SUPREME COURT OF INDIA

State Represented By Inspector of Police Central Bureau of Investigation

Vs.

M.Subrahmanyam

Crl.A.No.853 of 2019

(Arun Mishra and Navin Sinha,JJ.,)

07.05.2019

JUDGMENT

Navin Sinha,J.,

SLP(Crl.)No. 2133 of 2019

1. Leave granted.

2. The Inspector of Police, Central Bureau of Investigation, Vishakhapatnam, is aggrieved by order dated 06.08.2018 of the High Court, dismissing the application under Section 482, Cr.P.C. by the prosecution to bring on record the order passed by the Superintendent of Police, CBI, Visakhapatnam, under Section 17 of Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act'), authorising Sri V.K.C. Reddy, the then Deputy Superintendent of Police, CBI, Visakhapatnam, to investigate against the respondent, an Income Tax Officer, Visakhapatnam, pursuant to an F.I.R. lodged under Sections 13(2) read with 13(1)(c) of the Act on allegation for possessing moveable and immoveable properties disproportionate to the known sources of income.

3. Learned counsel for the appellant submits that the order of authorisation for investigation could not be filed along with the charge-sheet due to inadvertence. It was subsequently sought to be filed under Section 242 Cr.P.C. by Crl.M.P. No.26 of 2008 much prior to the commencement of the trial. The application was not rejected on merits but on the ground that no satisfactory explanation had been furnished for the delay in submission. Crl.M.P. No.560 of 2013 was then filed afresh under Section 173(2) (5)(a), Cr.P.C. to bring the authorisation on record. It was erroneously dismissed applying the principles of res judicata even though there had been no adjudication on merits earlier. The truth and veracity of the authorisation was not in dispute. The interest of justice therefore required that the authorisation should have been allowed to be brought on record. The issue pertained only to a matter of procedure. Section 362 Cr.P.C. was wrongly relied upon by the trail judge. Reliance was placed on *Central Bureau of Investigation vs. R.S. Pai and another*[1],.

4. Learned counsel for the respondent contended that the earlier application under Section 242 Cr.P.C. having been dismissed, appropriately a revision or appeal ought to have been preferred. The order of rejection having attained finality no fresh application for the same purpose could have been filed quoting another provision of the Code. Serious prejudice shall be caused to the respondent, affecting the course of justice if it were to be permitted at this stage.

5. We have considered the submissions on behalf of the parties and opine that the appeal deserves to be allowed for reasons enumerated hereinafter.

6. FIR No.RC 35(A)/2002-CBI/ACB/VSP (CC-03 of 2005) was registered against the respondent on 01.11.2002 under the Act. Charge-sheet was filed on 05.04.2005. On 07.01.2008, an application was filed on behalf of the prosecution under Section 242 Cr.P.C. to bring on record the authorisation for investigation issued to Shri V.K. Reddy. On 11.03.2008 it was dismissed on the ground that no proper explanation had been furnished for not filing the same along with the charge-sheet. Subsequently, on 21.06.2013, the authorisation was again sought to be brought on record by the prosecution invoking Section 173(2)(5)(a) of the Code giving rise to the impugned orders.

7. The truth and veracity of the authorisation order not being in issue, the failure to file it along with the charge-sheet was an omission constituting a procedural lapse only. The rejection of the first application on 11.03.2008 not having been ordered on merits, but for failure to furnish a satisfactory explanation for the delay, Section 362 Cr.P.C has no relevance on facts. We are, therefore, of the opinion that there was no impediment in the appellant seeking to bring the same on record subsequently under Section 173(2)(5)(a) of the Code. The consequences of disallowing the procedural lapse were substantive in nature.

8. In *Bihar State Electricity Board vs. Bhowra Kankanee Collieries Ltd*[2], the Court opined:

> "6. Undoubtedly, there is some negligence but when a substantive matter is dismissed on the ground of failure to comply with procedural directions, there is always some element of negligence involved in it because a vigilant litigant would not miss complying with procedural direction The question is whether the degree of negligence is so high as to bang the door of court to a suitor seeking justice. In other words, should an investigation of facts for rendering justice be peremptorily thwarted by some procedural lacuna?"

