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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 18th September, 2018

+ CRL.M.C. 907/2015 & CRL.M.A. 3408/2015 (stay)

RAKESH MOHAN SHARMA & ANR. Petitioners

Through: Mr. Rajiv K. Garg, Advocate
with Mr. Ashish Garg,
Advocate along with Petitioners
in person.

versus

STATE (GOVT OF NCT OF DELHI) & ORS..... Respondents

Through: Mr. Amit Ahlawat, APP for the
State
Mr. Shaju Francis, Adv. with
Mr. Abhishek Soni, Adv. for
R-2 & R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The case at hand might possibly go down in the legal history as an illustration of how the judicial process can be defeated as long as one wants if those responsible fail to exercise control. The proceedings in a criminal case arising out of first information report (FIR) No.774/2000, registered by Police Station Connaught Place, involving offences allegedly committed under Sections 409/420/506/34 of the Indian Penal Code, 1860 (IPC), in which report (charge-sheet) under Section 173 of the Code of Criminal Procedure,

1973 (Cr.P.C.) were instituted way back on 14.11.2003 and have been successfully kept stalled for almost fifteen years with not a single effective step taken.

2. The petition at hand invoking the jurisdiction of this court under Section 482 Cr.P.C. with the prayer for quashing of the criminal case was brought on 09.03.2015 on the basis of some terms settled with the complainants' side but has remained pending now for over 3½ years, the pendency of these proceedings and some of the orders passed therein having also been misused to keep the Metropolitan Magistrate at bay from making any progress. Unfortunately, all agencies involved including the prosecution, the defence and the judicial apparatus have aided and assisted in the design of the petitioners to keep the cliched long arm of the law away for the last eighteen years after the offences were allegedly committed.

3. The above can be demonstrated by taking note of how the case before the trial court proceeded.

4. As mentioned above, the charge sheet was filed on 14.11.2003. The petitioners are the two persons who had been sent up for trial for allegedly committing the aforementioned offences. The second petitioner is the sister of the first petitioner. On 08.04.2004, a counsel appeared on their behalf and took exemption for their personal appearance. The matter was adjourned to 19.07.2004. On 19.07.2004, none appeared and so the trial magistrate issued non-bailable warrant (NBW) with notices to sureties under Section 446 Cr.P.C. for 27.04.2005. On 04.09.2004, the first petitioner moved application for

cancellation of NBW which was granted, subject to payment of Rs.100/- as penalty. Since both petitioners have been together in contest, including by the petition before this court, it has to be assumed that the second petitioner would be privy to the duress process that had been issued by order dated 19.07.2004. Yet, no immediate move on her behalf was made.

5. On 27.04.2005, both petitioners appeared together with a counsel. The application of second petitioner for cancellation of NBWs was also considered and granted, both being released on bail. On 15.10.2005, the first petitioner again took exemption and the matter again was adjourned. On 13.12.2005, it was the turn of the second petitioner to seek exemption. The matter again stood adjourned. On 22.03.2006, once again exemption was taken for the second petitioner. It was stated before the magistrate that the dispute had been compromised with “*all the investors*” and payments had been made to them. Adjournment was taken to move for “*compounding*”. On 28.07.2006, the magistrate granted exemption to the second petitioner and noted that the petitioners intended to move this court for getting the FIR quashed. The case was adjourned to 27.10.2006 for consideration of the issue of charge. On 27.10.2006, exemption was taken and matter was again adjourned. On 24.01.2007, exemption was again granted and matter adjourned for the same purpose.

6. The above continued till 12.07.2007, when the petitioners were again absent, leading to NBWs being issued against them, which were

cancelled by a very cryptic order on 04.08.2007. Yet, on the very next date, *i.e.*, 29.10.2007, the first petitioner was again absent leading to fresh NBWs being issued against both the petitioners with notices to their sureties. These duress processes were cancelled by order dated 14.11.2007, subject to penalty of Rs.500/- each.

7. The matter was again at the stage of charge when on 20.02.2008, exemption was again sought and readily granted, the case being adjourned for three months thereafter. On 21.05.2008 again exemption was taken and the matter again adjourned. On 31.07.2008, the petitioners informed the court again that the matter had been “*settled*” amicably with the complainants’. Time was sought for petition to be filed for “*quashing*”. Neither any details were given nor the magistrate was interested, nor it was recorded as to what were the settlement terms and why no petition had been filed till then. The fact remains that no petition for quashing was filed around that time.

