

Kailash Chandra Vs. State of Raj.

Kailash Chandra Vs. State of Raj.

SooperKanoon Citation : sooperkanoon.com/768567

Court : Rajasthan

Decided On : Apr-08-1999

Reported in : 1999(1)WLN509

Judge : G.L. Gupta, J.

Appeal No. : S.B. Cr. Misc. Petition No. 768 of 1998

Appellant : Kailash Chandra

Respondent : State of Raj.

Disposition : Petition dismissed

Judgement :

G.L. Gupta, J.

1. Through this misc. petition Under Section 482 Cr.P.C. the petitioner seeks quashment of the proceedings of Criminal Case No. 45/85, Under Section 7/16 of the Prevention of the Food Adulteration Act pending against him in the Court of Chief Judicial Magistrate, Bhilwara.

2. Mr. Gehlot, pointing out that the case against the petitioner is in respect of the sample of oil taken on 20.7.1984 and the learned CJM vide his order dt. 2.7.1998 has directed that the case shall be tried in summary manner, contended that the petitioner has suffered a lot during the period of 18 years and his right of speedy

trial has been violated. Relying on the case of Hemraj v. State of Raj. 1995 RCC 26, Prahalad v. State of Raj. 1996 RCC 241, Pradeep Kumar v. State of Raj. 1997 RCC 144 Ramnath v. State of Raj. 1997 RCC 124, Sukh Chand v. State of Raj. 1998 (2) RCC 64 and Kamal Kishan v. State of Raj. 1998 (2) RCC 210, Mr. Gehlot canvassed that the proceedings against the petitioner should be quashed.

3. As against this, the learned P.P. submitted that the case against the petitioner is of adulteration in the food article and in such matters the court should not be sympathetic to the accused.

4. The Supreme Court time and again has emphasised the need of deciding the cases without delay. It has also been held that 'right to speedy trial flows from Article 21 of the Constitution of India. All previous decisions were considered by the Constitution Bench of the Appex Court in the case of A.R. Antullay v. R.S. Nayak : 1992 CriLJ2717 . In that case, their lordships addressed themselves to this pertinent question as to what consequences flow from an infringement of right to speedy trial. At para 85 of the report, their lordships observed as follows-

85. Another question seriously canvassed before us related to the consequence following from an infringement of right to speedy trial. Counsel for accused argued on the basis of the observations in Sheela Barse : [1986]3SCR562 and Strunk 1973 (37) Law Ed 2d 56, that the only consequence is quashing of charges and/or conviction, as the case may be. Normally, it may be so. But we do not think that is the only order open to court. In a given case, the facts - including the nature of offence - may be such that quashing of charges may not be in the interest of justice. After all, every offence - more so economic offences, those relating to public officials and food adulterations - is an offence against society It is really the society-the State - that prosecutes the offender. We may in this connection recall the observations of this Court in Champalal Punjaji Shah : 1981 CriLJ1273 . In cases, where quahsing of charges/convictions may not be in the interest of justice, it shall be open to the Court to pass such appropriate orders as maybe deemed just in the circumstances of the case. Such orders may, for example, take the shape of order for expedition of trial and its conclusion within a particular prescribed period, reduction of sentence where the matter comes up after

conclusion of trial and conviction, and so on.(emphasis supplied)

5. A reading of the above observations makes it clear that where there is an infringement of right to speedy trial, normally the charges should be quashed or if the accused was convicted the conviction should be set aside but such a course cannot be adopted where the offence is against the society. Their lordships have particularly made a mention of an offence under the Food Adulteration Act; which is an offence against the society. It has been observed that in such matters the Court should pass appropriate order as may be just in the circumstances of the case and such orders may, for example, take the shape of order for expedition of trial and its conclusion within a particular prescribed period.

6. In view of the authoritative pronouncement of the Constitution Bench of the Apex Court it has to be held that on the ground of infringement of right of speedy trial, the proceedings in a case under the Food Adulteration Act cannot be quashed.

7. The Apex Court in the case of 'Common Cause' A Registered Society v. Union of India 1996 SCC 33 while observing that criminal prosecutions should not operate as engines of oppression directed the disposal of the pending criminal cases in a particular manner, yet it was specifically stated in the judgment that these directions shall not apply to a case under the Food Adulteration Act. It is obvious, even assuming that there is infringement of right of speedy trial in a case under the Prevention of Food Adulteration Act, the Court did not think it proper to direct its disposal in the manner it directed for the disposal of other cases.

8. So also the Apex Court in the case of Rajdeo Sharma v. State of Bihar : 1998 CriLJ4596 their lordships while considering right of an accused of the speedy trial gave directions for the disposal of the pending cases in a particular manner, yet it was made clear at the end of para 16 of the report that the directions in the judgment will be in addition to and without prejudice to the direction given by the Apex Court in the case of Common Cause v. Union of India (supra).

9. Thus, the principle, that can be deduced from the three judgments of the Apex Court Viz. A.R. Anthullay (supra), Common Cause (supra) and Rajdeo Sharma

(supra), is that on the ground of infringement of right of speedy trial the prosecution should not be quashed where the offence involved is against the society such as offence under the Prevention of Food Adulteration Act.

10. In view of the aforesaid legal position, it is not in the interest of justice to quash the proceedings pending against the petitioner. The bare reading of the rulings, relied on by Mr. Gehlot, makes it clear that the Supreme Court cases, referred to above, had been not brought to the notice of the Hon'ble Judges, who decided those cases.

11. Consequently, the petition fails and is hereby dismissed. However, it is directed that the trial of the case be held on day to day basis and it be disposed of positively within a period of three months from the date a copy of the order is placed before the learned Chief Judicial Magistrate.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com