STATE OF BIHAR

v.

BAIDNATH PRASAD @ BAIDYANATH SHAH AND ANR.

OCTOBER 19, 2001

[K.T. THOMAS AND S.N. VARIAVA, JJ.]

Code of Criminal Procedure, 1973 :

Section 482—Quashing of criminal proceedings—Prayer for discharge in a long pending criminal matter before Judicial Magistrate—Rejected—Accused moved the High Court—High Court observed that the case is pending for several years—Nothing on record to show that delay in proceeding caused due to laches on the part of the accused—Hence quashed the criminal proceedings—On appeal, held, the seriousness of the offence involved is not to be overlooked while considering the question whether delay alone is sufficient to quash criminal proceeding—High Court order set aside.

Section 245—Applicability of—An order of discharge can be passed when Magistrate considers that no case against the accused has been made-out which if unrebutted, warrant conviction—Or when he considers the charges to be groundless—Accused cannot seek advantage of the delay if their contribution towards the delay was substantial.

An F.I.R. was registered under Section 3 of the Railway Property (Unlawful Possession) Act, 1966. After completion of the inquiry, a complaint was filed in the Court of Judicial Magistrate on 13.1.92. The Magistrate took cognizance of the offence and instituted proceedings against accused persons including respondents. First respondent thereafter moved the Sessions Court in revision. The Sessions Judge quashed the Criminal proceeding on 29.5.92. Appellant moved the High Court on 1.4.94. The High Court overturned the order of the Sessions Court. Thereafter on account of the absence of accused the case remained in limbo till 14.10.96, when all the accused made their appearance before the Magistrate. The Trial Magistrate collected evidence and the case was posted for framing charge. On 5.1.1998, the accused filed a petition for discharging them, which was dismissed by the trial Court. Against the said order, respondent moved the High Court. The High Court quashed the criminal proceeding holding that the case was pending for more than 7 years and there was

A **nothing on record to show that the delay in proceeding with the case has been caused due to laches on the part of petitioners and therefore the proceeding against petitioners should not continue any further. In this appeal, the appellant-State challenged the Judgment of the High Court.**

Allowing the appeal, the Court

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HELD : 1. The interval between 13.1.1992 (the date on which the Magistrate took cognizance of the offence) and 24.7.1998 (the date on which the High Court quashed the proceedings) is too long a period. If the criminal case remained without any progress during the said period it C **portrays a sad picture of the administration of criminal justice. But the uncontroverted fact/situation in this case reflects that the respondents-accused have no justification in seeking advantage of delay because their contribution towards such delay was, by no means insubstantial. The ideal situation is to have criminal proceedings completed swiftly. But the ideal is far from practical attainment due to variety of reasons. If one has to abide** D **by the ideal alone, then any period of delay is enough to axe-down the criminal proceedings. In considering the question whether delay alone is sufficient to quash pending criminal proceedings, the seriousness of the offence involved is not to be overlooked. [463-H; 464-A-B; 465-B; E-F]**

E *Seeta Hemchandra Shashittal* **v.** *State of Maharashtra*, **[2001] 4 SCC 525, relied on.**

Rajiv Gupta **v.** *State of H.P.*, **[2000] 1 SCC 68, held inapplicable.**

2. An order of discharge of the accused after collecting the evidence F **envisaged in Section 244 Cr.P.C., can be passed only when the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction. This is the legislative edict of Section 245 Cr.P.C. The only other exception to the said percept is that is it open to the Magistrate to discharge the accused at any previous stage of the case if for reasons to be recorded, the Magistrate** G **considers the charge to be groundless. [464-G-H]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1075 of 2001.

From the Judgment and Order dated 24.7.98 of the Patna High Court in H Crl. M. No. 8235 of 1998.

B.B. Singh for the Appellant. A

S.N. Mishra, Mohd. Kazim Sher for N.S. Bisht for the Respondents.

The Judgment of the Court was delivered by

THOMAS, J. Leave granted. B

The accused persons who succeeded greatly in procrastinating a criminal proceedings against them, later succeeded in getting the criminal proceedings quashed solely on the ground of procrastination of court proceedings in the criminal case concerned. State of Bihar has now challenged the judgment of a learned single Judge of the Patna High Court as per which the aforesaid C criminal proceedings have been quashed.

An FIR was registered in 1991 for the offence under Section 3 of the Railway Property (Unlawful Possession) Act, 1966, (for short 'the RPUP Act'). An inquiry was conducted under Section 8 of the said Act and on completion of the inquiry a complaint was filed in the court of a judicial magistrate of First D Class on 13.1.1992. The magistrate took cognizance of the offence and issued proceedings against four persons arrayed in the complaint including the respondents in this appeal. Thereafter, the case passed through many vicissitudes. On 5.1.1998, the respondent moved an application in the trial court praying that they may be discharged. The magistrate rejected the application E and the said order of the magistrate was challenged before the High Court. On 24.7.1998, learned single Judge of the High Court quashed the criminal proceedings as per the impugned order. The reasoning of the learned single Judge for adopting such a step is the following:

> "Admittedly, the criminal case was registered against the petitioners F on the basis of report on 22.2.1991 and cognizance was taken on 13.1.1992 on the basis of the charge-sheet submitted by the Railway Police Force personnel. It is also admitted fact that till date charge has not been framed although about 7 years have passed and the case is pending for the last seven years. There is nothing on the record to G show that the delay in proceeding with the case has been caused due to laches on the part of the petitioners. In such circumstances, in my opinion, for the ends of justice, the instant proceeding against the petitioners should not continue any further."

