

Sanjai Tiwari vs The State Of Uttar Pradesh on 16 December, 2020

Equivalent citations: AIR 2021 SUPREME COURT 162, AIR ONLINE 2020 SC 893

Author: Ashok Bhushan

Bench: M.R. Shah, R. Subhash Reddy, Ashok Bhushan

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.869 Of 2020
(Arising out of SLP(Crl.)No.5299 of 2020)

SANJAI TIWARI

... APPELLANT(S)

VERSUS

THE STATE OF UTTAR PRADESH & ANR.

... RESPONDENT(S)

J U D G M E N T

ASHOK BHUSHAN, J.

Leave granted.

2. This appeal has been filed questioning the order dated 09.09.2020 passed by the High Court of Judicature at Allahabad in Application under Section 482 Cr.P.C. filed by respondent No.2 on which application the High Court directed the trial court to expedite the criminal trial and conclude the same at the earliest.

3. The appellant is an accused in FIR No.02/2006, Vigilance Department, Lucknow under Sections 420, 467, 468, 471, 477A & 120B IPC and Section 13(1) C/D read with 13(2) of Prevention of Corruption Act, 1988. The Vigilance Department of State of Uttar Pradesh commenced an inquiry on a complaint filed by one R.K. Choudhary. Writ Petition No.45047 of 2005 was filed by the appellant in the High Court challenging the Vigilance Inquiry initiated against him. The High Court

directed on 22.08.2005 that unless complainant R.K. Choudhary is examined first no inquiry can be proceeded with against the appellant. On 08.12.2005, the Secretary, Vigilance, U.P. directed lodging of an FIR against the appellant and five others. On the basis of which FIR No.02/2006 was registered against the appellant. Writ Petition No.572 of 2006 was filed by the appellant in which the High Court stayed the order dated 08.12.2005 passed by the Secretary, Vigilance Department which order was continued by order dated 31.12.2006. In PIL No.35628/2013 the High Court by an order on 04.07.2013 directed conducting of a preliminary investigation by CBI. Writ Petition No.45047 of 2005 filed by the appellant was dismissed due to non-appearance of counsel on 29.01.2020. After which charge-sheet dated 23.05.2020 was filed by the Vigilance Department against the appellant before the Court of Additional District Judge/Special Judge(A/C), Court No.5, Gorakhpur, U.P. Respondent No.2 filed an application under Section 482 Cr.P.C. on 04.08.2020 seeking direction to Special Judge to expedite and conclude Special Trial No.520/2020. Respondent No.2 in his application in paragraph 6 disclosing his locus has made the following averments:

"6. That the applicant is a social activist and an Advocate by profession and a person having an urge to positively contribute to the society in all possible ways. He puts it on oath that he is not filing this application under Section 482 Cr.P.C. for any personal interest. He or any of his relations are not going to be benefited by filing the application."

4. Respondent No.2 has further stated in his application that although FIR was lodged on 09.01.2006 but it got delayed by tactics opted by the accused persons. The Vigilance Department completed the investigation after about 14 years and still the accused persons are trying to get away from the charges. The aforesaid application filed by respondent No.2 came before the High Court for consideration on 09.09.2020 which application stood disposed of by the following order:

"The instant application has been filed to expedite and conclude Special Trial No.520 of 2020, "State of U.P. vs. Sanjai Tiwari" relating to Case Crime No.02 of 2006, under Sections 420, 467, 468, 471, 477A & 120B IPC and Section 13(1) C/D read with 13(2) of Prevention of Corruption Act, 1988, Police Station Kursi, District Barabanki, pending in the court of Additional District Judge/Special Judge, Anti Corruption Act, Court No.5, Gorakhpur.

Learned Senior Counsel submits that the special trial pending before the court below be expedited.

Considering the facts and circumstances of the case, the application stands disposed of directing the Court concerned to expedite the proceedings of the aforesaid case and conclude the same, at the earliest possible, on day to day basis without granting any unnecessary adjournment to either of the parties, in accordance with law, provided there is no impediment."

5. Learned counsel for the appellant questioning the order of the High Court submits that the High Court committed error in entertaining the application under Section 482 Cr.P.C. at the instance of

respondent No.2 who had no locus standi to file a petition under Section 482 Cr.P.C. It is submitted that the High Court without issuing any notice to the appellant who was an accused in the trial and was impleaded as respondent No.2 in 482 Cr.P.C. application passed the order.

6. It is further submitted that the present was not a case where it can be said that any delay is caused by the accused. It is submitted that relevant fact is that proceeding consequent to lodging of FIR remained stayed by the High Court for entire period due to which any charge- sheet could be filed, which fact was not brought into the notice of the High Court when the order impugned was passed. It is submitted that even lodging of FIR against the appellant is challenged before the High Court by filing a writ petition which was dismissed on non-appearance on 29.01.2020. Appellant filed a restoration/recall application seeking restoration of Writ Petition No.45047/2005 on 15.06.2020.

7. Learned counsel for the State submits that all criminal trials where offences involved are under the Prevention of Corruption Act have to be held on day to day basis and no exception can be taken to the order passed by the High Court.

8. Respondent No.2 although had appeared in this proceeding on 03.11.2020 through counsel but subsequently has instructed his counsel not to appear any further and failed to appear on 09.12.2020 which was the date fixed by this Court.

9. We have considered the submissions of the learned counsel for the parties and perused the records.

10. From the facts which have been brought on record it is clear that Criminal Trial No.520 of 2020 was registered only after filing of charge-sheet on 23.05.2020 in FIR 02/2006, not even charges have been framed by the trial court as on date.

