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DURGESH CHANDRA SAHA
v.
BIMALCHANDRA SAHA & ORS.

NOVEMBER 23, 1995

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[G.N. RAY AND G.T. NANAVATI, JJ.]

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Criminal Procedure Code, 1973—Section 167 (5) as amended by the West Bengal Amendment Act (Act 24 of 1988)—Interpretation of—Power to stop investigation after expiry of three years—Applicability of Section 167(5) as amended by West Bengal Act—Object of provision.

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Respondents were prosecuted on a complaint lodged by the appellant. The investigation was completed and chargesheet was filed u/ss 148/149/307/326/302 of Indian Penal Code against the respondents. The Court took cognizance of the offences in the year 1988. The respondents claimed discharge on the ground that in view of amendment of section 167(5) of Criminal Procedure Code by the West Bengal Amendment Act, as enforced w.e.f. 2.5. 1989, the trial against them should come to an end by stopping investigation. The application was dismissed. In revision, the High Court allowed the claim of the accused while holding that in view of the amendment of section 167(5), the investigation of the entire case was required to be stopped by the Trial Court after expiry of three years from the first date of appearance of the accused and the Court had also a duty to discharge all the accused after expiry of the said period of three years. The present appeal had been filed against the said judgment of the High Court.

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The appellant submitted that the language of section 167(5) as amended by the West Bengal Act indicates that the provision will be made applicable where the investigation is still pending and it is only when the investigation has not been completed within a period of three years from the date of appearance of the accused in the criminal case, the Criminal Court was required to stop the investigation and to discharge the accused and that in the instant case, the investigation had already been completed and a chargesheet had been filed and as the court had also taken cognizance of the charges, section 167(5)(ii) Cr. P.C. had no application. It was submitted that section 167(5) Cr. P.C. as amended in West Bengal

imposes a responsibility on the Court namely to stop any further investigation and simultaneously to discharge the accused persons against whom the investigation was then pending because both these actions form one invisible course of action. The respondents contended that the amendment of section 167(5) was made to give effect to the inviolable right of the accused under Art. 21 of the Constitution and if will be only appropriate to hold that u/s 167(5) Cr. P.C. the accused would be entitled to be discharged even if investigation has been completed but more time than that specified in Sec. 167(5) has elapsed from the date of first appearance of the accused in Court and the filing of the charge sheet or completion of investigation in the concerned Criminal case; that two actions required to be taken by the Court u/s 167(5) Cr. P.C. namely stopping of further investigation and discharging the accused are two separate actions, one not being dependent on the other and that liberal construction of Sec. 167(5) is fully justified as the real purpose of amendment namely preventing the undesirable prolonging the agony of a criminal case seriously prejudicing the right to personal liberty will be frustrated if the investigation is allowed to be completed leisurely exceeding a period of three years from the date of first appearance of the accused without any justification.

Allowing the appeal, this Court

HELD : The language of section 167(5) of the Code of Criminal Procedure as amended by the West Bengal Act is quite clear in indicating that the said section is applicable only in a case where the investigation was still pending but not in a case where investigation had been completed and the chargesheet had been filed. Section 167(5) Cr. P.C. as amended is intended to ensure speedy completion of investigation within the time frame specified therein otherwise to face an order of discharge of the accused against whom investigation without any just cause to the satisfaction of the Court has been kept pending. Where investigation has been completed a different situation not contemplated under section 167(5) Cr. P.C. emerges. If a criminal case is kept pending for a very long time without any just cause thereby seriously effecting the guarantee under Article 21 against deprivation of personal liberty, the law is well settled that the Court in an appropriate case may quash the criminal proceeding as indicated in the Constitution Bench decision of this Court in *A.R. Antulay's* case. Hence unnecessary liberal construction of section 167(5)

- A Cr. P.C. with a view to protect the right against deprivation of personal liberty is not called for. [617-C-F]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 715 of 1994.

- B** From the Judgment and order dated 18.3.93 of the Calcutta High Court in CrI. R. No. 1238 of 1992.

R.A. Misra, K.S. Rana and M.C. Dhingra for the Appellant/complainant.

- C** Tapas Ray, Dilip Sinha and J.R. Das, for the State.

Bijan Ghosh and R.P. Gupta for the Respondent No. 7.

The following Order of the Court was delivered :

- D** This appeal is directed against the judgment dated 18th March, 1993, passed by a single Bench of Calcutta High Court in Criminal Revision No. 1238/92. By the impugned order, the learned Judge of Calcutta High Court *inter alia* came to the finding that in view of amendment of section 167 (5) of the Code of Criminal Procedure by the West Bengal Amendment Act (Act 24 of 1988), the investigation of the entire case was required to be stopped by the Trial Court after expiry of three years from the first date of appearance of the accused and the Court had also a duty to discharge all the accused after expiry of the said period of three years.

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- F** For the purpose of appreciating the rival contentions of the learned counsel appearing for the parties, some of the events may be noted. On the 15th March, 1984, a complaint was lodged by the appellant in Gaighata police station. North 24 Paragana. West Bengal and on such complaint a police case No. 11 of 15th March, 1984 was initiated. On 8th of February, 1988, the investigation was completed by the police and chargesheet was filed under sections 148/149/307/326/302 of IPC against the respondents
- G** Nos. 1-10 in the said case being numbered as G.R. Case No. 205 dated 15.3.84. On 23rd of July, 1988 the learned Sub-Divisional Magistrate. Bongaon took cognizance of the said offences in G.R. Case No. 205 of 1984. On 2nd May, 1989. Section 167(5) Cr. P.C. was amended by the West Bengal Amendment Act 24/88. Such amendment Act got the President's
- H** assent and the amended provisions were enforced with effect from 2nd

May, 1989.

