

Ambu Nath Saha Alias Ambu Saha Vs. State of West Bengal

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Court : Kolkata

Decided On : Mar-21-2007

Reported in : 2007CriLJ2359

Judge : Partha Sakha Datta, J.

Acts : Indian Penal Code (IPC) - Sections 120B, 409, 467, 471 and 477A; ;Code of Criminal Procedure , 1974 - Section 173; ;[Constitution of India](#) - Article 21

Appeal No. : C.R.R. No. 63 of 2006

Appellant : Ambu Nath Saha Alias Ambu Saha

Respondent : State of West Bengal

Advocate for Def. : Swapan Kumar Mullick, Adv.

Advocate for Pet/Ap. : Joymala Bagchi and ;Sourav Bhagat, Adv.

Judgement :

ORDER

Partha Sakha Datta, J.

1. By this application dated 6-1-2006 one accused Ambu Nath Saha alias Ambu Saha in Special Case No. 01/91 pending before the learned 3rd Additional Sessions Judge, Alipore under Sections 120B/ 409/467/471/477A of the I.P.C. has

prayed for quashing of the proceeding as against him on the grounds inter alia that if the FIR and the charge-sheet are taken at face value they do not reveal constitution of any offence against him and that even after elapse of 15 years since submission of charge-sheet against the accused persons in the case not an inch has moved towards progress of the suit resulting thereby violation of the constitutional principle of accused's right to speedy trial within the ambit of Article 21 of the Constitution and that there has not been any appointment even of a Public Prosecutor for trial of the case during these long years, that two accused persons have already died and so far as the petitioner is concerned there is no case against him.

2. Seven accused persons including the present petitioner as accused No. 6 were charge-sheeted under Section 120B/409/ 471/477A, I.P.C. on the allegations that they pursuant to criminal conspiracy committed forgery and misappropriated a sum of Rs. 5,41,441.58 p. from the Government treasury and investigation revealed that several fictitious payment entries were made in the books of accounts of the Collector of South 24 Parganas at Alipore in the name of M/s. Krishna Service Station and Ors. From the charge-sheet it could not be revealed as to what was the contribution of the present petitioner who was a group 'D' employee in the office of the collectorate but it could be revealed that the principal accused was Pradyot Kumar Mukherjee who pursuant to criminal conspiracy misappropriated the Government fund from the Nezarath of the collectorate.

3. Mr. Joymalya Bagchi, learned Advocate for the petitioner made a two-fold submissions namely if the Court be pleased to look into 173, Cr. P.C. papers it would be revealed that no case was made out against the present petitioner who was merely a peon in the office of the collectorate and secondly 21 years have elapsed since the lodging of the FIR and 16 years have elapsed since filing of the charge-sheet but the case has not yet been taken up in the trial Court which lost sight of the fact that the accused has been denied his right to speedy trial which has been enshrined under Article 21 of the Constitution and the petitioner has remained a suspended employee for last 21 years resulting in his mental agony and equilibrium.

4. Mr. Bagchi cited before me the decision in *S.G. Jain v. Union of India* 1995 SCC (Cri) 889 : 1992 Cri LJ 560, *Mahendra Lal Das v. State of Bihar and Ors.* 2002 SCC (Cri) 110 : 2001 Cri LJ 4718 and *Ramanand Chaudhary v. State of Bihar and Ors.* 2002 SCC (Cri) 114 : 1994 Cri LJ 1221 to argue that the prosecution cannot be given the latitude of protracting the conclusion of the trial without any further limitation of time. The Hon'ble Supreme Court quashed the prosecution in the case of *S.G. Jain* (supra) having regard to the mental agony of the petitioner for 14 years out of which 11 years were spent in Supreme Court. In *Mahendra Lal Das's* (supra) case the Hon'ble Supreme Court observed that inordinate long delay can be considered as a preventive proof of prejudice caused to a party. In the case of *Ramanand Chaudhary*. (supra) prosecution was quashed because of delay in obtaining sanction. There are other decisions of our High Court namely (1) *Mihir Ghosh v. State of West Bengal and Ors.* 1990 Cri LJ 26 (Cal), (2) *Ranjit Kumar Pal v. State* 1990 Cri LJ 643 (Cal), (3) *Gopal Mukherjee and Ors. v. State* 1991 (1) CHN 389, (4) *Surajit Kumar Day and Ors. v. State of W.B. and Anr.* 1991 Cal Cr LR 55, (5) *Chandan Chakraborty v. State* 1993 (2) CHN 234, (6) *Sujit Kumar Sen v. State of West Bengal* 1995 (3) Crimes 232 : 1995 AIHC 4413 (7) *Aswini Kumar Bhattacharya v. State of W.B.* 2002 (3) CHN 670 (8) *Pradip Mitra v. State of W.B. and Anr.* 2003 (1) CHN 557) and (9) *Paritosh Kumar Dubey v. Steel Authority of India Ltd.* 1995 (1) CHN 264 which are all to the effect that the speedy trial is a constitutional right of an accused and in some of the cases proceedings were quashed.

5. Mr. Swapan Kumar Mullick, the learned Advocate for the State of West Bengal admitted that there has been inordinate delay in the commencement of trial no doubt but the delay was on account of different factors and a Public Prosecutor has of late been appointed to take charge of the case and a direction may be given by this Court for conclusion of the trial as expeditiously as possible.

6. Since the papers under Section 173, Cr. P.C. could not be produced by the prosecution it could not be examined whether the petitioner's contention that no case was at all made out against him is correct or not. But the matter of the fact is that by long and inordinate delay of almost 15 years in the commencement of trial the petitioner no doubt has suffered mental agony and emphatically it can be said

that Article 21 of the Constitution which demanded that the trial of the case should have been completed within a reasonable period of time has not been honoured. But since it could not be ascertained as to the factors that accounted for the delay in not commencing the trial - whether it is prosecution alone and none but it (sic) who adopted lackadaisical approach towards the case I have become loath in quashing the proceeding in so far as the accused is concerned. Since there are other accused persons in number and the charge-sheet reveals a case against 7 accused persons who allegedly pursuant to criminal conspiracy committed misappropriation of huge sum of money from Alipore Nezarat against fake and fraudulent vouchers it does not appear to be expedient to quash the proceedings.

7. Having considered all the aspects of the matter it appears to me that an appropriate direction should be given to the learned trial Court for disposal of the case within a period of six months.

8. Therefore, the revisional application is disposed of directing the learned trial Court to dispose of the case as expeditiously as possible, preferably within a period of six months from the date of communication of the order being not oblivious of the pendency of the case for last 15 years since the submission of the charge-sheet and of the petitioner as also the other accused persons having been put to mental stress and strain because of such pendency and uncertain outcome of the case. The learned trial Court shall be particular to ensure that the trial of the case proceeds from day to day and neither the prosecution nor the defence is favoured with unmerited adjournment that would have the effect of protracting the litigation further.

9. Let a copy of the judgment be sent to the learned Additional Sessions Judge, Alipore with reference to Special Case No. 01/1991.

10. Criminal Section is directed to supply xerox certified copy of this judgment as early as possible.