J. Murugesan and Another Vs. State of Tamil Nadu, Represented by The Deputy Superintendent of Police, Counterfeit Currency Wing, Crime Branch CID, Chennai

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Court : Chennai

Decided On : Aug-03-2016

Judge : R. Subbiah

Appeal No. : Crl.O.P.No. 25233 of 2015

Appellant : J. Murugesan and Another

Respondent : State of Tamil Nadu, Represented by The Deputy Superintendent of Police, Counterfeit Currency Wing, Crime Branch CID, Chennai

Judgement :

(Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to call for the records and quash the proceedings against the petitioners/Accused Nos.9 and 10 in Calendar Case No.73 of 2011 on the file of the Special Court for trial of cases under the Prevention of Corruption Act, 1988, Chennai, as the same in abuse of process of law.)

This Crl.O.P. is filed praying to call for the records and quash the proceedings against the petitioners/A-9 and A-10 in C.C.No.73 of 2011 on the file of the Special Court for trial of cases under the Prevention of Corruption Act, 1988, Chennai.

2. Brief facts which are necessary to decide the issue involved in this petition, are as follows:

(a) The Government of Tamil Nadu, the Government of India and Swedish International Development Authority (SIDA) were providing funds for implementation of various schemes, of which, Integrated Child Development Service (ICDS) is one of such schemes introduced in 1975-76, intended for the welfare of children, for which funds are provided by the Government of Tamil Nadu. The object of the said scheme is to deliver a package of services in an integrated manner to the vulnerable children to improve the nutritional and health status of children below six years of age to lay foundation for proper physical and socio-psychological development, to reduce the school dropouts and to enhance the capability of mothers to look after the nutritional and other needs of children.

(b) The ICDS was implemented with the assistance of SIDA in 1 to 30 blocks in the composite Chengai-MGR District, later extended to 13 blocks in Pudukkottai and 4 blocks in the Nilgiris District. The Government accorded sanction of Rs.2,042.34 Lakhs to incur expenditure for the period from 01.07.1993 to 30.06.1995 in G.O.Ms.No.235, Social Welfare Department, dated 17.08.1994 and Rs.2,200 Lakhs for the period from 01.07.1995 to 30.06.1997 in G.O.Ms.No.68, Social Welfare Department, dated 08.03.1996. Till August 1999, the Child Development Project Officers concerned were purchasing the commodity (Sundal, i.e. cooked grain) directly from the Co-operative Societies at the prevailing rate of Rs.15.50 paise per Kilogram.

(c) During September 1994 and December 1994. Tr.K.Deenadayalan, IAS, (A-1), former Director of Social Welfare and Nutritious Meal Programme, in connivance with the then Minister for Social Welfare Tmt.R.Indirakumari and with the active assistance of her former Personal Assistant Tr.Venkat @ Venkatakrishnan (A-12), with an intention to gain pecuniary advantage from the Scheme, directed Tmt.Grace Annabai (A-4), former Programme Officer, Integrated Child Development Services, Tambaram to issue necessary instructions to the Child Development Project Officers of the Districts not to purchase the Sundal (cooked grain) from the area Co-operative Societies themselves. The former Director of

Social Welfare and Nutritious Meal Programme, in contravention of the directions issued in the above said G.O.Ms.No.235 in which it was mentioned that all the purchases like food articles and drugs, etc., shall be made in accordance with the Tamil Nadu Financial Code - Article 125 and in violation of the said Financial Code, the indent orders for supply of Sundal (cooked grain) items such as Peas, Karamani and Gram, were placed with Sriperumbudur Agricultural Producers Co-operative Marketing Society (SAPCMS) and with Thiruthani Co-operative Agricultural Marketing Society (TCAMS) from September 1994 to May 1996 at the rate of Rs.23/- and Rs.24/- per kg., when the prevailing rate in the market was only Rs.15.50 at that time.

