *State of Maharashtra v. Ramdas Shrinivas Nayak and Anr.* (1982) 2 SCC 463 wherein this Court has held that "the principle is well settled that statements of fact as to what transpired at the hearing recorded in the judgment of the court are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence".

10. After hearing the rival contentions, we informed the learned Counsel that we are not inclined to remit the matter to the High Court. What is staring at us is the atrocious delay in disposal of the criminal petitions. The complaint is dated 4/3/2010. Cognizance of the offences has been taken on 4/12/2010. Petitions came to be filed by the Petitioners in 2011/2012. We are in 2014. It is distressing to note that the petitions were kept pending at admission stage for almost over three years and could be disposed of only on 16/7/2014. In the circumstances, we called upon learned Counsel to address us on all points so that their grievance that they were not heard is redressed. We accordingly heard learned Counsel at length for the entire day. It is urged by counsel for the Petitioners that the prosecution has not collected any evidence to establish the involvement of the Petitioners. This is a case of no evidence. The Petitioners have been implicated with ulterior motive.

11. It is urged by learned Counsel for A1 that application dated 18/6/2012 filed by the prosecution Under Section 53A read with Section 173(8) of the Code of Criminal Procedure was not tenable inasmuch as the accused was earlier medically examined. It is submitted that Section 53A of the Code of Criminal Procedure speaks of examination of person accused of rape, by medical practitioner. It must be done immediately after the arrest. Direction issued to A1 to submit himself to medical examination is illegal. We feel that this submission is raised to avoid medical examination. It is the prime duty of the accused to cooperate with the investigating agency. It is pointed out by the State counsel that Section 53A does not put fetters on the investigating agency to get the accused examined at a later stage. It is submitted that earlier examination was conducted to find out whether there are any marks of violence on the accused. We do not want to comment on this. If the accused are entitled to get any benefit because of the delayed medical examination, they can surely urge that point in the trial. But they must submit themselves to medical examination. This submission is, therefore, rejected.

12. It is pointed out by learned Counsel for A2 that on 14/1/2011, the prosecution made an application before the Chief Judicial Magistrate, Ramanagara District stating that on 27/11/2010, charge-sheet was submitted against the accused Under Sections 376, 377, 420, 114, 212, 201, 417 r/w. Sections 415, 506(1) and 120B of the Indian Penal Code and cognizance was taken/under Section 190 of the Code of Criminal Procedure It was further stated in the application that cognizance of offence punishable Under Section 212 of the Indian Penal Code was not taken against A2 due to oversight. It was further stated in the application that after going through the order-sheet, A2 has filed criminal petition before the High Court to quash the charge-sheet filed against him and, therefore, cognizance of offence punishable Under Section 212 of the Indian Penal Code be taken against A2. Counsel pointed out that it was improper for the investigating agency to file such application during the pendency of the criminal petition. Moreover, on this application, on 17/1/2011, learned Magistrate passed order of taking cognizance without giving any reasons. Counsel submitted that it is well settled that at the time of taking cognizance, learned Magistrate must apply his mind to the facts before him. Learned Magistrate's order taking cognizance shows non-application of mind. Counsel urged that there is absolutely no material on record to show that

A2 harboured any offender. In this connection, he drew our attention to Section 52A of the Indian Penal Code which defines the term 'harbour' as "supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means or conveyance or the assisting a person by any means, whether of the same kind as those enumerated in Section 52A or not, to evade apprehension". Counsel submitted that there is nothing on record to establish that A2 has indulged in any of the above activities. In reply, Mr. Rao, learned senior Counsel for the State submitted that in view of the fact that the charge-sheet is already filed, if A2 is aggrieved by the charge Under Section 212 of the Indian Penal Code levelled against him, he can file a discharge application before the concerned court and on this count, the charge-sheet cannot be quashed.

