MAHENDRA LAL DAS

v.

STATE OF BIHAR AND ORS.

OCTOBER 12, 2001

[M.B. SHAH AND R.P. SETHI, JJ.]

Prevention of Corruption Act, 1947—Sections 5(1)(e) and 5(2)—FIR lodged—Non-grant of sanction and non-initiation of prosecution even after 12 years of lodging FIR—Opinion of Government authorities that sanction could be futile—Failure of prosecution to explain the delay—Quashing of proceedings sought—Held, in the facts of the case proceedings quashed—In cases of corruption the amount involved is not material but speedy justice is the mandate of Constitution—Right to speedy trial encompasses all the stages viz. Investigation, enquiry, trial, appeal, revision and retrial—inordinate long delay can be taken as proof of prejudice—Constitution of India, 1950—Section 21.

FIR was lodged against appellant under Sections 5(2) and 5(1)(e) of Prevention of Corruption Act, 1947 for having misappropriated Rs. 50,600. After investigation, when Investigating Officer submitted a proposal for grant of sanction the authorities felt that the grant of sanction would prove to be a futile attempt on the part of the Department. When no prosecution was launched against the appellant even after 12 years, he filed writ petition for quashing the proceedings. High Court dismissed the petition on the ground that mere delay in granting sanction had not prejudiced the appellant. Hence this appeal.

Allowing the appeal, the Court

HELD : 1.1. In view of the peculiar facts and circumstances of the case the proceedings against the appellant are quashed, as permitting further prosecution would be travesty of justice and a mere ritual or formality so far as the prosecution agency is concerned, and unnecessary burden as regards the courts. [161-H; 162-A]

1.2. In the present case the prosecution has failed to explain the delay in granting the sanction for prosecution of the appellant-accused.

A **The authorities of the respondent-state also appear to be not satisfied about the merits of the case and were convinced that despite granting of sanction the trial would be a mere formality and exercise in futility. [161-C]**

B **1.3. In cases of corruption the amount involved is not material but speedy justice is the mandate of the Constitution being in the interests of the accused as well as that of the society. Cases relating to corruption are to be dealt with swiftly, promptly and without delay. As and when delay is found to have been caused during the investigation, inquiry or trial, the concerned appropriate authorities are under an obligation to find out and** C **deal with the persons responsible for such delay. The delay can be attributed either to the connivance of the authorities with the accused or used as a lever to pressurise and harass the accused as is alleged to have been done to the appellant in this case. [161-D-E]**

D *Ramanand Chaudhary* **v.** *State of Bihar & Ors.,* **AIR (1994) SC 948, relied on.**

2.1. The right to speedy trial encompasses all the stages, namely, stage of investigation, enquiry, trial, appeal, revision and retrial. While determining the alleged delay, the court has to decide each case on its E **facts having regard to all attending circumstances including nature of offence, number of accused and witnesses, the work-load of the court concerned, prevailing local conditions, etc. Every delay may not be taken as causing prejudice to the accused but the alleged delay has to be considered in the totality of the circumstances and the general conspectus** F **of the case. Inordinate long delay can be taken as a presentive proof of prejudice. [160-H; 161-A-B]**

2.2. It is true that interference by the court at the investigation stage is not called for. However, it is equally true that the investigating G **agency cannot be given the latitude of protracting the conclusion of the investigation without any limit of time. It is in the interest of all concerned that guilt or innocence of the accused is determined as quickly as possible in the circumstances. [160-F-G]**

Abdul Rehman Antulay & Ors. **v.** *R.S. Nayak & Anr.,* **[1992] 1 SCC** H **225, referred to.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1038 of 2001. A

From the Judgment and Order dated 31.7.2000 of the Patna High Court in Crl. W.J.C. No. 378 of 2000.

S.B. Sanyal, Alok Kumar, Rajesh Pathak for Ms. Naresh Bakshi for the appellant. B

Saket Singh for B.B. Singh for the Respondents.

The Judgment of the Court was delivered by C

SETHI, J. Leave granted.

The appellant who, at the relevant time, was an Executive Engineer, Public Engineering Department, Mechanical Division, Ranchi, has prayed for quashing of the FIR registered on 20.5.1988 against him under Sections 5(2) read with Section 5(1)(e) of the Prevention of Corruption Act, 1947 wherein it was alleged that the appellant was in possession of disproportionate assets to the extent of Rs. 50,600. The FIR was sought to be quashed mainly on the ground that despite expiry of over 12 years, the respondent-State had not granted the sanction which amounted to the violation of his right of life and liberty as enshrined in Article 21 of the Constitution of India. The petition, filed by the appellant, was dismissed vide the order impugned on the ground that mere delay in granting the sanction has not prejudiced the appellant in any manner particularly when he is already on anticipatory bail. D E

