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Court : Rajasthan

Decided On : Mar-31-1999

Reported in : 1999(3)WLC435; 1999(1)WLN177

Judge : G.L. Gupta, J.

Appeal No. : S.B. Cr. Misc. Petition No. 819 of 1996

Appellant : Rajendra Kumar

Respondent : State of Raj.

Advocate for Pet/Ap. : Mr. Singh

Disposition : Petition allowed

Judgement :

G.L. Gupta, J.

1. Through this misc. petition Under Section 482 Cr.P.C. accused Rajendra Kumar seeks the quashment of the proceedings pending against him in the Court of Judicial Magistrate No. 1, Bikaner, and also the setting aside of the order dt. 1.10.1996 passed by the Judicial Magistrate in Criminal Case No. 341/94.

2. The relevant facts are these : In respect of a theft which took place between 13.2.1993 and 15.2.1993 petitioner Rajendra Kumar and two more persons were

arrested. After the completion of the investigation a challan was filed against the petitioner and two other persons on 3.8.1993. It was stated that the petitioner and accused Raj Kumar Committed offence Under Section 411 IPC and accused Ganesh committed offences Under Section 457 and 380 IPC. The trial of the case could not proceed because the attendance of one of the accused could not be procured for one or the other reason. Virtually no effective proceedings took place before 1.10.96. ON 1.10.96, an application was filed by the petitioner before the learned Magistrate stating that he was arrested on 19.5.93 and yet charge had not been framed against him, and therefore, he was entitled to be discharged under the directions of the Apex Court in the case of Common Cause v. U.O.I. The learned Magistrate heard the petitioner's counsel on the same day and rejected the application. At the same time, he framed a charge Under Section 411 IPC against the petitioner. Charges Under Section 457, 380 and 411 IPC were framed against Ganesh Kumar and a charge Under Section 411 IPC was framed against Raj Kumar. It is this order which is under challenge in this petition.

3. Mr. Singh, learned Counsel for the petitioner, contended that the petitioner was challaned for an offence Under Section 411 IPC which is punishable with imprisonment for a term not more than 3 years and as the trial had not started within a period of 2 years the petitioner was entitled to be discharged in view of the directions given in the Common Cause case. He pointed out that the delay in commencement of the trial of the case was not attributable to the petitioner.

4. Learned Public Prosecutor, on the other hand, contended that there is joint trial of the accused-petitioner and two other persons and as the attendance of one of the accused could not be procured for one or the other reason there was delay in the trial, and the petitioner is not entitled to have the benefit of the directions contained in the Common Cause case.

5. I have considered the above arguments. In the case of Common Cause, A registered Society v. Union of India 1996 SC 1619, the Apex Court gave directions in respect of cases pending in criminal courts for a long period, in view of the fact that the very pendency of the criminal proceedings for long periods by itself operates as an engine of oppression. Clause 2(f) is relevant for the disposal of this

case, which is reproduced hereunder-

2(f) Where the cases pending in Criminal Courts under IPC or any other law for the time being in force are punishable with imprisonment up to three years, with or without fine, and if such pendency is for more than two years and if in such cases trial have still not commenced, the Criminal Court shall discharge or acquit the accused, as the case may be, and close such cases.

(emphasis supplied)

6. As Para 3 of the report, it is stated that the period of pendency of a criminal case shall be calculated from the date the accused are summoned to appear in the Court.

7. This judgment of the Common Cause case was clarified by the Apex Court in the second case of 'Common Cause' A Registered Society Through its Director v. Union of India and Ors. 1997 SC 1539. At Para (II), their Lordships explained the meaning of the phrase 'non-commencement of trial' as employed in paragraphs from 2(b) to 2(f) in the earlier judgment. In respect of trial of warrant cases, it was observed 'as follows-

(ii) In cases of trials of warrant cases by Magistrate, if the cases are instituted upon police reports the trials shall be treated to have commenced when charges are framed under Section 240 of the Code of Criminal Procedure, 1973 while in trials of warrant cases by Magistrate when cases are instituted otherwise than on police report such trials shall be treated to have commenced when charges are framed against the concerned accused under Section 246 of the Code of Criminal Procedure, 1973.

8. A reading of the directions given in both the judgments makes it clear that the pendency of a case is to be calculated from the date an accused is summoned to appear in the Court and the trial of the warrant case commences on the date charges are framed under Section 240 Cr.P.C. against the accused.

