ARIVAZHAGAN

v.

STATE, REPRESENTED BY INSPECTOR OF POLICE

MARCH 8, 2000

[K.T. THOMAS AND M.B. SHAH, JJ.]

Code of Criminal Procedure, 1973 :

Section 243(1)—Scope of.

Prevention of Corruption Act, 1988 : Sections 13(1)(c) and 22.

Criminal Trial—Accused—Defence witnesses—Liberty to produce—Extent of—List of witnesses—Object and purpose of—Accused charged under Section 13(1)(c) of the Prevention of Corruption Act, 1988 read with Section 109 of the Indian Penal Code—List of 267 Defence Witnesses submitted by accused—Number of witnesses short listed by Special Judge—Marginal enhancement by High Court—Appeal before Supreme Court—Held no interference was called for with the impugned order—However, if interest of justice required Special Judge may allow accused to examine additional witnesses.

The appellant was prosecuted under Section 13(1)(c) of the Prevention of Corruption Act, 1988 read with Section 109 of the Indian Penal Code, 1860. He submitted a list of 267 witnesses in his defence. The Special Judge made a scrutiny of the list and pruned it down. As the appellant was not willing to reduce the number of witnesses, he approached the High Court which enhanced the number of witnesses marginally.

In appeal to this Court it was contended on behalf of the appellant that the position envisaged in Section 243(1) of the Code of Criminal Procedure, 1973 without the interjection of Section 22 of the Prevention of Corruption Act, 1988 has a different perception, and therefore, once the Court decided to call upon the accused to enter on his defence there is no discretion vested with the trial Judge to vivisect the list for the purpose of eliminating certain names therefrom.

Disposing the appeal, this Court

HELD : 1. The pruning exercise undertaken by the trial court and

A the High Court was within the limits permitted by law. [164-B]

2. The purpose of furnishing a list of witnesses and documents to the Court before the accused is called upon to enter on his defence, is to afford an occasion to the court to peruse the list. On such perusal, if the court feels that examination of at least some of the persons mentioned in the list is B quite unnecessary to prove the defence plea and the time which would be needed for completing the examination of such witnesses would only result in procrastination, it is the duty of the court to short list such witnesses. If the court feels that the list is intended only to delay the proceedings, the court is well within its powers to disallow even the whole of it. [163-D-E]

C

3. In the present case it was the ground of delay which the Special Judge countenanced as the ground for pruning down the massive list of witnesses presented by the appellant. Normally no court would mind if the list contains only a handful of names because the court would not then bother much about the delay factor. But when the list contains a crowd of D names of witnesses the court will certainly make a serious exercise to ascertain whether examination of all those witnesses is necessary in the interest of justice even at the risk of procrastination. [160-D-E]

4. The position of an accused is involved in a trial under the P.C. Act is more cumbered than an accused in other cases due to legislative curbs. E One of them is envisaged in Section 22 of the P.C. Act. The court is not obliged to direct an accused involved under the P.C. Act to enter upon his defence until the Special Court has the occasion to see the list of his witnesses and also the list of his documents to be adduced in evidence on the defence side. An accused in other cases has to be called upon to enter on his F defence irrespective of whether he would propose to adduce defence evidence because it is a choice to be exercised by him only after he is called upon to enter on his defence. But the accused under P.C. Act need be called upon to enter on his defence only after the trial judge has occasion to peruse the names of the witnesses as well as the purpose of examination of each one of them, and also the nature of the documents which he proposed to adduce G as his evidence. [161-F-H]

5. Section 22 of the P.C. Act has amended sub-section (1) of Section 243 of the Code in its application to the trial of offences under the P.C. Act. Section 7-A was introduced in the erstwhile P.C. Act by Act 40 of 1964. H That section is *pari materia* with Section 22 of P.C. Act. One of the main

objects sought to be achieved through insertion of Section 7A was speedy trial for cases relating to the problems of corruption. While reading Section 22 of the P.C. Act which requires a particular procedure to be followed relating to the filing of list of witnesses and documents for the defence, it must be borne in mind that the legislative intent for the aforesaid change in the procedure is mainly, for achieving expeditiousness of the trial. It is true that the concept of speedy trial must apply to all trials, but in the trials for offences relating to corruption the pace must be accelerated with greater momentum due to a variety of reasons. Parliament expressed grave concern over the rampant ever-growing corruption among public servants which has been a major cause for the demoralisation of the society. When corrupt public servants are booked they try to take advantage of the delay proned procedural trammels of our legal system by keeping the penal consequences at bay for a considerable time. It was this reality which impelled the Parliament to chalk out measures to curb procrastinating procedural clues. Section 22 of the P.C. Act is one of the measures evolved to curtail the delay in corruption cases. So the construction of Section 243(1) of the Code as telescoped by Section 22 of the P.C. Act must be consistent with the aforesaid legislative intent. [162-G-H; 163-A-C]

