SUPREME COURT OF INDIA

Raj Deo Sharma

Vs.

The State of Bihar

(M.Srinivasan, K.T.Thomas and M.B.Shah JJ.)

22.09.1999

JUDGMENT:

K.T.THOMAS, J:-

1. When I read the draft judgment prepared by my learnedbrother Justice K.T. Thomas, I respectfully endorsed my agreement with the same as I found it to be in accordance with law and justice. But now, I have received the draft judgment from my learned brother Justice M. B. Shah. After going through the same, I am of the opinion that it is necessary for me to express my views by a separate order. I make it clear at the outset that I am entirely in agreement with the view expressed by Justice Thomas and I am unable to persuade myself to agree with Justice Shah.

2. The present petition is filed only for directions/modifications/clarification of the directions of this Court dated 8/10/98 in Criminal Appeal No.1045 of 1998 (vide para 1 of the petition). This is not a petition for review of the judgment in the main appeal. It is also needless to say that this bench is not sitting in appeal over the judgment in the main appeal. The petitioner herein was not a party as such in the appeal. The Superintendent of Police, CBI, Patna was impleaded as second respondent in the petition for Special Leave to Appeal (Criminal Appeal No.1177 of 1996) by Court order dated 9/9/96 and on grant of leave, the appeal was numbered as Criminal Appeal No.1045 of 1998. In the course of arguments, learned Additional Solicitor General appearing for the petitioner expressly stated that he was only seeking a clarification of the judgment in the main appeal, as according to him, the subordinate courts are under a wrong impression that the directions contained in the said judgment give no option to them but to close the evidence of the prosecution whenever the periods mentioned in the guidelines are completed. Thus, there is no occasion for this bench to consider whether the directions contained in the judgment in the main appeal are against law in the sense that they run counter to the earlier judgments of this Court rendered by Constitution Benches. In my

humble opinion, it is not open to this Bench to canvass the legality or correctness of the directions contained in the main judgment. The only prayer by the petitioner is to clarify the main judgment, in order that the Subordinate Courts understand the directions contained therein in the proper perspective and carry out the same in letter and spirit.

3. It is needless to point out that for more than two decades, this Court has been repeatedly emphasising the right of an accused to speedy trial and giving appropriate directions to the State and the subordinate judiciary with a view to reduce the delay in the disposal of criminal matters. The Constitution Bench in Antulays case 1992 (1) SCC 225 thought fit to lay down certain guidelines. The Court said : In view of the above discussion, the following propositions emerge, meant to serve as guidelines. We must forewarn that the propositions are not exhaustive. It is difficult to foresee all situations. Nor is it possible to lay down any hard and fast rules.

While stating that it is neither advisable nor practicable to fix any time limit for trial of offences, the Court took care to say in proposition No. 9 as follows : Ordinarily speaking, where the court comes to the 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. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order - including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded - as may be deemed just and equitable in the circumstances of the case. (underline mine)

4. Thus, the Constitution Bench had in Antulays case itself contemplated an order to conclude the trial within a fixed time in appropriate cases. In fact, in the judgment in the main appeal in the present case, the court has not fixed any time limit for the conclusion of trial. As such, the court has only laid down guidelines for closing the prosecution in certain circumstances. There is a difference between fixing a time limit for the disposal of a trial and fixing time limit for the prosecution to complete its evidence. A perusal of the guidelines contained in the main judgment would themselves show that there is no hard and fast rule applicable to every case, irrespective of facts and circumstances thereof. If the delay is not due to any fault of the prosecution, it is open to the prosecution to place the relevant facts before the court and seek further time for producing its evidence. It is clear from the last part of clause 3 in paragraph 16 of the judgment. Even though, there is no express exception similar to that in clause 1 in paragraph 16, the same position will obtain. The judgment in the appeal cannot be understood as punishing the prosecution and preventing the same from adducing evidence even when it is not responsible for the delay.

5. It is necessary to place on record certain facts brought to the notice of the court when the main appeal was heard. In the State of Bihar alone, several cases were pending for more than 25 years. A report submitted by the Special Judge, CBI Court in December 1996 pointed out that in one case which was pending from 1982, the prosecution had cited as many as 40 witnesses, but had examined only 3 witnesses up to 1996; the last of them was examined on 3/9/93. The report also pointed out that thereafter, the prosecution had taken 36 adjournments to examine the remaining witnesses, but had not produced even one of them. There were hundreds of such cases and if this court is going to look on helplessly by merely reiterating that right to speedy trial is a fundamental right enshrined in Article 21 of the Constitution of India, but no time limit could be fixed for conclusion of trials, the problem will remain unsolved for ever. It is stated by my learned brother Justice Shah that the accused would get undeserving benefit by the time limit prescribed in the judgment in the main

appeal and it may result in doing injustice to the society. It is also observed by him that all the beneficiaries of the large scale frauds, all the employees who have misappropriated large sum of money from the public exchequer or private employer or accused who are tried for corruption cases would get undeserving benefit at the system of implementation of law. With respect, I am unable to agree. In fact, Justice Shah has himself quoted, a passage in the judgment in Ganesh Narain Hegde vs. S. Bangarappa & Others [1995 (4) SCC 41]. In that passage it is pointed out that when the case reaches the stage of trial after all the interruptions by the higher courts, the time would have taken its own toll, the witnesses are won over, evidence disappears and the prosecution loses interest. It is unnecessary to point out that when the prosecution delays the production of its witnesses, the failing human memory of such witnesses could be certainly advantageous to the accused and even in such cases, there will be a failure of the system. The problem is one of basic human rights of persons languishing in prison for years together which in several cases exceed the maximum period of punishment prescribed for the offences alleged to have been committed by them even before the trial is concluded. Even if the accused are not in prison, they would be suffering from immense mental agony as if a dagger is hanging over their heads. Can they be compensated if they are found to be innocent at the end of the trial?.

6. As pointed out in Antulays case, the court has to balance and weigh the several relevant factors and determine in each case whether the right to speedy trial has been denied in the given case. It is only to enable the Subordinate Courts to apply the right balancing test or balancing process, the guidelines have been given in the judgment in the main appeal.

7. The judgment has also taken care to mention that the directions given therein are only to supplement the propositions laid down by the Constitution Bench in Antulays case and also in addition to and without prejudice to the directions issued by this Court in Common Cause case [(1996) (4) SCC 33] and [(1996) (6) SCC 775].

8. I am unable to appreciate how the operation of a judgment rendered by the Court can be held in abeyance indefinitely when there is no appeal or review against the same. Prayer a in the petition is unsustainable and it cannot be countenanced by this Bench. As regards prayer e, directions were being given by this Court again and again ever since Hussainara Khatoon and Others vs. Home Secretary, State of Bihar [(1980) 1 SCC 81] to the State Governments and it is mandatory duty of all the State Governments to take appropriate steps to comply with such directions. If the State Governments are interested in the proper administration of justice, they should fulfill their constitutional obligations, as repeatedly pointed out by this Court in its earlier judgments.

9. In the result, the only clarifications which are required to be made are found in the order of Justice Thomas and I express my concurrence with the same. Neither prayer a nor prayer e can be granted as stated by my brother Justice Shah.