

STATE REPRESENTED BY INSPECTOR OF POLICE CENTRAL A
BUREAU OF INVESTIGATION

v.

M. SUBRAHMANYAM
(Criminal Appeal No. 853 of 2019)

MAY 7, 2019

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[ARUN MISHRA AND NAVIN SINHA, JJ.]

Code of Criminal Procedure, 1973:

s. 482 – Case under Prevention of Corruption Act – Application u/s. 242 Cr.P.C to bring on record authorisation of investigation, filed after three years of filing of charge-sheet – Dismissed on the ground that no explanation furnished for not filing the same alongwith the charge-sheet – After five years of dismissal of the application, another application u/s. 173 (2)(5)(a) Cr.P.C filed for bringing the authorisation on record – Dismissed on the ground of res judicata – Petition u/s 482 seeking to bring the authorisation on record, dismissed by High Court – On appeal, held: Substantive justice must always prevail over procedural or technical justice – Procedural lapse cannot be placed at par with what is or may be substantive violation of law – The failure to bring the authorisation on record was a procedural lapse – The consequences of disallowing the procedural lapse was substantive in nature – The High Court in exercise of inherent jurisdiction, in the interest of justice and to prevent abuse of process of law, ought to have allowed bringing of authorisation order on record – Prosecution is permitted to bring the authorisation order for investigation on record – However, in the facts of the case, possibility of deliberate omission to bring on record authorisation order, to favour the accused, cannot be ruled out – CBI directed to hold inquiry to determine the reason for delay in approaching the court.

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Allowing the appeal with directions, the Court

HELD: 1. The truth and veracity of the authorisation order not being in issue, the failure to file it along with the charge-sheet was an omission constituting a procedural lapse only. The rejection of the first application on 11.03.2008 not having been ordered on merits, but for failure to furnish a satisfactory

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A explanation for the delay, Section 362 Cr.P.C has no relevance on facts. Therefore, there was no impediment in the appellant seeking to bring the same on record subsequently under Section 173(2)(5)(a) of Cr.P.C. The consequences of disallowing the procedural lapse were substantive in nature. [Para 7] [291-D-F]

B 1.2 The failure to bring the authorisation on record, as observed, was more a matter of procedure, which is but a handmaid of justice. Substantive justice must always prevail over procedural or technical justice. To hold that failure to explain delay in a procedural matter would operate as res judicata will be a travesty of justice considering that the present is a matter relating to corruption in public life by holder of a public post. The rights of an accused are undoubtedly important, but so is the rule of law and societal interest in ensuring that an alleged offender be subjected to the laws of the land in the larger public interest. To put the rights of an accused at a higher pedestal and to make the rule of law and societal interest in prevention of crime, subservient to the same cannot be considered as dispensation of justice. A balance therefore has to be struck. A procedural lapse cannot be placed at par with what is or may be substantive violation of the law. [Para 9] [292-A-C]

E 1.3 The High Court was exercising inherent jurisdiction in the interest of justice and to prevent the abuse of the process of law. In the facts and circumstances of the case, the High Court ought to have exercised its inherent powers to allow the bringing of the authorisation order on record rather than to have adopted a narrow and pedantic approach to its own jurisdiction given the provisions of Section 173(2)(5)(a) Cr.P.C. Therefore, the prosecution is permitted to bring the order of authorisation for investigation on record. [Paras 11 and 12] [292-F-G]

G *Bihar State Electricity Board v. Bhowra Kankanee Collieries Ltd.*, 1984 Supp SCC 597 ; *Sakshi v. Union of India* (2004) 5 SCC 518 : [2004] 2 Suppl. SCR 723 – relied on.

Central Bureau of Investigation v. R.S. Pai and another, (2002) 5 SCC 82 : [2002] 2 SCR 889 – referred to.

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2. The charge-sheet was submitted on 05.04.2005. No explanation has been furnished as to why the prosecution exhibited such laxity in seeking to bring the authorisation order on record nearly three years later on 07.01.2008. If that were not enough, after rejection of the same on 11.03.2008, the prosecution again remained silent till it filed the fresh application under Section 173(2)(5)(a) as late as on 21.06.2013, with no explanation furnished for the same. Considering the matter from the administrative perspective, a lapse on the first occasion may be an inadvertent error but the repeat of the same lapse raises serious doubts and issues whether it was inadvertent or deliberate. The present was a case relating to corruption in public life by a public servant owing allegiance to the Constitution. The possibility, in the facts of the present case, cannot be entirely ruled out of a deliberate omission, to favour the accused. Therefore it is directed that a senior officer of the Central Bureau of Investigation, shall hold an inquiry and determine the circumstances under which the initial lapse took place, and the reason for delay in approaching the court. The inquiry shall also encompass the passage of nearly 5 years after rejection of the same, and the belated attempt in 2013 only. Responsibility must be fixed in the report and adequate disciplinary action be initiated and concluded against the concerned persons in accordance with law. [Paras 13 and 14] [293-F-H; 294-A-D]

Case Law Reference

[2002] 2 SCR 889	referred to	Para 3	
1984 Supp SCC 597	relied on	Para 8	F
[2004] 2 Suppl. SCR 723	relied on	Para 10	

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 853 of 2019.

