

R.Pandian Vs. The State Rep. By

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Court : Chennai

Decided On : Jul-31-2015

Judge : S.Nagamuthu

Appellant : R.Pandian

Respondent : The State Rep. By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 31.07.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
Crl.O.P(MD)No.14337 of 2015 R.Pandian : Petitioner versus The State rep.

by The Deputy Superintendent of Police, Vigilance and Anti Corruption,
Pudukkottai District.

(Crime No.7 of 1999).: Respondent PRAYER Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, praying to direct the learned Chief Judicial Magistrate cum Special Judge for P.C.Act Cases, Pudukkottai to complete the trial of the criminal case in Special Case No.2 of 2001 on his file forthwith and within the time stipulated by this Court and pass such further or other ordeRs.!For Petitioner : Mr.Veera Kathiravan ^For Respondent : Mr.K.Chellapandian, Additional Advocate General assisted by Mr.C.Mayil Vahana Rajendran, Additional Public Prosecutor.

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ORDER

The petitioner is the fiRs.accused in Special Case No.2 of 2001 on the file of the learned Chief Judicial Magistrate cum Special Judge for Prevention of Corruption Act Cases, Pudukkottai.

The second accused is one Mr.Vikraman.

The petitioner was working as an Assistant Engineer in Thirumayam Rural Electric Cooperative Society, Karaiyur Section.

The second accused was working as a wireman.

The allegation against the petitioner is that for effecting electric service connection to the well of the de facto complainant viz., Mr.Palaniappan, the petitioner demanded a sum of Rs.5,000/- as illegal gratification and then got it reduced to Rs.2,000/-.

It is further alleged that in the trap laid, the petitioner received a sum of Rs.1,000/- on 28.10.1999.

Final report in this case was filed against the accused for the offence under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, on 29.03.2001.

So far in the case, only eight witnesses have been examined by the prosecution.

Alleging that he has been dragged to Court for more than fourteen years.he has come up with this petition seeking to quash the entire proceedings on the ground of denial of speedy trial to him as his fundamental right guaranteed under Article 21 of the Constitution of India is infringed.

2.In the report submitted by the Director in-charge of Directorate of Vigilance and Anti Corruption, Chennai it is stated that charges in this case were framed by the Lower Court on 06.06.2001.

But, the trial could not proceed as the petitioner filed a petition for discharge.

That was dismissed on 21.04.2004.

As against the same, he filed a revision in CrI.R.C.No.995 of 2004 before this Court and the same was dismissed on 16.07.2007.

It is further stated in the report that after 16.07.2007, on the side of the prosecution, eight witnesses were examined as detailed below: Date Details of witness examination 20.08.2008 LW-1 as PW-1 Examined (Chief and Cross) 03.02.2010 LW-2 as PW-2 Examined (Chief and Cross) 03.03.2010 LW-3 as PW-3 Examined (Chief only) 15.09.2010 LW-4 as PW-4 Examined (Chief only) 27.03.2013 LW-8 as PW-5 Examined (Chief only) 17.04.2013 PW-4 and PW-5 (Cross Examined) 12.06.2013 LW-6 as PW-6 Examined (Chief only) 31.07.2013 LW-7 as PW-7 Examined (Chief only) 15.10.2014 LW-11 as PW-8 Examined (Chief only) According to the respondent, twelve more witnesses are to be examined in the case.

The case is now posted to 12.08.2015 for examination of further witnesses.

3.It is further stated that the delay in proceeding with the trial of the case is not solely on account of the prosecution so as to quash the proceedings on the ground of denial of speedy trial.

According to the status report, between August 2013 to February, 2014, the trial of the case could not be conducted because the Presiding Officer of the Court appointed as Chief Judicial Magistrate at Pudukkottai was not notified as the Special Judge under the Prevention of Corruption Act by means of appropriate notification.

Such notification was issued only in the month of February, 2014.

