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Court : Delhi

Decided On : Dec-23-1966

Reported in : AIR1967Delhi111; 1967CriLJ1495

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

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 344

Appeal No. : Criminal Misc. (Main) 2 of 1966

Appellant : Jai Parkash

Respondent : The State

Advocate for Def. : K.L. Sharma, Adv.

Advocate for Pet/Ap. : P.S. Safeer, Adv

Judgement :

ORDER

(1) Jai Parkash son of Shri Bir Bhan has applied under Section 561-A Code of Criminal Procedure, praying that the record of the lower Court be summoned and the proceedings pending therein be ordered to be quashed.

(2) This case is one of the very few instances which bring out a very dark aspect of our judicial process. A criminal case against the petitioner under Sections 409 and 420, Indian Penal Code was started as far back as in 1956. One Roshan Lal

Kapur is his co-accused. The facts out of which this criminal prosecution arises are concerned with a limited company called the National Planners Ltd., which has apparently since gone into liquidation and of which one Shri Hardit Singh is functioning as the liquidator. The challan was put into Court more than 9 years ago in April 1957 and practically no progress has been made in this case during the last more than 9 years. At the present moment, I am informed that the case is pending in the Court of Shri M. L. Grover, Sub-Divisional Magistrate, Delhi. Roshan Lal Kapur, co-accused of the petitioner, it appears, has been actively fighting the Case and the matter has more than once gone even to the Supreme Court. Once an order was made by the Supreme Court on 25-8-1958 on a transfer application at the instance of Roshan Lal Kapur and again some orders are stated to have been made in November and December, 1962. An application for transfer of the case was also , by Roshan Lal Kapur in the Court of the learned Sessions Judge, Delhi on 18-5-1966, in which it was prayed that 7 cases pending against him be transferred for trial to one Court in Kashmere Gate or Tis Hazari. An interim order of stay of proceedings was also claimed but it appears that on 19-5-1966, the learned Sessions Judge did nto grant any stay and he merely issued ntoice of the applications to the State for 28-5-1966. On that date, the learned Sessions Judge thought it fit to call for the comments of the Presiding Officers of the Courts in which those cases were pending. It was further specifically stated that there was no ground for stay of proceedings at that stage. The hearing was adjourned to 14-6-1966. On 14-6-1966, it is ntoed by the Reader that the learned Sessions Judge had nto yet taken over and that comments of Shri N.L. Kakkar and Shri M.L. Grover, learned Magistrates, had been received. The case was directed to come up on 24-6-1966. On that date the case was adjourned to 6-7-1966 for further orders. On 6-7-1966, it appears that Roshan Lal submitted supplementary grounds for the transfer of the case. The Public Prosecutor, was required to file his reply on 25-7-1966, on which date the reader to the Court ntoed that the learned Sessions Judge was on leave. It was, however, added that the petitioner had put in additional grounds of transfer of the case of which a copy was given to Shri Hardit Singh. The case was adjourned to 3-8-1966 for proper orders. On 3-8-1966, it was ntoed that the comments of the learned Magistrates had nto been received and a reminder was directed to be sent for furnishing the comments by 19-8-1966. The

petition was, however, adjourned to 29-8-1966, on which date the case was adjourned to 6-9-1966, without assigning any reasons. On 6-9-1966, the order said 'As prayed for to come up on 12-9-1966'. On 12-9-1966 again, it was adjourned to 14-9-1966 without assigning any reasons and similarly it was again adjourned to 21-9-1966. On 21-9-1966, the case was adjourned to 1-10-1966, but the order does not bear the signatures of the Court. On 1-10-1966, the order said : 'To come up for orders on 25-10-1966', but this is also not signed by the learned Sessions Judge. Same is the position in regard to the order dated 25-10-1966, which merely said 'To come up on 8-11-1966'. On 8-11-1966, another application appears to have been presented by Roshan Lal and notice was ordered on that application to the Public Prosecutor for 9-11-1966. On 9-11-1966, it was observed by the learned Sessions Judge that Roshan Lal Kapur merely wanted the case against him under Section 420, Indian Penal Code, pending in the court of Shri N.K. Garg, S.D.M., New Delhi, to be transferred to some other Court of competent jurisdiction. Regarding other cases he did not press his application, because in one of such cases he had already been acquitted and in other cases the Presiding Officers had been transferred. Regarding the additional grounds submitted by Roshan Lal Kapur, further comments of the learned Magistrate were invited the case was adjourned to 25-11-1966, on which date it was noted by the Reader that the Presiding Officer was on leave and also that the comments had not been received. The Reader also seems to have ordered that the learned Magistrate may be requested to submit his comments before the next date of hearing and the case was adjourned to 6-12-1966, on which date arguments were heard and the case was adjourned on 8-12-1966. On 8-12-1966, application for transfer of the case (State v. Roshan Lal Kapur) under Section 420, Indian Penal Code was allowed and the case transferred from the Court of Shri N.K. Garg to that of Shri A.K. Kapur, Magistrate 1st Class, Delhi. The petitioner Roshan Lal was directed to appear in the transferee Court on 14-12-1966.