(d) Initially, the former Director of Social Welfare and Nutritious Meal Programe placed indent orders with SAPCMS from December 1994 onwards at the inflated rate of Rs.23/- and Rs.24/- per kg., when the prevailing market rate as stated above was only Rs.15.50 per kg. TCAMS claimed for supply of 72.300 MT of Sundal without actually supplying and caused pecuniary loss of Rs.17,35,200/- to the Government with the assistance of Tr.Kuppusami (A-3), former Assistant Director (Accounts), SIDA and other officials of Pudukkottai District, who had given false stock entry certificates stated to have been obtained by intimidation by Rajendran (A-11), an employee of M/s.J.M.Stores, Poonamalle, run by J.Murugesan (A-9) (first petitioner in this Crl.O.P) and the said Tmt.Grace Annabai (A-4) also issued false stock entry certificate for a quantity of 340 MT worth Rs.81,60,000/- with the active connivance of M.Kuppusami (A-3). Out of 413.000 MT, false stock entry certificates were issued for only 320.800 MT, which were supplied and 93 MT was yet to be supplied. Tr.K.Deenadayalan (A-1), Tr.R.Kuppusami, IAS, former Director of Social Welfare and Nutritious Meal Programme, Tmt.Kamala, former Deputy Director, Tmt.Lalitha Gopalakrishnan, former Deputy Director, Tmt.R.Kannammal, former Deputy Director, Tr.V.P.Venkatachari (A-2), former Assistant Director (Accounts), SIDA, Tr.M.Kuppusami (A-3) and Tmt.Grace Annabai (A-4), are responsible for taking decision for the purchase and payment of money to TCAMS and Child Development Project Officers.

(e) In respect of the above procurement of "Sundal" (cooked grain) at the highest rates rather than the market value, a complaint was lodged by Mrs.D.Sabitha, IAS, Director of Social Welfare and Nutritious Meal Programme, Chepauk, Chennai, which was registered by the respondent-Police in FIR Crime No.6 of 1997 on 03.05.1997 for the alleged offences under Sections 120-B, 409, 467, 468, 420, 471, 477-A IPC and Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, against 33 accused persons. After completion of the investigation of the above scam in purchase and payment of money causing loss to the Government exchequer, the respondent-Police filed Police Report under Section 173(2) Cr.P.C., which was taken on file in C.C.No.4 of 2009 initially before III Additional Sessions Judge, Chennai, and subsequently transferred to the file of the Special Judge for trial under the Prevention of Corruption Act, Chennai and re-numbered as C.C.No.73 of 2011 and necessary documents and list of witnesses were also filed along with the said Police Report against 13 accused persons (including the petitioners (A-9 and A-10 in this Crl.O.P), whom after investigation, were shown as accused from and out of 33 persons against whom initially the FIR was registered. The Police Report was filed for the offences punishable under Sections 120-B, 409, 420, 467, 468, 471, 477-A IPC and Section 13(2) read with 13(1)(d), 13(1)(d)(i) and (ii) and 13(1)(c) of the Prevention of Corruption Act, 1988, read with 109 IPC read with 34 IPC.

3. The present Crl.O.P. is filed by only A-9 and A-10 to quash C.C.No.73 of 2011 pending on the file of the Special Court for trial of cases under the Prevention of Corruption Act, mainly on the sole ground that there was an inordinate and huge delay of 12 years in completing the investigation, which has infringed the right of speedy trial, thereby, amounting to violation of Article 21 of the Constitution of India.

4. Learned Senior Counsel appearing for the petitioners/A-9 and A-10 submitted that the petitioners are individual persons not holding any official post. The allegation against them is that they have obtained pecuniary advantage, thereby causing loss to the Government, in conspiracy with others by quoting inflated rates in respect of obtainment of Peas, Karamani and Gram (Sundal--cooked grains) and in connivance with the higher officials of the Government machinery. It is the

further submission of the learned Senior Counsel that the alleged offences are said to have taken place during 1994 and 1995 and the complaint was lodged resulting in registration of the FIR in 1997 in Crime No.6 of 1997 for the offences referred to above and filing of charge sheet / Police Report in the year 2009 as indicated above for the offences complained of against the accused persons. He further submitted that during the course of investigation, the offences were alleged only against 13 accused persons, though the FIR was filed against 33 persons. The investigation continued with the examination of 126 witnesses and filing of 204 documents including the Police Report, which are evident from the enclosures filed along with the Police Report.