6. In the circumstances of the case no interference with the impugned order is necessary. However, after the appellant completes his evidence in accordance with the permission now granted as per the impugned orders, it is open to the appellant to convince the trial court that some more persons need be examined in the interest of justice. If the Court is so satisfied, the Special Judge can permit the appellant to examine such additional witnesses the examination of whom he considers essential for a just decision of the case or he can exercise the powers envisaged in Section 311 of the Code in respect of such witnesses. [164-C-D]

Ronald Wood Mathams v. *State of West Bengal,* [1955] SCR 216, held inapplicable.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 272 of 2000.

From the Judgment and Order dated 14.1.2000 of the Madras High Court in Crl.R.C. No. 1435 of 1999.

A Sushil Kumar, K.V. Vishwanathan, K.N. Jothi and K.V. Venkataraman for the Appellant.

The Judgment of the Court was delivered by

THOMAS J. Leave granted.

B

Has the accused a right to examine a myriad of witnesses and has the court any power to prune down the list of such witnesses? Such a question arose when the appellant submitted a list of 267 witnesses for the defence when the trial reached that stage. The trial Court was not disposed to allow him to examine all the persons mentioned in the list and directed him to C limit the number to the minimum necessary. As the appellant was not willing to reduce the number of witnesses he approached the High court to help him. But the advantage he got from the High Court was only marginal and it did not satisfy him. Hence, he filed the Special Leave Petition. After hearing Shri Sushil Kumar, learned senior counsel for the D appellant we felt that the appeal can be disposed of without the aid of arguments of the respondents and so we did not issue notice to them.

The factual background in which the situation reached the above stage is the following: Appellant and three persons are now being arraigned before the Special Court at Chennai for facing a charge for the offence under E Section 13(1)(c) of the Prevention of Corruption Act, 1988 (for short 'the PC Act') read with Section 109 of the Indian Penal Code. Prosecution examined a number of witnesses by summoning 41 persons. When the case reached the stage envisaged in Section 243(1) of the Code of Criminal Procedure (for short the 'Code') he submitted a list of defence F witnesses. As we mentioned earlier the number of witnesses shown in the list was so much that even a marathon legal proceeding would not be sufficient to exhaust the entire list.

The Special Judge made a scrutiny of the list and dissected the names into four divisions. The first division consisted of names shown G as No. 1 to 8. The second division consisted of names shown as No. 9 to 117 in the list. The third division consisted of names figuring in the list as No. 118 to 177. The fourth division consisted of names of 178 to 267 witnesses.

The Special Judge permitted persons shown as Nos. 4 and 8 in the H first division to be examined as he found them alone in the said division

as necessary witnesses and the others were found unnecessary for the purpose of defence plea. Regarding the second division the Special Judge stated thus:

> "Witness Nos. 9 to 117 have been cited as witnesses to speak about the masonry works, wood works, painting works etc. Instead of examining the huge number of witnesses, examination of one or two engineers will be sufficient and it would save the time also."

About the third division learned Special Judge observed that since all of them were cited only to speak about the "agriculture and business income" of the accused the appellant can advisedly confine to ten witnesses in that division. Regarding the last division in the list learned special judge observed thus:

> List of witness Nos.178 to 267 have been cited as witnesses to speak about the loans, gifts, etc. Such a huge list may not be necessary in view of Section 134 of the Indian Evidence Act. However, the accused could examine any 10 witnesses from them.

Learned Single Judge of the High Court felt that from the first division mentioned above the appellant can examine witnesses shown as Nos. 6 and 7 also and from the remaining divisions the appellant can choose ten more persons. The petition filed in the High Court was disposed of in the following terms:

> "The Special court is directed to permit the petitioner to examine witnesses 1,4 to 7 and also 10 more witnesses in the list of witnesses 118 to 267, in addition to the witnesses already permitted to be examined. The order of the Special Court is modified as stated above. The criminal revision case is disposed of accordingly."

