

Jit Pal Vs. State of W.B.

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Court : Kolkata

Decided On : Mar-14-2001

Reported in : 2001CriLJ3924

Judge : Debiprasad Sengupta, J.

Acts : Indian Penal Code (IPC) - Sections 120B and 420

Appeal No. : C.R.R. No. 938 of 1994

Appellant : Jit Pal

Respondent : State of W.B.

Advocate for Def. : A.K. Mukherjee, ;Goutam Sen and ;Monoranjan Daw, Advs.

Advocate for Pet/Ap. : Balai Chandra Roy, ;Sandip Ghosal and ;Abhijit Mukhopadhyay, Advs.

Disposition : Application dismissed

Judgement :

ORDER

Debiprasad Sengupta, J.

1. This is an application for quashing of a proceeding being case No. G.R. 3849 of 1985 pending in the Court of learned Metropolitan Magistrate, 12th Court, Calcutta

under Section 120B/420 of the Indian Penal Code.

2. The Secretary to the Commissioner of the Port of Calcutta lodged a complaint with the Central Bureau of Investigation, Special Police Establishment, C.I.A. (i) New Delhi against the petitioner and 7 other accused persons alleging commission of offences under Section 120B/420, IPC. On completion of investigation the Investigating Agency submitted a charge-sheet against the petitioner and 7 other accused persons under Section 120B read with Section 420, IPC in the Court of learned Chief Presidency Magistrate, Calcutta. On the basis of the said charge-sheet the learned Magistrate took cognizance of the offence and transferred the case to the learned Presidency Magistrate, 6th Court, Calcutta for trial and disposal. The learned Magistrate thereafter on 9-9-77 framed charge against all the accused persons.

3. On 6-10-80 an application was filed before the learned Magistrate on behalf of the accused persons stating that the charge-sheet filed by the CBI was submitted upon incomplete investigation inasmuch as the investigating agency refused to take into consideration certain material and important documents lying in the custody of nationalised banks. It was submitted that if those documents were taken into consideration there would have been a final report by the investigating agency. The learned Magistrate, however, rejected the said application filed by the accused. It was held by the learned Magistrate that the case was instituted before the new Code of Criminal Procedure came into force and that under the old Code there was no provision for further investigation in a case after submission of charge-sheet.

4. Challenging the said order a revisional application was preferred in this Court being Criminal Revision No. 1744/80. The said revisional application came up for final disposal before this Court when this Court quashed the order of framing of charge passed by the learned Magistrate as also the charge-sheet submitted by the CBI, on the basis of which such charge was framed. It was directed by this Court that the documents which were set out in paragraph No. 3 of the application filed before the learned Magistrate are all documents lying in the custody of a nationalised bank. This Court observed that if after consideration of the documents

the charge against the petitioner and the other accused persons appears to be groundless, then certainly the petitioners are entitled to an order of discharge. In such circumstances this Court directed that the Central Bureau of Investigation would further investigate into the case taking into consideration the documents which have been mentioned in paragraph No. 3 of the application filed by the accused.

5. Thereafter the Central Bureau of Investigation on 4-11-85 submitted a fresh charge-sheet against the petitioner and other accused persons after conducting further investigation as directed by this Court.

6. Mr. Balai Ch. Roy the learned Advocate appearing for the petitioner submits that the charge-sheet which was submitted on 4-11-85 is on identical allegations made in the previous charge-sheet which was quashed by this Court, without taking into consideration the said documents, in violation of the order passed by this Court on 11-8-83. Mr. Roy submits that the CBI submitted the fresh charge-sheet mechanically which is based on identical allegations which is neither permissible nor maintainable in law. On the basis of such charge-sheet the learned Magistrate took cognizance of the offence. It is further submitted by Mr. Roy that the act of the investigating agency is contumacious as the same was done in utter disregard and in violation of the order passed by this Court. Mr. Roy in support of his contention relies on a judgment of the Hon'ble Apex Court reported in : AIR 1996 SC2005 , (Delhi Development Authority v. Skipper Construction Co. Pvt. Ltd.).