It appears that one Smt. Usha Punindre Narayan Sinha, filed a FIR in the Vigilance Thana, Division and District, Patna, alleging that the appellant while holding different posts during the years 1961-62 to 1982-83 acquired disproportionate assets by misusing his official position and adopting corrupt means. During investigation, the appellant gave details of his income and expenses, on the basis of which the IO concluded that the appellant was in possession of Rs. 50,600 as unaccountable money. As no prosecution was launched against the appellant till the year 2000, he moved the High Court for quashing the proceedings and his prayer was rejected vide the order impugned. F G

In the counter-affidavit filed on behalf of the respondent-State it is H

A submitted that a case of disproportionate assets of Rs. 50,600 was registered against the appellant as P.S. No. 0017/88 under the provisions of Prevention of Corruption Act and detailed enquiry held by the then Deputy Superintendent of Police. After four years of investigation, the IO submitted a proposal for granting sanction for prosecution of the appellant for which a letter was sent B to the Secretary, PH Engineering Department, Patna through the Vigilance Department on 6.1.1992. The Department of PHED as well as the Law Department, after the scrutiny of the allegations made against the appellant, arrived at the conclusion that the case could not be proved in the court. They further concluded that the grant of sanction would prove to be a futile attempt on the part of the Department, The Advocate General of the State also opined that no C case for sanction was made out on the basis of the material collected during the investigation of the case registered against the appellant. The file was also sent to the Chief Minister through Chief Secretary. The Chief Secretary suggested that the attention of the investigating agency be drawn to the defects and after obtaining its opinion appropriate orders be passed. Again in the year 1992, D the then Investigating Officer submitted a proposal for granting sanction for prosecution of the appellant put till the time the petition was disposed of by the High Court, no orders were passed on the proposal seeking the grant of sanction. Even in the affidavit filed in this Court on 27.11.2000, it is submitted that "A fresh letter for sanction of prosecution against accused Mahendra Lal E Das was sent by Vigilance Department to Dy. Secretary, PHED vide letter No. SRO 17/88 Vig. 794 C.R. dated 17.11.2000. Now the matter is under consideration and opinion by the parent department". However, during the arguments we were informed that ultimately sanction has been granted after filing of the SLP in this Court.

F It is true that interference by the court at the investigation stage is not called for. However, it is equally true that the investigating agency cannot be given the latitude of protracting the conclusion of the investigation without any limit of time. This Court in *Abdul Rehman Antulay & Ors.* v. *R.S. Nayak & Anr.*, [1992] 1 SCC 225 while interpreting the scope of Article 21 of the Constitution G held that every citizen has a right of speedy trial of the case pending against him. The speedy trial was considered also in public interest as it serves the social interest also. It is in the interest of all concerned that guilty or innocence of the accused is determined as quickly as possible in the circumstances. The right to speedy trial encompasses all the stages, namely, stage of investigation, H enquiry, trial, appeal, revision and re-trial. While determining the alleged delay,

the court has to decide each case on its facts having regard to all attending circumstances including nature of offence, number of accused and witnesses, the work-load of the court concerned, prevailing local conditions, etc. Every delay may not be taken as causing prejudice to the accused but the alleged delay has to be considered in the totality of the circumstances and the general conspectus of the case. Inordinate long delay can be taken as a presentive proof of prejudice.

In this case the prosecution has miserably failed to explain the delay of more than 13 years by now, in granting the sanction for prosecution of the appellant-accused of possessing disproportionate wealth of about Rs. 50,600. The authorities of the respondent-State also appear to be not satisfied about the merits of the case and were convinced that despite granting of sanction the trial would be a mere formality and exercise in futility.

In cases of corruption the amount involved is not material but speedy justice is the mandate of the Constitution being in the interests of the accused as well as that of the society. Cases relating to corruption are to be dealt with swiftly, promptly and without delay. As and when delay is found to have been caused during the investigation, inquiry or trial, the concerned appropriate authorities are under an obligation to find out and deal with the persons responsible for such delay. The delay can be attributed either to the connivance of the authorities with the accused or used as a lever to pressurise and harass the accused as is alleged to have been done to the appellant in this case. The appellant has submitted that due to registration of the case and pendency of the investigation he lost his chance of promotion to the post of Chief Engineer. It is common knowledge that promotions are withheld when proceedings with respect to allegations of corruption are pending against the incumbent. The appellant has further alleged that he has been deprived the love, affection and the society of his children who were residing in foreign country as on account of the pendency of the investigation he could not afford to leave the country.

This Court in *Ramanand Chaudhary* v. *State of Bihar & Ors.*, AIR (1994) SC 948 quashed the investigation against the accused on account of not granting the sanction for more than 13 years. The facts of the present case are almost identical. No useful purpose would be served to put the appellant at trial at this belated stage.

Keeping in view the peculiar facts and circumstances of the case, we are

A inclined to quash the proceedings against the appellant as permitting further prosecution would be the travesty of justice and a mere ritual or formality so far as the prosecution agency is concerned, and unnecessary burden as regards the courts.

B This appeal is accordingly allowed by setting aside the order impugned and quashing the proceedings initiated against the appeallant on the basis of PS No. 0017/88 under the provisions of Prevention of Corruption Act.

K.K.T. Appeal allowed.