Mr. Sushil Kumar, learned senior counsel contended that once the trial court has proceeded from the stage envisaged in sub-section (1) of Section 243 and passed over to the next stage contemplated in sub-section (2) he has no power to sift and select witnesses from the list submitted by accused. We may record, in fairness to learned senior counsel, that he candidly conceded that no accused can claim a right to examine any number of witnesses on the defence side. This was stated by the learned counsel when we asked him - hypothetically- whether the accused can file a list of ten thousand names as witnesses and ask the court to permit him

A to examine all of them.

Section 5(1) of the P.C. Act requires the Special Judge to follow the procedure prescribed by the court for trial of warrant cases by magistrates. Chapter XIX of the Code contains the provisions for such trial and Section 243 falls within the said chapter. (The corresponding provisions in the old B Criminal Procedure Code were sub-sections (8) to (10) of Section 251-A.) It is not disputed before us that a court has the power to refuse to summon any person as a witness on any of the three different grounds: (1) If any witness is cited for the purpose of vexation; (2) If any witness is cited for causing delay; (3) If any witness is cited for defeating the ends of C justice. In fact Section 243(2) of the Code incorporates such powers of the court.

In the present case it was the ground of delay which the Special Judge countenanced as the ground for pruning down the massive list of witnesses presented by the appellant. No doubt the time which would consume D for completely examining all the 267 witnesses on the defence side would be unimaginably long if a court is compelled by law to exhaust such a whopping list in its full swing. The criminal trial would only limp badly and procrastination would be the inevitable consequence. Normally no court would mind if the list contains only a handful of names because the court would not then bother much about the delay factor. But when the list E contains such a crowd of names of witnesses the court will certainly make a serious exercise to ascertain whether examination of all those witnesses is necessary in the interest of justice even at the risk of such procrastination.

F Shri Sushil Kumar, learned senior counsel first contended that the position envisaged in Section 243(1) of the Code without the interjection of Section 22 of the P.C Act has a different perception, and therefore, once the court decided to call upon the accused to enter on his defence there is no discretion vested with the trial judge to vivisect the list for the purpose of eliminating certain names therefrom. In order to G understand the said contention we would extract Section 243 in its virgin form as it is incorporated in the Code.

> "243. Evidence for defence. -
> (1) The accused shall then be called upon to enter upon his defence and produce his evidence; and if the accused puts in any written H statement, the Magistrate shall file it with the record.

(2) If the accused, after he had entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing.

Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice."

Section 22 of the P.C. Act has amended sub-section (1) of Section 243 of the Code in its application to the trial of offences under the P.C. Act. When Section 243(1) of the Code is re-read with the aforesaid changes it would run as follows:

"The accused shall then be required to give in writing at once or within such time as the court may allow, a list of persons (if any) whom he proposes to examine as his witnesses and of the documents (if any) on which he proposes to rely, and he shall then be called upon to enter upon his defence and produce his evidence, and if the accused puts in any written statement the magistrate shall file it with the record."

The position of an accused who is involved in a trial under the P.C. Act is more cumbered than an accused in other cases due to legislative curbs. One of them is envisaged in Section 22 of the P.C. Act. The court is not obliged to direct an accused involved under the P.C. Act to enter upon his defence until the Special Court has the occasion to see the list of his witnesses and also the list of his documents to be adduced in evidence on the defence side. An accused in other cases has to be called upon to enter on his defence irrespective of whether he would propose to adduce defence evidence because it is a choice to be exercised by him only after he is called upon to enter on his defence. But the accused under P.C. Act need be called upon to enter on his defence only after the trial judge has occasion to peruse the names of the witnesses as well as the purpose of examination of each

A one of them, and also the nature of the documents which he proposed to adduce as his evidence.

In this context it would be pertinent to examine the purpose behind it for the Parliament to make the aforesaid change as for the accused who gets involved in offences under the P.C. Act. A glance at the short B legislative history on this aspect would reveal the purpose when Section 7-A was introduced in the erstwhile P.C. Act by Act 40 of 1964. That section is pari materia with Section 22 of P.C. Act of 1988. Section 7-A was intended to be absorbed in the corresponding provision (Section 251-A) of the old Code whenever the trial was for offences under P.C. Act of 1947. C But it must be remembered that Parliament enacted the present Code in the year 1973 and even then the legislature did not incorporate the wording in Section 7-A of the old P.C. Act of 1947 in Section 243(1) of the Code but allowed that provision to be read in consonance with the different procedure prescribed for offences under the erstwhile P.C. Act. Now in the P.C. Act of 1988 also the legislature retained those alterations D as indicated in Section 22 thereof.

