

Present:

Mr. Justice Mohammad Marzi-ul-Huq

and

Mr. Justice Md. Ruhul Quddus

Criminal Revision No.1232 of 1992

Faruk Ahmed Siddiqui

... Petitioner

-Versus-

The State

...Opposite party

No one appears for the accused-petitioner

Mr. Khizir Hayat, D.A.G with Mr. Md. Yousuf
Mahmud Morshed, A.A.G.

í for the opposite party

Judgment on 11.4.2011

Md. Ruhul Quddus, J:

This Rule at the instance of an accused in a criminal case was issued on an application under section 439 read with section 435 of the Code of Criminal Procedure for setting aside the order dated 22.8.1992 passed by the Additional Sessions Judge, Naogaon in Session Case No.16 of 1991 rejecting the petitioner's application for stopping the proceedings in respect of trial of the case and discharging him therefrom.

Informant Narayan Chandra Pramanik lodged an *ejahar* with Raninagar Police Station, Naogaon on 7.10.1989 against five accused persons bringing allegation of throwing acid on his brother victim Mrinal Kanti Pramanik at the dead of night on 4.10.1989. Police recorded the case and after investigation submitted charge sheet on 2.2.1990 against seven accused persons including the petitioner under sections 326 A, 307 and 34 of the Penal Code.

The case having been ready for trial, was sent to the Sessions Judge, Naogaon. Learned Sessions Judge sent the record to the Additional Sessions Judge, Naogaon for hearing and disposal, which he received on 23.4.1991.

In midst of trial, the petitioner filed an application before the Additional Sessions Judge, Naogaon on 13.7.1992 for stopping the proceedings in respect of trial of the case and discharging him therefrom under section 339 C of the Code of Criminal Procedure on the ground that the trial has not been concluded within the specified time. Learned Additional Sessions Judge heard the application and rejected the same by the impugned order. Thereafter, the petitioner moved in this Court with the present criminal revision and obtained the Rule with an ad-interim order of stay.

This criminal revision has been appearing in the cause list with name of the Advocate for petitioner. Yesterday it was called for hearing but no one appeared to press the Rule. In view of its long pendency for more than twenty years, we took it up for disposal and allowed the Deputy Attorney General to make his submissions.

Mr. Khizir Hayat, learned Deputy Attorney General appearing for the State-opposite party, submitted that there are specific allegations of throwing acid against the accused. Police, after investigation, submitted charge sheet and the trial Court framed charge against them in accordance with law. There is no illegality in the proceedings.

Mr. Hayat further submitted that after issuance of the Rule, the law has been amended and the provisions of stopping any proceedings in respect of trial

of cases as well as revival of the same have been repealed. The present case, therefore, will be governed by the new procedural law.

We have perused the revisional application and lower Court's record. It appears that there is specific allegation of throwing acid on the victim. His (victim's) wife allegedly saw the occurrence and on hearing his cry, the neighbors rushed to the place of occurrence and got him admitted in hospital. Two of the co-accused, namely, Taser Ali and Abdul Majid made statements under section 164 of the Code respectively on 24.10.1989 and 19.12.1989 before the Magistrate of first class Mr. Md. Akteruzzaman. In the said statements both of them confessed their involvement in the alleged occurrence and also mentioned the petitioner's involvement therein. The police, after investigation, submitted the charge sheet. The Additional Sessions Judge after framing charge proceeded with trial and already examined seven prosecution witnesses.

It further appears that the petitioner moved the application for stopping proceedings in respect of trial of the case and "discharging" him therefrom under section 339C of the Code on the ground that the trial has not been concluded even within three hundred days from 23.4.1991 i.e. the day of receiving the case for trial by the Additional Sessions Judge.

Two months after issuance of the present Rule, section 339C of the Code was amended by The Code of Criminal Procedure (Second Amendment) Act, 1992 (Act No.XLII of 1992) on 1.11.1992 and thereby the provision of stopping the proceedings in respect of trial and releasing the accused for non-conclusion of trial within the time-limit under section 339 C (4) and that of revival of the

case under section 339D were repealed. After such amendment, section 339C of the Code stands as follows:

õ 339C. Time for disposal of the cases.- A Magistrate shall conclude the trial of a case within [one hundred and eighty days] from the date on which the case is [received by him] for trial.

