

B.B. Ojha Vs. the State and ors.

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Court : Kolkata

Decided On : Mar-01-1993

Reported in : (1993)1CALLT401(HC)

Judge : Rabin Bhattacharyya, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 120, 420, 468 and 471; ; [Prevention of Corruption Act, 1947](#) - Section 5(1) and 5(2); ; [Constitution of India](#) - Article 21; ; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 245(3), 325 and 360

Appeal No. : Crl. Rev. No. 1979 of 1990

Appellant : B.B. Ojha

Respondent : The State and ors.

Advocate for Def. : S.L. Hazra, Public Prosecutor and ;Abjihit Kr. Adday, Adv.

Advocate for Pet/Ap. : Dipak Kr. Sengupta, Sr. Adv. and ;D.K. Singh, Adv.

Disposition : Revision dismissed

Judgement :

Rabin Bhattacharyya, J.

1. This rule is issued for quashing the proceedings in Case No. 14 of 1977, pending disposal before the 2nd Special Court, Calcutta in connection with the order No. 140 dated 26.3.1990 was passed.

2. A few facts giving rise to the petition may be stated: One Mr. B.B. Ojha while working as a Branch Manager of the Central Bank of India, Ballygunj Branch, in between May 1972 and December 1973 was a party to the conspiracy with some constituents of the Banks to commit the offence of cheating the Central Bank of India, Ballygunj Branch, punishable under Section 420 of the Indian Penal Code read with Sections 5(2) and 5(1)(d) of the [Prevention of Corruption Act, 1947](#). The accused entered appearance on 28.11.77 after the court took cognizance on 3.10.77 and issued process. The learned trial court fixed 9.3.78 as the date for evidence. In between the date of appearance of the accused i.e. 28.11.77, and 9.9.88, the prosecution only succeeded in examining 19 witnesses. The order sheet of the case at hand contains the history of the case since its inception

3. The learned trial court framed charges against B.B. Ojha, Subhas Roy Chowdhury & Rama Roy Chowdhury under Section 120/420. But, the learned trial court framed charge against B.B. Ojha alone under Section 5(1) (d) read with Section 5(2) of the [Prevention of Corruption Act, 1947](#). However, Subhas Roy Chowdhury & Smt Rama Roy Chowdhury were fixed with the charges framed under Section 471/468 of the I.P.C.

4. It is needless to say, the charges so framed against each of the accused persons were read over and explained to each of them who pleaded not guilty and claimed to be tried. Much water has passed under the Ganges. The accused woke up from his slumber only on 3.2.1990 with the object of securing benefit of Section 245(3) of the Cr.P.C. The Criminal Procedure Code suffered an amendment in the year 1988. In fact it came into force on 2nd of May, 1989.

5. The learned trial court has assigned in the body of the order that discharge of the accused would not attract the operation of Section 245(3) by the reason of failure of the accused to prove that it will serve the interest of justice. The learned trial court on consideration of the materials on record did not agree with the submissions made by the learned Advocates for the accused and rejected the

application on merit.

6. The accused Mr. Ojha since aggrieved and dissatisfied with the order of dismissal has come up before the court of revision for a quashing preeminently on the ground that the combined effect of Article 21 of the [Constitution of India](#) and Section 245(3), Cr.P.C. has paved circumstances for his discharge.

7. The point arose for consideration of the Court is, if the revisional power could be exercised in order to prevent the abuse of the process of the court in the background of the relief sought to be availed of was totally denied.

8. Mr. Dipak Sengupta, the learned Advocate, appearing for the accused has made a forceful submission that the object of Article 21 of the [Constitution of India](#) and the object of Section 245(3) of the Cr.P.C. is basically identical as both of them work to accord the relief to the accused when the right, as enshrined in the Article 21 of the [Constitution of India](#), is affected and the right assuring the release of the accused under Section 245(3) of the Cr.P.C. is taken away.

9. The edifice of submission of Mr. Sengupta is that, that an accused could not be held up or detained at the pleasure of the prosecution. In developing the argument, he has contended that the prosecution does not enjoy any unfettered liberty to prolong the proceedings to its dangerous and embarrassing length. The appearance of the accused occurred long back in the court before the state amendment came into force. Besides, there was infringement of liberty as provided under Article 21 of the [Constitution of India](#). The Constitution within its broad sweep has enlarged the scope of Article 21 which by any means whatever cannot be abridged. He has cited a good number of decisions to fortify his argument in support of discharge.

