Santosh Dev vs Archna Guha on 3 February, 1994

Equivalent citations: 1994 SCR (1) 549, 1994 SCC (2) 420

Author: B.P. Jeevan Reddy

Bench: B.P. Jeevan Reddy, B.L Hansaria

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           PETITIONER:
SANTOSH DEV

        Vs.

RESPONDENT:
ARCHNA GUHA

DATE OF JUDGMENT03/02/1994

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
HANSARIA B.L. (J)

CITATION:
 1994 SCR  (1) 549        1994 SCC  (2) 420
 JT 1994 (1)   413        1994 SCALE  (1)423


ACT:



HEADNOTE:



JUDGMENT:
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The Judgment of the Court was delivered by B.P. JEEVAN REDDY, J.- Leave granted in SLP (Crl.) Nos. 983 of 1990 and 483 of 1992.

Appeal No. 3811 of 1990 are, preferred against the judgment of the Division Bench of the Calcutta High Court in Archana Guha v. Ranjit (alias Runu) Guha Niyogil dated March 5, 1990 while Criminal Appeal No. 97 of 1994 [arising from SLP (Crl.) No. 483 of 1992] is directed against the order of a learned Single Judge in Criminal Revision No. 1003 of 1991 dated October 4, 1991.

3.The respondent, Smt Archana Guha filed a private complaint in August 1977 against five police officers alleging that they had tortured her in the torture cell of the Police Headquarters at Lal Bazar (Calcutta) in July 1974. She has set out in detail the manner in which she was tortured in her complaint. On September 30, 1974 she was detained under Section 3 of the Maintenance of Internal Security Act, 1971 and released on May 3, 1977. Other members of her family too were similarly detained. They were released on June 21, 1977.

1 (1990) 1 CHN 281 ** Of the five accused, three are dead. The two surviving accused are the appellants herein

4.On the private complaint filed by Smt Guha, the learned Magistrate directed issue of summons to the accused police officials. On November 5, 1977 the appellants herein surrendered before the learned Magistrate. By an order dated December 20, 1978, the learned Magistrate committed the accused to stand trial before a sessions court for offences under Sections 325, 330, 331 and 509 read with Section 34 IPC. The accused-police officials filed a criminal revision against the order of committal which was allowed by the Division Bench of the Calcutta High Court on May 13, 1980. The High Court held the order of committal bad. It directed the learned Magistrate to try the said case as a warrant case. The reasons for which the matter could not proceed thereafter from 1980 up to now, beyond the examination-in-chief of the complainant (Smt Guha), is graphically set out in the opening paragraphs of the judgment of Shri Sunil Kumar Guin, J. in his judgment in Criminal Revision No. 1003 of 1991 as well as in the judgment of the Division Bench, both of which are subject- matters of these appeals. We do not think it necessary to reproduce the same except to say that it is largely due to the various proceedings taken by the accused in various superior courts on many an issue. For example, six years were spent on the question whether Shri A.P. Chatterjee, Advocate can appear for the complainant. The matter was fought up to this Court from 1981 to 1987. In this connection, we may also refer to the particulars mentioned in para 9 of the judgment of the Division Bench in Archana Guha v. Ranjit Guha Niyogil.

5.We may now set out the facts relating to the appeals before us. We shall first take up the Criminal Appeal No. 97 of 1994 arising from SLP (Crl.) No. 483 of 19921. This appeal is directed, as already stated, against the order of the learned Single Judge dated October 4, 1991 in Criminal Revision No. 1003 of 1991. The said order was made in a revision filed by the accused-police officials against the order of the learned Metropolitan Magistrate, Seventh Court, Calcutta dated April 3, 1991 whereunder the learned Magistrate dismissed the application filed by the accused under Section 245(3) of the Criminal Procedure Code. Sub- section (3) was inserted in Section 245 by the West Bengal (Amendment) Act No. 24 of 1988. Section 245 together with sub-section (3) reads as follows:

> "245. When accused shall be discharged.- (1) If, upon taking all the evidence referred to in Section 244, 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, the Magistrate shall discharge him.
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> (2)Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such

> Magistrate, he considers the charge to be groundless. (3)If the evidence referred to in Section 244 are not produced in support of the prosecution within four years from the date of appearance of the accused, the Magistrate shall discharge the accused unless the prosecution satisfies the Magistrate that upon the evidence already produced and for special reasons there is ground for presuming that it shall not be in the interest of justice to discharge the accused."