8. The case before the magistrate continued to linger on. On 03.02.2009, again exemption was taken and the matter adjourned for “*further proceedings*”. Five months thereafter on 07.07.2009, the petitioners mercifully were present but their counsel was not available and so there was another occasion for three months’ adjournment being granted.

9. In a case of 2000 in which charge-sheet had been filed in 2003 there seemed to be no hurry on anybody’s part. On 06.10.2009, again there was absence on the part of the petitioners. This time, the magistrate was not satisfied with the reasons for exemption. He issued

bailable warrants against the petitioners with notices to their sureties. On 14.01.2010, they did appear in person but no effective proceedings took place. This continued till 06.01.2011 when, again on account of absence, NBWs were issued against the petitioners with notices to their sureties. The processes had not returned on 22.02.2011 and, thus, were renewed for 30.03.2011. On the said date, the first petitioner appeared and NBW against him was cancelled, subject to penalty of Rs.400/-. Exemption request on behalf of second petitioner was declined because of her continued absence. But, on 16.05.2011, two months thereafter she did appear and NBW was again cancelled with penalty of Rs.500/-.

10. At this stage, the counsel for petitioners rose up to point out that arguments on the question of charge were heard on 16.05.2011, but the same had remained inconclusive. This is of no solace since the matter was adjourned for the same purpose to 29.06.2011 when the petitioners again chose to remain absent, leading to fresh NBWs being issued. Later, on the same date, the first petitioner did appear and NBWs were suspended till the next date. On 05.08.2011, NBW against first petitioner was cancelled with “*warning*” for him to be “*careful in future*”. The second petitioner was still absent and NBW was renewed against her. On 03.10.2011, both the petitioners were again absent. Exemption was sought and granted, subject to costs of Rs. 500/- on behalf of the first petitioner. NBW against second petitioner was cancelled on 15.11.2011, subject to costs of Rs.200/-. On 16.02.2012, second petitioner again took exemption, and the case

was yet again adjourned for consideration of the question of charge to 26.04.2012. Similar move for exemption on 26.04.2012 again was successful in evading the hearing and leading to matter being adjourned to 25.07.2012.

11. On the last said date, the petitioners were once again absent, and fresh NBWs were issued, the NBW against the first petitioner being cancelled on his appearance later and, at his request, NBW against second petitioner being stayed till next date, caution to be careful in future being again reiterated.

12. The drama continued on 26.09.2012 when both the petitioners were again absent. Their counsel moved application for exemption which was granted to the first petitioner, but declined in the case of second petitioner, though execution of duress process was stayed. This did not have any effect since on 18.12.2012 again the petitioners were absent and fresh NBWs were issued. On 28.02.2013, application for cancellation was moved. The NBWs against first petitioner were cancelled on costs of Rs.500/- and the NBWs against second petitioner were stayed, she being still absent. Similar proceedings were recorded on next date, *i.e.*, 17.05.2013 and, yet again, on 05.08.2013, costs of Rs.300/- being imposed. Yet, on 23.10.2013 there was again absence. NBWs against second petitioner were renewed and exemption to first petitioner was granted for that date. Similar proceedings took place again on 06.01.2014, and on 27.03.2014.

13. On 26.05.2014, both the petitioners were finally present together and NBW against second petitioner was stayed, the matter

being adjourned to 26.08.2014. On 26.08.2014, on account of absence of second petitioner, another round of NBW and notice to her surety started.

14. On 21.10.2014, the magistrate eventually felt constrained to record that the process was being evaded and, thus, issued proclamation under Section 82 Cr.P.C. against the second petitioner. The proclamation was returned published on 06.01.2015 and the matter was adjourned for recording of the statement of the process server. On 04.03.2015, the statement of the process server was recorded. It was, however, noted that there was another address of the second petitioner. Therefore, duress process directed at the said address was issued for 08.05.2015.

15. As noted earlier, by this time the petition before this court had been brought on 09.03.2015. By order dated 01.05.2015, the second petitioner was permitted by a learned judge of this court to appear before the trial court *“through counsel”* and to file an application for her exemption from personal appearance. It is not clear as to whether or not the above noted evasive conduct of the said petitioner in the earlier proceedings had been brought to the notice of the court at that stage.

