Supreme Court of India
State Of West Bengal vs Pranab Ranjan Roy on 6 March, 1998
Author: Thomas
Bench: M.K. Mukherjee, K.T. Thomas

PETITIONER:
STATE OF WEST BENGAL

Vs.

RESPONDENT:
PRANAB RANJAN ROY

DATE OF JUDGMENT: 06/03/1998

BENCH:
M.K. MUKHERJEE, K.T. THOMAS

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T Thomas, J.

Leave granted.

Respondent in this appeal was the Chief (Operation) of Central Inland Water Transport, Calcutta. Prosecution proceedings were launched against him under Section 13(2) of the Prevention of Corruption Act, 1988, on the allegation that he has acquired assets disproportionate to his known sources of income. But a Special Judge before whom the charge-sheet was laid, discharged him under Section 167(5) of the Code of Criminal Procedure (West Bengal Amendment). A revision petition was preferred by the State before the High Court of Calcutta assailing the said order of discharge, but in vain. Hence the State has filed this appeal by special leave.

Some relevant facts necessary for this appeal are the following:

The case against the respondent was registered on 27.8.1990. As the respondent desired to have some documents returned to him, he applied to the court of Special Judge on 29-2-1992 through an advocate praying for return o such documents. On the same day a vakalatnama was filed by his advocate in the Court. On 4-5-1994, the investigation agency submitted charge-sheet against the

respondent for offence under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988. When respondent on 13-7- 1996 praying for his discharge under Section 167(5) of the Code (West Bengal Amendment) on the premise that he appeared in the Court on 29-2-1992 through his counsel and that no charge-sheet was filed till the expiry of two years from the said date of appearance. That plea was upheld by the Special Judge and respondent was discharged which was concurred with by a Single Judge of the High Court of Calcutta. It is the Judgment of the High Court which is in challenge now.

The respondent pleaded that his case falls under clause

(iii) of the sub-section (5) of Section 167 of the Code. According to him, since the investigation was not concluded within two years from 29-2-1992, the inevitable sequel is that he should have been discharged.

Appellant sought to tide over the difficulty by adopting three different alternative arguments before the High Court. First was, on the premise that the investigating officer has made an application before the Special Judge seeking permission to continue the investigation. Second was, that the time taken for obtaining the sanction to prosecute the respondent must be excluded from the period of two years mentioned in sub-section (5). Third was, that respondent had not really appeared in court on 29-2-1992 even by conceding that this counsel filed vakalatnama on that date for making a plea to return certain documents.

High Court has repelled all the three contentions. Learned counsel for the appellant did not canvass for the first two grounds before us, but confined to the third ground. However, we may state that when the SLP was taken up we felt initially that this case is squarely covered by the dictum enunciated by this Court in Durgesh Chandra Saha v. Bimal Chandra Saha & ors. [1996(1) SCC 341]. We, therefore, issued notice to the respondent calling upon him to show cause why the petition should not be disposed of in terms of the ration in the above decision. This Court in that decision held thus.

> "The language of Section 167 of the CrPC as amended by the West Bengal Act is quite clear in indicating that the said section is applicable only in a case where the investigation was still pending but not in a case where investigation had been completed and charge-sheet had been filed."

The situation in this case also is the same in that the investigation was completed and charge-sheet was laid on 4- 5-1994 and the accused claimed the right to get discharged only thereafter. Learned counsel for the respondent made an endeavour to distinguish the present case from the facts of Durgesh Chandra Shah (supra). However, we do not think it necessary to consider that contention now as this appeal can be disposed of on a decision regarding the third ground mentioned above.

Shri S.B. Sanyal, learned senior counsel argued for the respondent that if an accused has appeared through his advocate that would be enough to make his appearance in court even if he was not physically present in the Court. Shri A.S. Nambiar, learned Senior Counsel contended for the

appellant that appearance of an accused in the court means his surrender to the process or control of the court, in which case the court would either release him on bail or remand him to custody.

We may point out that respondent was not arrested at any time in connection with this case. Not did he surrender to the court's custodial domain at any time. However, it is not disputed that respondent has filed a vakalatnama in the court on 29.2.1992, for making a plea for return of some documents. If that act of the respondent on the said date cannot amount to his "making appearance" in the court, its corollary is that he cannot avail himself of the benefit envisaged in the provision concerned.

Section 167(5) of the Code as amended by Section 4 of the West Bengal Act No.24/1988, reads thus:

> "(5) If, in respect of-
>
> (i) any case triable by a Magistrate as a summons case, the investigation is not concluded within a period of six months, or
>
> (ii) any case exclusively triable by a Court of Session or a case under Chapter XVIII of the Indian Penal Code (45 of 1860), the investigation is not concluded within a period of three years, of
>
> (iii) any case other than those mentioned in clauses (i) and (ii), the investigation is not concluded within a period of two years, from the date on which the accused was arrested or made his appearance, the Magistrate shall make an order stopping further investigation into the offence and shall discharge the accused unless the officer making the investigation satisfies the Magistrate that for special reasons and n the interests of justice the continuation of the investigation beyond the periods mentioned in this sub-section is necessary." When construing the word "appearance" in the above sub-

section we have to look at the context in which it is used. In other contexts the same word "appearance" may have different connotations or at least different shades of meaning e.g. Order 9 Rules 6 and 8 of the Code of Civil Procedure prescribe the consequence when the plaintiff or defendant in a suit does not "appear". Order 41 Rule 17 of that Code deals with the consequence when appellant in an appeal does not "appear". In all such instances "appearance" would include appearance by advocate because it is made so clear in Order 3 Rule 1 of the Code that any appearance required by law to be made in any court may be made "by the party in person, or by his recognised agent or by his pleader on his behalf."

