

Jagmohan Vs. the State

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Court : Delhi

Decided On : Feb-29-1980

Reported in : 1980CriLJ742; 17(1980)DLT438

Judge : G.B. Luthra, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 155(2), 397,468, 470 and 473

Appeal No. : Criminal Revision Appeal No. 54 of 1980

Appellant : Jagmohan

Respondent : The State

Advocate for Pet/Ap. : K.L. Arora,; Harish Gulati,; J.S. Wasu and;

Judgement :

G.R. Luthra, J.

(1) The present revision petition Nos. 53, 54, and 52 filed by Sarvshri Sanjay Gandhi, Jagmohan, and Ranbir Singh respectively under Sections 397 and 482 of the Code of Criminal Procedure 1973 (hereinafter referred to as the Code) seek to invoke the revisional and inherent powers for quashing and order dated 11th February 1980 of Shri K.P.Verma, Chief Metropolitan Magistrate, Delhi allowing under Section 473 of the Code, launching of prosecution against the petitioners

beyond and after the expiry of period of limitation as prescribed by Section 468 of the Code. As all the petitions are in respect of the same order they are being decided together by means of one judgment which is being written in Revision Petition No. 54 of 1980 tiled Shri Jagmohan.

(2) On 28th May 1977, Government of India acting under Section 3 of the Commission of Inquiries Act, appointed a commission of inquiry with Mr. Justice J.G. Shah, retired Chief Justice of India as the Chairman. That Commission submitted two reports dated 11 the March 1978 and 26th April 1978. In report dated 26th April 1978 the said Commission of Inquiry gave findings in respect of commission of offences by the present petitioners by way of carrying out illegal demolitions of some shops and houses in and around villages Kapeshera and Smalka situated in the Union territory of Delhi.

(3) Due to aforesaid findings of Shah Commission, C.B.I, investigated the matter. The G.B.I, filed a report under Section 173 of the Code on 17th July 1979. As by that time cognizance of the offences alleged to have been committed by the present petitioners was barred by limitation under S. 468 of the Code, an application under Section 473 of the Code dated 16th July 1979 was made by Public Prosecution for condoning the delay and taking cognizance of the offences notwithstanding the expiry of the period of limitation.

(4) According to the prosecution it was in pursuance of a criminal conspiracy between the present petitioners that aforesaid illegal demolitions were carried out from September 4 to December 31, 1975. It is alleged by the prosecution that all the petitioners thus committed offences punishable under Section 120-B read with Sections 427, 448 and 166 Indian Penal Code. It is further alleged that each of Shri Sanjay Gandhi and Shri Jagmohan petitioners committed offences punishable under Section 427 and 448 read with S. 109 1. P. G' while Shri Ranbir Singh petitioner committed offences punishable under Section 427, 448 and 166 read with Section 109 Indian Penal Code.

(5) Section 468 of the Code, which prescribes limitation for taking cognizance of different offences, reads as under : '468 (1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the

category specified in Sub-section (2) after the expiry of the period of limitation. The period of limitation shall be : a) Six months if the offence is punishable with fine only; b) One year if the offence is punishable with imprisonment for a term not exceeding one year; e) Three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.' Punishment for offence of conspiracy under Section 120-B is the same as is for the offence for the commission of which the conspiracy is. Punishment provided for offence punishable under Section 427 is imprisonment for two years or fine or both. Punishment for offence punishable under Section 448 is imprisonment for one year or fine of Rs. 1000.00 or both. Punishment provided for the offence punishable under Section 166 is simple imprisonment for one year or fine or both. therefore, period of limitation for the offence punishable under Section 448 and 166 is one year while period of limitation for the offence punishable under Section 427 is three years. According to Section 469 of the Code starting point for limitation is one year from the date of commission of the offence. therefore, limitation period for the offences under S. 120-B read with Section 448 and 166 Indian Penal Code as well as substantive offences punishable under Section 448 and 166 Ipg expired on 31st December 1976, while the said period in respect of offences punishable under Section 120-B read with Section 427 Indian Penal Code and the substantive offence under Section 427 Indian Penal Code expired on 31st December 1978.

