D.S. Bhatnagar Vs. the State

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Court : Delhi

Decided On : Jan-09-1967

Reported in : AIR1967Delhi83; 1967CriLJ1297

Judge : I.D. Dua, a.C.J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 496 and 497

Appeal No. : Criminal Misc. No. 161 of 1966

Appellant : D.S. Bhatnagar

Respondent : The State

Advocate for Def. : Bishamber Dayal, Adv.

Advocate for Pet/Ap. : Party-in-perso

Judgement :
ORDER

(1) This is an application by D.S. Bhatnagar, an under-trial `B' class prisoner confined in the Central Jail, New Delhi for his release on bail pending his trial under section 307, Indian Penal Code, and Sections 25 and 26 of the Arms Act. The alleged offences are stated to have been committed on 23-8-1966. The petitioner claims to belong to a respectable family is a B.Sc. from United States and Law Graduate from the Government Law College, Bombay, having passed

the Bar Council Examination and also being on the rolls of the Bombay High Court. At the present moment, he claims to be an officer in the Council of Scientific and Industrial Research. He has averred in his application that the police have had four months time for investigation and the challan has actually been filed in Court. But there has been practically no progress in the case since then. From the record, I find that the evidence of P.W. 1 Uma Shankar and P.W. 2 Daya Nath was recorded on 3-11-1966 by the learned Magistrate Shri M.M. Oberoi.

One has to struggle to trace the progress of the case from the record of the Court below. The index of the record is nto maintained in accordance with the relevant directions contained in High Court Rules and Orders. The entries in Column No.4 are nto in sufficient detail to allow the papers described therein to be identified. They are vague and unprecise and presumably nto made in due course on the prescribed dates according to the rules. The first two leaves of printed index form the blank, though the heading of the case is filled in. Antoher such index form bearing page No.1 has, in the space meant for heading in the column `name of Pargana' and `Goshwara number', a number of dates, ntoed in the form of a column. It is difficult to identify the papers on the record from pages 1 and 2 of this form.

A number of dates beginning with '28/10' and ending with '25/11' appear in a column. The evidence taken down on 3-11-1966 in Hindi is found at pages 147 to 149, and the typed English record of this evidence at pages 151 to 161. The English typed record of the testimony of P.W. 1 and P.W. 2 has nto been properly tagged and I find that after page 151 the tagged record contains pages 159, pages 153 to 158 being separately pinned. Page 153, I may, point out, contains a part of the evidence of P.W.1, and page 158, the whole of the testimony of P.W. 2. At page 157, one finds an unsigned duplicate carbon copy of the testimony of P.W. 1, the remaining testimony going on to page 159 and page 161 containing the unsigned duplicate carbon copy of the testimony of P.W. 2. At the conclusion of this evidence I do nto find any order in the handwriting of the Presiding Officer of the Court. It is a matter for surprise that the sheet of paper on which the evidence was recorded on 3-11-1966 should till today - after a lapse of two months - has nto been properly tagged at its proper place in the judicial record. This attitude of

unconcern towards the maintenance of judicial records is difficult for this court to appreciate and countenance.

(2) Reverting to the record of proceedings presumably in the handwriting of the Reader on 3-11-1966, after ntoing the presence of the accused and of the P.S.I., it was recorded that two witnesses had been examined and the case was adjourned to 7-11-1966 for cross-examination by the accused. On 7-11-1966, it was ntoed that the accused was nto present and the Presiding Officer was on special duty. The case was accordingly adjourned to 15-11-1966, for appropriate proceedings. On 15-11-1966, it was again recorded that the accused had nto come from jail. The case was adjourned to 19-11-1966 for calling the accused. On 19-11-1966, again it was ntoed that the accused had nto come from jail and he was summoned for 25-11-1966. On that date again, it was ntoed that the accused had nto come from jail and the presiding Officer and the P.S.I. were on special duty. The accused was accordingly ordered to be called on 5-12-1966. On that date again, it was ntoed that the accused had nto come and that he was to be summoned for 13-12-1966.

On that date, the accused and the P.S.I. were buth present, but the case was adjourned to 14-12-1966 for appropriate orders.

On 14.12.1966, the presence of the accused was ntoed and the case was adjourned to 21-12-1966 for the cross-examination of the witnesses already examined. The said witnesses were directed to be summoned for the next date. On 21-12-1966 again it was ntoed that the accused had nto come from jail. The P.S.I, was present and the accused was summoned for 26-12-1966. On that date again the accused did nto come from jail, though the P.S.I. was present. The accused was then summoned for 29-12-1966. On that date, the accused was present and the remaining witnesses were directed to be summoned for 4-1-1967. In the meantime on 2-1-1967, the present bail application was set down for hearing in this Court but no one appeared to oppose the petition. I was informed by the petitioner that 4-1-1967 had been fixed in the lower Court for the remaining evidence and that two prosecution witnesses were to be cross examined by the accused.