Even under the Code of Criminal Procedure the word "appear" of "making appearance" can include appearance through the advocate without the accused concerned physically presenting himself in certain situations. For example, Section 204 speaks about the magistrate's power to issue summons and in clause (b) of sub-section (1) the magistrate may issue a warrant or a summons for causing the accused to be brought or "to appear at a certain time before such magistrate". In Section 205, it is

made clear that when a magistrate issues summons, he may dispense with the personal attendance of the accused and permit him to appear through this pleader. In Section 206 the magistrate is empowered to issue summons to the accused "requiring him either to appear in person or by pleader." Those are instance where appearance made through pleader can as well be regarded as appearance of the accused.

But the above principle cannot be carried forward to the situation in Section 167(5) of the Code. The words "made his appearance" in that sub-section cannot be truncated from the particular context in which that expression is used. It is a salutary principle in the sphere of interpretation of statutory clauses that words in a provision must not be understood merely by their ordinary meanings de hours the context in which such words are used. In Bidie vs. General Accident, Fire and Life Assurance, [1948 (2) All E.R. 995] Lord Greene has observed thus:

> "The first thing one has to do, I venture to think, in construing words in a section of an Act of Parliament is not to take those words in vacuo, so to speak, and attribute to them what is sometimes called their natural or ordinary meaning. Few words in the English language have a natural or ordinary meaning in the sense that they must be so read that their meaning is entirely independent of their context. The method of construing statues that I prefer is not to take particular words and attribute to them a sort of prima facie meaning which you have to displace or modify. It is to read the statute as a whole and ask oneself the question: `In this state, in this context, relating to this subject matter, what is the true meaning of the word?'"

A three judges bench of this Court has in Goodyear India Ltd. VS. Union of India and ors. [JT 1997 (3) SC 63] made a reference to the observations of Stamp J. in Bourne vs. Norwich Crematorium Ltd. [1987 (2) E.R. 378] that:

> "English words derive colour from those which surround them and sentences are not mere collections of words to be taken out of the sentence, defined separately by reference to the dictionary or decided cases."

The words "made his appearance" in Section 167(5) are used along with the preceding words which by themselves form into a composite collocation as thus: "From the date on which the accused was arrested or made his appearance." It must be noted that the purpose of the sub-section is to impose a time schedule for completion of investigation and such time schedule is to commence either "from the date of arrest of the accused or the date when he made his appearance in court." It is pertinent to notice that the period of time is not commencing from the date of registration of the crime or the date of first information. Why the time is fixed to commence from the date on which "the accused was arrested or made his appearance"? The sublime idea is that the investigating agency who gets opportunity to question the accused under Section 161 of the Code cannot be permitted to dodge with or further prolong the investigation without special reasons and in the interest of justice. In other words, the sub-section aims at expeditious and effective completion of the investigation when once the accused concerned is available for interrogation by the investigating agency.

What happens if a different interpretation is given to the words "made his appearance" in the sub-section? In a case where an accused is out of India he can send his vakalatnama duly attested from abroad to be filed in the court through his advocate and he can well remain without returning to India for the period mentioned in the sub- section, and thereafter claim the benefit of discharge from the offence on the ground that investigation was not completed within the prescribed period. On such a person even without going abroad can keep himself away from the court and claim the same benefit. We should desist from affording an interpretation which would lead to such inept consequences.

In the aforesaid context a reference can be made to Sections 436 and 437 of the Code, which fail within Chapter XXXIII of the Code under the caption "Provisions as to bail and bonds". In the former section appearance of accused in bailable offences is dealt with for the purpose of releasing him on bail. "When any person other than a person accused on bail in a non-bailable offence is dealt with. "When any person accused of, or suspected of, the commission of any non-bailable offence is arrested ... or appears or is brought before a Court ... he shall be released on bail ...". The appearance mentioned in these sections can only mean physical appearance of the accused and not appearance by counsel because the very notion of bail presupposes restraint of the accused and hence the person who wishes to be released on bail is to appear and surrender before the court. A person who is not under any sort of restraint does not require to be released on bail. The word "appearance" in Section 167(5) cannot be understood different from the same word used in Sections 436 and 437 of the Code.

In the present case, respondent has not made his physical appearance before the Special Judge at any time before the charge-sheet was laid. Hence there is no question of invoking the bar contemplated in Section 167(5) on the facts of this case.

In the result, we allow this appeal and set aside the impugned judgment as well the order of discharge passed by the Special Judge. We direct the Special Judge to proceed with the case and dispose it of in accordance with law.