From the Judgment and Order dated 06.08.2018 of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in Criminal Petition No. 7904 of 2013.

Vikramjit Banerjee, ASG, Ms. Praveena Gautam, Ms. Seema Bengani, Anas Zaidi, Arvind Kumar Sharma, Advs. for the Appellant.

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A P. S. Narasimha, Sr. Adv., M. Srinivas R. Rao, Sarath S. Janaradan,
K. Narsimbha Murthy, Rahul T., V. C. Shukla, Sundoor VNL., Abid Ali
Beeran P, Advs. for the Respondent.

The Judgment of the Court was delivered by

NAVIN SINHA, J. 1. Leave granted.

B 2. The Inspector of Police, Central Bureau of Investigation,
Vishakhapatnam, is aggrieved by order dated 06.08.2018 of the High
Court, dismissing the application under Section 482, Cr.P.C. by the
prosecution to bring on record the order passed by the Superintendent of
Police, CBI, Visakhapatnam, under Section 17 of the Prevention of
C Corruption Act, 1988 (hereinafter referred to as 'the Act'), authorising
Sri V.K.C. Reddy, the then Deputy Superintendent of Police, CBI,
Visakhapatnam, to investigate against the respondent, an Income Tax
Officer, Visakhapatnam, pursuant to an F.I.R. lodged under Sections
13(2) read with 13(1)(c) of the Act on allegation for possessing moveable
D and immoveable properties disproportionate to the known sources of
income.

3. Learned counsel for the appellant submits that the order of
authorisation for investigation could not be filed along with the charge-
sheet due to inadvertence. It was subsequently sought to be filed under
E Section 242 Cr.P.C. by CrI.M.P. No.26 of 2008 much prior to the
commencement of the trial. The application was not rejected on merits
but on the ground that no satisfactory explanation had been furnished
for the delay in submission. CrI.M.P. No.560 of 2013 was then filed
afresh under Section 173(2)(5)(a), Cr.P.C. to bring the authorisation on
record. It was erroneously dismissed applying the principles of res judicata
F even though there had been no adjudication on merits earlier. The truth
and veracity of the authorisation was not in dispute. The interest of
justice therefore required that the authorisation should have been allowed
to be brought on record. The issue pertained only to a matter of procedure.
Section 362 Cr.P.C. was wrongly relied upon by the trial judge. Reliance
G was placed on *Central Bureau of Investigation vs. R.S. Pai and
another*, (2002) 5 SCC 82.

4. Learned counsel for the respondent contended that the earlier
application under Section 242 Cr.P.C. having been dismissed,
appropriately a revision or appeal ought to have been preferred. The
H order of rejection having attained finality no fresh application for the

same purpose could have been filed quoting another provision of the Code. Serious prejudice shall be caused to the respondent, affecting the course of justice if it were to be permitted at this stage. A

5. We have considered the submissions on behalf of the parties and opine that the appeal deserves to be allowed for reasons enumerated hereinafter. B

6. FIR No.RC 35(A)/2002-CBI/ACB/VSP (CC-03 of 2005) was registered against the respondent on 01.11.2002 under the Act. Charge-sheet was filed on 05.04.2005. On 07.01.2008, an application was filed on behalf of the prosecution under Section 242 Cr.P.C. to bring on record the authorisation for investigation issued to Shri V.K. Reddy. On 11.03.2008 it was dismissed on the ground that no proper explanation had been furnished for not filing the same along with the charge-sheet. Subsequently, on 21.06.2013, the authorisation was again sought to be brought on record by the prosecution invoking Section 173(2)(5)(a) of the Code giving rise to the impugned orders. C D

7. The truth and veracity of the authorisation order not being in issue, the failure to file it along with the charge-sheet was an omission constituting a procedural lapse only. The rejection of the first application on 11.03.2008 not having been ordered on merits, but for failure to furnish a satisfactory explanation for the delay, Section 362 Cr.P.C has no relevance on facts. We are, therefore, of the opinion that there was no impediment in the appellant seeking to bring the same on record subsequently under Section 173(2)(5)(a) of the Code. The consequences of disallowing the procedural lapse were substantive in nature. E

8. In *Bihar State Electricity Board vs. Bhowra Kankanee Collieries Ltd.*, 1984 Supp SCC 597, the Court opined: F

“6. Undoubtedly, there is some negligence but when a substantive matter is dismissed on the ground of failure to comply with procedural directions, there is always some element of negligence involved in it because a vigilant litigant would not miss complying with procedural direction..... The question is whether the degree of negligence is so high as to bang the door of court to a suitor seeking justice. In other words, should an investigation of facts for rendering justice be peremptorily thwarted by some procedural lacuna?” G