6.Section 245 occurs in Chapter XIX-B, which prescribes the procedure for trial of warrant cases. A perusal of sub- section (3) would show that it recognises and incorporates the principle of speedy trial implicit in Article 21 of the Constitution. The section applies only to private complaints. According to sub-section (3), if all the evidence referred to in Section 244 is not produced in support of the prosecution within four years from the date of appearance of the accused, the Magistrate shall discharge the accused unless the prosecution satisfies him on the basis of the evidence already recorded and for other special reasons that it will not be in the interest of justice to discharge the accused.

7.In this case, the accused appeared in the court for the first time on November 5, 1977. All the evidence on behalf of the complainant prosecution has admittedly not been adduced within four years therefrom. But, it must be remembered, sub-section (3) was not on the statute book in the years 1981 or 1982. It was inserted only in the year 1988. We shall assume for the purpose of this case that the four years' period prescribed by Section 245(3) must be deemed to have expired on the date the said subsection was inserted and deal with the appellants' submissions on that basis.

8.Soon after the insertion of sub-section (3), the accused applied to be discharged. The learned Magistrate refused to do so. He opined that in the light of the evidence already produced together with the nature of the crime, the conduct of the accused and all other relevant circumstances, it would not be in the interest of justice to discharge the accused. The criminal revision filed by the accused has been dismissed by the learned Single Judge of the Calcutta High Court. We agree with the learned Single Judge that discharge of the accused under sub-section (3) is not automatic, once it is found that the prosecution has failed to adduce all the evidence referred to in Section 244 within four years of the appearance of the accused. If the Magistrate is satisfied that it will not be in the interest of justice to do so, he will not discharge the accused. But the said satisfaction has to be formed on the basis of evidence already recorded and for special reasons which, of course, he may have to record in his order. In this case, both the Magistrate and the High Court have referred to the nature of the crime, the several attempts made by the accused to protract the trial by various means and all other relevant circumstances in support of their satisfaction that discharging the accused would not be in the interest of the justice.

9.Shri Jain, the learned counsel for the accused- appellant argued firstly that the deposition of the complainant cannot be treated as 'evidence' within the meaning of Section 245(3) inasmuch as the complainant has not so far been cross-examined. Counsel submitted that a testimony, which has not been subjected to cross-examination is not 'evidence' within the meaning of Section 3 of the Evidence Act. Shri Jain's second submission was that "the interest of justice" referred to in Section 245(3) must be read and understood as "public interest". He submitted that one of the accused,

Ranjit Guha Niyogi, has already retired from service; out of the five original accused, three are dead; only one accused, namely, Shri Santosh De is continuing in service; the offence is already 20 years old; continuing the prosecution at this distance of time truly amounts to persecution and that it is not in the public interest to proceed with the said complaint, more particularly because the complainant is no longer in India but has settled down in Denmark after marrying a citizen of that country. Yet another argument addressed by Shri Jain is that while considering the matter under Section 245(3), the court cannot take into consideration the nature of the offence alleged. Shri Vaidyanathan reiterated the said submissions.

10.Shri Chatterjee, the learned counsel for the complainant/respondent, besides refuting the correctness of the reasons advanced by Shri Jain and Shri Vaidyanathan submitted that the complainant has come back to India and that she is now permanently settled in India.

11.On the basis of the facts set out in the judgment of the learned Single Judge relating to the progress of the case over the last several years, we are of the opinion that the learned Magistrate has exercised his discretion and judgment properly in dismissing the application filed by the accused under Section 245(3) of the Criminal Procedure Code. The High Court sitting in revision did not find any error in the approach and conclusion arrived at by the learned Magistrate. We also agree with the view taken by the learned Single Judge that the evidence of complainant already recorded is 'evidence' within the meaning of Section 245(3) of the Act, though she has not yet been subjected to cross-examination. A perusal of Section 244 and the context in which it occurs would establish the untenability of the said contention. It is also not possible to agree with the learned counsel that the nature of the offence alleged should not be taken into consideration. It is certainly relevant, as has been held in A.R. Antulay v. R.S. Nayak2. We are not satisfied that any interference is called for in the matter by this Court under Article 136 of the Constitution of India. The criminal appeal is accordingly dismissed.