13. To ascertain the correctness of this submission, we have carefully perused the material made available to us by both sides. According to the prosecution, on 27/11/2010, the investigating agency had included in its charge-sheet offences punishable Under Sections 376, 377, 420, 114, 212, 201, 417 r/w. Section 415, 506(1) and 120B of the Indian Penal Code. On 4/12/2010, cognizance was taken by learned Chief Judicial Magistrate, Ramanagara of the said offences Under Section 190 of the Code of Criminal Procedure. However, against A2, cognizance was not taken of offence Under Section 212 of the Indian Penal Code. A2 filed Criminal Petition No. 234 of 2011 in the High Court on 10/1/2011 for quashing order dated 4/12/2010 passed by the Chief Judicial Magistrate, Ramanagara directing registration of the offences against A2 inter alia on the above ground. On 14/1/2011, the prosecuting agency submitted an application in the Court of Chief Judicial Magistrate, Ramanagara praying that cognizance of offence punishable Under Section 212 of the Indian Penal Code be taken against A2 as A2 has filed a petition in the High Court. We must reproduce the relevant portion of the application.

"With reference to the above, it is submitted that on 27-11-2010 charge sheet was submitted before Hon'ble court against A1-Nithyananda Swamy and 4 others for the offence punishable Under Sections 376, 377, 420, 114, 212, 201, 417 r/w 415, 506(1), 120B Indian Penal Code. The same was taken cognizance Under Section 190 Code of Criminal Procedure by the Hon'ble Court except Section 212 alleged against A2. It appears that time of

taking cognizance the Section 212 Indian Penal Code was leftover by oversight, as it is apparent that no special reasons or grounds are assigned by the Hon'ble Court in this regard. After going through the ordersheet the accused person A2-Nithya Bhakthananda has filed criminal petition before the Hon'ble High Court to quash the charge sheet filed against him.

Under above circumstances, it is submitted to take cognizance of Section 212 Indian Penal Code against A2-Nithy Bhakthananda Under Section 190(2) Code of Criminal Procedure in the interest of justice."

Thus it is the investigating agency, who approached learned Chief Judicial Magistrate taking a stand for the learned Chief Judicial Magistrate that Section 212 of the Indian Penal Code was not included due to oversight by him. The matter does not rest here. On 17/1/2011, learned Chief Judicial Magistrate passed a cryptic order and took cognizance against A2 of offence punishable Under Section 212 of the Indian Penal Code. The order reads thus:

"Superintendent of Police, Special Enquiries, CID, Bangalore has submitted an application to take cognizance of Section 212 of the Indian Penal Code against A2-Nithya Bhaktananda. Perused the records. Cognizance taken for Section 212 Indian Penal Code against Accused No. 2. Called on 27/1/2011."

14. Thus, cognizance of offence punishable Under Section 212 of the Indian Penal Code was taken against A2 during the pendency of A2's criminal petition in the High Court in which he had raised the point that despite investigator's report, cognizance of offence Under Section 212 of the Indian Penal Code was not taken against A2. It was highly improper for the investigating agency to submit such application when criminal petition of A2 was pending. Non-inclusion of Section 212 of the Indian Penal Code was termed as oversight and this was accepted by learned Chief Judicial Magistrate, without even elaborating on it in his order. Elaboration was necessary because earlier, he had not included Section 212 of the Indian Penal Code. We are distressed at this.

15. Though we are unhappy about the manner in which application was made during the pendency of the criminal petition, to satisfy our conscience we repeatedly asked counsel for the State to show us the material against A2. We wanted to find out whether Section 212 of the Indian Penal Code was really not included due to oversight. However, learned Counsel for the State was unable to do so. He took us only to the summary of charge-sheet dated 27/11/2010. Following four sentences were read by learned Counsel. It is not clear whether reference is to A2, so far as Section 212 of the Indian Penal Code is concerned.

"The accused No. 1 escaped and went out to Solan District in Himachal Pradesh after he came to know about the case registered on accused No. 2. He hides himself to cover the actions under the law I.P.C. col. 212, 120(B)."