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- A 9. The failure to bring the authorisation on record, as observed,
was more a matter of procedure, which is but a handmaid of justice.
Substantive justice must always prevail over procedural or technical
justice. To hold that failure to explain delay in a procedural matter would
operate as *res judicata* will be a travesty of justice considering that the
present is a matter relating to corruption in public life by holder of a
B public post. The rights of an accused are undoubtedly important, but so
is the rule of law and societal interest in ensuring that an alleged offender
be subjected to the laws of the land in the larger public interest. To put
the rights of an accused at a higher pedestal and to make the rule of law
and societal interest in prevention of crime, subservient to the same
C cannot be considered as dispensation of justice. A balance therefore
has to be struck. A procedural lapse cannot be placed at par with what
is or may be substantive violation of the law.

10. In *Sakshi vs. Union of India*, (2004) 5 SCC 518, the Court
observed:

- D “31..... There is major difference between substantive provisions
defining crimes and providing punishment for the same and
procedural enactment laying down the procedure of trial of such
offences. Rules of procedure are handmaiden of justice and are
meant to advance and not to obstruct the cause of justice. It is,
E therefore, permissible for the court to expand or enlarge the
meanings of such provisions in order to elicit the truth and do
justice with the parties.”

11. The High Court was exercising inherent jurisdiction in the
interest of justice and to prevent the abuse of the process of law. In the
F facts and circumstances of the case, the High Court ought to have
exercised its inherent powers to allow the bringing of the authorisation
order on record rather than to have adopted a narrow and pedantic
approach to its own jurisdiction given the provisions of Section
173(2)(5)(a), Cr.P.C., as observed in *R.S. Pai* (supra):

- G “7. From the aforesaid sub-sections, it is apparent that normally,
the investigating officer is required to produce all the relevant
documents at the time of submitting the charge-sheet. At the same
time, as there is no specific prohibition, it cannot be held that the
additional documents cannot be produced subsequently. If some
mistake is committed in not producing the relevant documents at

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the time of submitting the report or the charge-sheet, it is always open to the investigating officer to produce the same with the permission of the court. In our view, considering the preliminary stage of prosecution and the context in which the police officer is required to forward to the Magistrate all the documents or the relevant extracts thereof on which the prosecution proposes to rely, the word “shall” used in sub-section (5) cannot be interpreted as mandatory, but as directory. Normally, the documents gathered during the investigation upon which the prosecution wants to rely are required to be forwarded to the Magistrate, but if there is some omission, it would not mean that the remaining documents cannot be produced subsequently. Analogous provision under Section 173(4) of the Code of Criminal Procedure, 1898 was considered by this Court in *Narayan Rao v. State of A.P.* and it was held that the word “shall” occurring in sub-section (4) of Section 173 and sub-section (3) of Section 207-A is not mandatory but only directory. Further, the scheme of sub-section (8) of Section 173 also makes it abundantly clear that even after the charge-sheet is submitted, further investigation, if called for, is not precluded. If further investigation is not precluded then there is no question of not permitting the prosecution to produce additional documents which were gathered prior to or subsequent to the investigation. In such cases, there cannot be any prejudice to the accused. Hence, the impugned order passed by the Special Court cannot be sustained.”

12. The appeal will, therefore, have to be allowed and the prosecution is permitted to bring the order of authorisation for investigation on record, which we do hereby order.

13. But the matter shall not end there. As noticed, the charge-sheet was submitted on 05.04.2005. No explanation has been furnished as to why the prosecution exhibited such laxity in seeking to bring the authorisation order on record nearly three years later on 07.01.2008. If that were not enough, after rejection of the same on 11.03.2008, the prosecution again remained silent till it filed the fresh application under Section 173(2)(5)(a) as late as on 21.06.2013, with no explanation furnished for the same. We have no hesitation in observing that considering the matter from the administrative perspective, a lapse on the first occasion may be an inadvertent error but the repeat of the same

- A lapse raises serious doubts and issues whether it was inadvertent or deliberate. The present was a case relating to corruption in public life by a public servant owing allegiance to the Constitution. The charge-sheet was filed in 2005. The trial has successfully been thwarted at a very nascent stage for long years. The possibility, in the facts of the present case, cannot be entirely ruled out of a deliberate omission, to
- B favour an accused.

14. We therefore direct that a senior officer of the Central Bureau of Investigation, Visakhapatnam shall hold an inquiry and determine the circumstances under which the initial lapse took place, and the reason for delay in approaching the court. The inquiry shall also encompass the
- C passage of nearly 5 years after rejection of the same, and the belated attempt in 2013 only. Responsibility must be fixed in the report and adequate disciplinary action be initiated and concluded against the concerned persons in accordance with law. Compliance report shall be
- D taken, within a period of three months from today.