IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.50 of 2013

Arising Out of PS.Case No. -46 Year- 1992 Thana -C.B.I CASE District- Patna

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1. Dhanuk Prasad Gupta @ Dhanush Prasad Gupta, Son of Late Nandu Sah, Resident of 'Shakuntala Vatika', Mohanpur, Punaichak, P.S.- Shastri Nagar, District and Town Patna.
2. Shiv Nandan Prasad Gupta, son of Late Brij Nandan Lal, Resident of Bari Patan Devi Road, Police Station- Alamganj, District and Town Patna.
3. Jayanti Gupta, Wife of Sri B.K. Gupta, Resident of Samar Vihar Colony Alambagh, Police Station- Manak Nagar, District and Town, Lucknow.
4. Manju Gupta, Wife of Sri S.N.P. Gupta, Resident of Accolade Apartment Kharadi, Police Station Shiv Rana, District and Town, Pune.

.... Petitioners

Versus

The State of Bihar through Vigilance

.... Opposite Party

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Appearance :

For the Petitioners : Mr. Gaurang Chatterjee, Advocate

For the Opposite Party: Mr. Kedar Singh, AC to Law Officer (Vigilance)

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 19-05-2015

The present petition has been filed for quashing the order dated 25.11.2013 passed in Special Case No. 24 of 1992 arising out of Vigilance P.S. Case No.46 of 1992 whereby the learned Special Judge Vigilance (II) at Patna has taken cognizance under Sections 5(2) read with Section 5(1)(e) of the Prevention of Corruption Act, 1947 and Section 13(2) read with Section 13(1)(e) and Section 12 of the Prevention of Corruption Act, 1988.

2. The brief facts leading to the present petition may be noticed as follows. The petitioner No. 1 joined as Junior Engineer in the Irrigation Department, State of Bihar, in the year 1956 and in

due course, he was promoted in 1973 to the post of Assistant Engineer. Pursuant to an anonymous letter written to the Vigilance Department containing allegations of acquisition of wealth disproportionate to his known sources of income, a vigilance enquiry in File No. M-17/74 was started. The check period comprised of the years 1956 to 1978 which was later extended up to 1992, in which year, a first information report came to be registered. In the meantime, the petitioner No. 1 superannuated in 1991 with full pension. The Vigilance enquiry was thus carried on from 1974 to 1992 for a period of about 18 years. Pursuant to the FIR being registered in 1992, investigation was taken up and continued for another 11 years until 2003 when the charge sheet finally came to be submitted, upon which cognizance was taken in the same year. It was alleged that during the check period, the known sources of income of the petitioner No.1 amounted to Rs. 6,92,787/- as against which the acquisition of assets stood Rs. 32,90,284/- and thus, the difference of Rs. 25,97,497/- represented disproportionate assets acquired by him through corrupt practices. The police papers were given to the accused in 2008 and charges were also framed in that year. It is further stated that trial in the case is going on and it appears that till date, depositions of eight prosecution witnesses have been recorded.

3. It is submitted on behalf of the petitioners that the

prosecution of the Petitioners is liable to be quashed, considering the inordinate delay which is almost entirely attributable to the prosecution side, though in all fairness, it has been conceded that one year's delay is attributable to the accused in between the years 2003 and 2008. It is submitted that the right of the petitioners to speedy trial has been infringed inasmuch as over four decades have passed since the case was first taken up for enquiry by Vigilance, for which the prosecution side is chiefly responsible. It is further stated that petitioner No. 1, having superannuated in 1991, is now a man of advanced age suffering from various ailments and is short of funds even for his medical treatment. As a result, great prejudice has been suffered by the petitioners owing to prolonged investigation and trial, which, even otherwise and in all likelihood, would result in acquittal of the petitioners in the attendant facts and circumstances of the case. As such, continuance of the prosecution would be a mere exercise in futility and an abuse of process of Court. It is emphasized that the right to speedy trial is embedded in Article 21 of the Constitution of India which guarantees to every person a fundamental right to life and liberty which has seriously been violated in the instant case.

4. Learned counsel for the Vigilance Department, on the other hand, submits that strictly speaking, there is no outer limit for conclusion of trial which is going on and several prosecution

witnesses have already been examined. He submits that in the present circumstances, allowing the prayer for quashing of the prosecution would be premature, more so when the matter relates to an economic offence. In any event, learned counsel for the Vigilance Department undertakes to produce all its witnesses before the learned trial Court within a period of three months hereof.

5. The underlying principles of right to a speedy trial are now well established through several judicial decisions. A Constitution Bench of the Hon'ble Supreme Court in A.R. Antulay Vs. R. S. Nayak reported in (1992) 1 Supreme Court Cases 225 adumbrated certain guidelines to be borne in mind in the matter of quashing of proceedings sought on grounds of prolonged prosecution. The propositions (not exhaustive) enumerated in paragraph 85 of the judgment leave no manner of doubt that right to speedy trial must be treated as a constitutional guarantee to a citizen in terms of Article 21 of the Constitution. The gist of the 11 propositions has been set out in paragraph 13 of the judgment rendered in the case of Vakil Prasad Singh Vs. The State of Bihar reported in 2009 (1) PLJR (SC) 277 as follows:

> "(i) fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily;
> (ii) right to speedy trial flowing from Article 21 encompasses all the stages, namely, the stage of investigation, inquiry, trial, appeal, revision and

retrial;
(iii) in every case, where the speedy trial is alleged to have been infringed, the first question to be put and answered is — who is responsible for the delay?;
(iv) while determining whether undue delay has occurred (resulting in violation of right to speedy trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on—what is called, the systemic delays;
(v) each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of the accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case;
(vi) ultimately, the court has to balance and weigh several relevant factors—'balancing test' or 'balancing process'—and determine in each case whether the right to speedy trial has been denied;
(vii) ordinarily speaking, where the court comes to a conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open and having regard to the nature of offence and other circumstances when the court feels that quashing of proceedings cannot be in the interest of justice, it is open to the court to make appropriate orders, including fixing the period for completion of trial;
(viii) it is neither advisable nor feasible to prescribe any outer time-limit for conclusion of all criminal proceedings. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and

> explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint;
> (ix) an objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in the High Court must, however, be disposed of on a priority basis."

6. Having regard to the legal principles governing a case of the present nature as well as the rival submissions of the learned counsel for the parties, I am of the view that the ends of justice will be met if the trial Court is directed to conduct the trial on day-to-day basis and conclude the same as expeditiously as possible, and in any event, preferably within a period of six months from the date of receipt/production of a copy of this order. It is made clear that in case the prosecution fails to produce its witnesses within a stipulated period of three months hereof, the learned Special Judge shall not allow delay on that account, rather he should close the prosecution case and proceed to the next stage of the trial.

7. Ordered accordingly. The petition stands disposed of.

(Vikash Jain, J)

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