As there was no representation in this Court on behalf of the State, I considered it proper to send for the record to see for myself as to how far the averments made by the petitioner and supported by his affidavit were justified. I accordingly directed that the records be summoned immediately from the Court of Shri M.M. Oberoi so that on the following day, namely 3-1-1967, I could see the record and return the same to the Court below in time for recording the evidence on 4-1-1967. A special messenger was directed to be sent for the purpose. Unfortunately, for certain reasons nto quite clear on the record, on 3-1-1967, when the case was called in the early hours of the morning, the records had nto arrived. I, thereforee made a specific order that the records should now be summoned for 6-1-1967.

It appears that the records were sent by the Court below to this Court on 3-1-1967 late in the afternoon, with the unfortunate result that no proceedings took place on 4-1-1967. I can only express my disappointment as the way in which the purpose of this Court's order dated 2-1-1967 should have been defeated and no proceeding should have taken place on 4-1-1967. On 6-1-1967, I called for the order of the learned Magistrate dated 4-1-1967 and I find from this order that the presence of the accused and the P.S.I. was ntoed and it was observed that since the file had gone to the High Court, the case be adjourned to 19-1-1967 to await the return of the file. On the peculiar facts and circumstances of this case, I do feel that it would have been better to have adjourned the case for a shorter duration than two weeks.

(3) The accused has in his petition in this Court averred that since 3-11-1966 every morning, the petitioner used to get ready but was never informed whether or nto he was to be taken to the Court and produced before the Magistrate. The lower Court, according to the averments in the application for bail, used to go on giving dates without the actual production of the petitioner. These averments have been supported by a sworn affidavit of the petitioner D.S. Bhatnagar.

(4) Before me, the learned counsel for the State has nto controverter the averments made in this application. Indeed there is no Explanationn as to why the learned Magistrate did nto take appropriate steps to see that the accused was produced in his Court on the dates of hearing. If the jail authorities were flouting

his orders then he was nto helpless, and if his Court staff was nto summoning the accused, even then the learned Magistrate had sufficient power, as indeed it was his duty, to enforce his orders. His helplessness or his indifference in this matter, whichever be the position, reflects a most unsatisfactory state of affairs. The learned Magistrate seems to me to have clearly adopted an attitude of unjudicial indifference towards the judicial proceedings in his Court. I may at this stage also advert to the earlier applications by the petitioner for his release on bail presented in the Court of the learned Sessions Judge, Delhi.

It appears that the first application for bail presented in the Court of the learned Sessions Judge was dismissed by that Court on 19-10-1966. Antoher application was apparently made which was disposed of by the learned Sessions Judge on 30-11-1966. In this later order, there is a clear reference to the earlier application and it has been observed in the order dated 30-11-1966, that after the disposal of the earlier bail application no new developments had taken place which would justify the admission of the accused to bail. Apparently the learned Judge did nto attach to the delay the importance it deserved. The fact that the accused belongs to a respectable family and that there is no danger of his absconding were nto considered by the learned Sessions Judge to be the only considerations for granting bail.

After holding that this was nto a fit case in which the petitioner should be released on bail pending trial the learned Sessions Judge proceeded to make the following observations:

'The Magistrate in whose Court the case is pending will of course see that no undue delay takes place. The petitioner mentioned that from 3-11-1966 there has been no further progress in the case. A copy of this order should be sent to the Magistrate so that he may look into this aspect of the matter. The petitioner should also be informed through the Superintendent of Jail.'

(5) In spite of these clear and unequivocal directions the learned Magistrate does nto seem to have looked into the aspect of delay of the case and as observed earlier in the month of December, 1966, the proceedings before the learned Magistrate were just as unsatisfactory as if nto more so then, they had been

before 30-11-1966. It is somewhat regrettable that the learned Magistrate should have paid scant respect to the clear directions of the learned Sessions Judge.

(6) I enquired from the learned counsel for the State appearing in this Court as to how long the proceedings in the Court of the learned Magistrate were likely to take to conclude, but he was fair and frank enough to express his inability to give any reasonably approximate limit of time within which they would be so concluded. Further the learned State counsel has nto suggested that the accused is likely to abscond or nto likely to appear in Court when required or that he is likely to tamper with the prosecution evidence. As a matter of fact, this Court has nto even been told as to why the proceedings against the accused are being thus delayed or conducted in an indifferent manner and indeed all that has been suggested is that the proceedings are likely to be prtoracted.