(3) It is obvious that the present petitioner against whom the criminal proceedings were initiated as far back as 1956 and the challan put into Court as far back as April, 1956 is still awaiting his trial. Shri Safer has drawn my attention to a decision of the Circuit Bench at Delhi of the Punjab High Court in Kulwant Rai v. Shyam Sunder, Crl. Misc. 59 of 1965 decided by S.K. Kapur, J. On 20-11-1965

reported as (1966) 2 DLT 7 of the Short Notes Section.

There, it is observed as under:-

'Where the criminal case was pending since 1961 and the accused had attended the Court for more than 96 hearings and a number of adjournments were granted in the case for recording the complainant's evidence and his statement and the appalling delay appears on the face of it.

Held, that, proceedings should be quashed only either where on the complaint itself. It appears that the Court had no jurisdiction or where the allegations made do constitute an offence, but there is no legal evidence adduced in support of the case or the evidence adduced manifestly fails to prove the charge.

Held, that if the perusal of the entire record shows that the only conclusion possible is that the accused could not have any intention to commit a crime, then the High Court will not permit the process of the Court to be abused. The entire course of conduct between the parties shows that the dispute between the parties is purely of a civil nature.

Held, further that, no person should be allowed to use the criminal Courts as a handle to coerce another person to honour his civil liabilities'.

Shri Safer has, relying on this decision, tried to take me through the allegations in the complaint on the basis of which challan was put into Court for the purpose of persuading me to quash the proceedings. I am, however, not inclined on the facts and circumstances of this case to go into the merits of the complaint. I am nevertheless, quite clear that the case against the present petitioner must be taken up seriously by the learned Magistrate and it must be proceeded with and disposed of with due dispatch and promptitude. An attempt should be made to conclude this case within three months and the prosecution must be called upon to produce their evidence without undue delay.

(4) I cannot help pointing out this stage that the standard of civilization of a democratic country set-up like ours is largely measured by the standard of efficiency, consideration of the person accused and promptness in its criminal

administration. Indifference on the part of Courts to the delay in the trial of criminal cases particularly, reflects a serious dereliction of their duty and such an attitude of mind can by no means be countenanced by this Court. Cases like the present this only serve to bring discredit to our judicial process and the Presiding Officers of criminal Courts must never ignore the importance of this aspect. Apart from the wholly unsatisfactory state of affairs in the trial of this case even in the Court of the Sessions Judge, the proceedings in the application for transfer have been conducted in a manner which is difficult for this Court to appreciate & indeed still more difficult to approve. As far as enquiries and trials are concerned, the Code of Criminal procedure in express terms directs that the proceedings must be held as expeditiously as possible and in particular, when the examination of witnesses has begun, it must be continued from day to day; unless adjournment is considered necessary for reasons to be recorded. The scheme of our Code of Criminal Procedure expects the Presiding Officers of Criminal Courts to apply their mind to this matter with due seriousness and not to treat it with indifference as seems to have happened in this case. In this connection, I may appropriately impress upon all subordinate criminal Courts the desirability of carefully studying the relevant provisions of the Code of Criminal Procedure and the directions contained in Vol. Iii of the Punjab High Court Rules and Orders, more particularly Chapter I.

(5) The proceedings for the transfer of the case, I regret to point out, have also been held in an extremely unsatisfactory manner and the Presiding Officers have not devoted to the case the personal attention and anxiety which the law required of them. These proceedings also betray an attitude of indifference which is inconsistent with the judicial sense of responsibility. It is however, hoped, that in future such proceedings would be held with due regard to the aspects mentioned above. This petition is dismissed.

(6) I am informed that today is the date fixed in this case in the Court of Mr. Grover,. It is hoped that on the next date of hearing, he would devote his full attention to this case and after going through the record, proceed to dispose it of in accordance with law in the light of the observations made above.

(7) Petition dismissed.

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