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Court : Kolkata

Decided On : Aug-14-1989

Reported in : 1990CriLJ643

Judge : Ajit Kumar Sengupta and ;Jyotindra Nath Hore, JJ.

Acts : Constitution of India - Article 21; ;Code of Criminal Procedure (CrPC) , 1898 - Section 200; ;Indian Penal Code (IPC) - Sections 21, 109, 120B and 420

Appeal No. : Criminal Revn. No. 1566 of 1988

Appellant : Ranjit Kumar Pal

Respondent : The State

Advocate for Def. : Bholanath Bhattacharya, Adv.

Advocate for Pet/Ap. : Sekhar Bose and ;Hiranya Chowdhury, Advs.

Disposition : Petition allowed

Judgement :

Ajit Kumar Sengupta, J.

1. This revisional application demonstrates the colossal wastage of money by Life Insurance Corporation, a public undertaking, the prosecution of a Criminal Case for 22 years for a paltry sum of Rs. 8,000/- under an Insurance Policy taken on

15th October, 1957 by one Hrishikesh Ghosh just two years before his death. This case has a chequered history.

2. On October 15, 1957, a Life Insurance Policy was effected in favour of the said Hrishikesh Ghosh. On January 1, 1969, the said policy was assigned in favour of the petitioner and one Joydev Paul. On October 20, 1959, the said Hrishikesh Ghosh died. On March 1, 1960, claim for policy of Rs. 8000/-was lodged on behalf of the assignees.

3. On 2nd September, 1960, Sri P. H. Gupta, Zonal Manager, Life Insurance Corporation of India lodged a complaint with the Officer-in-Charge, Bhadreshwar Police Station against the petitioner and six others, namely Dr. Panchanan Paul (since deceased), Sri Joydeb Paul, Sri Ramesh Chandra Paul, Sri Bholanath Mukherjee, Dr. Mahendralal Rakshit and Dr. Umacharan Kumar, alleging inter alia therein commission of offences punishable under Sec. 120B/420/109 of the I.P.C.

3A. After completion of the investigation charge sheet was submitted before the learned Sub Divisional Judicial Magistrate, Chanda-nnagore on 19th January, 1962. Subsequently the case was committed to the First Special Court at Hooghly as some of the accused persons were alleged to be public servants within the meaning of Sec. 21 of the Indian Penal Code.

4. On 17th June, 1970, the then Learned Judge, First Special Court at Hooghly framed charge against the petitioner herein, Dr. Umacharan Kumar, Bholanath Mukherjee and Dr. Panchanan Paul (since deceased).

5. At the point of time when the charge was framed by the Learned First Special Court at Hooghly in respect of proceedings against the public servants, the procedure followed was the one adopted for trial of warrant cases instituted on complaint. Accordingly before framing of the charge witnesses were examined and the examination of witnesses began on 18th June 1969 and terminated on 22nd May, 1970. After the framing of the charge, the case did not proceed further.

6. On 6th August, 1976, Sri S. Maity, Learned Judge, 1st Special Court, Hooghly in compliance with the ruling of this Court dropped the proceeding holding, inter

alia, that in taking cognizance of offences, Sec. 200 of the Criminal Procedure Code, 1898 was not followed rendering the procedure unsustainable in law. The said order, which amounted to an order of acquittal, was assailed in this Court at the instance of the State of West Bengal, giving rise thereby to Criminal Appeal No. 40 of 1976, wherein Special Leave to appeal was granted and the appeal was admitted for hearing on 1st March, 1977 by the Division Bench presided over by Anil Kumar Sen, J. (as His Lordship then was). The petitioner was impleaded as one of the accused in the said appeal and pending hearing of the appeal, the petitioner was re-arrested and released on bail to the satisfaction of the Chief Judicial Magistrate, Hooghly.

7. The Criminal Appeal No. 40 of 197:6 was. finally disposed of by N. C. Choudhury, J. on 18th February, 1982. The appeal was allowed and remanded to Trial Court for disposal. The Court directed for early disposal of the trial taking into account that the proceeding itself was initiated in 1966. For over five years there was no endeavour on the part of the Trial Court and no heed was paid to the directions passed by the Division Bench of this Court on 18th February, 1982, while disposing of the Criminal Appeal No. 40 of 1976.