In the said judgment it was held by the Hon'ble Apex Court as follows :-

Where an act is done in violation of an order of stay or injunction, it is the duty of the Court, as a policy, to set the wrong right and not allow the perpetuation of the wrong doing. The principle that a contemner ought not to be permitted to enjoy and/or keep the fruits of his contempt is well settled. Undergoing the punishment for contempt does not mean that the Court is not entitled to give appropriate directions for remedy and rectifying the things done in violation of its orders. The inherent power of the Court is not only available in such a case, but it is bound to exercise it to undo the wrong in the interest of justice. This salutary rule has to be applied and given effect to by the Supreme Court, if necessary, by overruling any

procedural or other technical objections. Article 129 is a constitutional power and when exercised in tandem with Article 142, all such objections should give way. The Court must ensure full justice between the parties before it.

7. The next judgment relied upon by Mr. Roy is reported in : [1998]2SCR1108 , (Gopabandhu Biswal v. K.C. Mohanty). From a perusal the aforesaid judgment of the Hon'ble Apex Court it appears that the Administrative Tribunal vide its judgment dated 24-12-91 partly allowed the appellant's application by holding that an Assistant Commandant in Orissa Military Police was entitled to be considered for promotion to the IPS prior to 5-11-80, along with officers of the Orissa State Police Service. In 1992 State of Orissa and two other respondents filed SLP which was dismissed. In July, 1993 two officers belonging to the Orissa Police Service filed a fresh application before the tribunal challenging the correctness of the judgment dated 24-12-91. This application was converted into a review application. Besides, three (3) officers belonging to Orissa Military Police filed three separate applications in 1993 claiming benefit of the judgment dated 21-12-91. The tribunal allowed the review applications on the ground that there was an error apparent on the face of record and dismissed three applications in which benefit of judgment dated 24-12-91 was claimed. The question considered by the Hon'ble Supreme Court was whether the revision applications filed by third parties were maintainable in the facts and circumstances of the case. It was held by the Hon'ble Apex Court that after dismissal of the special leave petition the same grounds cannot be urged against by way of review by another party who was not a party in the main petition. It was further held that only remedy for a person who wants to challenge the judgment is to file a separate application before the tribunal in his own case and persuade the tribunal either to refer the question to a larger bench or, if the tribunal prefers to follow its earlier decision, to file an appeal from the tribunal's judgment and if the tribunal's judgment set aside in appeal, but review cannot be sought. The next judgment relied upon by the Advocate for the petitioner is reported in (1993) 2 Cal HN 282, (Jiban Kumar Banerjee v. State of West Bengal). In a contempt application it was held by this Court that when the Court directs the respondents to re-consider an order holding clearly that a particular decision in the case is inapplicable but if the respondent again relies upon it, it is direct circumvention of the order of the Court amounting to contempt

of Court.

8. The next judgment relied upon by Mr. Roy is reported in : 1996 CriLJ426 , (T.R. Dhanjaya v. J. Vasudevan). From the said judgment of the Hon'ble Apex Court it appears that in a contempt petition it was contended that the State Government had committed a deliberate dis-obedience of orders of the Supreme Court, while the respondent contended that the contempt petitioner was not eligible for the post of Chief Engineer and that therefore that post was given to an eligible candidate and not to the contempt petitioner. It was held by the Hon'ble Supreme Court that the respondents were guilty of contempt and they were accordingly sentenced to undergo simple imprisonment for one month. The Hon'ble Apex Court also directed the Government to give effect to the resolution passed by the corporation with all the consequential benefits as ordered earlier.

9. Mr. Roy the learned Advocate of the petitioner also relies upon a judgment of Allahabad High Court reported in 1992 Cri LJ 319, (Daya Shankar Dubey v. Subhash Kumar). In the said judgment it was held by the learned single Judge of Allahabad High Court as follows :-

Where, in a dispute regarding refusal of work to a panel lawyer, the Court had ordered maintenance of status quo and the Authority though advised by the chief standing counsel of the department, on interpretation of the Court's order to maintain status quo, of his volition came to the conclusion that the order of the Court will not be infringed if he did not assign work to the petitioner panel lawyer, it amounts to contempt, of Court. Once the order had been passed by the Court not only the plain meaning of the language used is to be considered but also the spirit and the sense in which the order had been passed has also to be kept in mind. May be that in some cases the order may be couched in such a language that it may create some kind of doubt and confusion in the mind of those who have to comply with it but the best way, in such cases, is not to circumvent, the order but to try as much as possible to comply with it first. If that may not be found fessible then to make an effort to approach the Court and seek clarification or modification of the order. Only this will enable the different wings of the State in maintaining a proper balance and harmony.