The interval between 13.1.1992 (the date on which the magistrate took H

A cognizance of the offence) and 24.7.1998 (the date on which the High Court quashed the proceedings) is, no doubt, too long a period. If the criminal case remained without any progress during the said period it portrays a sad picture of the administration of criminal justice. But the uncontroverted fact situation in this case reflects that the respondents accused have no justification in seeking advantage of the said delay because their contribution towards such B delay was, by no means, insubstantial.

We may now give an outlay of the said factual position which the respondents, in their counter affidavit, did not dispute. The complaint was filed on 13.1.1992 and process was issued against the four accused arrayed therein. C First respondent thereafter moved the Sessions Court in revision by challenging the order by which the magistrate took cognizance of the offence. Despite the legal position casting burden of proof on the person who is found in possession of railway property, the Sessions Judge had quashed the criminal proceedings on 29.5.1992. The State thereupon moved the High Court in challenge of the said order of the Sessions Judge. On 1.4.1994, the High Court overturned the D said order of the Sessions Court.

The next stage should have commenced in the trial court soon after the receipt of the records from the High Court, but on account of the absence of one or the other accused the case remained in limbo till 14.10.1996 by which E time alone all the accused made their appearance before the magistrate. The trial court adopted the procedure prescribed in Chapter XIX of the Code of Criminal Procedure (for short 'the Code') for trial of warrant cases instituted otherwise than on police report. The trial magistrate collected preliminary evidence envisaged in Section 244 of the Code and then the case was posted for framing charge. On 5.1.1998, the accused filed a petition for discharging F them. That petition was dismissed by the trial court on 10.2.1998. It was against the said order of the magistrate that the respondents moved the High Court and learned single Judge passed the impugned order.

An order of discharge of the accused after collecting the evidence envisaged in Section 244 of the Code can be passed only when "the magistrate G considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction." This is the legislative edict of Section 245 of the Code. The only other exception to the said precept is that it is open to the magistrate to discharge the accused at any previous stage of the case "if for reasons to be recorded by such magistrate, H he considers the charge to be groundless." The magistrate had no reason to

discharge the accused at that stage as he felt that there is evidence to frame the charge he could not but dismiss the plea for a discharge. The High Court did not consider the case from the angle provided in Section 245 of the Code. As extracted above, the High Court was persuaded to discharge the accused only on the ground that "the case was pending for the last seven years."

The ideal situation is to have criminal proceedings completed swiftly. But the ideal is far from practical attainment due to a variety of reasons. If one has to abide by the ideal alone, then any period of delay is enough to axe down the criminal proceedings. In *Seeta Hemchandra Shashittal* v. *State of Maharashtra,* [2001] 4 SCC 525 this Court made the following observations:

> "This Court has emphasised, time and again, the need for speeding up the trial as undue delay in culminating the criminal proceedings is antithesis to the Constitutional protection enshrined in Article 21 of the Constitution. Nonetheless the court has to view it from pragmatic perspectives and the question of delay cannot be considered entirely from an academic angle. In other words, the High Court and this Court, when approached by accused to quash proceedings on the ground of delay, must consider each case on its own facts. Unfortunately the delay has so permeated in our legal system that at all levels tardiness has become the leitmotif. Such a malady has been judicially reprobated and efforts have been made to curtail the delay which has developed as a systemic canker."

In considering the question whether delay alone is sufficient to quash pending criminal proceedings the seriousness of the offence involved is not to be overlooked. This aspect has been highlighted in the aforecited decision after extracting the observations made by the Constitution Bench in *A.R. Antuley* v. *R.S. Naik,* [1992] 1 SCC 225. In the present case, the offence charged against the respondents is Section 3 of the RPUP Act. That offence is punishable with imprisonment for a term which may extend to five years and in the absence of special and adequate reasons to be mentioned in the judgment such imprisonment shall not be less than one year. If it is found that the accused had committed the second or a subsequent offence such minimum term of imprisonment shall be two years. We point out this aspect to show that the offence now pitted against the respondents is serious in nature.

Learned counsel for the respondents invited our attention to the decision of this Court in *Rajiv Gupta* v. *State of H.P.,* [2000] 1 SCC 68. In paragraph

A 7 of the said judgment learned Judges pointed out that if the trial of a case for an offence punishable with imprisonment up to three years has been pending for more than two years without commencing the trial the criminal court is required to discharge and acquit the accused. As indicated by this Court in *Common Cause* v. *Union of India,* [1996] 6 SCC 775, it is apparent that the said decision has no application to the facts of this case.

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In the present case, cause of the delay is mostly due to the accused either because they challenged the various orders passed or because they were not present in the court and hence proceedings could not be continued on many occasions. Causes attributable to the prosecution or even to the court are C comparably much less as to permit the accused to take advantage of the delay in registering progress of the proceedings.

We, therefore, set aside the impugned order and direct the trial court to proceed with the case and complete the prosecution evidence within six months from the date on which the accused would appear before the trial court. We D make it clear that if the accused is instrumental in causing the delay, then so much of the period would be debited from the time frame fixed by us above.

This appeal is allowed in the above terms.

S.K.S. Appeal allowed.