Civil Appeal No. 3811 of 1990 and Criminal Appeal No. 96 of 1994 [Arising from SLP (Crl.) No. 983 of 1990]

12.These two appeals are preferred by Shri Santosh De and Ranjit Guha Niyogi respectively, the two surviving accused. They are directed against the judgment of the Division Bench in Writ Appeal No. 652 of 19881 preferred by Smt Guha (the complainant) against the judgment and order of a learned Single Judge of Calcutta High Court (Shri Ajit Kumar Sen Gupta, J.) allowing the writ petition filed by the accused and quashing the criminal proceedings instituted on the basis of the private complaint of Smt Guha. The learned Single Judge had allowed the writ petition mainly on the ground of inordinate delay in proceeding with the trial. The said delay, the learned 2 (1992) 1 SCC 225 :1992 SCC (Cri) 93 Single Judge held, violates the right to speedy trial inhering in the accused. He also opined that proceeding with the complaint at this distance of time would serve no purpose. The Division Bench, however, disagreed with the learned Single Judge and held under a very elaborate judgment that the order of the learned Single Judge quashing the entire proceedings was 'improper', besides being unjustified, in the facts and circumstances of the case. The Division Bench also observed that the learned Single Judge had taken into consideration extraneous matters while allowing the writ petition which he ought not to have done. We agree with the opinion of the

Division Bench. The Division Bench also referred to the nature of the offence alleged and the allegation of the complainant that she was tortured in a very inhuman manner by the accused-police officials in the torture chamber of the Police Headquarters. It opined that if the said allegations are proved they constitute serious offences and, therefore, they ought to be tried in the interest of justice. We are of the opinion, applying the principles evolved by this Court in A.R. Antulay v. R.S. Nayak2 that this is not a case where the accused's right to speedy trial has been violated. We agree with the High Court that the truth of the allegations can be arrived at only after a proper trial which, having regard to the nature of allegations and having regard to other circumstances referred to by the Division Bench, should now take place without any further delay. We see no reason to differ from the view taken by the Division Bench.

13.Shri Harish N. Salve, learned counsel of Shri Santosh De submitted that his client's part was very minor even according to the complaint and that his client was only a police constable obeying the orders of his superiors. Counsel submitted in such a situation it would not be in the interest of justice to ask him to face criminal trial at this distance of time. We are not satisfied with the reasons assigned by the learned counsel. We are also not inclined to separate his case from that of Ranjit Guha Niyogi. The complaint against them is common and there is Section 34 as well.

14. For the above reasons, both these appeals are also dismissed.

15. The facts of this case impel us to say how easy it has become today to delay the trial of criminal cases. An accused so minded can stall the proceedings for decades together, if he has the means to do so. Any and every single interlocutory is challenged in the superior courts and the superior courts, we are pained to say, are falling prey to their stratagems. We expect the superior courts to resist all such attempts. Unless a grave illegality is committed, the superior courts should not interfere. They should allow the court which is seized of the matter to go on with it. There is always an appellate court to correct the errors. One should keep in mind the principle behind Section 465 CrPC. Any and every irregularity or infraction of a procedural provision cannot constitute a ground for interference by a superior court unless such irregularity or infraction has caused irreparable prejudice to the party and requires to be corrected at that stage itself. Such interference by superior courts at the interlocutory stages tends to defeat the ends of justice instead of serving those ends. It should not be that a man with enough means is able to keep the law at bay. That would mean the failure of the very system.

16.We direct the learned trial Magistrate to proceed with the trial expeditiously and as far as possible on day-to-day basis. No adjournment shall be granted except for very good and sufficient reasons. No court other than this Court shall be competent to entertain any appeal, revision or other petition (including writ petitions) against any interlocutory orders and the order/proceedings framing charges, if any, against the accused, passed by the learned Magistrate in the said case. Of course against the final order passed, the aggrieved parties shall have their remedies provided by law. The above direction is made having regard to the peculiar circumstances of this case. The Registry of this Court shall forthwith communicate this order to the learned Magistrate.