10. The first case, he relied on is the case of Madheschwardhary Singh & Anr. v. The State of Bihar, 1973 Cr.L.J. 1771. On a perusal of the aforesaid case it appears, that the prosecution was apparently unmoved by the delay of 16 years, for which a revision was preferred and a direction was given to the judicial Magistrate to examine the witnesses to be produced by the prosecution. The prosecution slept over the matter and the learned Magistrate by his order dated

1st of September, 1984, was again compelled to close the case. This case has no relevance to the case against which the instant revision arose. Besides, it is found that Mr. Singh was implicated at a belated stage which by itself was significant to indicate malice. In the case of Mr. Ojha, the scope of malice is almost drawn to a blank. He was not arrested at a belated stage and the reason for his arrest bore adequate materials on record. The offence was very serious.

11. The 2nd case, he relied on is the case of Arun Kr. Ghosh v. The State of West Bengal, 1991 C.Cr.Lr. 365. The court held that administration of justice requires that the accused is entitled to have as such protection as the prosecution is entitled to. The court struck down the case on the ground that there was inordinate delay which inflicted physical and mental cruelties on the accused. In the said case his lordships also considered the case reported in : AIR1986 Pat324 , but the case of Mr. Ojha stands on a different footing. It is manifest from the record that the charge was framed against all the three accused who pleaded not guilty to the charge. Thereafter, evidence also of the witnesses was recorded who were subjected to cross-examination. Section 245(3) does not suggest discharge after charge is framed and accused pleaded not guilty. In other words the trial commences as soon as the charge is framed and the accused pleads not guilty and claims to be tried. The Magistrate has no power under Section 227 or any other provisions of the court to cancel the charge and reverse the proceedings to the stage of Section 253 and discharge the accused. Once a charge is framed in a warrant case, instituted either on complaint or on police report the Magistrate has no power under the code to discharge the accused and, thereafter, he can either acquit or convict the accused unless he decides to proceed under Sections 349 and 562 of the old Code which corresponded to Sections 325 and 360 of the Code of Criminal Procedure, 1973.

12. In my view, the accused is precluded from reaping benefit of Section 245(3) of the Cr.P.C. The production of all evidence by the prosecution within 4 years from the date of appearance of the accused cannot be read in isolation. The mechanism of the state amendment by the reason of its inbuilt structure does not permit to read '4 years from the date of appearance of the accused' and 'production of all evidence by the prosecution within such stipulated period' in

isolation. Besides, the ordersheets of the learned court on a clean perusal indicate that the accused has taken as many as 54 adjournments and, therefore, the prosecution was the author of the delay is to be taken with a grain of salt. It is true, that the prosecution also took adjournments but it is the accused who took a large number of adjournments which cannot compete with the adjournments taken by the prosecution. It is true, that the speedy trial as such is not a specific fundamental right. The Criminal Procedure Code does not guarantee specifically any right to speedy trial. Nor is there any provision prescribing the maximum period for which a Magistrate can keep an undertrial prisoner in jail without trial. But the Supreme Court has laid great emphasis on speedy trial of criminal offences and has emphasized 'it is implicit in the broad sweep and content of Article 21'. A fair trial implies a speedy trial. But the Supreme Court has clearly laid-down in the case of A.R. Antulay v. R.S. Nayak (1992)¹ Crimes 193, the ample guidelines for taking into consideration what circumstances may constitute special reasons for presuming, in the background of the particular facts and circumstances of a case, that it shall not be in the interest of justice to discharge the accused under Section 245(3) of the Cr.P.C. It is notorious from the record that the accused was also responsible for the delay and, therefore, he cannot take advantage of his own wrong. There is no material on the record, in the light of the above that the prosecution was prolonging the trial with the object of harassing the accused. If it would have been reflected from the record that the prosecution was guilty of delay, the right of the accused could hardly be denied for his discharge under the state amendment. It is not a case that the delay is systematic and, therefore, the applicability of Section 245(3) in the background of the gravity of the offence is totally inapplicable. As in the instant case, witnesses have been examined, charges are framed and the accused persons have already pleaded not guilty and claimed to be tried. In view of the aforesaid facts, the discharge of the accused may cast a serious reflection on the society and the accused, if allowed to be let off, on the score of trial being delayed. The contents of the complaint suggest that the revisionist acted beyond his authority in the matter of according loan to the accused Nos. 2 & 3 without obtaining the financial report. The contents of the complaint further indicate, that 'open loan' and 'key loan' sanctioned by the revisionist are manifestly, according to procedure in the bank, are illegal.

13. The above indicates as to how the money of the bank was misused, in complete abuse of his position as public servant.

14. Another contention has been raised that the sanction is invalid and no prosecution could lie. But the view taken by the learned court below could hardly be dispelled at this stage.

15. The offence prima facie committed is totally grave and it will not be in all fitness of things to let off the accused where reasonable enquiries have not been made in respect of the bogus bills and vouchers put in by the accused Nos. 2 & 3, to secure the loan at the cost of the bank.

16. Therefore, I will be too slow to interfere with the order impugned. The interference with the order will result in grave miscarriage of justice.

In the result, the revision fails.

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