Thereafter, the Trial Court still could not make much progress in the case, because the Presiding Officer of the said Court, has been giving priority only to those cases under the Prevention of Corruption Act, where this Court has already issued directions for early disposal.

Therefore, according to the status report, between 15.10.2014 to 15.07.2015, that is, for about nine months, the Trial Court did not issue any summons at all to the witnesses as the Court was busy with the other cases, which were given priority.

4.It is further stated in the status report that the cases under the Prevention of Corruption Act instituted by the Vigilance and Anti Corruption Police are handled before the Trial Courts by Deputy Legal Advisors (D.L.As).So far as the Special Court at Pudukkottai, namely Chief Judicial Magistrate's Court is concerned, there is no Deputy Legal Advisor exclusively earmarked for that Court.

The Deputy Legal Advisor, Thanjavur is in-charge of the Court of Chief Judicial Magistrate cum Special Judge for Prevention of Corruption Act cases at Kumbakonam, Pudukkottai, Thiruvar and Nagapattinam.

Thus, according to the status report, the said Deputy Legal Advisor could devote only one day in a week to attend the cases before the Special Judge at Pudukkottai.

The report further states that in the absence of the Deputy Legal Advisor, Thanjavur, the Deputy Legal Advisor at Trichy has to attend these Courts also in addition to his regular work before the Special Court for Prevention of Corruption Act Cases, Tiruchirappalli.

At times, he has to take care of the cases pending in eight Courts.

5.The report further states that the post of Deputy Legal Advisors at Thanjavur and Trichy were kept vacant during the following periods: Sl.No.Vacant Period From To Vacant Post 1 01.01.2000 June ?.

2001 DLA, V&AC., Thanjavur.

2 May-2001 17.03.2002 DLA, V&AC., Trichy.

3 01.07.2003 22.06.2004 DLA, V&AC., Thanjavur.

4 12.09.2003 30.03.2004 DLA, V&AC., Trichy 5 18.11.2006 06.07.2010 DLA, V&AC., Thanjavur.

6 26.11.2007 06.07.2010 DLA, V&AC., Trichy 7 01.06.2011 15.11.2012 DLA, V&AC., Trichy 8 28.11.2011 22.02.2013 DLA, V&AC., Thanjavur.

9 15.11.2013 02.02.2014 DLA, V&AC., Trichy Referring to the above, the learned Additional Advocate General would submit that because of these reasons, progress could not be made in the present case and the trial could not be conducted in a speedy manner.

6.It is further stated in the status report that at this stage, as of now, there are thirty four Courts in the State dealing with the cases under the Prevention of Corruption Act.

Out of which, eight Courts are Special Courts exclusively trying the cases under the Prevention of Corruption Act.

To conduct these cases in these thirty four Courts, according to the status report, there are only seventeen posts of Deputy Legal Advisors sanctioned by the Government.

As of now, there are only fifteen Deputy Legal Advisors working throughout the State.

Out of these fifteen Deputy Legal Advis ORS.eight officers have to be fully engaged in the Special Courts for Prevention of Corruption Act cases exclusively trying the cases on all working days.

The remaining seven Deputy Legal Advisors have to manage with twenty six Courts, throughout the State.

It is stated that it is highly impossible for these seven officers to manage twenty six Courts by promptly attending on all working days.

It is because of these reasons, at the request of the police, the Special Courts have been devoting one day a week for taking up these cases under the Prevention of Corruption Act.

7.It is further stated in the status report that now the Director of Vigilance and Anti Corruption has sent a proposal to the Government seeking creation of seventeen additional posts of Deputy Legal Advisors and three posts of Additional Legal Advis ORS.so that there is a Law Officer for every Court and that they are sufficiently guided by supervisory officeRs.The learned Additional Advocate General, on instructions from the Chief Secretary to the Government of Tamil Nadu, would submit that the said proposal is under the active consideration of the Government and the Government would create these seventeen additional posts of Deputy Legal Advisors and three posts of Additional LeAal advisors within three months from today.

