

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1351 OF 2012
[Arising out of SLP (Crl.) No. 1288 OF 2011]

Shri Sudarshanacharaya

... Appellant

Versus

Shri Purushottamacharya & Anr.

... Respondents

JUDGMENT

(SMT.) RANJANA PRAKASH DESAI, J.

1. Leave granted.

2. This appeal, by grant of special leave, is directed against the judgment and order dated 10/12/2010 passed by the High Court of Judicature at Allahabad, Lucknow Bench at Lucknow. The High Court dismissed Criminal Misc. Case No.4227 of 2010 filed by the appellant praying that Criminal Complaint Case No.13 of 2008 be quashed.

3. Respondent 1 is the complainant (**'complainant'**, for clarity). He filed a complaint in the court of ACJM, Faizabad against the appellant. According to the complainant, the temple of Lord Venkatesh situated in Ayodhya town is managed by a Trust. The appellant is the adopted son of Smt. Hulasmani Devi, the Sarwarkar and President of Vaikunth Mandap Sri Venkatesh Mandir Trust Committee. In short, the case of the complainant, as disclosed in Complaint dated 09/09/1985, is that on 31/08/1973 considering religious nature of the appellant, the appellant was entrusted with several silver and gold articles, jewellery and other articles belonging to the temple so that he may propagate the sect. In December, 1973, the appellant requested that he may be given certain more articles. Accordingly, more articles were given to him. The receipt of first set of articles was given by him but he did not give receipt of second set of articles. The appellant never returned the articles. He misappropriated them and thus committed criminal breach of trust.

4. Certain facts, which can be gathered from the various orders which are on record and from the affidavit of Mr. R.K. Chaturvedi, S.S.P. Faizabad need to be stated. As we have already noted, the complaint was filed on 09/09/1985. On 17/10/1985, the statement of the complainant was recorded. On 25/11/1985, the statement of witness Bashisht Pandey was recorded. On 17/12/1985, the statement of Rakesh Kumar Mishra was recorded. Both these witnesses confirmed the allegations made by the complainant. On 07/03/1986, learned Magistrate took cognizance of the offence and the case was fixed for hearing on 18/06/1988. On 18/06/1988, the complainant took time for producing evidence under Section 244 of the Criminal Procedure Code, 1973 (**"the code"**, for short). Learned Magistrate posted the matter for hearing on 25/08/1988. But on 25/08/1988, the complainant and his advocate were absent. The appellant's advocate presented an application for exemption which was accepted. Application preferred by the appellant under Section 245(1) of the Code was fixed for hearing on 26/08/1988. On 26/08/1988, learned Magistrate discharged the appellant under Section

245 (1) of the Code on the ground that the complainant was absent on 25/08/1988, which was the date fixed for production of evidence.

5. The complainant filed Criminal Revision No.91 of 1988 before the Additional Sessions Judge, Faizabad challenging the said order of discharge. Learned Sessions Judge observed that on 07/03/1986, learned Magistrate had summoned the appellant so as to inquire into the charge under Section 406 of the IPC but the appellant did not appear. He finally appeared on 18/06/1988 i.e. after about two and half years. This observation of the Sessions Court indicates that it is the appellant who kept himself away from the court. Learned Sessions Judge further observed that on 27/05/1988, the appellant was released on bail and the case was adjourned to 18/06/1988. On the next date of hearing i.e. on 25/08/1988, the complainant as well as the appellant were absent. The appellant's advocate gave an application for exemption and also an application under Section 245(2) of the Code for

discharge. The Magistrate fixed the hearing on 26/08/1988. On 26/08/1988 the appellant was absent. His advocate filed an application for exemption. The complainant was present. He filed two applications. In one application, he sought opportunity to produce evidence under Section 244 of the Code and in the other application, he requested learned Magistrate to take further action only after recording evidence. In his application, the complainant gave reasons for his absence in the court on 25/08/1988. He stated that the date '26/08/1988' was fixed because of advocates' strike. The Sessions Court observed that if learned Magistrate was of the view that the appellant had to be discharged under Section 245 of the Code, because evidence was not produced, he should have discharged the accused on the same day. He, however, adjourned the case to 26/08/1988. On that day, the complainant was present and he filed two applications. Pertinently, he had requested the Magistrate to allow him to produce evidence and take further action only after recording evidence. The Sessions Court observed that it was not proper for learned Magistrate to pass order on the application of the

appellant ignoring applications of the complainant, who was present. No order was passed on the complainant's applications. The Sessions Court observed that the complainant had taken only two dates to produce evidence. The Sessions Court in the circumstances, by its order dated 17/02/1990 set aside the discharge order and remanded the matter to the trial court with a direction to provide adequate opportunity to the complainant to produce evidence.