8. After the disposal of the aforesaid Criminal Appeal records were sent down to the Trial Court from the Office of this Court by Office Memo No. 3346 (Criiminal) dated 26th March, 1982. On numerous occasions the petitioner attended the Trial Court to ascertain as to when the further proceeding would commence. But the case was not taken up for hearing on the plea that the records had not been received by the trial Court.

9. This deplorable state of affairs continued in the trial Court for the whole of 1982 (excluding the period till 26th March, 1982), the whole of 1983, the whole of 1984 and the whole of 1985. It is to be placed on record that on 20th September, 1983, the petitioner through his Advocate who represented the petitioner in the trial Court solicited information from the office of the trial court with regard to the records of the case. The information conveyed thereon was to the effect that the records were not lying in the trial Court. Such information was conveyed on 28th September, 1985.

10. Towards the end of the month of January, 1986, the petitioner was informed that the instant case would appear before the Learned Judge, Special Court at Hooghly on 7th February, 1986. Accordingly, the petitioner appeared before the Learned Judge, Special Court at Hooghly and he was released on bail.

11. On 21st July, 1986, the petitioner filed a petition before the Ld. Judge, First Special Court at Hooghly praying for quashing of the proceeding and to acquit him of the charges framed. The copy of the said application was served upon the learned Public Prosecutor. On several dates the hearing of the said application was adjourned by the Ld. Judge, 1st Special Court at Hooghly, who ultimately found that the Court, he presided over is not vested with the power to try Special Court cases. The result was that the petition of the petitioner remained undisposed of although days after days the petitioner was compelled to appear before the 1st Special Court at Hooghly in connection with the Special case.

12. From 7th February, 1986 till 7th October, 1987 no witness was produced by the prosecution for cross-examination. On 7th October, 1988, Sri M. K. Bau, Learned Judge, First Special Court at Hooghly took up for consideration the petition dated 21st July, 1986 filed by the petitioner. The Learned Judge held that the Court of Session or for that matter the Special Court is not vested with the jurisdiction to quash or drop a proceeding on the ground of inordinate delay in disposal thereof. The conclusion of the Ld. Judge was further based on a finding that dropping of the proceeding on ground of inordinate delay would tentamount to show-ing disregard to the direction of this Court in Criminal Appeal No. 40 of 1976. The Ld. Judge thereafter fixed 21st November, 1988 for appearance of all the accused persons for fixing a date of the trial. This is one aspect of the matter.

13. The other aspect of the matter is the filing of Money Suit by the petitioner against the L.I.C. and Ors. for recovery of moneys payable under the policies. Money Suit No. 8 was instituted on 31-10-62 for recovery of Rs. 8600/- under the said policy. A suit being Suit No. 7 of 1962 was also instituted under $imilar circumstances for realisation of Rs. 35,000/-. The facts and circumstances which led to the commencement of the investigation at Bhadreswar Police Station and subsequent submission of the Charge sheet whereupon the petitioner and other

accused persons had been put on trial for the last 22 years have had a direct bearing on Money Suit No. 7 of 1962 and Money Suit No. 8 of 1962 instituted by the petitioner and Ramesh Chandra Paul and the petitioner and Joydeb Paul respectively against the Life Insurance Corporation of India Ltd. The charges framed by the Learned First Special Court are in respect of Rs. 35,000/- (Money Suit No. 7 of 1962) and Rs. 8,000/- (Money Suit No. 8 of 1962) due under two several policies. Both the suits were heard together and decreed by the 1st Subordinate Judge, Hooghly on 2nd March 1977. In decreeing the suit ex parte the Ld. Subordinate Judge took into account the evidence adduced on behalf of the plaintiffs.

14. The judgment and decree with regard to sum of Rs. 35,000/- was directly appealed against in this Court giving rise to F.A. No. 544 of 1978. The judgment and decree-with regard to Rs. 8000/- was appealed against before the Ld. Lower Appellate Court. Subsequently, pursuant to the order passed by this Court the said appeal was transferred to this Court to be heard along with F.A. No. 544 of 1978. On transfer, the other appeal was numbered as F.A. No. 36 of 1985.