10. Relying upon the aforesaid judgments it is submitted by Mr. Roy the learned Advocate appearing for the petitioner that the action on the part of the investigating agency namely, the CBI is in utter disregard and in violation of the order earlier passed by this Court in Criminal Revision No. 1744 of 1980 wherein this Court directed the investigating agency to further investigate into the case after taking into consideration the documents which are in the custody of a nationalised bank. Without complying with the said direction the CBI submitted a fresh charge-sheet on the basis of some materials on which the earlier charge-sheet was submitted. The learned Magistrate also has taken cognizance of the offence on the basis of such charge-sheet. According to Mr. Roy the present proceeding is liable to be quashed on this score alone, Mr. Anjan Mukherjee the learned Advocate appearing for the opposite party submits that after the criminal revisional application was disposed of by this Court the investigating agency tried their best to collect, those documents which were referred to by the accused petitioner in this application, but they failed to collect, those documents in spite of their honest efforts. Mr. Mukherjee submits that after the order was passed by this Court further investigation was taken up by CBI. Sincere and persistent efforts were made to obtain the documents cited by the accused from the Punjab National Bank, Bombay; Punjab National Bank, Calcutta and also Dena Bank, Bombay. Requisitions for such documents were also given to the Punjab National Bank, Calcutta on 1-1-84 and 9-1-84. Similarly requisitions for concerned documents were also given to the Head Office of Dena Bank, Bombay on 8-2-84 and to the Punjab National Bank, Bombay on 9-2-84. Since the documents requisitioned/pertained to the period 1962-63, the inability was expressed by the concerned banks in tracing out and producing those documents before the CBI. They also kept on seeking time for doing the needful on the ground that the documents are very old. However, the matter was seriously pursued by the I.O. and other officers of the CBI. Finally all the banks came out with the reply that the documents were not available with them. All these subsequent events are mentioned in the charge-sheet which was submitted after re-investigation. Mr. Mukherjee submits that in the facts and circumstances stated above it cannot be said that there is violation of the order passed by this Court. Had it been a case that no attempt was made by the CBI officers for collecting those documents, it could have been a case for

violation or disregard of the order passed by this Court.

11. I have heard the learned Advocates of the respective parties. I have perused the earlier order passed by this Court, the charge-sheet which was subsequently filed by the CBI against the accused petitioner and the entire order-sheet of the Court below. On a perusal of the charge-sheet it appears that a prima facie case is made out against, the petitioner and other accused persons. The offence is serious in nature. Pursuant to the direction of this Court the investigating agency tried their best to collect the materials referred to by the accused persons in their applications. From a reading of the charge-sheet it becomes clear that there were sincerest efforts on the part of the investigating agency to collect those documents from the concerned banks. But they failed to collect it as the concerned banks gave reply, that the documents were not available with them. In such circumstances it cannot be held that the investigating agency acted in a manner in utter disregard and in violation of the earlier order passed by this Court. The judgments referred to above by the learned Advocate appearing for the petitioner are all relating to the applications for contempt. In my considered view those judgments do not have any manner of application in the present case.

12. Since the allegations are serious in nature and since a prima facie case is made out against the accused persons, which is sufficient for the purpose of proceeding further, I am of the view that it will not be proper for this Court to quash the proceeding at this stage. It appears that by an order dated 4-4-94 the learned Metropolitan Magistrate, 12th Court, Calcutta fixed 'a date for consideration of charge and the petitioner preferred revisional application before this Court at that stage and obtained an order of stay.

13. In view of the discussion made above, I am of the opinion that this is not a fit a case for quashing. The present application accordingly fails and the Rule is discharged. Since this is a very old case, I direct the learned trial Magistrate to proceed with the trial and to conclude the same with utmost expedition without granting any unnecessary adjournment to either of the parties. L.C.R. may be sent down to the Court below immediately.

Let urgent xerox certified copies of the order, if applied for, be supplied to the respective parties at an early date.

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