6. Being aggrieved by this order, the appellant filed Criminal Revision No.59 of 1990 before the Allahabad High Court. The High Court vide its order dated 28/01/2000 dismissed the said criminal revision and directed the trial court to rehear the parties after giving an opportunity to the complainant to produce evidence. It is pertinent to note that the High Court has clearly stated in this order that the order passed by learned Sessions Judge does not suffer from any illegality or impropriety. Thus, the findings of Sessions Court about the conduct of the appellant were confirmed by the High Court. This order of the High Court has assumed finality.

7. Thereafter on 21/07/2009, the appellant again preferred a discharge application stating, inter alia, that Smt. Hulasmani Devi who had executed power of attorney in favour of the complainant had died on 17/08/1985 and, therefore, all actions taken by the complainant have become null and void. Learned Magistrate observed that after the appellant got bail, it is only because of untiring efforts of the complainant in obtaining non-bailable warrant against him that the appellant appeared in the court on 20/04/2009. Learned Magistrate observed that the appellant is a clever person. By filing such application, he is willfully delaying the case. Learned Magistrate observed that because of the conduct of the appellant, the case did not proceed for 22 years. Learned Magistrate observed that the appellant knew about the death of Smt. Hulasmani Devi on 17/11/1994. But when the Allahabad High Court was hearing his case on 28/01/2000, he did not bring this fact to the notice of the court. Learned Magistrate, in the circumstances, dismissed the application by his order dated 22/09/2010. The appellant then filed

Criminal Misc. Case No.4227 of 2010 in the High Court under Section 482 of the Code for quashing the complaint. The High Court vide its order dated 10/12/2010 refused to quash the complaint on the ground that there was no ground for doing so. The High Court expedited the proceedings and directed that the case will be heard on day-to-day basis. It is this order which is challenged in this appeal.

8. Affidavit in rejoinder is filed by the appellant denying all the allegations. It is stated in the affidavit by the appellant that the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the appellant. It is further stated that the instant criminal proceedings are manifestly attended with mala fides. The proceedings are instituted with an ulterior motive for wreaking vengeance.

9. We have heard Shri S.B. Sanyal, senior advocate appearing for the appellant, as well as Shri Yatish Mohan, advocate appearing on behalf of respondent 1. Shri Sanyal submitted that the appellant is about 72 years of age. It is clear from the affidavit of Shri Chaturvedi, S.S.P., Faizabad that the complainant consistently remained absent and, therefore, the case could not be proceeded with. Counsel submitted that it is apparent that the complainant is not serious about prosecuting the complaint. This is a case of sheer harassment to an old man of 72 years, against whom the complaint discloses no offence at all. Relying on **State of Haryana & Ors. V. Bhajan Lal & Ors.**¹, counsel submitted that, examined in light of this judgment the instant complaint deserves to be quashed. Counsel submitted that speedy trial is the right of an accused. This right is denied to the appellant. It is unfair to submit the appellant to the agony of a trial after a lapse of 8 years. Counsel submitted that the complaint was filed by the power of attorney holder of Sarwarkar of the temple. Principal having died on 17/12/1994, power of

¹ (1992) Supp 1 SCC 335

attorney holder's right to continue the proceedings comes to an end because no substitution was made or ordered (Section 201 of Indian Contract Act, 1872). Counsel submitted that the case initiated on 09/09/1985 with respect to an offence of the year 1973 and 1976 is barred under Section 468 of the Code and, therefore, pre-charge proceedings should not be allowed to continue. The appellant should have been discharged. Counsel submitted that continuance of pre-charge proceedings is an abuse of the process of the court. In support of his contentions, counsel relied on **Punjab National Bank & Ors. V. Surendra Prasad Sinha**², **"Common Cause" A registered Society v. Union of India & Ors.**³ (**'Common Cause-I'**), **Japani Sahoo v. Chandra Sekhar Mohanty**⁴ and **Rajiv Gupta & Ors. V. State of H.P.**⁵.

