SUPREME COURT OF INDIA

Somveer Lamba

Vs.

Haryana Public Service

Crl.A.No.854 of 2011

(J. Chelameswar and Adarsh Kumar Goel, JJ.)

06.07.2015

JUDGMENT

Adarsh Kumar Goel, J.

1. The appellants have called in question the order dated 6th July, 2009 of the High Court of Judicature, Allahabad, Bench at Lucknow in Criminal Miscellaneous Case No.2428 of 2009. Thereby, the High Court declined to interfere with the order of summoning and to quash the complaint dated 3rd May, 2008 registered as Criminal Complaint Case No.1066 of 2008 underSection 307 of the Indian Penal Code, P.S. Atrauli, District Hardoi, pending in the Court of Judicial Magistrate-II, Hardoi. According to the appellants, the complaint and the proceedings were gross abuse of process of the Court having been filed after gross delay of 16 years after the incident.

2. The incident in question took place on 11th February, 1992. In respect of the said incident, there were two cross cases being Crime Case No.37/92 under Section 307 IPC registered against the appellants, and Crime Case No.37A/92 under Section 307 IPC registered at the instance of the appellants at Police Station Atrauli, District Hardoi. The investigating Agency charge sheeted respondent No.2, which gave rise to Session Trial Case No.760 of 1995. After trial, respondent No.2 and three others were convicted under Section 307/34 IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.5,000/- each vide judgment dated 23rd September, 2009 by Additional Sessions Judge/F.T.C.-I, Hardoi. However, an appeal against the said judgment is said to be pending. Respondent No.2, in his statement under Section 313 Cr.P.C. stated that he had also lodged a cross case. He also led defence evidence in support of the cross version. Having regard to the nature of injuries received on the side of the appellants and other evidence, version of the appellants was accepted and respondent No.2 and two others were convicted.

3. What is significant and undisputed is the fact that though respondent No.2 had registered Crime Case No.37/92 on 11th February, 1992 against the appellants and no action was taken thereon, he kept quiet till 11th August, 2005. Meanwhile, respondent No.2 and other

co-accused were charge sheeted on 21st January, 1993 and session trial commenced against them in the year 1995. It was only on 11th August, 2005 that respondent No.2 filed an application for summoning progress report of Crime Case No.37/1992, so that the cross case against the appellants could also be tried along with the trial against respondent No.2.

4. Case of respondent No.2 is that no order was passed on the application but it was only on 1st February, 2008 that respondent No.2 filed another application. There is nothing to show if any other step was taken by respondent No.2 except on 11th August, 2005 and 1st February, 2008.

5. Application filed on 1st February, 2008 was disposed of on 20th February, 2008 in view of the report of the police that the appellants were exonerated during investigation and the report was filed before the Court. On 3rd May, 2008, respondent No.2 filed the impugned complaint alleging that the appellants had committed offence under Section 307 IPC on 11th February, 1992. The said complaint led to summoning of the appellants vide order dated 3rd June, 2009 which was impugned before the High Court. The High Court dismissed the petition filed by the appellants for quashing on the ground that allegation in the complaint and preliminary evidence led in support thereof made out a case for summoning and thus no case for quashing was made out.

6. We have heard learned counsel for the parties and perused the record.

7. While issuing notice on 23rd November, 2009 further proceeding in Criminal Case No.1066 of 2008 pending in the Court of Judicial Magistrate- II, Hardoi was stayed and the said order has been operative till date.

8. Main contention raised on behalf of the appellants is that the impugned complaint has been filed 16 years after the incident and for 13 and a half years after the incident, respondent No2 did not persue the matter. It is thus submitted that since the complainant kept quiet for 13 years after the incident and the complaint has been filed after 16 years, respondent No.2 having been convicted in the cross case, the prosecution of the appellants at this stage will be unfair and futile.

