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Bimal Kanti Sarkar Vs. the State

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Court : Kolkata

Decided On : Feb-23-1994

Reported in : (1994)1CALLT414(HC)

Judge : Nisith Kumar Batabyal, J.

Acts : Constitution of India - Article 21; ;Code of Criminal Procedure (CrPC) , 1973 - Section 482

Appeal No. : Crl. Rev. No. 1739 of 1993

Appellant : Bimal Kanti Sarkar

Respondent : The State

Advocate for Pet/Ap. : K.K. Moitra and ;Sudhan Kr. Haldar, Advs.

Disposition : Application allowed

Judgement :

Nisith Kumar Batabyal, J.

1. This revisional case arises out of an application under Section 401 xead with Section 482 of the Cr.P.C. for quashing the charges framed under Sections 420/468/471/409 of the I.P.C. in Special Court Case No. 3 of 1984 arising out of Kotwali P.S. Case No. 11 dated 15-6-1977 pending before the learned Judge,

Jalpaiguri Special Court.

2. The petitioner was appointed as L.D. Clerk in the office of the S.P., Jalpaiguri in 1962. By an order dated 17-6-1977 of the D.I.G. of Police, Jalpaiguri Range he was suspended from service in connection with Kotwali P.S. Case No. 11 dated 15-6-77 under Sections 420/468/471/409 of the I.P.C. He was released on bail on 25-8-77. For about four years, Police could not submit any report in final form. So by order dated 22-12-81 the learned Magistrate discharged the petitioner and he resumed his duties on 5-4-1984. Kotwali P.S. Case No. 11 dated 15-6-77 was sent to the Special Court, Jalpaiguri as per order of the S.P., Jalpaiguri and was registered as Special Court Case No. 3 of 1984. On 23-11-84, the chargesheet was submitted against the petitioner in that case before the learned Special Court. The learned Judge, Jalpaiguri, Special Court took cognizance and directed issue of summons. The petitioner appeared before the learned Judge, Special Court on 28-1-85 and obtained bail. Copies of some of the papers to which the petitioner was entitled were given to the petitioner but copies of other relevant and important documents were not supplied to the petitioner upto the date of the filing of the Criminal Revisional application on 20th September, 1993. The main contention of the petitioner is that the proceedings were initiated in the year 1977 and the charge-sheet was submitted on 27th June, 1984 but the case was still pending after the expiry on 16 years. The exorbitently long delay is attributable to the negligent conduct of the prosecution side only. There was only a single occasion when adjournment was taken during this span of 16 years at the instance of the petitioner. Article 21 of our Constitution confers the fundamental right to speedy trial and in this case that right has been flagrantly violated. Hence, the petitioner has come before this Court for quashing the proceedings.

3. Heard the learned Counsel for the petitioner at length. His main contention is that the right to speedy trial flowing from Article 21 of the Constitution of India has been infringed in this case as the case, is pending even after the expiry of 16 years from, the date of its inception due to the callousness and negligent attitude of the prosecuting authority. Therefore, the petitioner is entitled to an order for quashing the proceedings.

4. The latest decision of our apex Court covering the ground is reported in A.R. Antulay v. R.S. Nayak, 1992 Crl. LJ. 2717. In that case it has been laid down that the provisions of the Cr.P.C. provide for an early investigation and for a speedy and fair trial. The constitutional guarantee of speedy trial emanating from Article 21 of our Constitution is also reflected in the provisions of the Code. In that case, it has been held that it is not possible in the very nature of things to draw a time limit beyond which a criminal proceeding will not be allowed to go. In many cases the accused may himself have been responsible for the delay. In some cases, delays may occur for which neither side can be blamed. Each case must be left to be decided on its own facts having regard to the principles enunciated in the said case of the apex Court. The apex Court has laid down certain guidelines in that decision though it has been warned that the proposition are not exhaustive.

5. Applying those principles in this case, it appears that, firstly, the delay can be laid squarely at the doors of the prosecution; secondly, the delay is bound to impair the ability of the accused to defend himself in the trial after the lapse of so many years; thirdly, there is nothing to show that the abnormal delay can be attributed to any systematic fault like huge accumulation of arrears or other things; fourthly, in this case the petitioner always demanded speedy trial and lastly, it does not appear to be in the interest of justice to prolong the case any further as it is neither in the interest of public service nor in the interest of justice to keep a public servant perpetually under a threat of criminal prosecution specially when investigation was completed about 10 years ago. Thus considering the facts and circumstances of the case it is found that it is a fit case where the impugned proceeding should be quashed in the interest of justice and fair play. Accordingly, the revisional application is allowed and the impugned proceeding is quashed.

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