5. Learned Senior Counsel further submitted that sanction for prosecuting the public servants, was obtained only after a lapse of about two years from the date of registration of the FIR. In this regard, he invited the attention of this Court to the list of documents and witnesses and pointed out that the sanction for prosecuting the official witnesses was obtained on various dates, namely for the first witness only on 19.04.2000, for the second witnesses only on 30.12.2000 and for the third witness on 08.05.2000, which is evident from the Memo of Evidence filed along with the Police Report. Learned Senior Counsel further submitted that after obtaining sanction to prosecute the official witnesses/accused persons, nothing further had been done by the prosecution, after filing of charge sheet/Police Report on 31.03.2009, inspite of the fact that the examination of all the witnesses was over by 30.06.1998. The delay of 12 years from the date of registering the FIR in 1997 till the date of filing of the Police Report in 2009, has not been explained by the prosecution. This unexplained delay could not be attributed on the part of the accused persons.

6. Learned Senior Counsel further contended that from the date of first hearing till date, no accused stood absent and the accused persons used to appear personally or petition would be filed to dispense with their appearance. It is further stated that the petitioners/A-9 and A-10 were regularly appearing before Court and the copies of the documents were not furnished as enunciated under Section 207 Cr.P.C. He further contended that only a part of the documents were furnished to the petitioners on 07.10.2009, but as mandated under Section 207 Cr.P.C., all the

copies of the documents were not furnished till date (2016), i.e. after a period of about six years from the date of filing of Police Report in 2009. He further submitted that still 40 more documents are yet to be furnished. Therefore, this has caused incurable and irreparable delay, thereby causing prejudice to the petitioners/A-9 and A-10.

7. In the above context, learned Senior Counsel appearing for the petitioners, while bringing to the notice of this Court regarding the list of dates and events filed before this Court, submitted that the delay was not on the part of the accused, but it was only due to belated furnishing of the documents to them. The sum and substance of the submission of the learned Senior Counsel with regard to the delay is that from 1997 when the complaint was lodged, till 2009 when the Police Report / Charge Sheet was filed, there was a delay of 12 years, though the investigation was completed by examining all the witnesses by 30.06.1998 and further from 2009 till date (2016) of about 6 years in furnishing the documents to the accused persons. For all practical purposes, the investigation was completed and charge sheet was filed only on 31.03.2009 after a lapse of 12 years from the date of registration of FIR being 03.05.1997. As the delay of 12 years could not be complained of against the petitioners, their right of speedy trial has been infracted under Article 21 of the Constitution of India.

8. On the above aspects, learned Senior Counsel relied on the judgment of the Supreme Court reported in 2008 (16) SCC 117 = AIR 2008 SC 3077 = 2010 (4) SCC (Cri) 217 = CDJ 2008 SC 1184 = 2008 (2) MLJ (Crl) 1649 (Pankaj Kumar Vs. State of Maharashtra and others), wherein it has been held as follows:

"17. It is, therefore, well settled that the right to speedy trial in all criminal persecutions 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 persecutions 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. Where the court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction, as the case may be, may be quashed unless the court feels that having regard to the nature of offence and other relevant circumstances, quashing of proceedings may not be in the interest of justice. In such a situation, it is open to the court to make an appropriate order as it may deem just and equitable including fixation of time for conclusion of trial"

9. By relying upon the above judgment of the Apex Court, learned Senior Counsel appearing for the petitioners/A-9 and A-10 submitted that the right of the accused to speedy trial cannot be denied and the Court, by taking into consideration the attendant circumstances in a given case, could determine as to whether the right to speedy trial has been infringed. Learned Senior Counsel further submitted that so far as the present case is concerned, though the complaint/FIR was lodged/registered against 33 persons, but at the time of filing the Police Report (charge sheet), 20 persons have been left out including the then Minister for Social Welfare and the then Child Development Project Officers. Though a very detailed investigation has been done for more than 12 years, the Police Report was filed only against said 13 accused persons conspicuously exonerating the then Minister for Social Welfare and the then Child Development Project Officers. He further contended that from the date of filing of the Police Report / Charge Sheet (2009) to till date (2016), the accused persons have been appearing before the Court below regularly, inspite of the fact that there was no fault on their part, but the trial in the case has not yet commenced.

