

Devendra Kumar Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Apr-20-1998

Reported in : 1999CriLJ493

Judge : Arun Madan, J.

Acts : [Essential Commodities Act, 1955](#) - Sections 3 and 7; Indian Penal Code (IPC) - Sections 120B and 407; Code of Criminal Procedure (CrPC) , 1974 - Sections 167(5) and 251; Rajasthan Trade Articles (Licensing and Control) Order, 1980; Rajasthan Kerosene (Restriction on Use and Fixation of Ceiling Price Order, 1993; Rajasthan Motor Spirit and High Speed Diesel (Prevention of Mal Practices in Supply and Distribution) Order, 1980

Appeal No. : Criminal Revision Petition No. 299 of 1997

Appellant : Devendra Kumar

Respondent : State of Rajasthan

Advocate for Def. : S.M. Poddar, P.P.

Advocate for Pet/Ap. : S.K. Tiwari, Sr. Adv.

Disposition : Revision allowed

Judgement :

ORDER

Arun Madan, J.

1. This revision petition has been preferred before this Court against the impugned order dated 5-9-1997 passed by learned Special Judge (Essential Commodities Act) (Sessions Judge), Kota in proceedings arising out of FIR No. 114/1995 P.S. Udhog Nagar, Kota in respect of offences punishable under Sections 3/7 of the [Essential Commodities Act, 1955](#) (for short 'The Act of 1955') and for offences punishable under Sections 407 and 120B, IPC whereby the petitioner's application dated 25-3-1996 was dismissed.

2. The questions of law which have arisen for determination of this Court in the context of the case as set up by the prosecution against the accused petitioner are formulated herein below :-

(a) Whether the learned Special Judge (E.C. Act) cases, Kota by the impugned order dated 5-9-1997 in a case arising out of FIR No. 114/1995 for offences punishable under Sections 3/7 of the Act of 1955 and Sections 407 and 120B, IPC was justified in dismissing the petitioner's application for his discharge on the ground that the Bar under Section 167(5), Cr. P.C. was not attracted to this case notwithstanding the abatement of the proceedings automatically after the expiry of the statutory period of six months as specified under the Code with regard to the summons cases. Unless the Officer conducting the investigation gives a satisfactory explanation to the concerned Magistrate that for the special reasons recorded in writing and in the interest of justice the continuation of the investigation beyond the period of six months was necessary?

(b) Whether in absence of non-fulfilment of the aforesaid requirements as stipulated under the law, the trial Court was justified in extending the statutory period beyond six months for trial of summons cases under the Act of 1955 by giving the extensions from time to time on the request of learned A.P.P. for the State and which has culminated in filing of the challan/chargesheet in the said Court on 4-4-1996?

(c) Whether such extensions beyond the stipulated period of six months in absence of any satisfactory explanation on the record of the trial Court which

would have justified such extensions would not have vitiated the trial and the accused petitioner deserved his discharge in respect of the charges framed by the prosecution for offences punishable under Sections 3/7 of the Act of 1955 and Sections 407 and 120B, IPC?

(d) Whether the ratio of the decision of the Apex Court in the matter of 'Common Cause' a Registered Society v. Union of India reported in 1996 (6) SCC 775 : AIR 1997 SC 1539 : 1997 Cri LJ 195 clarifying/modifying its earlier judgment dated 1 - 5-1996 in Writ Petition (Civil) No 1128/1986, wherein the Apex Court had observed that the time limit of six months for conclusion of trial in respect of Criminal Cases instituted under the Essential Commodities Act registered as summons cases, the trial would be deemed to have commenced with effect from the date when the accused who was charged for commission of (he said offence are produced before the concerned Magistrate and are directed in accordance with Section 251, Cr. P.C. as to whether they pleaded guilty or have any offence to set up, shall not apply to the cases where the dilatory tactics adopted by the accused are directly attributable to the actions of the accused which results in prolonging the trial, is attracted to this case?

(e) Whether in lieu of the ratio of the aforesaid decisions of the Apex Court, the accused is entitled to the benefit of discharge of charges framed against him since the trial Court not be concluded within the stipulated period of six months to accordance with law particularly when no dilatory tactics were attributed by the prosecution and the delay in conclusion of the trial was mainly on the part of the prosecution which is not entitled to take any benefit of its own laches which resulted in protraction of the trial against the accused?

3. The brief facts giving rise to the filing of this Revision Petition are that an FIR was lodged against the petitioner under the Rajasthan Trade Articles (Licensing & Control) Order, 1980; Clause 3(2) of the Rajasthan Kerosene (Restriction on Use & Fixation of Ceiling Price Order, 1993; Clause 8 of Rajasthan Motor Spirit & High Speed Diesel (Prevention of Mal Practices in Supply & Distribution) Order, 1980 and Sections 407 and 120B, IPC in pursuance of which the petitioner was arrested on 19-4-1995 and investigation commenced on the said dates and he was

enlarged on bail, The challan was filed with the concerned Magistrate on 4-4-1996

4. Admittedly the investigation was not completed till 4-4-1996, when the challan was filed against the petitioner. The prosecution has not disputed that the investigation was not completed against the accused within the stipulated period of six months to be reckoned from the date of arrest of the accused petitioner. However, it is an admitted position as per the record that an application for grant of further extension of time for conducting investigation beyond the period of six months from the date of arrest of the accused petitioner had not been filed till 12-12-1997

5. During the course of hearing learned Public Prosecutor for the State has not disputed the aforesaid position nor has been able to show any thing to the contrary from the record of the case which would justify the extensions of time beyond six months keeping in view the requirement of Section 167(5) Cr P.C.

