

CASE NO.:
Appeal (crl.) 607 of 2008

PETITIONER:
SUBIR KUMAR BASU

RESPONDENT:
STATE OF WEST BENGAL

DATE OF JUDGMENT: 27/03/2008

BENCH:
ALTAMAS KABIR & B. SUDERSHAN REDDY

JUDGMENT:
JUDGMENT
O R D E R

CRIMINAL APPEAL NO. 607 OF 2008
(Arising out of SLP(Crl.) No. 2398/06)

Leave granted.

Without going into the merits of the case, we can simply indicate that Criminal Proceedings under Section 420 and 120B IPC, which arose out of First Information Report made on 5th March, 1981, has not yet proceeded beyond the stage of filing of chargesheet before the learned Special Judge in Case No.4 of 1985. Of course, we must add that major part of the delay has been caused by proceedings pending in court, at the instance of not only of the appellant but mainly on account of proceedings taken by the State.

The appellant had, in fact, moved the court for quashing of the proceedings in writ jurisdiction and proceedings were, in fact, quashed. They were, however, revived when the State came up to this Court and directions were given to conclude the trial expeditiously. Unfortunately, over the issue of supply of documents, which the prosecution was in any event required to supply, while filing the chargesheet, proceedings were taken up first before the learned Special Judge and, thereafter, before the High Court at Calcutta, resulting in a major part of the delay of 28 years since the initial First Information Report was filed.

Against a direction given by the Trial Court on 11th March, 1989, to the prosecution to supply copies of the documents to the appellant, the respondent herein, moved the High Court in revision on 24th January, 1990, and proceedings were stayed in the said revision which was ultimately dismissed for default on 21st November, 2000. Consequently, the directions given by the learned Trial Judge on 11th March, 1989, became final. Despite the same, it appears that the said documents as directed by the learned Trial Judge, were not supplied and have still not been supplied to the appellant. Consequently, the appellant once again moved the High Court for quashing of the proceedings but on this occasion, by its judgment and order dated 20th January, 2006, the High Court, after considering the various decisions on the subject, was of the view that the proceedings ought not to be quashed. On the other hand, the High Court gave directions in the following manner:

"The learned Trial Judge, that is, the learned Judge, 5th Special Court, Calcutta is directed to supply copies as far possible in terms of order dated 11.03.1989 and would also allow inspection as directed by him in the said order, I make it more clear that copies of papers and documents over which prosecution would not place any reliance need not be supplied to the accused. As it appears that papers and documents consisting of more than three almirahas were seized copies of voluminous documents need not be supplied and inspection should be allowed in respect of voluminous documents over which prosecution would place reliance. I also direct the learned Trial Court to supply copies within three months from the date of communication of this order and thereafter to dispose of criminal case as expeditiously as possible and preferably

within one year after supply of copies of relevant papers and documents and giving inspect of papers and documents to the accused persons.

All interim order of stay passed earlier stand vacated."

Aggrieved by the said order and directions of the High Court, the appellant came up before this Court by way of Special Leave Petition (Crl.) No. 2398/06.

We have heard learned counsel for the respective parties and have also considered the various decisions directly on the point involved in this particular matter. In particular, we have been taken through the decisions of this Court in the case of A.R. Antulay & Ors. Vs. R.S. Nayak & Anr. (1992 (1) SCC 225), R. Ramachandra Rao Vs. State of Karnataka (2002(4) SCC 578 and very recent Judgment in the case of Motilal Saraf Vs. State of Jammu & Kashmir & Anr. (2006(10)SCC 560). All these three cases, amongst others, agree on the principle that a criminal trial should not be prolonged and that the accused is entitled to a speedy trial as flowing from Article 21 of the Constitution. At the same time, this Court has also given a note of caution and has indicated that each case would, however, depend on its own facts and the decision to either quash or to allow a proceeding or trial to continue, would depend on the facts and circumstances of each case.

Although, it is extremely unfortunate that in the present case about 28 years have elapsed since FIR was lodged and the proceedings are still at the stage of filing of chargesheet, we also have to take into consideration the time taken before the courts which has resulted in this huge and inordinate delay. We cannot, however, absolve the prosecution of not proceeding with the matter with expedition when the same was not pending before the courts. This is a lapse on the part of the prosecution which we deprecate. However, we are of the view that it would best serve the interest of all the parties to maintain the directions given by the High Court in the impugned judgment with a few modifications.

Accordingly, we dispose of this appeal by directing the Trial Court to supply copies of the documents referred to in its order dated 11th March, 1989, within three months from the date of communication of this Order. Apart from supplying copies of the documents mentioned in the said order, the prosecution will also to give inspection of the other documents also referred in the said order within the said time frame. We make it clear that in the event any of the documents referred to, are not supplied to the appellant, the prosecution shall not be entitled to rely on the same during the trial.

We also direct that once the copies have been supplied and inspection has been given, the learned Trial Judge will proceed with the criminal case and dispose of the same as expeditiously as possible, but positively within one year from the date of supply of the copies of the relevant documents and giving inspection of the documents to the appellant.

In the event, the Trial Court records have not been sent down by the High Court, the same are to be

sent down within one week from the date of the receipt of the copy of this Order. The Registry is directed to communicate this Order to the High Court expeditiously.

We also indicate that in the event the trial is not completed within the period indicated hereinabove, the appellant will be once again entitled to renew his prayer for quashing of the proceedings.

The appeal is disposed of accordingly.