It may be pointed out that apart from special legal provisions prohibiting or restricting release on bail as a general rule bail is intended to be security for the accused person's appearance to answer the charge at given time and place. Even though an offence be non-bailable if the prosecuting agency without adequate reasons, does nto prosecute with due diligence the proceedings against the accused and the Court below also does nto pay to this matter the expected anxious attention, then this Court cannto feel powerless, leaving the duration of the custody of the accused at the mercy of the prosecuting agency and just watch as a helpless spectator his continued detention for an indeterminate period. In these circumstances, I feel that I have no option but to release the accused-petitioner on bail to the satisfaction of the learned District Magistrate.

I cannto help repeating what has often been said in various judicial decisions of superior Courts in this country that in a democratic set up like ours the dignity of the individual has been accorded some importance and a citizen is entitled to expect that a criminal case against him is proceeded with without undue delay and with due expedition and that he is nto detained in custody for an hour longer than is absolutely necessary. It must also be borne in mind by the Courts holding criminal proceedings that when an accused person is in custody, a responsibility rests on the Presiding Officer of the Court concerned to see that his trial proceeds

with reasonable promptitude and the prosecuting agency concludes the prosecution with due diligence and no unnecessary adjournments are granted in the case.

The matter of detention of the accused in custody must nto be completely ignored as if it is of no concern to the Court. Unfortunately I do nto find any cogent reasons given by the Court below on a large number of occasions for adjourning the case, even though the recording of prosecution evidence had actually started as far back as 3-11-1966. As a matter of fact, the learned Magistrate does nto seem to have realised that except when statute clearly provides to the contrary, till a person is found guilty, he is presumed under our criminal jurisprudence to be innocent and to prolong his custody by delaying the proceedings against him for inadequate reasons, is contrary to the basic principles of the criminal law in our democratic set up. And this is so even if the accused be charged with the commission of the most serious offence.

I consider it necessary here to point out that the quality of a nation's civilisation can largely be measured by the manner in which it enforces its criminal law. That measurement is nto taken merely, in retrospect by special historians of the future, it is on the toher hand taken from day-today working of the Courts by the people of the world, and to them our Code of Criminal Procedure and the rules and directions of the High Courts give the clue. The subordinate Courts, would, thereforee, be well advised to keep themselves fully informed of our law of procedure and to conduct proceedings before them in accordance with that buth in letter and in spirit.

(7) I should also like to impress on the Court below the imperative necessity of maintaining proper judicial Court records in accordance with law is the sine qua non of efficient and impartial judicial process which would satisfy a democratic mind. Nto only must the Presiding Officers take pains personally to see that the records are prepared and maintained in accordance with law, but the superior Courts are also expected to devtoe the requisite attention to the maintenance of records of the subordinate Courts. Carelessly or negligently maintained judicial records, it must never be forgtoten, tend to defeat the cause of justice.

(8) In the final result, as observed earlier, the petitioner is released on bail buth in the case under Section 307, Indian Penal Code, and in the cases under the Indian Arms Act to the satisfaction of the District Magistrate. A copy of this order should be sent immediately to the authorities concerned for compliance. I should, however, make it clear that if and when it is made to appear to the Court below that the petitioner's release on bail is reasonably calculated to prejudice the fair trial of the case or if toherwise cogent legal considerations required his detentions in custody, it would be open to it to reconsider the question in accordance with law. What I have stated in this order is nto to be interpreted to be any expression of opinion, direct or indirect on the merits of the case. I am releasing the petitioner on bail solely on account of the wholly unexplained and inordinate delay in the criminal proceedings in the Court below, I have indeed been influenced by the fact that the learned Magistrate did nto attach due importance to the directions issued by the learned Sessions Judge and also that he had acted in violation of the directions contained in Paragraphs 6, Chapter I-A, Punjab High Court Rules and Orders, Vol.. Iii which provide for speedy disposal of cases and lay down that the Magistrates should, as a rule, give priority to criminal cases over toher work, especially when an accused person is in custody.

(9) Before finally concluding, I may express this Court's hope that the proceedings would now be conducted with due expedition and promptitude and attempt should be made to hold proceedings from day to day because such a course is also in the interests of the prosecution itself, as great delay in the production of evidence carries with it many defects, nto the least being that memory may tend to fade with the lapse of time. Judicial work deserves priority at the hands of the Magistrate entrusted with judicial powers and this Court trusts that the authorities concerned would provide adequate facilities by way of relief to such Magistrates from toher work so as to enable them to satisfactorily devtoe themselves to the judicial cases entrusted to them. In this connection, attention of the learned Magistrates and the authorities concerned is drawn to paragraph 9, Chapter 1-A, Punjab High Court Rules and Orders Vol. Iii, which provides that in criminal cases in which the proceedings are likely to be prtoracted, the proper course for the Magistrate trying the case is to apply to the District Magistrate to be relieved of toher work to such an extent as to enable him to deal promptly and efficiently with the cases.

FK/VPP/G.G.M.

(10) Petition allowed.