10. Learned Senior Counsel further submitted that the first petitioner herein (A-9) was aged about 30 years at the time of registration of the FIR and he is now aged about 47 years and his prime-hood of life has gone for the past more than 16 years, and moreover, he has been attending the Court proceedings regularly. Likewise, the second petitioner herein (A-10) has also been attending the Court proceedings for more than the past 16 years. By taking into account all the above attendant circumstances, the proceedings before the trial Court in C.C.No.73 of 2011 is liable to be quashed on the lone and sole ground of inordinate and huge delay in the investigation and peremptory persecution of the case.

11. In order to substantiate the above contentions, learned Senior Counsel appearing for the petitioners relied on a judgment of this Court, dated 26.08.2015 in Crl.O.P.Nos.8435 and 9468 of 2015, wherein, in an identical situation, considering the inordinate delay of two decades, i.e. 20 years in filing the final report, this Court quashed the criminal proceedings pending before Court below and also another judgment of this Court, dated 21.09.2015 in Crl.O.P.No.13062 of 2015 on the same point. On similar lines, he also relied on some judgments of Supreme Court and prayed for quashing the criminal proceedings in C.C.No.73 of 2011 pending before the Court below against the petitioners/A-9 and A-10.

12. Per contra, learned Additional Public Prosecutor appearing for the respondent-Police, by filing a detailed counter affidavit, submitted that though the Police Report / Charge Sheet was filed on 31.03.2009, the petitioners and other accused themselves were causing hurdle to commence trial by filing petition/Memo one after the other for furnishing the copies of documents, etc., inspite of the fact that the relevant documents have been furnished to them, and thus they have been dragging on the matter under the pretext of the provisions of Section 207 Cr.P.C. He further submitted that though all the relevant documents were already furnished to the accused persons twice, and the document Nos.24, 51, 60 and 115 to 125 are cheque book remnants, adjustment receipts, tapal register and bill books and as it was not possible to furnish these documents to them, they can be perused in the Court itself, but wantonly they have been requesting the copies of those documents by adopting dilatory tactics and delaying the matter further without subjecting themselves for trial before Court below. However, after filing of this Crl.O.P., the petitioners have been duly given copies of those documents also, and therefore, according to the learned Additional Pubic Prosecutor, the delay could not be attributed on the part of the prosecution.

13. Learned Additional Public Prosecutor further contended that the criminal proceedings in C.C.No.73 of 2011 before the Court below, cannot be quashed merely on the ground of delay, considering the facts and circumstances of the case and the Court has to weigh the particular facts of each and every case and then only it could arrive at a conclusion whether the delay has crept in or not. In support of his contentions, learned Additional Public Prosecutor also relied upon a

judgment of the Supreme Court reported in 2010 (9) SCC 368 = CDJ 2010 SC 830 (Sajjan Kumar Vs. Central Bureau of Investigation), wherein the Apex Court held that though the delay is also a relevant factor and every accused is entitled to speedy justice in view of Article 21 of the Constitution of India, ultimately, it depends upon various factors/reasons and materials placed by the prosecution and hence, though the delay may be a relevant ground, in the light of the materials which are available before the Court through CBI (in that case), without testing the same at the trial, the proceedings cannot be quashed merely on the ground of delay.