10. Counsel for the respondents supported the impugned order.

² (1993) Supp 1 SCC 499

³ (1996) 4 SCC 33

⁴ (2007) 7 SCC 394

⁵ (2000) 10 SCC 68

11. Having carefully perused the complaint, it is not possible for us to concur with learned counsel for the appellant that the allegations made in the complaint, even if they are taken at their face value, do not disclose any offence at all. The complaint states the relationship of the appellant with the President of Baikunth Mandap Venkatesh Mandir Trust Committee. It clearly states that certain gold and silver articles were entrusted to the appellant. The particulars of the articles are clearly stated in the complaint. It is further stated that for the first set of articles the appellant gave a receipt and for the second set of articles he did not give a receipt. It is alleged that the appellant never returned the articles and thus committed criminal breach of trust. Facts are narrated in detail. It cannot, therefore, be said that prima facie no offence is made out against the appellant. Judgment of this court in **Bhajan Lal** does not help the appellant. **Punjab National Bank's** case turns on its own facts and has no application to this case.

12. We are mindful of the fact that this court has repeatedly laid stress on the importance of speedy trials. Undoubtedly, the right of an accused to speedy trial flows from Article 21 of the Constitution of India. Speedy trial is an important component of the procedure established by law contemplated by Article 21 of the Constitution of India. But, in this case, reliance placed by Mr. Sanyal on '**Common Cause' A Regd. Society v. Union of India**⁶ ('**Common Cause-II**') and **Rajiv Gupta** is totally misplaced. In **Rajiv Gupta**, reliance was placed on the judgments of this Court in **Common Cause-I** and **Common Cause-II**. In these cases, this court had given certain directions for expeditious disposal of trials. This court had prescribed periods of limitation at the end of which the trial court would be obliged to terminate the criminal proceedings and necessarily acquit/discharge the accused. Following these cases, this court issued further directions in **Raj Deo Sharma v. State of Bihar**⁷ (**Raj Deo Sharma-I**) and **Raj Deo Sharma (II) v. State of Bihar**⁸ (**Raj Deo**

⁶ (1996) 6 SCC 775

⁷ (1998) 7 SCC 507

⁸ (1999) 7 SCC 604

Sharma-II). In **P. Ramachandra Rao v. State of Karnataka**⁹, the Seven Judges Bench of this Court considered whether the directions given by this court in the above cases would apply to prosecutions under the Prevention of Corruption Act and other economic offences. While dealing with these issues, this court also considered whether time limits of the nature mentioned in the above cases can, under the law, be laid down. After an indepth examination of the relevant law on the point, this court came to the conclusion that the view taken by it in the above judgments ran counter to the view taken by the Constitution Bench in **Abdul Rehman Antulay v. R.S. Nayak**¹⁰. This court was also of the view that prescribing periods of limitations at the end of which the trial court would be obliged to terminate the proceedings and necessarily acquit or discharge the accused, and further, making such directions applicable to all the cases in the present and for the future amounts to legislation which cannot be done by judicial directives and within the arena of the judicial law making power available to constitutional

⁹ (2002) 4 SCC 578

¹⁰ (1992) 1 SCC 225

courts, howsoever liberally Articles 32, 21, 141 and 142 of the Constitution may be interpreted. This court, therefore, made it clear that in the above-mentioned cases the court could not have prescribed periods of limitation beyond which the trial of a criminal case or a criminal proceeding cannot continue and must mandatorily be closed followed by an order acquitting or discharging the accused. The relevant conclusion of this Court reads as under:

“It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. The time-limits or bars of limitation prescribed in the several directions made in Common Cause (I), Raj Deo Sharma (I) and Raj Deo Sharma (II) could not have been so prescribed or drawn and are not good law. The criminal courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of time, as prescribed by the directions made in Common Cause case (I), Raj Deo Sharma case (I) and (II). At the most the periods of time prescribed in those decisions can be taken by the courts seized of the trial or proceedings to act as reminders when they may be persuaded to apply their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration the several relevant factors as pointed out in A.R. Antulay case and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time-limits cannot and will not by themselves be treated

by any court as a bar to further continuance of the trial or proceedings and as mandatorily obliging the court to terminate the same and acquit or discharge the accused.”

