

G.i. Punvani Vs. State

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Court : Allahabad

Decided On : Apr-25-1994

Reported in : 1995CriLJ3884

Judge : J.K. Mathur, J.

Acts : [Prevention of Corruption Act, 1947](#) - Sections 5(1), 5(1)(E), 5(2) and 5(2)(E); Code of Criminal Procedure (CrPC) , 1974 - Sections 240 and 482; [Constitution of India](#) - Articles 20(1) and 21

Appeal No. : Criminal Misc. Case No. 1203 of 1981

Appellant : G.i. Punvani

Respondent : State

Disposition : Petition allowed

Judgement :

J.K. Mathur, J.

1. This petition under Section 482, Cr.P.C. has been moved for quashing of charges framed against him by the Special Judge, Anti-corruption (Central) at Lucknow in case No. 33 of 1975 under Section 5(2) read with Section 5(1)(E) of the [Prevention of Corruption Act, 1947](#) (hereinafter to be referred to as the Act).

2. The Petitioner joined the Territorial Army in 1960. He was relieved from there in 1969 when he joined as Controller of Imports & Exports, in the Ministry of Commerce. He was retired compulsorily in 1982. The order of compulsory retirement was quashed in 1990 after the date of superannuation of the petitioner which was 31st January, 1983. On 3-12-1971 a First Information Report was lodged against the petitioner saying that he had issued bogus licences and had got money and also that he had purchased Royal Hotel, at Nainital and was living beyond his means. Investigation was carried out and finally charge-sheet was filed on 15-4-1975. However, it was only on 9-3-1981 that charges were framed in this case.

3. The learned counsel for the petitioner firstly urged that there has been inordinate delay in the trial because of which the petitioner should not be prosecuted any longer. It was also urged that the sanction was invalid. The petitioner also argued that assets not belonging to the petitioner were included in calculating the assets possessed by the petitioner and that he was not a public servant during the period when he was in the Territorial Army between 1960 and 1969 and, therefore, the assets acquired by him before 1969 could not be subject matter of prosecution. It was lastly urged that Section 5(2)(E) of the Act having been introduced in the Act only on 18-12-1964, any asset acquired by him before that date would not render him liable for being punished under this provision.

4. As far as sanction is concerned, the matter was raised by him earlier in the High Court and his contention has not been accepted. He cannot now raise this plea again.

5. His being not a public servant while in the Territorial Army is also not tenable. As long as he was part-time member of the Territorial Army, he may not have been a public servant, but when he was embodied in the Territorial Army and was getting salary for the work that he was doing, he did become a public servant liable to the provisions of the Act.

6. It was next urged that Section 5(1)(e) of the Act was added in December, 1964 while the check period of the petitioner has been fixed from 1-1-1961 to 9-12-1971. According to the petitioner, the assets which were in his possession till 18th

December, 1964 would not inculcate him for any offence which is alleged to have been committed under Section 5(2) read with Section 5(1)(e) of the Act.

7. The proposition that a person cannot be punished of any offence if the act alleged to have been committed, was before the act was made an offence, is undisputed, it is also provided in Article 20(1) of the Constitution.

8. However, what is an offence under Section 5(1)(e) of the Act is possession of disproportionate assets. If the assets were possessed by a person after the coming into force of this provision, it would render him criminally liable. Acquisition of the assets is not punishable under this provision. Therefore, merely because the assets were acquired before coming into force of this provision, would not decriminalise the possession of those assets after 1964.

9. In the present case, the petitioner is alleged to have possessed these assets in 1971, much after coming into force of this provision. On that date, if he was possessed of those assets disproportionate to his income, he would be liable. Even he can take into account acquisition before 1964 to explain that they were validly acquired. The acquisition before 1964 would, therefore, logically be necessary even from the point of view of an accused and only because the income and expenditure for the period before 1964 is being enquired into would not render his prosecution bad only because part of that period falls earlier than the date on which this provision came into being.

10. However, one of the objections which was raised by the petitioner even at the time of framing of the charge was that the property in Nainital had been acquired not by him but by his son. The description of the property is contained in the report which shows its value to be substantial inclusive of its furnishing and acquisition of shares.

11. The learned Special Judge disposed of this objection by saying that this matter would be considered at the time of evidence and did not record any finding. He then proceeded to frame the charge.

12. As the provision of Section 240, Cr.P.C. would show, the Magistrate is to consider the police report and the documents sent with it and after hearing if he is of the opinion that there is ground for presuming that the accused has committed the offence, he may proceed to frame the charge.