14. For the same proposition, learned Additional Public Prosecutor also relied on a decision of a 7-Judge Bench of the Supreme Court reported in 2002 (4) SCC 578 = CDJ 2002 SC 319 (P.Ramachandra Rao Vs. State of Karnataka), wherein it has been held that right to speedy trial deprived could be identified by factors like length of delay, the justification for the delay, assertion of the right by the accused for speedy trial and prejudice caused to the accused by such delay.

15. Learned Additional Public Prosecutor also submitted that during the investigation of this case, nine investigating officers have been changed and after filing of the Police Report/Charge Sheet, the Public Prosecutor(s) concerned who have been conducting the case, have resigned, i.e. as early as even on 02.07.2012, and thereafter, the present Public Prosecutor took charge only on 02.04.2013 and hence, the trial could not be commenced due to the administrative exigencies. Hence, the delay may not be attributed solely on the prosecution side.

16. Therefore, learned Additional Public Prosecutor submitted that by considering the factual aspects of each and every case, the Court may come to the conclusion whether the criminal proceedings could be quashed on the sole ground of delay or not, and hence, he sought for dismissal of the Crl.O.P.

17. Keeping in mind the above submissions made by learned counsel on either side and having given my anxious consideration to the same, I have perused the materials available on record.

18. Though very many contentions have been raised by the learned Senior Counsel appearing for the petitioners/A-9 and A-10, as also the learned Additional Public Prosecutor, with regard to the delay on the factual aspects of the matter and very many decisions were relied on by them, the only question that falls for consideration in this case is as to whether the criminal proceedings in C.C.No.73 of 2011 pending before the Court below, against the petitioners herein, is liable to be quashed on the ground of delay alone ?

19. The main submission of the learned Senior Counsel appearing for the petitioners/A-9 and A-10 is that initially, there was a delay of 12 years from the date of registering the FIR in 1997 till the date of filing of Police Report / Charge Sheet in 2009, and thereafter, further delay of more than six years occurred in the stage of hearing of the case and the trial has not yet commenced. But in my considered view, the criminal proceedings pending against the petitioners cannot be quashed on the said ground of delay alone, as has been held by Supreme Court in various decisions that the delay aspect should be weighed by taking into consideration the relevant facts and circumstances of each case. At this juncture, it is worthwhile to note that the Apex Court in Pankaj Kumar case (cited supra), observed that the Court has to perform the balancing act upon taking into consideration the attendant circumstances for the delay. In this regard, learned Senior Counsel appearing for the petitioners submitted that one of the attendant circumstances in the case is that though the FIR was registered against 33 accused persons, ultimately, 20 persons including the then Minister for Social Welfare and the then Child Development Project Officers (CDPOs) have been left out. But on a perusal of the Police Report / Charge Sheet, it is seen that as against the then Minister for Social Welfare and the then CDPOs, no evidence was forthcoming to show that they have obtained any pecuniary advantage, and therefore, their names have been not included in the list of accused persons in the Police Report. Some of the accused persons were even treated as witnesses, since there is no evidence as against them also, to show that they have committed the offence. Therefore, since some of the persons against whom the FIR have been registered, were not included as accused persons in the Police Report, the same cannot be taken as one of the attendant circumstances attributing to delay on the side of the prosecution.

20. The other attendant circumstance pointed out by the learned Senior Counsel appearing for the petitioners is that from the date of filing the Police Report in the year 2009, accused persons including the petitioners/A-9 and A-10 have been regularly appearing for hearing of the case before the Court below and inspite of the same, they were not furnished with the requisite documents in the case as adumbrated under Section 207 Cr.P.C.,and lastly, it was furnished only on 29.04.2016 and hence, the accused persons have earlier been repeatedly filing petitions and due to the voluminous contents in the documents as alleged by the prosecution, they have been not earlier furnished, and only during the pendency of this Crl.O.P., those documents have been furnished. But, in my considered opinion, this attendant circumstance cannot be a ground of delay to quash the criminal proceedings, as the prosecution has properly explained the same to the satisfaction of the Court as observed above regarding the administrative exigencies like resignation of Public Prosecutors,.