(2) A Sessions Judge, an Additional Session Judge or an Assistant Sessions Judge shall conclude the trial of a case within [three hundred and sixty days] from the date on which the case is received by him for trial.

[(2A) Notwithstanding anything contained Sub-section (1) or sub-section (2), where a person is accused in several cases and such cases are brought for trial before a Magistrate or a Court of Session, the time limit specified in sub-section (1) or sub-section (2) for the trial of such cases shall run consecutively.]

[(2B) Notwithstanding the transfer of a case from one Court to another Court, the time specified in sub-section (1) or sub-section (2) shall be the time for concluding the trial of a case.]

...

[(4) If a trial cannot be concluded within the specified time, the accused in the case, if he is accused of a non-bailable offence, may be released on bail to the satisfaction of the Court, unless for reasons to be recorded in writing, the Court otherwise directs.]

[(5) Nothing in this section shall apply to the trial of a case under section 400 or 401 of the Penal Code (Act XLV of 1860), or to the trial of a case to which the provisions of chapter XXXIV apply.]

[(6) In this section, in determining the time for the purpose of a trial.--

...

(b) the days spent on account of the absconion of an accused after his release on bail, if any, shall not be counted.ö

For a clear understanding of the previous legal position, the old sections 339 C and 339 D of the Code are also quoted below:

339C.-(1) A Magistrate shall conclude the trial of a case within one hundred and twenty days from the date on which the case is received by him for trial.

(2) A sessions Judge an Additional Sessions Judge or an Assistant Sessions Judge shall conclude the trial of a case within two hundred and forty days from the date on which the case is received by him for trial.

(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), where a person is accused of in several cases and such cases are brought for trial before a Magistrate or a Court of Session, the time-limit specified in sub-section (1) or sub-section (2) for the trial of such cases shall run consecutively.

(3) If for any reason to be recorded in writing, a Magistrate or a Sessions Judge, Additional Sessions Judge or Assistant Sessions Judge is unable to conclude the trial of a case within the specified time, he shall conclude such trial within thirty days after the expiry of the specified time:

Provided that nothing in this sub-section shall apply to the summary trial of a case.

(4) If a trial cannot be concluded within the specified time or the extended time as mentioned in sub-section (3) further proceedings in respect of the trial shall stand stopped and the accused person released.

(5) Nothing in this section shall apply to a trial of a case under section 400 or 401 of the Penal Code, 1860 (Act XLV or 1860) or to the trial of a case to which provisions of chapter XXXIV apply

(6) In this section, in determining the time only the working days shall be counted.

339D.-(1) Notwithstanding anything contained in section 339C, any proceedings in respect of the trial of a case stopped under sub-section (4) of that section shall be revived, if an application for such revival is made by the Government to the Court, where such proceedings were pending on the date

they were stopped, within ninety days from that date; and the proceedings thus revived shall continue from the stage at which they were stopped:

Provided that where such Court is not in existence or has no jurisdiction to try the case for any reason, the application for such revival shall be made to the Court which has jurisdiction to try such case.

(2) Where any proceedings are revived under sub-section (1), the accused in the case shall, if he is accused of a non bailable offence, be released on bail to the satisfaction of the Court unless for reasons to be recorded in writing the Court otherwise directs.

(3) Where any proceedings are revived under sub-section (1), the trial of the case after such revival shall be concluded within the time specified in sub-section (1) or sub-section (2) of section 339C, as the case may be.

(4) If the trial of a case after revival cannot be concluded within the specified time, further proceedings in respect of the trial of the revived case shall stand stopped and the accused person released.

(5) In this section, in determining the time for the purpose of trial:-

(a) the date of revival of a case shall be deemed to the date on which the case is received for trial: and

(b) only the working days shall be counted.