(6) Section 473 of the Code reads as under : 'Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of the justice.' On account of expiry of the period of limitation, the prosecution applied for exercise of discretion under Section 473 of the Code. It was stated in the application that offences were committed during the period of emergency, that extreme sense of terror prevailed over the minds of public in general and it was not possible for the aggrieved persons to seek redress of their grievances, that after emergency was lifted a Commission headed by Shri J.C. Shah, retired Chief Justice of India and Chairman was appointed by Government of India vide notification dated 28th May 1977, that it

was on the basis of the reports dated 11th March 1978 and 26th April 1978 that the case was registered on 10th July 1978, that after the completion of investigation reference was made to the Government for sanction of prosecution under "Section 197 and 196(2) of the Code on 2nd and 4th January 1979, that sanctions were received on 10th and 16th July 1979 respectively and that without any loss of time report under Section 173 was lodged on 17th July 1979.

(7) The learned Chief Metropolitan Magistrate issued a notice dated 27th July 1979 to every one of the petitioners to appear in the said court in person or through counsel on 16th August 1979 to answer the aforesaid application under Section 473 of the Code filed by the prosecution. The petitioners put in appearance and thereafter the matter was adjourned from time to time because copies of the documents had to be supplied to the petitioners and also they had to inspect the records. On 28th January 1980 Shri Jagmohan filed a reply to the aforesaid application for condensation of delay. Arguments were heard by the learned Magistrate on 4th February 1980 and the impugned order was passed on 11th February 1980.

(8) Section 473 of the Code has already been reproduced. It is apparent from the same that notwithstanding that limitation period has expired the court may take cognizance of the offences if the delay has been properly explained or in the alternative it is necessary to take cognizance of the offence in the interest of justice. The learned Magistrate after defaying with the objections raised in the reply of Shri Jagmohan petitioner and after holding that the limitation period expired on 31st December 1978 came to the conclusion that the delay from 31st December 1978 to 16th July 1979 did not stand explained. His conclusions are contained in the following words :

'I am surprised as to why the prosecution has failed to file at least an affidavit to show its diligence on the aforesaid dates and period. So I find that because of this negligence of the prosecution it could not establish its diligence w.e.f. 31-12-78 to 16-7-79.'

However, the learned Magistrate expressed an opinion that it was necessary in the interest of justice to take cognizance of the offences. Accordingly he passed the

impugned order.

(9) It was rightly held by the learned Magistrate that the delay had not been explained. It is however, to be seen if it was necessary in the interest of justice to take cognizance of the offence after the expiry of the period of limitation.

(10) I have already mentioned that the period of limitation was one year for the offences other than one punishable under Section 427 and the criminal conspiracy punishable under Section 120-B Indian Penal Code in respect of the said offence. thereforee period of limitation for the offences other than Section 427 expired on 31st December 1976. The delay at the time of filing of the report under Section 173 of the Code by the C. B. I. was about two years and seven months. It is urged by the learned counsel for the petitioners that commencing of prosecution in respect of offence punishable under Section 166 and 448 1. P. C. was hopelessly and incurably barred by time, that although period of limitation for the offences punishable under Section 427 and the conspiracy in respect thereof was three years, yet as that offence was non-cognizable according to the first schedule of the Co ie, in view of Section 155(2) of the Code investigation in respect of the said offence could not be conducted by the Police without the order of a Magistrate which was never obtained and that hence those offences could not be taken cognizance of at all.

(11) That contention has force. But even if it is taken for granted that the period of limitation was three years (as provided for offence under Section 427 IPC) and that the same expired on 31st December 1978, neither the delay of more than seven months from 1st January to 16th July 1979 had been explained nor there are good grounds for taking cognizance of the offence in the interest of justice after the expiry of period of limitation.

(12) The only reason given by the prosecution is that the offence were committed during the period of emergency, when the people were so much terrorstricken that they had no cheek to voice their grievance before any court or the Police. Firstly, no affidavit or even a single aggrieved persons has been filed to show to the effect that it was on account of fear that he did not start any proceedings for redress of wrong. Secondly, even if we suppose for the sake of argument that the aforesaid