11. It is well settled that criminal trial where offences involved are under the Prevention of Corruption Act have to be conducted and concluded at the earliest since the offences under Prevention of Corruption Act are offences which affect not only the accused but the entire society and administration. It is also well settled that the High Court in appropriate cases can very well under Section 482 Cr.P.C. or in any other proceeding can always direct trial court to expedite the criminal trial and issue such order as may be necessary. But the present is a case where proceeding initiated by respondent No.2 does not appear to be a bona fide proceeding. Respondent No.2 is in no way connected with initiation of criminal proceeding against the appellant. Respondent No.2 in his application under Section 482 Cr.P.C. in paragraph 6 has described him as a social activist and an Advocate. An application by a person who is in no way connected with the criminal proceeding or criminal trial under Section 482 Cr.P.C. cannot ordinarily be entertained by the High Court. A criminal trial of an accused is conducted in accordance with procedure as prescribed by the Criminal Procedure Code. It is the obligation of the State and the prosecution to ensure that all criminal trials are conducted expeditiously so that justice can be delivered to the accused if found guilty. The present is not a case where prosecution or even the employer of the accused have filed an application either before the trial court or in any other court seeking direction as prayed by respondent No.2 in his application under Section 482 Cr.P.C.

12. With regard to locus of a third party to challenge the criminal proceedings or to seek relief in respect of criminal proceedings of accused had been dealt with by this Court in Janata Dal vs. H.S. Chowdhary and others, (1993) 1 SCC 756. In the above case the CBI had registered FIR under the IPC as well as under the Prevention of Corruption Act, 1947 against 14 accused. On an application filed by the CBI the learned trial Judge allowing the application to the extent that a request to conduct necessary investigation and to collect necessary evidence which can be collected in Switzerland passed order on 05.02.1990 which is to the following effect:

"In the result, the application of the CBI is allowed to the extent that a request to conduct the necessary investigation and to collect necessary evidence which can be collected in Switzerland and to the extent directed in this order shall be made to the Competent Judicial Authorities of the Confederation of Switzerland through filing of the requisite/proper undertaking required by the Swiss law and assurance for reciprocity."

13. A criminal miscellaneous application was filed by Shri H.S. Chowdhary seeking various prayers before the Special Judge which petition was dismissed by the Special Judge. A criminal Revision under Sections 397/482 Cr. P.C. was filed by H.S. Chowdhary in the High Court to quash the order of the Special Judge, which Revision was also dismissed by the High Court. The appeals were filed in this Court by different parties challenging the said order including H.S. Chowdhary. This Court while dismissing the appeals filed by the H.S. Chowdhary and others made the following observations:

"26. Even if there are million questions of law to be deeply gone into and examined in a criminal case of this nature registered against specified accused persons, it is for them and them alone to raise all such questions and challenge the proceedings initiated against them at the appropriate time before the proper forum and not for third parties under the garb of public interest litigants.

"27. We, in the above background of the case, after bestowing our anxious and painstaking consideration and careful thought to all aspects of the case and deeply examining the rival contentions of the parties both collectively and individually give our conclusions as follows:

1. Mr. H.S. Chowdhary has no locus standi (a) to file the petition under Article 51A as a public interest litigant praying that no letter rogatory/request be issued at the request of the CBI and he be permitted to join the inquiry before the Special Court which on 5.2.90 directed issuance of letter rogatory/request to the Competent Judicial Authorities of the Confederation of Switzerland; (b) to invoke the revisional jurisdiction of the High Court under Sections 397 read with 401 of the CrPC challenging the correctness, legality or propriety of the order dated 18.8.90 of the Special Judge and (c) to invoke the extraordinary jurisdiction of the High Court under Section 482 of the CrPC for quashing the First Information Report dated

22.1.90 and all other proceedings arising therefrom on the plea of preventing the abuse of the process of the Court.

.....

28. In the result, we agree with the first part of the Order dated 19.12.90 of Mr. Justice M.K. Chawla holding that Mr. H.S. Chowdhary and other intervening parties have no locus standi. We, however, set aside the second part of the impugned order whereby he has taken suo moto cognizance and issued show cause notice to the State and CBI and accordingly the show cause notice issued by him is quashed.”

14. This Court in the above case laid down that it is for the parties in the criminal case to raise all the questions and challenge the proceedings initiated against them at appropriate time before the proper forum and not for third parties under the garb of Public Interest Litigants.

15. We are fully satisfied that respondent No.2 has no locus in the present case to file application under Section 482 Cr.P.C. asking the Court to expedite the hearing in criminal trial. We have already observed that all criminal trials where offences involved under the Prevention of Corruption Act have to be concluded at an early date and normally no exception can be taken to the order of the High Court directing the trial court to expedite the criminal trial but in the present case the fact is that proceedings have been initiated by respondent No.2 who was not concerned with the proceedings in any manner and the respondent No.2 has no locus to file the application which was not clearly maintainable, we are of the view that the impugned judgment of the High Court dated 09.09.2020 cannot be sustained.

16. In the result, the appeal is allowed, judgment of the High Court dated 09.09.2020 is set aside. The application filed by respondent No.2 under Section 482 Cr.P.C. is dismissed. We, however, make it clear that none of the observations made by us in this order shall affect the criminal trial. We, however, observe that it will be open for the trial court to expedite the criminal trial, the offences being the offences under the Prevention of Corruption Act, 1988, subject to any order passed by the High Court in pending proceedings.

.....J. (ASHOK BHUSHAN)J. (R. SUBHASH REDDY)
.....J. (M.R. SHAH) NEW DELHI, DECEMBER 16, 2020.