9. The failure to bring the authorisation on record, as observed, was more a matter of procedure, which is but a handmaid of justice. Substantive justice must always prevail over procedural or technical justice. To hold that failure to explain delay in a procedural matter would operate as res judicata will be a travesty of justice considering that the present is a matter relating to corruption in public life by holder of a public post. The rights of an accused are undoubtedly important, but so is the rule of law and societal interest in ensuring that an alleged offender be subjected to the laws of the land in the larger public interest. To put the rights of an accused at a higher pedestal and to make the rule of law

and societal interest in prevention of crime, subservient to the same cannot be considered as dispensation of justice. A balance therefore has to be struck. A procedural lapse cannot be placed at par with what is or may be substantive violation of the law.

10. In *Sakshi vs. Union of India*[3], the Court observed:

> "31 There is major difference between substantive provisions defining crimes and providing punishment for the same and procedural enactment laying down the procedure of trial of such offences. Rules of procedure are handmaiden of justice and are meant to advance and not to obstruct the cause of justice. It is, therefore, permissible for the court to expand or enlarge the meanings of such provisions in order to elicit the truth and do justice with the parties."

11. The High Court was exercising inherent jurisdiction in the interest of justice and to prevent the abuse of the process of law. In the facts and circumstances of the case, the High Court ought to have exercised its inherent powers to allow the bringing of the authorisation order on record rather than to have adopted a narrow and pedantic approach to its own jurisdiction given the provisions of Section 173(2)(5)(a), Cr.P.C., as observed in R.S. Pai (supra):

> "7. From the aforesaid sub-sections, it is apparent that normally, the investigating officer is required to produce all the relevant documents at the time of submitting the charge-sheet. At the same time, as there is no specific prohibition, it cannot be held that the additional documents cannot be produced subsequently. If some mistake is committed in not producing the relevant documents at the time of submitting the report or the charge-sheet, it is always open to the investigating officer to produce the same with the permission of the court. In our view, considering the preliminary stage of prosecution and the context in which the police officer is required to forward to the Magistrate all the documents or the relevant extracts thereof on which the prosecution proposes to rely, the word "shall" used in sub-section (5) cannot be interpreted as mandatory, but as directory. Normally, the documents gathered during the investigation upon which the prosecution wants to rely are required to be forwarded to the Magistrate, but if there is some omission, it would not mean that the remaining documents cannot be produced subsequently. Analogous provision under Section 173(4) of the Code of Criminal Procedure, 1898 was considered by this Court in Narayan Rao v. State of A.P. and it was held that the word "shall" occurring in sub-section (4) of Section 173 and sub-section (3) of Section 207- A is not mandatory but only directory. Further, the scheme of sub-section (8) of Section 173 also makes it abundantly clear that even after the charge-sheet is submitted, further investigation, if called for, is not precluded. If further investigation is not precluded then there is no question of not permitting the prosecution to produce additional documents which were gathered prior to or subsequent to the investigation. In such cases, there cannot be any prejudice to the accused. Hence, the impugned order passed by the Special Court cannot be sustained."

12. The appeal will, therefore, have to be allowed and the prosecution is permitted to bring the order of authorisation for investigation on record, which we do hereby order.

13. But the matter shall not end there. As noticed, the charge- sheet was submitted on 05.04.2005. No explanation has been furnished as to why the prosecution exhibited such laxity in seeking to bring the authorisation order on record nearly three years later on 07.01.2008. If that were not enough, after rejection of the sameon 11.03.2008, the prosecution again remained silent till it filed the fresh application under Section 173(2)(5)(a) as late as on 21.06.2013, with no explanation furnished for the same. We have no hesitation in observing that considering the matter from the administrative perspective, a lapse on the first occasion may be an inadvertent error but the repeat of the same lapse raises serious doubts and issues whether it was inadvertent or deliberate. The present was a case relating to corruption in public life by a public servant owing allegiance to the Constitution. The charge-sheet was filed in 2005. The trial has successfully been thwarted at a very nascent stage for long years. The possibility, in the facts of the present case, cannot be entirely ruled out of a deliberate omission, to favour an accused.

14. We therefore direct that a senior officer of the Central Bureau of Investigation, Visakhapatnam shall hold an inquiry and determine the circumstances under which the initial lapse took place, and the reason for delay in approaching the court. The inquiry shall also encompass the passage of nearly 5 years after rejection of the same, and the belated attempt in 2013 only. Responsibility must be fixed in the report and adequate disciplinary action be initiated and concluded against the concerned persons in accordance with law. Compliance report shall be filed before this Court along with conclusions of the inquiry and action taken, within a period of three months from today.

Judgment Referred.

[1](2002) 5 SCC 0082
[2](1984 Supp SCC 0597
[3](2004) 5 SCC 0518