contention is correct, emergency was lifted on 20th March 1977 and even a New Janta Party Government came into power on 24th March 1977. None of the petitioners had any influence over the new Government and rather the new Government was hostile and started making inquiries against petitioners through appointment of various commissions as well as instituted criminal cases. Why then the aggrieved persons could not come up and urge the Police to take action against the petitioners. Then report of Shah Commission of Inquiry, due to which investigation was started by the G. B. I., was submitted on 26th April 1978. The learned counsel for the petitioner rightly contended that waiting for report of commission of inquiry could not be a justification for extending period of limitation in the interest of justice. But we take it for granted for the sake of argument, that the Government was waiting to take action against the petitioners till its mind was so instructed by the findings of the commission. But even after the receipt of the report dated 26th April 1978 three months were taken in respect of the registration of the case on 10th July 1978. G.B.I., as is alleged by the prosecution, started investigation immediately on the registration of the case. It was fully known at that time that sanction under Section 197 would be required in respect of prosecution of Shri Jagmohan and Shri Ranbir Singh petitioners because they were public servants removeable with the sanction of the Government and no cognizance of the offence could be taken without such sanction. Similarly it was fully known to the prosecution that the offence of conspiracy could not be taken cognizance of without sanction under Section 196(2) of the Code. therefore, move for obtaining sanctions should have been made in the month of July 1978 itself but none was done. It is alleged that moves were made on 2nd and 4th January 1979 for obtaining sanctions under Sections 197 and 196(2) of the Code respectively. It is apparant that the prosecution was taking things lazily and leisurely. How could under these circumstances the petitioners be deprived of the valuable rights which had accrued to them on account of lapse of limitation.

(13) In this respect following observations of a division bench of this court consisting of Mr. Justice V.D. Misra and Mr. Justice F.S. Gill, in State v. Anil Puri and others. Criminal Appeal No. 389 of 1977 decided on 25th May 1979 are very pertinent and instructive : 'The provision for limitation was made in the Code of Criminal Procedure 1973 (No. 2 1974) for the first time. It is one of the progressive

steps taken by legislature keeping in view the recent trends in criminology. 'Limitation Acts are based on public policy that one must not be faced with stale claims. Indeed one should be allowed to have his peace of mind if no action is taken against him for an alleged infraction of law within a particular period. It is for that reason that a statute for limitation has been termed as a 'statute of repose'. The reports of the Joint Select Committee recommending the incorporation of provisions of limitations in criminal law mentions, amongst others, the grounds that (i) 'people will have no peace of mind if there is no period of limitation even for petty offences', (ii) 'the deterrent effect of punishment is impaired if prosecution is not launched and punishment is not inflicted before the offence has been wiped off the memory of persons concerned.' 'Once a limitation is barred in favor of a person he acquires a valuable right. This right cannot be taken away except under the law.' In the present case not only that delay was totally unjustified and unexplained interests of justice could never require that peace of mind of petitioners which had been bestowed due to lapse of period of limitation should be snatched away. On the other hand it will be abuse of process of law if the petitioners are made to suffer harassment of prosecution forstals alleged infractions of law after months together of expiry of period of limitation.

(14) The learned Magistrate had been more swayed by irrelevant considerations in giving findings that interest of justice required prosecution of the petitioner. Further his order lacks clarity. Relevant portion of his order reads as under : 'Now the question is as to whether the 'interest of justice' demand or not that the delay should be condoned or not as has been laid down under Section 473 of the Cr. P. C. I have thoroughly perused the materials on record. I have given my anxious thoughts to the various aspects of the case. I find that the circumstances of this case have been a bit extraordinary. The respondent No. 1 has been the son of the Prime Minister while the respondent No.2 had been the Vice-Chairman of D. D. A. and as an I. A. S. officer and a 'Padma Bhushan' while the respondent No. 3 had been a responsible Executive Engineer of DDA. As per the allegations of the prosecution, the avenue of the conspiracy has been I, Safdarjang Road, New Delhi which has been the then official residence of the Prime Minister of India, Heap of documents and statements were to be collected by the CBI. So the circumstances of this case have not been normal, as per the allegations of the prosecution. On

the other hand we have got much important persons like the respondents to file on the other hand we have got some humble so-called aggrieved persons. Let not the future generations and future History should say that the judiciary of the day shirked in its duties. Let the mist be cleared and the innocence or guilt of the respondents be established. It will be also in the larger interests of respondent No. 1 and 2 that the case should be tried and the truth and the alleged bona fide or mala fide be established. Let this case see the light of the day. At the same time I also feel that let no 'SOCRATES' and 'CHRIST' be harassed and punished. The rule of the law is on test today. So, I feel that interests of justice today demand that the delay should be condoned. If under these circumstances we are not going to condone the delay, I do not know what better case will be there when for the sake of interests of justice we shall be condoning the delay. So I find that in the larger interests of all concerned the delay should be condoned in this case. I shall be probably failing in my humble duty, if I do not condone the delay.' It is clear from the above that the learned Magistrate was of the view that the petitioners were holding very high positions and therefore, it was in the interest of justice that they must be prosecuted. That reasoning of the learned Magistrate is negation of the very concept of 'rule of law'. 'Rule of law' means that law must be the same for all whether high or low and rich or poor. Law looks at the case and not personalities involved. It keeps the scales of justice even for all sections of society. By no stretch of imagination it means that law must condemn high ups and people in position. The mere fact that in the present case petitioners were holding high positions their rights as ordinary citizens conferred upon them on account of lapse of period of limitation could not be forfeited. We have to decide objectively the case of the petitioners and in that way conclusion already mentioned that prosecution cannot be given benefit of provisions of Section 473 of the Code is inescapable.

