SUPREME COURT OF INDIA

Vakil Prasad Singh

Vs.

State of Bihar

Crl.A.No.138 of 2009

(D.K. Jain and R.M. Lodha JJ.)

23.01.2009

JUDGMENT

D.K. Jain, J.:

1. Leave granted.

2. Challenge in this appeal is to the order dated 9th July, 2007 passed by the High Court of Judicature at Patna in Criminal Miscellaneous No.17513 of 1998. By the impugned order, the High Court has dismissed the petition preferred by the appellant under Section 482 of the *Code of Criminal Procedure, 1973* (for short `the Cr.P.C.'), seeking quashing of proceedings pending against him in Special Case No. 29 of 1987 before the Special Judge, Muzaffarpur for allegedly committing offences under Sections 161 (before its omission by Act 30/2001), 109 and 120B of the *Indian Penal Code, 1860* (for short `the I.P.C.') and Section 5(2) of the *Prevention of Corruption Act, 1947* (for short `the Act').

3. The case has a chequered history and, therefore, in order to appreciate the rival stands of the parties, it would be necessary to notice the background facts in a little greater detail.

> "The genesis of the case dates back to 8th April, 1981 when a search operation was conducted by the office of the Superintendent of Police, Crime Investigation Department, (Vigilance), Muzaffarpur, on the basis of a complaint lodged by a civil contractor against the appellant, an Assistant Engineer in the Bihar State Electricity Board (Civil) Muzaffarpur, for allegedly demanding a sum of Rs.1000/- as illegal gratification for release of payment for the civil work executed by him. In the trap laid to catch the culprit, the chemically treated currency notes are stated to have been recovered from appellant's pocket. As a follow up action, after investigation by an Inspector of Police, a chargesheet for the afore-mentioned offences was filed against the appellant on 28th February, 1982. The Magistrate took cognizance on 9th December, 1982. Nothing substantial happened till 6th July, 1987 except for dismissal of an application, dated 30th June, 1983 filed by the prosecution for

reinvestigation of the case, when the case was transferred from Muzaffarpur to Patna."

4. On 7th December, 1990, the appellant filed a petition under Section 482 Cr.P.C. before the Patna High Court against the order passed by the Special Judge, Muzaffarpur taking cognizance of the said offences, on the ground that the Inspector of Police, who had conducted the investigations, on the basis whereof the chargesheet was filed, had no jurisdiction to do so. Accepting the plea of the appellant, the High Court, vide order dated 7th December, 1990 quashed the order of Magistrate taking cognizance, with a direction to the prosecution to complete the investigation within a period of three months from receipt of the order, by an officer of the rank of a Deputy Superintendent of Police or any other officer duly authorised in this behalf. No further progress was made in the case and the matter rested there till the year 1998, when the appellant filed yet another petition under Section 482 Cr.P.C., giving rise to the present appeal, seeking quashing of the entire criminal proceedings pending against him mainly on the ground that re- investigation in the matter had not been initiated even after a lapse of seven and a half years of the order passed by the High Court on 7th December, 1990 and in the process the appellant had suffered undue harassment for over eighteen years. On 20th November, 1998, the petition was admitted to final hearing.

5. Ultimately, when the matter was called out for final hearing after almost nine years, on 11th May, 2007, counsel for the vigilance department sought time to seek instructions in regard to the stage of investigations. In furtherance thereof, an affidavit was filed on behalf of the prosecution, inter alia, stating that the Superintendent of Police, Muzaffarpur vide his letter dated 22nd February, 2007 had directed the Deputy Superintendent of Police to complete the investigations. In pursuance of the said direction, the Deputy Superintendent started investigations on 28th February, 2007 and ultimately filed a fresh chargesheet on 1st May, 2007.

6. As noted earlier, the High Court has dismissed the petition. Acknowledging that there has been substantial delay in conclusion of proceedings against the appellant and some prejudice may have been caused to the appellant in his professional career on account of continuance of criminal case against him as he was deprived of the promotion in the meantime, the learned Judge finally concluded that this reason by itself was not sufficient to quash the entire criminal proceedings against him, particularly keeping in view the seriousness of the allegations. The learned Judge, however, directed the trial court to conduct the trial in the matter on a day to day basis and complete the same within a period of four months. The Court also directed that if the sanction of the State Government had not yet been obtained, the question of grant of sanction shall be considered by the State Government within a period of six weeks from the date of the order. Being aggrieved by the said decision, the appellant has preferred the present appeal.

7. Learned counsel appearing on behalf of the appellant vehemently submitted that though a period of about twenty eight years, since the registration of the case against the appellant, has elapsed, the trial according to law is yet to commence and thus, the appellant has been deprived of his constitutional right to speedy investigation and trial flowing from Article 21

of the Constitution. It was pleaded that having regard to the prevailing circumstances and the fact that it is still not clear whether the requisite sanction to prosecute the appellant has been granted or not, this is eminently a fit case where the chargesheet against the appellant ought to be quashed.

