

Kadra Pehadiya and Others

Vs

State of Bihar

Writ Petition No. 5943 of 1980

(P. N. Bhagwati, A. P. Sen JJ)

17.12.1980

JUDGMENT

BHAGWATI, J. –

1. This case before us is on a letter dated November 28, 1980 addressed to the Court by one Dr. Vasudha Dhagamwar, a researcher and Social Scientist working in the Santhal Parganas of the State of Bihar. It represents one more instance of the utter callousness and indifference of our legal and judicial system to the under-trial prisoners languishing in the jails. It seems that once a person accused of an offence is lodged in the jail, everyone forgets about him and no one bothers to care what is happening to him. He becomes a mere ticket number - a forgotten specimen of humanity - cut off and alienated from the society, an unfortunate victim of a heartless legal and judicial system which consigns him to long unending years of oblivion in jail.

2. Here is a case where four young boys who are designated as petitioners in the writ petition have been in Pakud sub-jail in Santhal Parganas for a period of about eight years without their trial having made any progress. They all belong to the Paharia Tribe which is admittedly a backward tribe. Two of them were arrested on November 26, 1972 while the other two, on December 19, 1972. The jail record shows the ages of the petitioners between 18 and 22 years at the time of their arrest, but Dr. Vasudha Dhagamwar states in her letter that they could not have been more than 9 to 11 years old when they were arrested, because on inquiry the jail staff told her that the petitioners were "naked goat-herds" when they first came to jail and when Dr. Vasudha Dhagamwar saw them in October 1980, they looked about 18 to 22 years old. Though the petitioners were brought to the jail as far back as November and December 1972, their case was not committed to the Court of Session until July 2, 1974. It is difficult to understand why their committal to the Court of Session should have been delayed for such a long period as 20 months after their arrest. We should like the High Court of Patna to make an inquiry and find out why it should have taken a period of 20 months for the case of the petitioners to be committed to the Sessions Court and to submit a report to us of the result of such inquiry. But this was not the end of delay and procrastination of the justicing process. It was just the beginning, because we find that though the case was committed to the Court of Session on July 2, 1974, the trial did not commence until August 30, 1977. It took a period of three years for the trial to begin after the committal to the Court of Session. This discloses a shocking state of affairs. There is something wrong with the entire system. How can any civilized society tolerate a legal and judicial system which keeps a person in jail for three years without even commencing his trial. But the atrocity does not end here : more is yet to come. Though the trial of the petitioners commenced on August 30, 1977 it was merely a symbolic commencement, for it never proceeded further and it has not yet made any progress. The petitioners appeared in the Sessions Court on August 30, 1977 but thereafter, Dr. Vasudha Dhagamwar says, they have not been

in Court again. Three more years have passed but they are still rotting in jail, not knowing what is happening to their case. They are perhaps reconciled to their fate, living in a small world of their own cribbed, cabined and confined within the four walls of the prison. The outside world just does not exist for them. The Constitution has no meaning and significance and human rights, no relevance for them. It is a crying shame upon our adjudicatory system which keeps men in jail for years on end without a trial. We had occasion in Hussainara Khatoon's case ((1980) 1 SCC 81 : 1980 SCC (Cri) 23) to criticise this shocking state of affairs and we hoped that after the anguish expressed and the severe strictures passed by us, the justice system in the State of Bihar would improve and no one shall be allowed to be confined in Jail for more than a reasonable period of time, which we think cannot and should not exceed one year for a Sessions trial, but we find that the situation has remained unchanged and these four petitioners, who entered the jail as young lads of 12 or 13 have been languishing in jail for over eight years for a crime which perhaps ultimately they may be found not to have committed. It is obvious that after so many years of incarceration awaiting trial, either their spirit must be totally broken or they must be seething with anger and resentment against the society. We fail to understand why our justice system has become so dehumanised that lawyers and judges do not feel a sense of revolt at caging people in jail for years without a trial. It is difficult to comprehend how the Sessions Judge could have forgotten that he had called the petitioners to the Court for commencement of the trial on August 30, 1977 and thereafter done nothing in the matter. We pointed out in Hussainara Khatoon's case that speedy trial is a fundamental right of an accused implicit in Article 21 of the Constitution, but we notice that in the case of these four petitioners, this fundamental right has merely remained a paper promise and has been grossly violated. It is surprising that these four petitioners should not have been released on bail despite our observations in Hussainara Khatoon's case. Since the trial has not made any progress for the last over eight years, we direct the Sessions Judge, Dumka to take up the case against these four petitioners immediately and to proceed with it from day to day without any interruption. The Sessions Judge, Dumka will submit a report to this Court immediately after the disposal of the case stating as to when he took up the case for hearing and when he completed it. These four petitioners will be provided legal representation by a fairly competent lawyer at the cost of the State, since legal aid in a criminal case has been declared by us in Hussainara Khatoon's case to be a fundamental right implicit in Article 21 of the Constitution. We expect complete compliance with our direction by the Sessions Judge, Dumka. We should also like the Sessions Judge, Dumka to inform us within a week as to why he could not commence the trial of the petitioners until August 30, 1977 and why no further steps have been taken in the trial thereafter.