15. On 4th December, 1986 both theappeals were heard by the A. M. Bhattacharya and Shyamal Kumar Sen, JJ. The Court dismissed both the appeals, affirming the findings and/or observations of the Ld. Subordinate Judge, 1st Court at Hooghly and confirmed the decree passed in favour of the plaintiffs including the petitioner here in both the Money Suits.

16. The judgments and orders passed by A. M. Bhattacharya and Shyamal Kumar Sen, JJ. in the aforesaid appeals were assailed on behalf of the Life Insurance Corporation of India before the Supreme Court of India. The Special Leave petitions made in that regard were registered as Special Leave to Appeal (Civil) Nos. 8275 and 8336 and by order dated 6th October, 1987 the Supreme Court dismissed the Special Leave petitions.

17. This Revisional application has been made against the order passed on 7th October, 1988 by the Ld. Judge, First Special Court at Hooghly refusing to drop the proceeding on the ground of inordinate delay.

18. We have heard the learned Advocates appearing for the parties. Long delay in disposal of the proceding prejudicially affects the defence of an accused. Administration of Justice requires that the accused is entitled to have as much protection as the prosecution is entitled to. Waste of time affects the defence case and the witness which the accused may choose to examine suffers from physical inability during the trial.

19. The broad interpretation of the fundamental right guaranted under Article 21 of the Constitution now includes the right of an accused to have speedy trial. The interpretation manifests the judicial concern to minimise the infliction of anxiety and agony on an accused by the institution of a criminal case. Greater the number of days severer is the anxiety. In the event of a trial being dragged on for years together, judicial view is in favour of dropping of the proceeding irrespective of the nature of the case. The mental torture and the anxiety suffered by an accused for a long length of time is to be treated as sufficient punishment inflicting on him. The prosecution cannot have the luxury of dragging a case in a Court of law for years together.

20. The Supreme Court in Srinivas Pal v. Arunachal Pradesh (now State), reported in (1988) 4 SCC 36: (1888 Cri LJ 1803) observed that 'quick justice is a sine qua non of Article 21 of the Constitution. Keeping a person in suspended animation for 9.1/2 years without any cause at all and none was indicated before the learned Magistrate or before the High Court or before us canriot be with the spirit of the procedure established by law. In that view of the matter, it is just and fair and in accordance with equity to direct that the trial or prosecution of the appellant to proceed no further. We do so accordingly.' There the Supreme Court quashed the proceedings solely on the ground of delay. Thus, delay by itself on the facts and in the circumstances of the case may be held to be. contrary to the spirit of the procedure established by law. The instant case is one of such cases.

21. There is another aspect of the matter. The judgment and decree passed by this Court in its Civil Appellate Jurisdiction over the self-same transaction will have a material bearing on the criminal trial, particularly when the Special Leave Petitions assailing the judgment and decree stood dismissed. The effect of the

decision in the Civil Appeal is this that the chance of conviction of the petitioner in the Criminal Court on the charges framed is bleak inasmuch as the issues have been judicially gone into even by this Court in the Civil Appeals. Where the chance of conviction is bleak, it would 'be unfair and unjust to compel the accused to face stale criminal proceeding.

22. In our view, having regard to the fact that the claim Under the Policy was paid by the Life Insurance Corporation pursuant to a decree which has become final in view of the rejection of the Special Leave Petition filed by the Life Insurance Corporation, and having regard to the long delay, it will be an abuse of process of the Court if the Life Insurance Corporation is allowed to continue with the criminal proceedings against the assignees of the policy. If any false delcaration was made, it was made by the deceased and the remedy available with the Life Insurance Corporation was to withhold the amount under the Policy on the ground of false declaration. In view of the fact that the entire money covered by the Policy has been paid to the assignees, the very basis of launching the prosecution against the assignees disappeared and there is no foundation for the charge levelled against the assignees.

23. In that view of the matter, this revisional application succeeds. The Rule is made absolute and the proceedings are quashed so far as the petitioner is concerned.

24. Let the records of the case be sent down forthwith.

Jyotindra Nath Hore, J.

25. I agree.

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