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Sub-section 5 of Section 167 Cr. P.C. as amended by the said West Bengal Act may be stated as hereunder :

167 (5) if in respect of

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(i) any case triable by a Magistrate as a summons case, the investigation is not concluded with a period of six months, or

(ii) any case exclusively triable by Court of section or case under Chapter XVIII of the Indian Penal Code (45 of 1860) the investigation is not concluded with a period of three years; or

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(iii) any case other than those mentioned in clause (i) and (ii) the investigation is not concluded within a period of two years from the date on which the accused was arrested or made his appearance, the Magistrate shall make an order stopping further investigation into the offence and shall discharge the accused unless the officer making the investigation satisfied the Magistrate that for special reasons and in the interest of justice the continuation of the investigation beyond the period mentioned in this sub-section is necessary.

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The respondent accused contended before the learned Sessions Court by making an application that in view of such amended provision of section 167(5) of Cr. P.C., the trial of the said Criminal Case should come to an end by stopping investigation and discharging all the accused persons. Such application however was dismissed by the learned Additional Session Judge. The said order was challenged by making a revisional application before the Calcutta High Court and as aforesaid, the revisional application has been allowed by the High Court.

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The learned counsel appearing for the appellant has submitted that the language of section 167(5) as amended by the West Bengal Act clearly indicates that the provision of Section 167(5) will be made applicable where the investigation is still pending. It is only when the investigation has not been completed within a period of three years from the date of appearance of the accused in the Criminal Case, not only the Criminal Court was required to stop the investigation but also to discharge the accused. As in the instant case, the investigation had already been completed and a

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- A chargesheet had been filed and as aforesaid, the Court had also taken cognizance of the said charges filed against the accused persons, section 167(5) (ii) of the Cr. P.C. had no manner of application and the High Court had gone wrong in allowing the claim of the accused in passing an order of discharge in favour of the said accused persons. The learned counsel has further submitted that section 167(5) of Cr. P.C. as amended in West Bengal imposes a responsibility on the Court namely to stop any further investigation and simultaneously to discharge the accused persons against whom the investigation was then pending. He has submitted that if the investigation had already been completed there was no occasion to stop the investigation. In such circumstances there would also be no occasion to discharge the accused, because according to the learned counsel, both the said actions namely stopping further investigation and discharging the accused from one and indivisible course of action.

- D Mr. Tapas Ray, learned counsel appearing for the State has submitted that the judgment of the High Court cannot be sustained because in the instant case, the investigation was completed and the Court had taken cognizance of the charges made against the accused. He has submitted that in the facts of the case, there was no occasion to stop further investigation when investigation had been completed and to take other consequential action flowing from non completion of investigation within specified time, namely discharging the accused.

- F Mr. Bijon Ghosh, learned counsel appearing for one of the accused namely respondent No. 7 has however submitted that the amendment of section 167(5) of CR. P.C. was made to give effect to the inviolable right of the accused under Art. 21 of the Constitution. Such amended provision has been incorporated not only to stop the delayed investigation out also to discharge the accused against whom a criminal case was pending for a long time. He has submitted that if the beneficial purpose of amendment of section 167(5) Cr. P.C. to safeguard the fundamental right against deprivation of personal liberty is kept in mind, it will be only appropriate to hold that under section 167(5) Cr. P.C. the accused would be entitled to be discharged even if investigation has been completed but time more than that specified in section 167(5) has elapsed from the date of first appearance of the accused in Court and the filing of the charge sheet on completion of investigation in the concerned criminal Case. Mr. Ghosh has submitted that two actions required to be taken by the Court under section

167(5) Cr. P.C. namely stopping of further investigation and discharging the accused are two separate actions, not being dependent on the other. He has submitted that the real purpose of amendment namely preventing the undesirable prolonging the agony of a criminal case seriously prejudicing the right to personal liberty will be frustrated if the investigation is allowed to be completed leisurely exceeding a period of three years from the date of first appearance of the accused without any justification. Hence, the liberal construction of 167(5) Cr. P.C. is fully justified.

After giving our anxious consideration to the respective submission of the learned counsel appearing for the parties it appears to us that the language of section 167(5) of Cr. P.C. as amended by the West Bengal Act is quite clear in indicating that the said section is applicable only in a case where the investigation was still pending but not in a case where investigation had been completed and the chargesheet had been filed. It appears to us that 167(5) Cr. P.C. as amended, is intended to ensure speedy completion of investigation within the time frame specified therein otherwise to face an order of discharge of the accused against whom investigation without any just cause to the satisfaction of the Court has been kept pending, where investigation has been completed, a different situation, not contemplated under section 167 (5) Cr.P.C. emerges. We may indicate here that if a criminal case is kept pending for a very long time without any just cause thereby seriously affecting the guarantee under Article 21 against deprivation of personal liberty, the law is well settled that the Court, in an appropriate case may quash the criminal proceeding as indicated in the Constitution Bench decision of this Court in *A.R. Antulay's* case. Hence unnecessary liberal construction of section 167(5) Cr. P.C. with a view to protect the right against deprivation of personal liberty as contended by Mr. Ghosh is not called for.

We therefore set aside the impugned order by allowing this appeal. As the matter is pending for long we direct the Trial Court to expedite the hearing of the Criminal Case.

R.A.

Appeals allowed.