8. Per contra, learned counsel for the State contended that in view of the seriousness of the offences alleged against the appellant, the High Court was fully justified in dismissing the petition by applying the correct principles tobe kept in view while exercising its inherent powers under Section 482 Cr.P.C. The learned counsel also submitted that the delay in trial was also, to some extent, attributable to the appellant because it was he who had belatedly questioned the jurisdiction of the investigating officer. Learned counsel also urged that the prosecution could not be held responsible for delay in trial on account of transfer of the case from Muzaffarpur to Patna and again from Patna to Muzaffarpur.

9. Before adverting to the core issue, viz. whether under the given circumstances the appellant was entitled to approach the High Court for getting the entire criminal proceedings against him quashed, it would be appropriate to notice the circumstances and the parameters enunciated and reiterated by this Court in a series of decisions under which the High Court can exercise its inherent powers under Sections 482 Cr.P.C. to prevent abuse of process of any Court or otherwise to secure the ends of justice. The power possessed by the High Court under the said provision is undoubtedly very wide but it has to be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. The inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. It is trite to state that the said powers have to be exercised sparingly and with circumspection only where the court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of the process of the court or that the ends of justice require that the proceedings ought to be quashed. [See: *Kurukshetra University & Anr. Vs. State of Haryana & Anr.*[1], *Janata Dal Vs. H.S. Chowdhary & Ors.*[2], *and State of Haryana & Ors. Vs. Bhajan Lal & Ors.*[3]]

10. In Bhajan Lal's case (supra), while formulating as many as seven categories of cases by way of illustration, wherein the extra-ordinary power under the afore-stated provisions could be exercised by the High Court to prevent abuse of process of the court, it was clarified that it was not possible to lay down precise and inflexible guidelines or any rigid formula or to give an exhaustive list of the circumstances in which such power could be exercised. This view has been reiterated in a catena of subsequent decisions.

11. We are of the opinion that having regard to the factual scenario, noted above, and for the reasons stated hereafter, it is a fit case where the High Court should have exercised its powers under Section 482 Cr.P.C.

12. Time and again this Court has emphasized the need for speedy investigations and trial as both are mandated by the letter and spirit of the provisions of the Cr.P.C. (In particular, Sections 197, 173, 309, 437 (6) and 468 etc.) and the constitutional protection enshrined in Article 21 of the Constitution. Inspired by the broad sweep and content of Article 21 as

interpreted by a seven-Judge Bench of this Court in *Maneka Gandhi Vs. Union of India & Anr.*[4], *in Hussainara Khatoon & Ors. Vs. Home Secretary, State of Bihar*[5], this Court had observed that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except according to procedure established by law; that such procedure is not some semblance of a procedure but the procedure should be 'reasonable, fair and just'; and therefrom flows, without doubt, the right to speedy trial. It was also observed that no procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21. The Court clarified that speedy trial means reasonably expeditious trial which is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21.

13. The exposition of Article 21 in Hussainara Khatoon's case (supra) was exhaustively considered afresh by the Constitution Bench in *Abdul Rehman Antulay & Ors. Vs. R.S. Nayak & Anr.*[6]. Referring to a number of decisions of this Court and the American precedents on the Sixth Amendment of their Constitution, making the right to a speedy and public trial a constitutional guarantee, the Court formulated as many as eleven propositions with a note of caution that these were not exhaustive and were meant only to serve as guidelines. For the sake of brevity, we do not propose to reproduce all the said propositions and it would suffice to note the gist thereof. These are: (i) fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily; (ii) right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial; (iii) in every case where the speedy trial is alleged to have been infringed, the first question to be put and answered is -- who is responsible for the delay?; (iv) while determining whether undue delay has occurred (resulting in violation of right to speedy trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the work-load of the court concerned, prevailing local conditions and so on--what is called, the systemic delays; (v) each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case; (vi) ultimately, the court has to balance and weigh several relevant factors--'balancing test' or 'balancing process'--and determine in each case whether the right to speedy trial has been denied; (vii) Ordinarily speaking, where the court comes to a 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 and having regard to the nature of offence and other circumstances when the court feels that quashingof proceedings cannot be in the interest of justice, it is open to the court to make appropriate orders, including fixing the period for completion of trial; (viii) it is neither advisable nor feasible to prescribe any outer time-limit for conclusion of all criminal proceedings. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint; (ix) an objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High

Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in the High Court must, however, be disposed of on a priority basis.