Act 40 of 1964, through which Section 7A was introduced in the erstwhile P.C. Act, was passed by the Parliament on the basis of Bill No.67/64. It was mentioned in the Statement of Objects and Reasons E of the said Bill, *inter alia,* thus:

> "The Committee on Prevention of Corruption was appointed in 1962 to review the problem of corruption and to suggest measures to combat it. The Committee has made various suggestions for dealing with the problem and has, inter alia, recommended F certain changes in the law to ensure speedy trial of cases of bribery, corruption and criminal misconduct, and to make the law otherwise more effective. The Bill is intended to give effect to such of these recommendations that have been accepted.

It is thus noticeable that one of the main objects sought to be G achieved through insertion of Section 7A was speedy trial for cases relating to the problem of corruption. When we read Section 22 of the PC Act which requires a particular procedure to be followed relating to the filing of list of witnesses and documents for the defence, it must be borne in mind that the legislative intent for the aforesaid change in the procedure H is mainly for achieving expeditiousness of the trial. It is true that the

concept of speedy trial must apply to all trials, but in the trials for offences relating to corruption the pace must be accelerated with greater momentum due to a variety of reasons. Parliament expressed grave concern over the rampant ever-growing corruption among public servants which has been a major cause for the demoralisation of the society. When corrupt public servants are booked they try to take advantage of the delay proned procedural trammels of our legal system by keeping the penal consequences at bay for a considerable time. It was this reality which impelled the Parliament to chalk out measures to curb procrastinating procedural clues. Section 22 of the P.C. Act is one of the measures evolved to curtail the delay in corruption cases. So the construction of Section 243(1) of the Code as telescoped by Section 22 of the PC Act must be consistent with the aforesaid legislative intent.

The purpose of furnishing a list of witnesses and documents to the Court before the accused is called upon to enter on his defence is to afford an occasion to the court to peruse the list. On such perusal, if the court feels that examination of at least some of the persons mentioned in the list is quite unnecessary to prove the defence plea and the time which would be needed for completing the examination of such witnesses would only result in procrastination, it is the duty of the court to short list such witnesses. We may also add that if the court feels that the list is intended only to delay the proceedings, the court is well within its powers to disallow even the whole of it.

Learned senior counsel made an endeavour to find support to his contention from the decision of a Constitution Bench of this Court in *Ronald Wood Mathams* v. *State of West Bengal,* [1955] SCR 216. In that case an accused filed a list of 15 witnesses to be examined for the defence. Though the trial court issued summons to those witnesses whose summons did not return served, and the court passed an order that no further process need be issued to those witnesses. The case ended in conviction of the accused and hence it was contended before the Supreme Court that the trial of the appellants had been vitiated by reason of the fact that they had no reasonable opportunity to examine their witnesses and that their convictions were accordingly bad. The finding of the Supreme Court in this regard was that "it is essential that rules of procedure designed to ensure justice should be scrupulously followed and courts should be jealous in saying that there is no breach of them." There is nothing in the decision to help the appellant to have an interpretation in consonance with his contention.

A In this case, the High Court as per the impugned order has further enlarged the number of witnesses to be examined on the defence side. As it is, the appellant cannot complain now that he did not get the opportunity to adduce his evidence. At any rate, we do not think it necessary to interfere with the impugned orders as the pruning exercise undertaken by the trial
B court and the High Court was within the limits permitted by law.

Nevertheless, we would add - after the appellant completes his evidence in accordance with the permission now granted as per the impugned orders, it is open to the appellant to convince the trial court that some more persons need be examined in the interest of justice, if the
C appellant then thinks that such a course is necessary. The trial court will then decide whether it is essential for a just decision of the case to examine more witnesses on the defence side. If the Court is so satisfied, the Special Judge can permit the appellant to examine such additional witnesses the examination of whom he considers essential for a just decision of the case or he can exercise the powers envisaged in Section 311 of the Code in respect of
D such witnesses. We cannot, at present, oversee the situation as to how the trial court could then reach such a satisfaction. Hence we leave it to the trial court to do the needful at the appropriate stage.

With the above observations we dispose of the appeal.

E T.N.A. Appeal disposed of.