3. Dr. Vasudha Dhagamwar has also stated in her letter that when she went to the Pakud sub-jail and saw the four petitioners in October 1980, she found them in leg irons. She learnt on enquiry that the four petitioners were to work outside jail walls for fetching water and doing other duties and to guard against the possibility of their running away, they were put in leg irons and even after they returned to the jail in the evening after doing outside work, the leg irons were not taken off and they remained in leg irons even at lock up time. This is a highly disturbing state of affairs and it discloses a sense of callousness and disregard of civilized norms. It is difficult to see how the four petitioners who are merely under-trial prisoners awaiting trial court be kept in leg irons contrary to all prison regulations and in gross violation of the decision of this Court in Sunil Batra (I) v. Delhi Administration ((1978) 4 SCC 494 : 1979 SCC (Cri) 155). It is also surprising how the four petitioners could be asked to work outside the jail walls when they are not convicted but merely under-trial prisoners. This would be in flagrant violation of prison regulations and contrary to the I.L.O. Conventions against forced labour. We would like the Superintendent of the Pakud sub-jail to explain as to why he kept the four petitioners in leg irons contrary to the law of the land and exacted

work from them when they are merely under-trial prisoners. We direct the Superintendent to immediately remove leg irons from the feet of the four petitioners and to desist from taking work from them so long as they are under-trial prisoners. We also direct that no convicted or under-trial prisoner shall be kept in leg irons except in accordance with the ratio of the decision in Sunil Batra's case ((1978) 4 SCC 494 : 1979 SCC (Cri) 155).

4. It appears that once a case is committed to the Court of Session, the prisoner who is confirmed in jail is not regarded by the State authorities as an under-trial prisoner, and that is why perhaps the names of the four petitioners did not figure in the list of under-trial prisoners submitted by the State Government in Hussainara Khatoon's case. We would therefore like the State Government to inform us by filing a list as to how many prisoners there are who have been in the jails in the State of Bihar for more than 12 months after the committal of their cases to the Court of Session. We should like to have the names of these prisoners with particulars of the jails in which they are lodged, the Sessions Court in which their cases are pending, the dates on which their cases were committed to the Court of Session and offences with which they are charged. We should also like the High Court to inform us as to how many cases are pending in the Court of Session in the State of Bihar where committal to the Session Court has been made more than 12 months ago and what are the reasons why these sessions cases have not been disposed of. We also direct the State Government to file a list of under-trial prisoners who have been in jail for a period of more than 18 months without their trial having commenced before the courts of magistrates. The detailed particulars in regard to the under-trial prisoners may be furnished by the State Government in that list.

5. We issue notice to the State of Bihar and direct that the writ petition may be placed on board for hearing on January 6, 1981.

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