

"Common Cause" a Registered Society through its Director

Vs

Union of India and Others

Writ Petn. (C) No. 1128 of 1986

(B. P. Jeevan Reddy, S. B. Majmudar JJ)

01.05.1996

JUDGEMENT

B. P. JEEVAN REDDY, J. :-

1. "Common Cause", a registered society espousing public causes has asked for certain general directions in this writ petition, preferred under Article 32 of the Constitution of India, with respect to cases pending in Criminal Courts all over the country. The directions asked for are :

(a) quashing of all proceedings against persons accused of offences under the Motor Vehicles Act where the proceedings were initiated more than one year ago and are still pending in any Court in the country;

(b) to direct the unconditional release of the accused and dismissal of all proceedings pending in Criminal Courts with respect to offences under Indian Penal Code or other penal statutes which have been pending for more than three years from the date of their institution and for which offences the maximum sentence provided under law is not more than six months - with or without fine. This direction is sought in respect of all prosecutions whether lodged by police, other governmental agency or by a private complainant;

(c) directing the unconditional release of all the accused and dismissal of criminal proceedings against person who have been in police or judicial custody for a period of more than three years from the date of their arrest or remand to such custody, where the offences alleged are not punishable with more than seven years - with or without fine; and

(d) directing the unconditional release of the accused and dismissal of proceedings against persons accused of offences under Section 309 of the Indian Penal Code (I.P.C.) where the proceedings have been pending in any Court for more than one year from the date of their institution.

The petitioner has requested that the aforesaid directions should apply not only to cases pending in Courts on the date of the passing of the order but also to cases executed hereinafter.

Notices were directed to Union of India and the State Governments of Uttar Pradesh and Bihar and

to the Delhi Administration. Counters have also been filed by them.

We are of the opinion that the suggestions made are well-meaning and consistent with the spirit underlying Part-III of the Constitution of India and the Criminal justice system. They deserve serious consideration by this Court and the High Courts in the country. It is a matter of common experience that in many cases where the persons are accused of minor offences punishable not more than three years - or even less - with or without fine, the proceedings are kept pending for years together. If they are poor and helpless, they languish in jails for long periods either because there is no one to bail them out or because there is no one to think of them. The very pendency of criminal proceedings for long periods by itself operates as an engine of oppression. Quite often, the private complainants institute these proceedings out of oblique motives. Even in case of offences punishable for seven years or less - with or without fine - the prosecutions are kept pending for years and years together in Criminal Courts. In a majority of these cases, whether instituted by police or private complainants, the accused belong to poorer sections of the society, who are unable to afford competent legal advice. Instances have also come before Courts where the accused, who are in jail, are not brought to the Court on every date of hearing and for that reason also the cases undergo several adjournments. It appears essential to issue appropriate directions to protect and effectuate the right to life and liberty of the citizens guaranteed by Article 21 of the Constitution. It is also necessary to ensure that these criminal prosecutions do not operate as engines of oppression. Accordingly, the following directions are made which shall be valid not only for the States of Uttar Pradesh, Bihar and Delhi but for all the states and the Union Territories :

1(a) Where the offences under IPC or any other law for the time being in force for which the accused are charged before any Criminal Court are punishable with imprisonment not exceeding three years with or without fine and if trials for such offences are pending for one year or more and the concerned accused have not been released on bail but are in jail for a period of six months or more, the concerned Criminal Court shall release the accused on bail or on personal bond to be executed by the accused and subject to such conditions, if any, as may be found necessary, in the light of Section 437 of the Criminal Procedure Code (Cr. P.C.).

1(b) Where the offences under IPC or any other law for the time being in force for which the accused are charged before any Criminal Court are punishable with imprisonment not exceeding five years, with or without fine, and if the trials for such offences are pending for two years or more and the concerned accused have not been released on bail but are in jail for a period of six months or more, the concerned Criminal Court shall release the accused on bail or on personal bond to be executed by the accused and subject to the imposing of suitable conditions, if any, in the light of Section 437, Cr. P.C.