14. Notwithstanding elaborate enunciation of Article 21 of the Constitution in Abdul Rehman Antulay (supra), and rejection of the fervent plea of proponents of right to speedy trial for laying down time-limits as bar beyond which a criminal trial shall not proceed, pronouncements of this Court in "Common Cause" *A Registered Society Vs. Union of India (UOI) & Ors.*[7]*, "Common Cause", A Registered Society Vs. Union of India & Ors.*[8]*, Raj Deo Sharma Vs. State of Bihar*[9] *and Raj Deo Sharma II Vs. State of Bihar*[10] gave rise to some confusion on the question whether an outer time limit for conclusion of criminal proceedings could be prescribed whereafter the trial court would be obliged to terminate the proceedings and necessarily acquit or discharge the accused. The confusion on the issue was set at rest by a seven-Judge Bench of this court in *P. Ramachandra Rao Vs. State of Karnataka*[11]. Speaking for the majority, R.C. Lahoti, J. (as his Lordship then was) while affirming that the dictum in A.R. Antulay's case (supra) as correct and the one which still holds the field and the propositions emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down as guidelines in the said case adequately take care of right to speedy trial, it was held that guidelines laid down in the A.R. Antulay's case (supra) are not exhaustive but only illustrative. They are not intended to operate as hard and fast rules or to be applied as a strait-jacket formula. Their applicability would depend on the fact-situation of each case as it is difficult to foresee all situations and no generalization can be made. It has also been held that it is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. Nonetheless, the criminal courts should exercise their available powers such as those under Sections 309, 311 and 258 of Cr.P.C. to effectuate the right to speedy trial. In appropriate cases, jurisdiction of the High Court under Section 482 Cr.P.C. and Articles 226 and 227 of the Constitution can be invoked seeking appropriate relief or suitable directions. The outer limits or power of limitation expounded in the aforenoted judgments were held to be not in consonance with the legislative intent.

15. It is, therefore, well settled that the right to speedy trial in all criminal persecutions is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in court but also includes within its sweep the preceding police investigations as well. The right to speedy trial extends equally to all criminal prosecutions and is not confined to any particular category of cases. In every case, where the right to speedy trial is alleged to have been infringed, the court has to perform the balancing act upon taking into consideration all the attendant circumstances, enumerated above, and determine in each case whether the right to speedy trial has been denied in a given case. Where the court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction, as the case may be, may be quashed unless the court feels that having regard to the nature of offence and other relevant circumstances, quashing of proceedings may not be in the interest of justice. In such a situation, it is open to the court to make an appropriate order as it may deem just and equitable including fixation of time frame for conclusion of trial.

16. Tested on the touchstone of the broad principles enumerated above, we are convinced that in the present case appellant's constitutional right recognized under Article 21 of the Constitution stands violated. It is manifest from the facts narrated above that in the first instance investigations were conducted by an officer, who had no jurisdiction to do so and the appellant cannot be accused of delaying the trial merely because he successfully exercised his right to challenge an illegal investigation. Be that as it may, admittedly the High Court vide its order dated 7th September, 1990 had directed the prosecution to complete the investigation within a period of three months from the date of the said order but nothing happened till 27th February, 2007 when, after receipt of notice in the second petition preferred by the appellant complaining about delay in investigation, the Superintendent of Police, Muzaffarpur directed the Deputy Superintendent of Police to complete the investigation. It was only thereafter that a fresh chargesheet is stated to have been filed on 1st May, 2007. It is also pertinent to note that even till date, learned counsel for the State is not sure whether a sanction for prosecuting the appellant is required and if so, whether it has been granted or not. We have no hesitation in holding that at least for the period from 7th December, 1990 till 28th February, 2007 there is no explanation whatsoever for the delay in investigation. Even the direction issued by the High Court seems to have had no effect on the prosecution and they slept over the matter for almost seventeen years. Nothing could be pointed out by the State, far from being established to show that the delay in investigation or trial was in any way attributable to the appellant. The prosecution has failed to show any exceptional circumstance which could possibly be taken into consideration for condoning a callous and inordinate delay of more than two decades in investigations and the trial. The said delay cannot, in any way, be said to be arising from any default on the part of the appellant. Thus, on facts in hand, in our opinion, the stated delay clearly violates the constitutional guarantee of a speedy investigation and trial under Article 21 of the Constitution. We feel that under these circumstances, further continuance of criminal proceedings, pending against the appellant in the court of Special Judge, uzaffarpur, is unwarranted and despite the fact that allegations against him are quite serious, they deserve to be quashed.

17. Consequently, the appeal is allowed and the proceedings pending against the appellant in Special Case No. 29 of 1987 are hereby quashed.

[1]*(1977) 4 SCC 451* [2]*(1992) 4 SCC 305* [3]*1992 Supp (1) SCC 335* [4]*(1978) 1 SCC 248*
[5]*(1980) 1 SCC 81* [6]*(1992) 1 SCC 225* [7]*(1996) 4 SCC 33* [8]*(1996) 6 SCC 775*
[9]*(1998) 7 SCC 507* [10]*(1999) 7 SCC 604* [11]*(2002) 4 SCC 578*