

A

S. GUIN & OTHERS
v.
GRINDLAYS BANK LTD.

DECEMBER 11, 1985

B

[E.S. VENKATARAMIAH AND R.B. MISRA, JJ.]

Indian Penal Code and Banking Regulation Act, 1949 Prosecution - Trial - Acquittal - Appeal disposed of after long delay quashing acquittal order - Re-trial ordered - Whether justified.

C

Criminal Procedure Code - S.482 - Inherent powers - Exercise of.

D

The appellants were prosecuted under s. 341 Indian Penal Code and under s.36AD of the Banking Regulation Act 1949, on a complaint filed by the Operation Manager of the respondent-Bank in the Court of the Chief Metropolitan Magistrate. It was alleged that the appellants had without reasonable cause obstructed the officers of the Bank from lawfully entering the premises of the branch of the Bank and had obstructed the transactions of normal business. After trial the appellants were acquitted.

E

The respondent-Bank filed an appeal against the judgment of acquittal before the High Court, which was disposed of after nearly six years. The High Court set aside the judgment of acquittal and remanded the case for re-trial for offences punishable under s. 341 read with s.34 or s. 149 Indian Penal Code.

F

The appellants appealed to this Court against the judgment of the High Court ordering re-trial.

Allowing the appeal,

G

HELD: 1. The judgment of the High Court is set aside and the order of acquittal passed by the Metropolitan Magistrate is restored without expressing any opinion on the issues of fact and law. [821 F]

H

2. Whatever might have been the error committed by the Magistrate, it was not just and proper for the High Court to have remanded the case for fresh trial, when the order of the acquittal had been passed nearly six years before the judgment of the High Court. [820 D-E]

3. The pendency of the Criminal Appeal for six years before the High Court is itself a regrettable feature of this case. The order directing re-trial has resulted in serious prejudice to the appellants. Having regard to the nature of the acts alleged to have been committed by the appellants this was a case in which the High Court should have directed the dropping of the proceedings in exercise of its inherent powers under s.482 Criminal Procedure Code even if it came to the conclusion that the acquittal was wrong. A fresh trial nearly seven years after the alleged incident is bound to result in harassment and abuse of judicial process. [820 E-G]

S. Veerabadrhan Chettiar v. E.V. Ramaswami Naicker & Ors.,
[1959] S.C.R. 1211, relied upon.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.848 of 1985.

From the Judgment and Order dated 19.12.1984 of the Calcutta High Court in Crl. A. No. 315 of 1978.

D.N. Mukharjee and P.K. Chakravorty for the Appellants.

U.R. Lalit, V.N. Koura and Ashok Grover for the Respondent.

The Judgment of the Court was delivered by

VENKATARAMIAH, J. This appeal by special leave is filed by the appellants against the judgment and order dated December 19, 1984 in Criminal Appeal No. 315 of 1978 on the file of the Calcutta High Court setting aside the judgment of acquittal passed in C-3064 of 1977 on the file of the Metropolitan Magistrate, 12th Court, Calcutta.

This appeal arises out of a complaint filed before the Chief Metropolitan Magistrate, Calcutta by one Manindra Narayan Choudhury, Operation Manager of the Grindlays Bank Ltd. against the twelve appellants, referred to above, for offences punishable under section 341, Indian Penal Code and section 36AD of the Banking Regulation Act, 1949 said to have been committed by them on October 31, 1977. The complaint alleged that the appellants had without reasonable cause obstructed the officers of the Bank, particularly Shri G. Vaidya from lawfully entering the premises of the branch of the Bank at 41, Chowringhee Road, Calcutta and had obstructed the transaction of normal business at the said

A branch. It was also alleged that they had thereby committed the offence punishable under section 147, Indian Penal Code. The prosecution further alleged that all of them were constructively liable for the offences said to have been committed by them under section 34, Indian Penal Code. It was urged that these acts had been committed by the appellants pursuant to a call of strike given by the employees of the Bank. The Magistrate issued summons to the appellants for offences punishable under section 341, Indian Penal Code and under section 36AD, of the Banking Regulation Act, 1949. After trial, the Magistrate by his judgment dated June 27, 1978 acquitted all the appellants. Against the said judgment of acquittal an appeal was filed by the Grindlays Bank Ltd. before the High Court of Calcutta in Criminal Appeal No. 315 of 1978. The said appeal came to be disposed of after nearly six years on December 19, 1984. The High Court felt that the trial court had missed the essence of the offences with which the appellants had been charged and therefore there was failure of justice. Hence it set aside the judgment of acquittal passed by the Magistrate and remanded the case for retrial for offences punishable under section 341 read with section 34 or section 149, Indian Penal Code. Aggrieved by the judgment of the High Court, the appellants have filed this appeal.

After going through the judgment of the Magistrate and of the High Court we feel that whatever might have been the error committed by the Magistrate, in the circumstances of the case, it was not just and proper for the High Court to have remanded the case for fresh trial, when the order of acquittal had been passed nearly six years before the judgment of High Court. The pendency of the Criminal Appeal for six years before the High Court is itself a regrettable feature of this case. In addition to it, the order directing retrial has resulted in serious prejudice to the appellants. We are of the view that having regard to the nature of the acts alleged to have been committed by the appellants and other attendant circumstances, this was a case in which the High Court should have directed the dropping of the proceedings in exercise of its inherent powers under section 482, Criminal Procedure Code even if for some reason it came to the conclusion that the acquittal was wrong. A fresh trial nearly seven years after the alleged incident is bound to result in harassment and abuse of judicial process. We may at this state refer to the decision of this Court in *S. Veerabadrán Chettiar v. E.V. Ramaswami Naicker & Ors.*, [1959] S.C.R. 1211. In that case this Court disagreed with the High Court on the interpretation of section 295 of the Indian Penal Code and the order of dismissal of complaint by the Courts below, but it proceeded to observe at page 1218 thus :

"But the question still remains whether, even after expressing our strong disagreement with the interpretation of the section by the courts below, this Court should direct a further inquiry into the complaint, which has stood dismissed for the last about 5 years. The action complained of against the accused persons, if true, was foolish, to put it mildly, but as the case has become stale, we do not direct further inquiry into this complaint. If there is a recurrence of such a foolish behaviour on the part of any section of the community, we have no doubt that those charged with the duty of maintaining law and order, will apply the law in the sense in which we have interpreted the law. The appeal is therefore, dismissed."

We are of the view that following the above principle the High Court should have dismissed the appeal before it even if it disagreed with the view taken by the trial court with regard to the gist of the offence punishable under section 341 Indian Penal Code, having regard to the inordinate delay of nearly six years that had ensued after the judgment of acquittal, the nature and magnitude of the offences alleged to have been committed by the appellants and the difficulties that may have to be encountered in securing the presence of witnesses in a case of this nature nearly 7 years after the incident. The termination of the criminal proceedings in that way would secure the ends of justice as it would bring about reconciliation between the management and the employees and also put an end to a stale criminal proceedings in which the public had no longer sufficient interest. We accordingly set aside the judgment of the High Court and restore the order of acquittal passed in this case by the Metropolitan Magistrate without however expressing any opinion on the issues of facts and law involved in the case.

The appeal is accordingly allowed.

A.P.J.

Appeal allowed.