1(c) Where the offences under IPC or any other law for the time being in force for which the accused are charged before any Criminal Court are punishable with seven years or less, with or without fine, and if the trials for such offences are pending for two years or more and the concerned accused have not been released on bail but are in jail for a period of one year or more, the concerned Criminal Court shall release the accused on bail or on personal bond to be executed by the accused and subject to imposing of suitable conditions, if any, in the light of Section 437 Cr.P.C.

2(a) Where Criminal proceedings are pending regarding traffic offences in any

Criminal Court for more than two years on account of non serving summons to the accused or for any other reason whatsoever, the Court may discharge the accused and close the cases.

2(b) Where the cases pending in Criminal Courts for more than two years under IPC or any other law for the time being in force are compoundable with permission of the Court and if in such cases trial have still not commenced, the criminal Court shall, after hearing the public prosecutor and other parties represented before it or their advocates, discharge or acquit the accused, as the case may be, and close such cases.

2(c) Where the cases pending in Criminal Courts under IPC or any other law for the time being in force pertain to offences which are non-cognizable and bailable and if such pendency is for more than two years and if in such cases trials have still not commenced, the Criminal Court shall discharge or acquit the accused, as the case may be, and close such cases.

2(d) Where the cases pending in criminal Courts under IPC or any other law for the time being in force are pending in connection with offences which are punishable with fine only and are not of recurring nature, and if such pendency is for more than one year and if in such cases trial have still not commenced, the Criminal Court shall discharge or acquit the accused, as the case may be, and close such cases.

2(e) Where the cases pending in Criminal Courts under IPC or any other law for the time being in force are punishable with imprisonment upto one year, with or without fine, and if such pendency is for more than one year and if in such cases trials have still not commenced, the Criminal Courts shall discharge or acquit the accused, as the case may be, and close such cases.

2(f) Where the cases pending in Criminal Courts under IPC or any other law for the time being in force are punishable with imprisonment up to three years, with or without fine, and if such pendency is for more than two years and if in such cases trials have still not commenced, the Criminal Court shall discharge or acquit the accused, as the case may be, and close such cases.

3. For the purpose of directions contained in clauses (1) and (2) above, the period of pendency of criminal cases shall be calculated from the date the accused are summoned to appear in the Court.

4. Directions (1) and (2) made hereinabove shall not apply to cases of offences involving (a) corruption, misappropriation of public funds, cheating, whether under the Indian Penal Code, prevention of Corruption Act or any other statute, (b) smuggling, foreign exchange violation and offences under the Narcotics Drugs and Psychotropic Substances act, (c) Essential Commodities Act, Food Adulteration Act, Acts dealing with Environment or any other economic offences, (d) offences under Arms Act, Explosive Substances Act, Terrorists and Disruptive Activities Act, (e) offences relating to the Army, Navy and Air Force, (f) offences against public tranquility; (g) offences relating to public servants, (h) offences relating to coins and Government stamp, (i) offences relating to election, (j) offences relating to giving false evidence and offences against public justice (k) any other type of offences against the State (l) offences under the Taxing enactments and (m) offences of defamation as defined in Section 499, IPC.

5. The Criminal Courts shall try the offences mentioned in Para (4) above on a priority basis. The High Courts are requested to issue necessary directions in this behalf to all the Criminal Courts under their control and supervision.

6. The Criminal Courts and all Courts trying criminal cases shall take appropriate action in accordance with the above directions. These directions are applicable not only to the cases pending on this day but also to cases which may be instituted hereafter. As and when a particular case gets covered by one or the other direction mentioned in Directions (1) and (2) read with Direction (4) above, appropriate orders shall be passed by the concerned Court without any delay. The writ petition is disposed of with the above directions. No costs. Note : The Registrars of the High Courts are requested to communicate copies of this Order to all the criminal Courts under the control and superintendence of the respective High Courts with a direction to send compliance reports to the High Court within three months from the date of receipt of communication. Order accordingly.