13. It is clear, therefore, that it is not open to a court to prescribe the time limit for disposal of a case and direct that after termination of that period if the case does not get over, the accused should be acquitted or discharged. As held in **P. Ramachandra Rao**, the court can always exercise its available powers under Sections 309, 311 and 253 of the Code to effectuate the right of an accused to speedy trial. In an appropriate case, in exercise of its jurisdiction under Section 482 of the Code, the High Court can undoubtedly quash the proceedings. Following the judgment in **P. Ramachandra Rao**, this court has in **Vakil Prasad Singh v. State of Bihar**¹¹ observed that where the court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction, as the case may be, may be quashed unless the court feels that having regard to the nature of offence and relevant circumstances, quashing

¹¹ (2009) 3 SCC 355

of proceedings may not be in the interest of justice. This Court further observed that the power possessed by the High Courts under Section 482 of the Code is undoubtedly very wide but it has to be exercised in appropriate cases, *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exist. This Court further observed that the inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. This Court further observed that it is trite to state that the said powers have to be exercised sparingly and with circumspection only when the court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of the process of the court or that the ends of justice require that the proceedings ought to be quashed.

14. We have already noted how the Sessions Court and the High Court have commented on the conduct of the appellant. It is true that from the affidavit filed by Mr. R.K. Chaturvedi, S.S.P., Faizabad, it appears that the complainant was also

negligent and casual at some stage. We are *prima facie* of the view that this observation of Mr. Chaturvedi does not appear to be wholly correct and runs counter to the observations made by learned Magistrate and Sessions Court in this case. Pertinently, the Sessions Court order in which the conduct of the accused has been severely criticized has been confirmed by the High Court. Besides, in this case, we are concerned with the Trust property. *Prima facie* we find that whenever the case was about to be heard, the appellant tried to put a spoke by filing an application for discharge. The Sessions Court and the High Court had directed that the case should proceed expeditiously or on day-to-day basis. Even by the impugned order, the High Court has directed that the case shall commence on day-to-day basis. The appellant has challenged the said order. Had the appellant not raised repeated challenges, the case would have proceeded and perhaps got over by now. *Prima facie* conduct of the appellant appears to us to be bad. In the facts of this case, we are unable to come to a conclusion that allowing the proceedings to continue would be an abuse of the process of the court. We are,

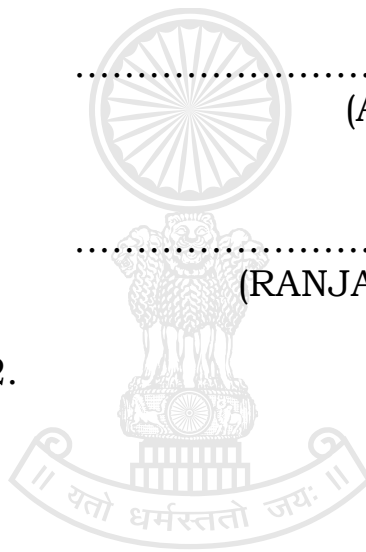
therefore, not inclined to give any relief to the appellant. Mr. Sanyal has raised two other legal points, one is regarding limitation and the other is regarding the proceedings having already been vitiated on account of death of Smt. Hulasmani Devi, who had executed power of attorney in favour of the appellant. We do not want to express any opinion on these questions. They involve questions of facts. We would leave them open so that the trial court can decide them in accordance with law. It is, therefore, not necessary for us to discuss the other decisions of this court cited by Mr. Sanyal. We must also caution the complainant. It is not possible for us to say that the complainant has also been extremely prompt in prosecuting the case. Since Trust property is involved in this case, the complainant is expected to be alert and vigilant. We deem it appropriate to give him a final chance to prosecute this case. We direct the trial court to take-up the case for final disposal, after receipt of this order by it and dispose it of within a period of four months from that date. We expect the appellant to cooperate with the trial court and not file frivolous applications leading to procrastination.

We make it clear that nothing said by us in this order should be treated as our final expression on the merits of the case of the complainant or the appellant. All questions of facts and law are expressly kept open. The appeal is dismissed with the above directions.

.....J.
(AFTAB ALAM)

.....J.
(RANJANA PRAKASH DESAI)

NEW DELHI,
SEPTEMBER 4, 2012.



JUDGMENT