16. Counsel for the State made a categorical statement that he was unable to show any other material against A2 to support charges Under Section 212 of the Indian Penal Code. In the circumstances, we are satisfied that cognizance of offence punishable Under Section 212 of the Indian Penal Code was not taken by learned Chief Judicial Magistrate against A2 because there was no material to substantiate it and the theory of oversight brought in by the investigating agency is an afterthought and was evolved after A2 filed criminal petition raising the issue. Subsequently, cognizance of offence Under Section 212 of the Indian Penal Code was taken to meet the challenge raised in the petition which was improper. In the circumstances, we will have to quash only charge Under Section 212 of the Indian Penal Code as against A2. We, however, make it clear that in view of the abovementioned peculiar facts, A2's case stands on a different footing from that of the other accused and none of the other accused can draw any advantage from the observations made by us hereinabove and from the quashing of charge Under Section 212 of the Indian Penal Code against A2.

17. Learned counsel for A3 strenuously contended that baseless charges have been leveled against A3, who is only a volunteer of the Ashram. There is no cogent evidence supporting the charges framed against him. Particularly, the charge framed against A3 Under Section 201 of the Indian Penal Code that he caused the 'Non-disclosure Agreements' to be destroyed or he gave false information to screen the offender is baseless as the three charge-sheet witnesses CW-8, CW-9

and CW-10 who deposed against A3, have not stated that A3 had destroyed the documents. Moreover, no other charge-sheet witnesses have said anything against A3. It is urged that in any case, destruction or otherwise of the said documents has no nexus with the main offence with which the accused are charged.

18. It is submitted by the counsel for A4 and A5 that A4 and A5 are merely employed as Personal Secretaries of A1 and they were unnecessarily dragged into the case. There is absolutely no incriminating material against them. The proceedings initiated against these Petitioners must, therefore, be quashed.

19. We have considered the above submissions advanced by the counsel for the accused that no offence is made out against them, in its proper perspective. Having given our anxious consideration to this submission and having perused the material on record, we feel that this is not a case where the proceedings could be quashed against the accused except charge Under Section 212 of the Indian Penal Code against A2 which is done for reasons which we have noted hereinabove. It is not possible for us to accept the submission that there is no evidence against the accused.

20. We notice that impleadment applications are filed by one Ranjitha Menon, stating that she is being wrongly projected as a victim. We are not inclined to expand the scope of these petitions. We, therefore, reject the applications. On her grievance, we are not expressing any opinion. If law permits, she may take such steps as she is advised, in the trial court.

21. Before parting, we must express our extreme displeasure about the manner in which the instant proceedings are dealt with by the accused as well as the prosecution. The complaint was registered in 2010. Charge-sheet is filed in the year 2010. However, there is no progress in the case. The prosecution is still required to conduct further investigation. The accused are obviously not cooperating with the investigating agency. A1 must subject himself to medical examination. Objections were raised to the appointment of the public prosecutor. For a considerable period, the appointment of the prosecutor was stayed. We are informed that now a new prosecutor is appointed. We find the approach of the prosecution also to be lackadaisical. The prosecution must gear up its efforts so that trial begins. This case brooks no further delay. The accused are also expected

to cooperate with the court or else adverse inference may have to be drawn against them. We hope and trust that the prosecution and the accused cooperate with the court so that the trial is concluded in near future. We make it clear that if any observations made by us touch the merits of the case, they are not our final observations as they are made while dealing with the prayer made for quashing of the proceedings. If any applications for discharge are made, the trial court shall deal with them independently and in accordance with law. With these observations, we dismiss Special Leave Petition No. 5844 of 2014 filed by A3, Special Leave Petition No. 5897 of 2014 filed by A1 and Special Leave Petition No. 5900 of 2014 filed by A4 and A5. So far as Special Leave Petition No. 6001 of 2014 filed by A2 is concerned, we dispose of the same by quashing only the charge framed against him for offence punishable Under Section 212 of the Indian Penal Code.