6. It has further not been disputed by the learned counsel for the parties and is also evident from the record that the trial Court had granted adjournments on several occasions to the prosecuting agency awaiting the filing of the challan which could not be filed till 4-4-1996 and hence the investigation remained inconclusive till 4-4-1996 and in fact the said adjournments for filing of challan were granted by the trial Court merely on the oral request made by the learned A.P.P., which in fact the said trial Court was not justified to do so in absence of a specific application having been moved by the prosecuting agency and placed on the record showing special reasons which would justify the extensions granted from time to time in accordance with law.

7. I have heard learned counsel for the parties at length, perused the summoned record as well as the legal position on the subject.

8. Prima facie I am of the considered view that learned Special Judge, (E.C. Act) cases, Kota has committed illegality in having passed the impugned order, dated 5-9-1997 in having dismissed the petitioner's application for his discharge on the ground that bar Under Section 167(5), Cr. P.C. is not attracted to this case notwithstanding the proceedings instituted under Sections 3/7 of the Act of 1955

and Sections 407 and 120B, IPC having not been concluded within the stipulated period of six months and more particularly when investigating agency had failed to specify before the trial Court as to what were those special reasons which would have justified the continuation of the investigation beyond the period of six months and in absence of such sparing and exceptional circumstances, the impugned order of the trial Court is wholly unwarranted and not sustainable in the eyes of law. I am further of the view that it was not open to the trial Court to have suo motu extended the period of trial beyond the stipulated period of six months for the trial of summons cases under the Act of 1955 and the impugned order of the trial Court is also violative of the ratio of the decision of the Apex Court in the matter of 'Common Cause' a Registered Society v. Union of India 1997 Cri LJ 195 (supra), since it was mandatory for the prosecuting/investigating agency to have filed an application before the concerned Magistrate indicating the special reasons for extension of trial beyond the stipulated period of six months to be reckoned with effect from the date of the arrest of the petitioner. Hence in those circumstances, since the investigation was obviously not concluded by the investigating agency even on 4-4-1996 when the charge-sheet was filed belatedly could not be taken cognizance by the concerned trial Court. My observations are also fortified from the decisions of this Court in the matter of Vishnu Bhagwan v. State of Raj. 1989 (2) WLN 324, Babulal v. State of Raj. 1981 WLN 225 : 1982 Cri LJ 1001, Hasan Ali v. State of Raj. 1979 WLN 151, as well as Jay Sankar Jha v. State 1982 Cri LJ 744, Dilip Kumar Das v. State of W.B. 1993 Cri LJ 837 and the decisions of the Apex Court in the matters of Jitendra Tyagi v. Delhi Administration 1990 Cri LJ 322 (SC) : AIR 1990 SC 487, Hussainara Khatoon v. State of Bihar 1979 Cr. LJ 1036 (SC) : AIR 1979 SC 1360 and the decision of Karnataka High Court in the matters of State of Karnataka v. Laxmi Narayana Bhat 1991 Cri LJ 2126 and the decision of Madras High Court in the matter of Jagannathan v. State 1983 Cri LJ 1748.

9. As a result of the above discussions the obvious conclusion which emerges for consideration of this Court is that keeping in view the statutory provisions of Section 167(5), Cr. P.C. there are statutory duties which are cast upon the Court and the other on the investigating agency. For invocation of the aforesaid provisions, the following conditions should be mandatorily satisfied :-

1. the case to which this provision is to be applied, should be one triable by the Magistrate as a summons case;
2. the accused in that case should have been arrested; and
3. the investigation should not have been concluded within a period of six months from the date of arrest of the accused. The officer making the investigation has necessarily to move the Court before which the case is pending, for an order permitting continuation of the investigation beyond the period of six months, before the Magistrate discharges his duty, which comes only after the expiry of six months. It follows that these two duties cast on these two functionaries are independent of each other.

10. I am further of the view that if in any case triable as a summons case the investigations is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate must make an order stopping the investigation into the offence unless the officer making the investigation has, before the expiry of the said six months' period, satisfied the Magistrate that for special reasons and in the interest of justice the continuation of the investigation beyond the period of six months is necessary, and that the investigation conducted beyond the period of six months without the permission of the Magistrate has to be held as illegal, because investigation beyond the period of six months without such permission of the Magistrate is clear breach of the directions given under this provision. The failure on the part of the Court to stop the investigation on the expiry of six months, as provided under Section 167(5), Cr. P.C., will not ipso facto be deemed to be an implied permission by the Court to the investigating officer to continue the investigation beyond the prescribed period, as the continuation of the investigation beyond the prescribed period could be permitted by the Court only for special reasons and in the interest of justice.

11. Consequently this revision petition is allowed and the impugned order, dated 5-9-19971 passed by learned special Judge (E.C. Act) cases, Kota in proceedings arising out of case vide FIR No. 114/1995, police station, Udyog Nagar, Kota whereby the petitioner's bail, he need not surrender to the trial Court and shall stand discharged, for commission of the aforesaid offences as a result his trial for

the aforesaid offences shall be deemed to have automatically concluded.

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