(15) It is really strange on the part of the learned Magistrate to hold that it will be in the larger interest of Shri Sanjay Gandhi and Shri Jagmohan, that the case should be tried. Will their interest be served when they will have to face long drawn trial and bear burnt of harassment and humiliation, which the prosecution necessarily entails? Is there any necessity of undergoing or deal of the trial for getting a stamp of innocence from a court when there is presumption that every one is

innocent unless proved otherwise. As a matter of fact it is neither in the interest of the petitioners nor, as already held, in the interest of justice that such extremely delayed and time barred criminal proceedings should be commenced, more so, when there is contention of the petitioners that the prosecution was with a view to satisfy political vendetta of the previous government and to tarnish political image of Shri Sanjay Gandhi, which is plausible.

(16) Reference of the learned Magistrate to 'Socrates' and 'Lord Jesus Christ' and in respect of their punishment is not only highly irrelevant but also lacks clarity. It is not understandable as to why such reference had been made. The aforesaid references as well as remark of the learned Magistrate 'Let not the future generation and future history should say that judiciary of the day shirked in its duties' are highly irrelevant. It is desirable that the judiciary should decide the cases objectively without bothering as to what would be the comments of future generation and future history. Unnecessary and irrelevant reference like the one made by the learned Magistrate should be avoided.

(17) The learned Magistrate also mentioned that he had thoroughly perused the materials on record. He also in earlier part of the judgment held that there were some materials on the record of the case to show that the aggrieved persons were prevented by pressure etc. from approaching law courts. But there is no mention of even single document which the learned Magistrate had the occasion to peruse or see. These vague observations should hardly be a basis for arriving at conclusions adverse to the petitioners. It was held as follows by a Division Bench of this court in G. D. Iyer and others v. State 1978 Criminal L. J. 1180 : 'As we have observed Section 473 vests a residual discretion in the court.' 'True it is a matter of discretion, but then the discretion is not willful or arbitrary, but legal, judicial discretion does not mean a wild self-willfulness, which may prompt to any and every act; but this judicial discretion is guided by the law, so as to do substantial equity and justice. It is a legal discretion to be exercised in discerning the course prescribed by law and is not to give effect to the will of the Judge, but to that of the law. Discretion is not the indulgence of a judicial whim, but the exercise of judicial judgment, based on facts and guided by law. That the judge is endowed with discretion does not mean that he is the master of the law. He remains, as

always, its Minister. He is a servant of law. As long ago as 1890 Lord Halsbury said that discretion is to be 'not arbitrary, vague and fanciful, but legal and regular.' Courts of Justice are 'to act according to rules of reason and justice, not according to private opinion.....according to law, and not 'humour'.'

(18) As already stated there were hardly any reason for the learned Magistrate to have exercised the discretion against the petitioners and in favor of the prosecution. In such cases of wrong exercise of discretion this court has to exercise revisional as well as inherent jurisdiction to redress the wrong. In the case before the division bench exercise of discretion was proper but the principle laid down was that in the event of wrong and arbitrary exercise of discretion, as happened in the present case, revisional as well as inherent powers could be invoked.

(19) Before concluding I may mention that the learned Magistrate fell in error when he remarked in para 8 of his judgment that judgment of Mr. Justice T.P.S. Chawla holding constitution of and proceedings before the Shah Commission as illegal, was not binding on him because an appeal was pending before the Supreme Court. Judgment of the High Court is binding unless and until it is set aside by the Supreme Court and mere pendency of the appeal does not take away its binding force. The learned Magistrate should be cautious in future.

(20) Under the above circumstances, I accept all the three petitions, set aside the impugned order dated 11th February 1980 of the learned Chief Metropolitan Magistrate, dismiss the application of the prosecution for condensation of delay and quash all the proceedings which are now pending in the said court against the petitioners in respect of the offences mentioned already and the petitioners shall not be prosecuted for the said offences.