The said statement made by the learned Additional Advocate General is recorded.

8.Alongwith the above report, the Director of Vigilance and Anti Corruption, has appended an annexure showing the number of cases pending trial at the end of each year.

According to the said annexure, as on 30.06.2015, 1901 cases are pending trial before the Courts.

In effect, the submission is that because of non-availability of Deputy Legal Advisors for each Court, trial could not be conducted and therefore there is stagnation in all Courts throughout the State.

9.I have considered the above submissions.

10.At the outset, I should say that speedy trial has been recognised as a fundamental right falling within the sweep of fair procedure enshrined in Article 21 of the Constitution of India.

Undue delay in trial infringing upon the said fundamental right is undoubtedly a ground to quash the proceedings unless the delay was occasioned on account of the act of the accused.

In the instant case, therefore, we have to examine as to whether the delay of more than 14 yeaRs.has violated the fundamental right of the accused so as to quash

the proceedings.

11. So far as the FIRs explanation by the respondent for the delay that there was no notification issued under the Prevention of Corruption Act, notifying the Chief Judicial Magistrate, Pudukkottai as the Special Judge under the Prevention of Corruption Act for the period between August, 2013 to February, 2014 is concerned, the delayed action of the Government to issue notification, deserves to be deprecated as this delay would have been avoided.

In order to avoid this delay in future, the Registry of this Court is directed to send proposals to the Government immediately on the posting of an officer in a particular Court and on receipt of the said proposal, the Government shall forthwith notify the said officer under Section 3 of the Prevention of Corruption Act, without any delay.

12. In respect of non-availability of Deputy Legal Advis ORS. since Corruption Act cases require special attention as corruption is a menace to the society like a cancer to a human body, all the posts of the Deputy Legal Advisors should be, FIRs. of all, filled up.

Secondly, as submitted to this Court, the Government shall create seventeen additional posts of Deputy Legal Advisors and three posts of Additional Legal Advisors within a period of three months from today and the Government shall ensure that there is one Deputy Legal Advisor for each Court as far as practicable.

13. In the instant case, though there has occurred delay of more than 14 years. the same is attributable to various causes, of which some are attributable to the accused as he had dragged on the proceedings for few years by filing one petition or the other, and he did not cross-examine the witnesses on time.

Some causes are attributable to the Government as the Government had delayed the notification empowering the Chief Judicial Magistrate to try the cases under the Prevention of Corruption Act and the Government has not appointed adequate number of Deputy Legal Advisors to do the cases.

Going by these causes and going by the gravity of the offences allegedly committed by the accused, I am not inclined to quash the case.

But, I am inclined only to issue appropriate directions to avoid any more delay.

14. The learned Additional Advocate General would submit that the respondent is prepared to produce all the witnesses in quickest possible time.

The learned counsel for the petitioner would submit that all the witnesses may be produced within a period of six weeks by the respondent police.

Having regard to all the above facts and circumstances, the following directions are issued: (i) The respondent shall make application to the Trial Court for issuance of summons to the witnesses and the Trial Court shall issue summons to all the twelve witnesses fixing four different dates for trial and all the witnesses shall be examined without fail within six weeks.

(ii) The petitioner shall cooperate for early disposal of the case and the petitioner shall not take unnecessary adjournments.

(iii) The witnesses, who have been examined in chief, shall also be produced, to enable the accused to cross-examine them within the said period, in the event, any request is made by the accused for recalling those witnesses.

(iv) After completing the examination of witnesses within six weeks from today, the Trial Court shall proceed further and dispose of the case within a further period of six weeks.

15. With the above directions, this Criminal Original Petition is disposed of.

To 1. The Chief Judicial Magistrate cum Special Judge for Prevention of Corruption Act Cases, Pudukkottai.

2. The Deputy Superintendent of Police, Vigilance and Anti Corruption, Pudukkottai District.

3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai..

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