16. Be that as it may, the evasion before the trial court continued even after the present petition had been brought. While on one hand the proceedings in this petition were adjourned from time to time, the proceedings before the trial court were evaded. After protection of this court had been taken by order on 23.11.2015, there was total

absence before the trial court. Neither the petitioners would appear nor their counsel would assist by appearing or making any submissions.

17. The magistrate was constrained to issue fresh NBWs against the petitioners with notices to their sureties. On 17.09.2015, a learned judge of this court, on fresh application moved directed the NBWs to be kept in suspension. Against this backdrop, on fresh application being moved, the NBWs against the first petitioner were cancelled by the magistrate on 22.12.2015. Exemption for second petitioner was granted on subsequent dates, one after the other.

18. Noticeably, from 16.05.2016 onwards, adjournments were taken before the magistrate on the ground that the petition at hand seeking quashing of the proceedings on settlement was pending, this even while it was submitted before this court on 19.10.2016 that the second and third respondents, on whose consent the quashing request depended, were not coming forward to co-operate in terms of the proceedings recorded in the corresponding civil case – FAO No.120/2002. The case before the trial court came to a complete halt with the order dated 16.08.2017 of a learned single judge of this court in these proceedings staying the further proceedings in the criminal case, till 08.03.2018, the said order having thereafter continued to operate.

19. It is clear from the above chronology that the petitioners have virtually mocked at the system with impurity. They have demonstrated how the judicial process can be rendered toothless and meaningless, if

such evasive conduct, as noted above, is adopted. The counsel for the private party respondents have submitted through counsel that the petitioners have not been true to their word in abiding by the terms on which there had been an understanding for the dispute to be settled as had formed the basis of the order in the civil case and, therefore, they are not willing to concede to the request for quashing on its basis.

20. The casual and callous manner in which the trial court has proceeded with the criminal case cannot be approved of or countenanced. Effective control over the proceeding will have to be exercised. There is always a need for expedition. Easy grant of adjournments, just for the asking, by cryptic orders only leads to the initiative going out of the hands of the presiding judge. It is nothing but abdication of duties and responsibilities of the court.

21. In the above facts and circumstances, there can be no occasion or reason for this court to exercise its inherent power under Section 482 Cr.P.C. to bring an end to the criminal process.

22. Having regard to the conduct of the petitioners, the petition at hand is dismissed with costs of Rs.2,00,000/- (Rupees Two Lakh Only) to be deposited with concerned District Legal Services Authority within two weeks, vacating all the interim orders, with following further directions:-

- (i) The petitioners shall be obliged and duty bound to appear in person with counsel of their choice, duly briefed and

instructed, ready to assist on each and every date of hearing before the concerned criminal court;

- (ii) No further indulgence or request(s) for exemption from personal appearance or for adjournment(s) shall be entertained or granted;
- (iii) In case the process is again evaded, the Metropolitan Magistrate will pass effective orders and issue necessary process to compel and secure the presence, and in case such request(s), as above for cancellation of duress process(es) are made, the same shall be considered, *inter alia*, in light of the previous conduct;
- (iv) The proceedings in the criminal court will hereafter be taken up on day-to-day basis, the question of charge to be considered first and, in case charge is found made out, for the further proceedings as per law to be conducted with a sense of expedition; and
- (v) The costs as imposed above, if not deposited within the specified above, shall be recoverable as fine by necessary process to be initiated by the magistrate.

23. The way the criminal case referred to above has been handled by various judicial officers presiding over the court of Metropolitan Magistrate over the years provides a model that cannot be allowed to be emulated. The society at large reposes trust in the judicial organ and it must never fail to discharge the responsibilities arising out of

such trust, howsoever difficult, challenging or onerous they may be. The court cannot lose control over the initiative. As said before, adjournment cannot be granted for the asking. The judicial process has to be expeditious. The criminal court must take the process to logical end with absolutely no undue indulgence for one side at the cost of other, lest it is reduced to a charade or farce. A copy of this order shall be sent to Delhi Judicial Academy for suitable advice and instructions to the judicial officers through its various training programs.

24. The petition and the applications filed therewith stand disposed of in above terms.

25. Trial court record shall be returned forthwith with copy of the order.

R.K.GAUBA, J.

SEPTEMBER 18, 2018

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