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RAM EKBAK MISSIR

v.

RAM NIWASH PANDEY @ SRI NIWASH PANDEY AND ORS.

OCTOBER 9, 2002

B

[M.B. SHAH AND D.M. DHARMADHIKARI, JJ.]

C

*Criminal Trial—Delay in—Quashing of FIR—FIR against accused under section 302 IPC—Proceeding not placed before court for more than ten years—Finally Magistrate taking cognizance of offences against accused—Accused filing application for dropping the proceedings in view of long delay—High Court dropping the prosecution case—On appeal held delay would not be a ground to drop the prosecution case since the accused is involved in serious offences—It is the duty of the court to see that neither the victim nor the accused suffers by the mischief of the investigation agency or the staff of the court—Penal Code, 1860—Sections 302, 147, 148 and 149.*

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On the fardbayan of appellant, FIR was registered under section 302 IPC. Investigation officer submitted the report. Appellant filed petition contending that the investigation was biased. Witnesses were examined in enquiry before the court. For unknown reasons the proceedings were not placed before the Magistrate for more than ten years. Appellant made inquiry and Magistrate took cognizance in the case. Accused filed a writ petition against taking of cognizance of the case. Accused relying on *A.R. Antulay's* case contended that as the accused was not at fault and the criminal case had been dragged for a long period of 21 years case be dropped. High Court accepted the contention and allowed the petition. Hence the present appeal.

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Allowing the appeal, the Court

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**HELD:** For unknown reasons the proceedings were not placed before the court for more than ten years and who played the mischief is not found out. The delay would hardly be a ground for dropping the prosecution where the accused are involved for the offences punishable under sections 302, 149, 148 and 147 IPC. It is the duty of the court to see that neither the victim nor the accused suffers by the mischief of the investigation agency or the staff of the court. Further at this stage, there was no

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necessity of making any observations on merits by the High Court as that is required to be decided at the time of trial or at the time of framing of charges. [165-B-C] A

*A.R. Antulay v. R.S. Nayak*, [1992] 1 SCC 225, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1051 of 2002. E

From the Judgment and Order dated 11.10.2001 of the Patna High Court in C.R.W.J.C. No. 668 of 2000.

Akhilesh Kumar Pandey and Ashok Kr. Pandey, for the Appellant. C

Pankaj Kalra, T. Mahipal, Pradeep Misra and B.B. Singh and Saket Singh, for the Respondent.

The Judgment of the Court was delivered by

SHAH, J. Leave granted. D

An FIR was registered under Section 302 IPC on a fardbayan of appellant on 5.8.1979. Thereafter, against the report submitted by the Investigating Officer, appellant filed Protest Petition stating that police has colluded with the accused persons. In that petition, five witnesses were examined who supported the FIR. It is the say of the appellant that in the meantime, he was taken into custody in connection with another offence under Section 302 IPC and remained in jail custody for more than 11 years and was released only in 1997. E

It is his further say that from the jail itself, he was trying to find out what had happened to the FIR lodged by him. After release, it was noticed that for unknown reasons the said proceedings were not listed before the C.J.M. from 1990 to the year 2000. Ultimately, appellant made inquiry and he was able to trace out the file which was placed before the ACJM who took cognizance of the offence against the respondent accused for the offence punishable under Section 302 IPC on 28.1.2000 and passed the following order: - F G

“Due to non entry in the diary and due to missing of the file the case was put up today. Attendance has been filed on behalf of the informant. The advocate for the informant submits that this case was H

A pending for orders from 1990 itself. Due to the fact that the file was missing in the office the same was not being produced in the court nor any order was passed. Today it has been found. Now after hearing order be passed. Heard the counsel of the informant and perused the records. Perused the statement of the complainant on solemn affirmation, on the protest petition, and also perused the evidence of  
 B all the witnesses, Ram Ekbal Pandey, Ram Singhasan Pandey, Uma Shankar Ram, Rama Kant Pandey, Dhaja Mishra and Mahesh Dusadh adduced during enquiry. The complainant has supported the complaint petition on S.A. and all the witnesses have supported/confirmed the occurrence.

C On perusing the statement of the complainant on S.A. of the protest petition and the deposition of all his witnesses, *prima facie* case is made out against all the accused persons named in the complaint petition u/s 147, 148, 302 IPC and 27 Arms Act. Therefore cognizance is taken in the case. Trial of Section 302 IPC is done by Sessions  
 D Court. Therefore, the case has been kept for Sessions Trial in the personal file. Complainant to file Talwana & Process fee for the appearance of accused persons.”

Against taking of cognizance, accused preferred Writ Petition being Cr.W.J.C. No. 668 of 2002 before the High Court at Patna. The High Court  
 E called for the record of S.D.J.M., Bikramganj, Sasaram to inquire as to why from the year 1990 to 2000, no order was passed on the report of the Investigating Officer as well as on the Protest Petition. In the said report, it was stated that records were never put up on the next date fixed for hearing. Ultimately when the record was put up in the year 2000, a show cause notice  
 F was issued to the concerned clerk. Thereafter at the time of hearing of the matter, it was contended by learned counsel for the respondent that accused were not at fault and the criminal case has been dragged on for a long period of 21 years, and therefore, it should be dropped on the basis of the decision rendered by this Court in *A.R. Antulay v. R.S. Nayak*, [1992] 1 SCC 225.

G The High Court accepted the said contention and allowed the petition by further holding that cognizance of the matter is taken by the Judicial Magistrate in a mechanical manner. The Court also made some observations on merits. Hence, this appeal.

H This case reveals a sorry state of affairs in administration of justice by the concerned Court. From the facts narrated above, it is clear that allegations

against the accused were for the offences punishable under Sections 302, 147, 148 and 149 IPC. When the Investigating Officer submitted report, immediately a Protest Petition was filed *inter alia* contending that investigation was biased and in the inquiry before the Court, it is the say of the appellant that five witnesses were examined. For unknown reasons, the said proceedings were not placed before the Court for more than ten years and who played that mischief is not found out. But this would hardly be a ground for dropping the prosecution where the accused are involved for the offences punishable under Sections 302, 147, 148 and 149 IPC. It is the duty of the Courts to see that neither the victim nor the accused suffers by mischief of the Investigating Agency or the staff of the Court. Further, at this stage, there was no necessity of making any observations on merits by the High Court as that is required to be decided at the time of trial or at the time of framing of charges.

Hence, the appeal is allowed, the impugned judgment and order dated 11.10.2001 passed by the High Court of Patna in Cr.W.J.C. No.668 of 2000 is set aside. The trial Court is directed to proceed further in the matter in accordance with law.

N.J.

Appeal allowed.