9. On the other hand, respondent No.2-complainant submitted that bar of limitation does not apply beyond the statutory bar under Section 468 Cr.P.C. A crime never dies. A criminal offence is a wrong against the society even though committed against an individual and thus the prosecution cannot be thrown out merely on the ground of delay. In support of this submission, reliance has been placed in *Japani Sahoo vs. Chandra Sekhar Mohanty*[1]

10. In response to this stand of the complainant, learned counsel for the accused submitted that even if it is assumed that the appellants had caused the injury in question, the nature of injury, in the circumstances can at best fall under Section 324 IPC in which case bar under Section 468Cr.P.C. is applicable. In any case, even cases not covered by statutory bar

of limitation could be held to be liable to be quashed on the ground of violation of right of speedy trial under Article21 of the Constitution.

11. We have given due consideration to the rival submissions. The question whether the proceedings in criminal cases not covered by Section 468 Cr.P.C. could be quashed on the ground of delay has been gone into in several decisions. While it is true that cases covered by statutory bar of limitation may be liable to be quashed without any further enquiry, cases not covered by the statutory bar can be quashed on the ground of delay in filing of a criminal complaint in appropriate cases. In such cases, the question for consideration is whether there is violation of right of speedy trial which has been held to be part of Article 21 of the Constitution having regard to the nature of offence, extent of delay, person responsible for delay and other attending circumstances. In this regard, observations in judgments of this Court may be referred to.

12. In Japani Sahoo (supra), it was observed :

> "16. At the same time, however, ground reality also cannot be ignored. Mere delay may not bar the right of the "Crown" in prosecuting "criminals". But it also cannot be overlooked that no person can be kept under continuous apprehension that he can be prosecuted at "any time" for "any crime" irrespective of the nature or seriousness of the offence. "People will have no peace of mind if there is no period of limitation even for petty offences."

13. *In Vakil Prasad Singh vs. State of Bihar*[2], it was observed :

> "18. Time and again this Court has emphasised the need for speedy investigations and trial as both are mandated by the letter and spirit of the provisions of CrPC [in particular, Sections 197, 173, 309, 437(6) and 468, etc.] and the constitutional protection enshrined in Article 21 of the Constitution. Inspired by the broad sweep and content of Article 21 as interpreted by a seven-Judge Bench of this Court in *Maneka Gandhi v. Union of India*[3] *and in Hussainara Khatoon (1) v. State of Bihar*[4] this Court had observed that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except according to procedure established by law; that such procedure is not some semblance of a procedure but the procedure should be "reasonable, fair and just"; and therefrom flows, without doubt, the right to speedy trial. It was also observed that: [Hussainara Khatoon (1) case, SCC p. 89, para 5].
> "5. … No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article

21." The Court clarified that speedy trial means reasonably expeditious trial which is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21.

19. The exposition of Article 21 in Hussainara Khatoon (1) case was exhaustively considered afresh by the Constitution Bench *in Abdul Rehman Antulay v. R.S. Nayak* [5] Referring to a number of decisions of this Court and the American precedents on the Sixt h Amendment of their Constitution, making the right to a speedy and public trial a constitutional guarantee, the Court formulated as many as eleven propositions with a note of caution that these were not exhaustive and were meant only to serve as guidelines.

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22. Speaking for the majority in P. Ramachandra Rao [(2002) 4 SCC 578, R.C. Lahoti, J. (as His Lordship then was) while affirming that the dictum in A.R. Antulay case as correct and the one which still holds the field and the propositions emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down as guidelines in the said case adequately take care of the right to speedy trial, it was held that: (P. Ramachandra case, SCC p. 603, para 29) "(3) … guidelines laid down in A.R. Antulay case are not exhaustive but only illustrative. They are not intended to operate as hard-and-fast rules or to be applied [as] a straitjacket formula. Their applicability would depend on the fact situation of each case [as] [i]t is difficult to foresee all situations and no generalisation can be made."

23. It has also been held that: (P. Ramachandra case, SCC p. 603, para 29) "(4) It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings." Nonetheless, "(5) [t]he criminal courts should exercise their available powers, such as those under Sections 309, 311 and 258 CrPC to effectuate the right to speedy trial. … In appropriate cases, jurisdiction of the High Court under Section 482 CrPC and Articles 226 and 227 of the Constitution can be invoked seeking appropriate relief or suitable directions"**.

(emphasis added) The outer limits or power of limitation expounded in the aforenoted judgments were held to be not in consonance with the legislative intent.