9. In the instant case, the petitioner appeared in the Court on 31.7.1993 when the challan was filed. He had already been arrested on 19.5.1993. Thus the pendency

of the case shall be calculated from 31.7.1993. Charge was not framed against the accused prior to 1.10.96. It is thus obvious that the trial of the case did not commence for more than two years. It has, therefore, to be accepted that the petitioner became entitled to the benefit of the directions given by the Apex Court at Clause 2(f) in the judgment of the first Common Cause case.

10. The learned Magistrate has rejected the application of the petitioner on two grounds; One, the trial has started as compliance of Section 207 Cr.P.C. had already been made. Two, the allegations against the petitioner are of serious nature.

11. In my considered opinion, the learned Magistrate has committed error in rejecting the application of the petitioner on the aforesaid grounds. Under Section 207 Cr.P.C, a duty has been cast on the Magistrate to furnish to the accused, free of cost, copies of the documents mentioned in that Section. The learned Magistrate obviously fell in error when he held that the trial of the case commenced from the date the copies were supplied to the accused. The judgment of the Apex Court is clear on the point that the trial of the warrant case instituted on police report shall be treated to have commenced when charges are framed under Section 240 Cr.P.C. As the learned Magistrate had not framed charge against the petitioner before 1.10.1996, it has to be held that the trial had not commenced.

12. As regard the second ground, it may be stated that it has not been left at the direction of the Magistrate to give benefit to an accused or not of the judgments of the Apex Court in the 'Common Cause Cases' It is nowhere contained in the two judgments of the 'Common Cause Case' that the Court/Magistrate shall look into the nature of the offence before granting the benefit of the directions. The directions contained in the judgments are of mandatory nature and there is no discretion left in the Court/Magistrate as regards those directions. Needless to say, all the courts of the country are bound to obey the directions of the Apex Court. When the Apex Court has not given discretion to a Court/Magistrate to give or not to give the benefit of the directions to an accused, looking to the nature of the case, or gravity of the offence, the petitioner could not be deprived of the right

which had accrued to him by the judgments of the Appex Court.

13. It is next to be considered as to how the directions of the Apex Court can be followed in a case where there are more than one accused, and some of the accused are not entitled to the benefit of the directions and others are entitled to such benefits.

14. In Clause 2(f) of the first judgment of the Common Cause Case, it was directed that on the discharge or acquittal of the accused, the case shall be closed. The closure of the case means the closure of the case against a particular accused. It cannot be interpreted to mean that the case can be closed only when all the accused are acquitted/discharged in a particular case following the directions of the Apex Court. If there are more than one accused and the case of one of them falls in the directions, he is entitled to the benefit of the directions and the case against him shall be treated to have closed. The case against remaining accused shall continue.

15. The judgment in the second Common Cause Case makes the position clear. In the first clause of that judgment, specifically it has been stated that the case has to be seen keeping in view the conduct of the concerned accused and the first judgment of the Common Cause Case will not apply to the cases where delay was attributable to the concerned accused. In view of Clause 1 of the second judgment of the Common Cause Case, it becomes clear that the directions are to be complied with in respect of a particular accused keeping in view his conduct. It is profitable to reproduce Clause 1 hereunder-

1. The time limit mentioned regarding the pendency of criminal cases in paragraphs from 2(a) to 2(f) of our judgment shall not apply to cases wherein such pendency of the criminal proceedings is wholly or partly attributable to the dilatory tactics adopted by it in prolonging the trial. In other words, it should be shown that the criminal proceedings have remained pending for the requisite period mentioned in the aforesaid clauses of paragraph 2 despite full co-operation by the concerned accused to get these proceedings disposed of and the delay in the disposal of these cases is not at all attributable to the concerned accused, nor such delay is caused on account of such accused getting stay of criminal

proceedings from higher courts. Accused concerned are not entitled to earn any discharge or acquittal of our Judgment, it is demonstrated that the accused concerned seek to take advantage to their own wrong or any other action of their own resulting in protraction of trial against them.

In view of the above observations of the Apex Court, it cannot be held that the judgment of the first Common Cause Case shall apply only where the entire case can be disposed of.

16. Now it is to be seen what is the effect of the framing of charge by the Magistrate on 1.10.1996 after he rejected the application of the petitioner. As already stated, the accused had a right to be discharged on 1.10.1996 as the trial had not commenced against him for more than 2 years from the date of pendency of the case. The petitioner could not be deprived of his right by framing the charge on that day. When the order rejecting the application of the petitioner is not sustainable, the subsequent order of framing of charge cannot be maintained.

17. Consequently, the petition succeeds. The order dated 1.10.96, so far it relates to the petitioner is concerned, is set aside. The proceedings against the petitioner are hereby quashed.