4. Special Provision-(1) Notwithstanding anything contained in the said Code, or in any judgment, order or decision of any Court, including the Supreme Court, all proceedings which were stopped under section 339C of the said Code before the commencement of this Ordinance shall be revived, if an application for such revival is made by the Government to the Court, where the proceedings were pending on the date they stopped, within ninety days from such commencement:

Provided that where such Court is not in existence or has no jurisdiction to try the case for any reason, the application for such revival shall be made to the Court which has jurisdiction to try such case.

(2) The provisions of section 339D of the said Code shall apply to all proceedings revived under this section.ö

Upon a comparative study of the old and amended sections, we find that the amended sub-section (4) of section 339 C of the Code has taken away the scope of stopping the proceedings in respect of trial of a criminal case and that of releasing the accused for non-conclusion of trial within the specified time. Act No. XLII of 1992 has also repealed section 339 D of the Code and thereby has taken away the scope of revival of the proceedings stopped under sub-section (4) of section 339 C.

Now the question arises as to whether the present case will be governed under the amended law. We get the reply in Abdul Wadud Vs. State, 48 DLR (AD) 6. In that case the High Court Division discharged the Rule in a criminal revision and thereby affirmed an order of Sessions Judge, Munshigonj rejecting an application for releasing the accused under section 339 C of the Code.

Leave was granted, amongst other, to consider whether the amendment of section 339C by Act No. XLII of 1992, by which sub section (4) of section 339 C was substituted during pendency of the criminal revision, would take away the right of release of the accused as it stood before amendment of the law. The Appellate Division dismissed the appeal by a unanimous decision. His lordship Mr. Justice Mustafa Kamal in paragraph 7 of the judgment observed as follows:

“ It is therefore of no consequence if the learned Sessions Judge has made a mistake in holding that since he had taken charge of the Sessions Division on January 23, 1991, a fresh period of 270 days will start from that date. Section 339 C referred to an offence, not to a person. The

learned Sessions Judge was obviously wrong in his view. But the wrong will not bring any relief to the appellant. During the pendency of the criminal revision the new Act came into force on the 1st November, 1992 and his supposed right of stoppage of proceeding and release evaporated along with the amendment, because the prosecution too lost the right of revival". (emphasis supplied)

In paragraph 21 of the same judgment as referred to above, his lordship Mr. Justice Md. Ismailuddin Sarker observed:

"In view of the repeal of sub-section (4) of section 339 C Cr P C followed by reenactment of the said sub-section the new procedural law will be applicable in the pending cases although instituted when the old provision was in force and the pending cases are to be governed by the new procedure under the amended law." (emphasis supplied)

There is another question to reply, whether an accused could be discharged under the old provision of section 339 C (4) of the Code. It is pertinent to mention that the petitioner had filed the application before the trial Court for his discharge (Ae"nWZ) from the case as well (vide annex-A to the revisional application). The words "discharge" and "release" have got two different meanings and effects. The old section 339 C (4) provided stopping of proceedings in respect of trial of a case if not concluded within 270 days (including the grace period of 30 days) and also the right to release of an accused. It did not provide any scope for discharge. Therefore, the petitioner's application before the Court below was misconceived to that extent.

The ratio laid down in the case of Abdul Wadud that the amended procedural law will be applicable in the pending cases although instituted when the old provision of law was in force, is also applicable in the present case. We are, therefore, of the view that the instant case will be governed by the amended procedural law.

It is to be kept in mind that the purpose of old section 339 C (4) was to expedite the trial and not to give a safe passage to the offenders to go unpunished. Learned Additional Sessions Judge in passing the impugned order rightly observed that if the case was stopped at this stage, justice would be defeated. We do not find any illegality in the order.

In the result, the Rule is discharged. The stay granted at the time of issuance of the Rule is vacated. The trial Court is directed to proceed with the case in accordance with law and conclude the trial as expeditious as possible. Before holding further trial, the Court will serve notice upon all the accused persons and give them reasonable opportunity to appear before the Court and shall consider their prayers for bail, if any.

Send down the lower Court's record.

Mohammad Marzi-ul-Huq, J:

I agree.