21. Therefore, in my considered view, quashing the criminal proceedings pending against the petitioners/A-9 and A-10 before the Court below on the ground of inordinate/huge delay is not a straight-jacket formula and whether a particular criminal proceedings can be quashed solely on that ground or not, is a matter to be considered only by taking into consideration all the relevant factors, as laid down by the Supreme Court in the case of P.Ramachandra Rao (cited supra). Further, even in Pankaj Kumar case (cited supra), the Supreme Court observed that the criminal proceedings can be quashed in the interest of justice, only if the Court feels so having regard to the nature of the offence and other relevant circumstances.

22. Coming to the other decisions relied on by the learned counsel for the parties, it is seen that, as held by the Supreme Court in the decisions reported in 2013 (4) SCC 642 (Niranjan Hemchandra Sashittal Vs. State of Maharashtra) and 2015 (9) SCC 201 (Sirajul Vs.State of U.P), only in order to prevent abuse of process of Court and in the interest of justice, quashing of the proceedings is permissible, that too by taking into consideration the relevant facts and circumstances of the case and attendant circumstances, by exercising the powers under Section 482 Cr.P.C. It was further held by the Apex Court that the factors like social justice, rule of law

and purpose of enactment concerned to secure and spread deterrent message, have to be weighed with and balanced and hence, no outer limit for trial could be fixed and if the corruption cases are allowed to be quashed merely on the ground of delay, it may garner and pave the way for anarchism. Further, the Supreme Court in the decision reported in 1991 SCC (Cri) 7 = 1990 (2) SCC 340 = AIR 1990 SC 1266 = CDJ 1990 SC 008 (State of Andhra Pradesh Vs. P.V.Pavithran), held that no general proposition can be laid to show that the reason for the delay would 'ipso-faco' provide a ground for quashing the FIR (therein) and further that, it is not possible to stipulate a period of limitation to complete the investigation, as the nature of some of the offences involved would take considerable time for unearthing the crime. Moreover, In the decision reported in 2007 (7) SCC 394 = CDJ 2007 SC 828 (Japani Sahoo Vs. Chandra Sekhar Mohanty), it was felt by the Apex Court that though the ground realities cannot be ignored, mere delay may not bar the right of the "Crown" in prosecuting the "criminals". Further, applying the principles laid down by the Supreme Court in the decision reported in 2012 (8) SCC 495 (Ranjan Dwivedi Vs. CBI), though in the case on hand, the alleged attendant circumstances have been shown as prejudice caused to the accused, the burden though shifted on the prosecution to prove that the accused have not suffered injury, yet, the so-called attendant circumstances have not in fact prejudiced the accused in this case, and that it is for the Criminal Court to exercise the powers under Sections 258, 309 and 311 Cr.P.C. to effectuate the right to a speedy trial and only in appropriate cases, the High Court shall invoke the powers under Section 482 Cr.P.C. to quash the proceedings, and that there is no express declaration of right to speedy trial under the Constitution of India and the right as interpreted under Article 21 of the Constitution is a right to a reasonably expeditious trial and only a deliberate delay by prosecution would violate such a right and in unintentional cases, due to unavoidable factors or due to administrative factors over which prosecution has no control, the delay could be considered as prejudice for speedy trial.

23. In the instant case, the main allegation against the accused persons including the petitioners/A-9 and A-10 is that they have swindled the public exchequer (Government money) by showing inflated rates / bills in respect of purchase and payment of money in respect of "Sundal" (cooked grain), thereby causing wrongful

loss to the Government. Therefore, taking into account the gravity of the offences and the huge amount of monetary loss to the Government's largess, this Court, in the interest of justice, is not inclined to quash the criminal proceedings pending against the petitioners/A-9 and A-10, merely on the ground of delay. Hence, the Crl.O.P. is liable to be dismissed.

24. Therefore, for the foregoing reasonings and following the above discussed decisions of the Supreme Court, I do not find any valid reason to entertain this Crl.O.P. Accordingly, this Crl.O.P. is dismissed.