24. It is, therefore, well settled that the right to speedy trial in all criminal persecutions (sic prosecutions) is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in court but also includes within its sweep the preceding police investigations as well. The right to speedy trial extends equally to all criminal prosecutions and is not confined to any particular category of cases. In every case, where the right to speedy trial is alleged to have been infringed, the court has to perform the balancing act upon taking into consideration all the

attendant circumstances, enumerated above, and determine in each case whether the right to speedy trial has been denied in a given case."

14. In *Ranjan Dwivedi vs. CBI*[6] declining to quash proceedings even after 37 years of delay in completion of trial, it was observed : "23. The length of the delay is not sufficient in itself to warrant a finding that the accused was deprived of the right to a speedy trial. Rather, it is only one of the factors to be considered, and must be weighed against other factors. Moreover, among factors to be considered in determining whether the right to speedy trial of the accused is violated, the length of delay is least conclusive. While there is authority that even very lengthy delays do not give rise to a per se conclusion of violation of constitutional rights, there is also authority that long enough delay could constitute per se violation of the right to speedy trial. In our considered view, the delay tolerated varies with the [pic]complexity of the case, the manner of proof as well as the gravity of the alleged crime. This, again, depends on case-to-case basis. There cannot be universal rule in this regard. It is a balancing process while determining as to whether the accused's right to speedy trial has been violated or not. The length of delay in and itself, is not a weighty factor."

15. *In Sajjan Kumar vs. CBI*[7], even after 23 years of delay in completion of trial, proceedings were not quashed and it was observed: "39. In the case on hand, though delay may be a relevant ground, in the light of the materials which are available before the Court through CBI, without testing the same at the trial, the proceedings cannot be quashed merely on the ground of delay. As stated earlier, those materials have to be tested in the context of prejudice to the accused only at the trial."

16. *In NOIDA Entrepreneurs Assn. Vs. NOIDA*[8] even delay of 17-18 years was held not to be adequate to stop criminal proceedings having regard to the gravity of offence, it was observed :

> "21. Thus, it is evident that question of delay in launching criminal prosecution may be a circumstance to be taken into consideration in arriving at a final decision, but it cannot itself be a ground for dismissing the [pic]complaint. More so, the issue of limitation has to be examined in the light of the gravity of the charge.
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> 42. In view of the above, we are of the considered opinion that these allegations being of a very serious nature and as alleged, Respondent 4 had passed orders in colourable exercise of power favouring himself and certain contractors, require investigation. Thus, in view of the above, we direct CBI to have preliminary enquiry and in case the allegations are found having some substance warranting further proceeding with criminal prosecution, may proceed in accordance with law. It may be pertinent to mention that any observation made herein against Respondent 4 would be treated necessary to decide the present controversy. CBI shall investigate the matter without being influenced by any observation made in this judgment."

17. It is thus clear from the above observations that mere delay in completion of proceedings may not be by itself a ground to quash proceedings where offences are serious, but the Court having regard to the conduct of the parties, nature of offence and the extent of delay in the facts and circumstances of a given case, quash the proceedings in exercise of jurisdiction under Section 482Cr.P.C. in the interest of justice and to prevent abuse of process of the Court.

18. In the present case, conduct of the complainant can certainly be taken into account. Admittedly, the complainant stood convicted in a cross case. At least for ten years after commencement of the trial, the complainant did not even bother to seek simultaneous trial of the cross case, the step which was taken for the first time in the year 2005 which could certainly have been taken in the year 1995 itself when the trial against respondent No.2 commenced. Having regard to the nature of allegations and entirety of circumstances, it will be unfair and unjust to permit respondent No.2 to proceed with a complaint filed 16 years after the incident against the appellants

19. We accordingly, allow this appeal set aside the impugned order and quash the proceedings in Criminal Complaint Case No.1066 of 2008 pending in the Court of Judicial Magistrate-II, Hardoi.

Judgment Referred.

[1] *(2007) 7 SCC 394*
[2] *(2009) 3 SCC 355*
[3]*(1978) 1 SCC 248*
[4]*(1980) 1 SCC 0081*
[5]*1992) 1 SCC 225*
[6]*(2012) 8 SCC 495*
[7]*(2010) 9 SCC 368*
[8] *(2011) 6 SCC 508*