13. At the stage of framing of charge, it is not mere allegation which will enable the Magistrate, in this case the Special Judge, to frame a charge. He has also to see that there is prima facie material to sustain the allegation. In case there is no material at all, no charge can be framed and the person would be entitled to be discharged. In the present case, if there was no material at all to show that the transaction of Hotel was benami, that part of the allegation of the prosecution could not have been considered by the learned Special Judge for framing of the charges. He could not get away merely by saying that the evidence would be seen later at the stage of the trial. He, at this stage, had to consider the material collected by the prosecution for a prima facie case that the sale was in fact Benami. It was not necessary for the prosecution to produce infallible evidence, but at least some material to sustain the allegation should have been there. The learned Special Judge, had to consider that material when he framed the charge. The order as passed by the learned Special Judge is not lawful to this extent.

14. Lastly it was urged that there is inordinate delay in disposal of the case and the petitioner is therefore, entitled to be relieved of the prosecution.

15. As pointed out above, the matter in respect of which prosecution is proceeding relates to the possession of assets in 1971. After investigation a charge-sheet was filed in April, 1975. The case proceeded in the court of Special Judge, and the charge was framed only in March, 1981. Learned counsel for the petitioner has produced before this Court the orders passed on each of the dates and has urged that all along it has been only on 3-4 days that adjournment was sought by the petitioner otherwise he was not responsible for the delay. After that the present application under Section 482, Cr.P.C. was moved in June, 1981. It has been pending in this Court for the last almost 13 years.

16. Desirability and effect of protraction of trials has come up repeatedly for judicial scrutiny. It was in *Husain Ara Khatoon v. Home Secretary, State of Bihar*, : 1979

CriLJ1036 that the right of speedy trial was recognised as an integral part of the fundamental right to life and liberty enshrined in Article 21 of the Constitution. This was reiterated in the second Husain Ara Khatoon's case: : 1979 CriLJ1045 . Since then and even before that in a number of cases, the Supreme Court considered the impact of delay and consistently held that there has to be a reasonable period during which trial is to conclude failing which the court will not permit it to be continued.

17. In State of Bihar v. Uma Shanker Kotriwal, : 1981 CriLJ159 again the Supreme Court consider this question and observed (at p 642 of AIR):-

'Such protraction itself means considerable harassment to the accused not only monetarily but also by way of constant attention to the case and repeated appearances in court, apart from anxiety. It may well be that the respondents themselves were responsible in a large measure for the slow pace of the case inasmuch as quite a few orders made by the trial Magistrate were challenged in higher courts, but then there has to be a limit to the period for which criminal litigation is allowed to go on at the trial stage. In this view of the matter we do not consider the present case a proper one for our interference in spite of the fact that we feel that the allegations disclosed the commission of an offence which we regard as quite serious.'

18. In this case, the fact that the accused had been responsible for some delay in the trial and that the crime was serious were considered not to be reasons to refuse conclusion of the trial in case there was an inordinate delay.

19. In a Full Bench decision of Patna High Court in Madheshwardhari Singh v. State of Bihar, : AIR1986 Pat324 various Indian and American authorities were considered to find that the trial cannot be permitted to continue ad infinitum and should normally conclude within a period of seven years inclusive of the time taken in investigation.

20. No law to the contrary was shown.

21. This Court also in the case of Harpal Dutt Sharma v. State of U.P. 1990 LLJ 28 came across a case where the trial continued for almost twenty years. Relying on the aforesaid cases of Madheshwardhari Singh, (AIR 1986 Pat 324) and Uma Shankar : 1981 CriLJ159 (supra) and another decision in T.J. Stephen v. Parle Bottling Co. (P) Ltd, (1988) 1 SV LR (Cri) 176 finding that the offence had been committed in 1967 and 1969, this court held that the trial could not be permitted to be proceeded with when it had continued for almost 18 years.

22. In the present case, as pointed out above the incident took place in 1971. As things stand today, only charge has been framed and as discussed above, the learned Special Judge will have to reconsider the charge in view of the observations made above. It is almost 23 years since the First Information Report was recorded. In this case except filing an application in revision and moving this court against the charge, there is no default on behalf of the petitioner. In moving those applications, the accused was merely bona fidely exercising his right and raising certain questions of law which he was justified in raising. In these circumstances, if the trial is permitted to proceed in the court of the Special Judge, not only will it result in causing immeasurable harassment to the petitioner who has been facing trial for the last 23 years, but is also likely to cause irreparable prejudice to him because ultimately it will be upon him to show that he had collected the property by his own means for which it may not be possible for him to gather evidence after almost quarter a century.

23. Considering the entire set of circumstances, it will not be in the interest of justice for the trial to be proceeded with now when more than 23 years have elapsed since recording of the First Information Report and there has been long delay in the trial resulting it in abuse of the process of Court.

24. The petition is therefore, allowed. The charge is hereby quashed. The trial shall not be continued any further and the petitioner shall stand discharged.