
D. Choudhary @ Dinabandhu Choudhary Vs The State of Jharkhand and Others

None

Court: Jharkhand High Court

Date of Decision: Oct. 30, 2009

Acts Referred:

Constitution of India, 1950 – Article 21, 226#Penal Code, 1860 (IPC) – Section 120B, 406, 409, 420, 467

Hon'ble Judges: R.R. Prasad, J

Bench: Single Bench

Judgement

R.R. Prasad, J.

Extra ordinary jurisdiction of this Court, as enshrined under Article 226 of the Constitution of India has been invoked for

quashing the entire criminal proceeding of Mosabani P.S. Case No. 19 of 1991 instituted under Sections 406/409/467/468/420 and 120B of the

Indian Penal Code, on the ground of right of speedy justice, as enshrined under Article 21 of the Constitution of India, being defeated on account

of prolonged continuance of the investigation going on since 1991.

2. Learned Counsel appearing for the petitioner submits that while the petitioner was working as Executive Engineer, Link Canal Division,

Mosabani, a first information report was lodged as Mosabani P.S. Case No. 19 of 1991 under the aforesaid Sections of the Indian Penal Code on

the allegation that the work of some part of Galudih main Canal was allotted to one M/s N.R. Ayyanger & Co. for its excavation within 24 months

from the date of commencement of the work i.e. 24.01.1986. The said Contractor after doing part of the work left it after May, 1989 though

several reminders were given to him for resuming the work but he never resumed it.

3. Thereafter, when measurement of the work done was taken, it could be known that the Junior Engineer, Assistant Engineer, Executive Engineer

(this petitioner) in connivance with the said Contractor, had made excess payment of 1,74,35,000/-and thereby, the petitioner and others have

been alleged to have committed aforesaid offences.

4. After lodgment of the case, the Investigating Officer after investigating the case, submitted charge sheet against one accused only on 15.12.1992

whereas the investigation was kept open so far other accused persons including this petitioner is concerned. Upon submission of the charge sheet,

the court took cognizance against Anil Sahay against whom charge sheet has been submitted and the record was split up whereby case was posted

awaiting final form but till date final form has not been submitted so far this petitioner is concerned, though 17 long years has elapsed and,

therefore, the petitioner had no option but to file this writ application for quashing the criminal proceeding as constitutional right of speedy trial as

guaranteed under Article 21 of the Constitution of India has grossly been violated and as such criminal proceeding is fit to be quashed.

5. Learned Counsel appearing for the petitioner further submits that whenever the courts have come across with a case of infringement of right to

speedy trial, the courts in an appropriate cases have quashed the criminal proceeding and recently the Hon^{ble} Supreme Court dealing with a

case of Vakil Prasad Singh Vs. State of Bihar, , when found that the investigation of the case has consumed 17 years, quashed the proceeding in

spite of the fact that the charge sheet had been submitted and under this situation, the criminal proceeding pending before the court below against

the petitioner is fit to be quashed.

6. A counter affidavit has been filed on behalf of the Superintendent of Police, East Singhbhum, Jamshedpur, wherein it has been stated that the

investigation of the case was handed over to Cabinet Vigilance Department, Patna vide its Memo No. 8316 dated 01.11.1993. Upon it,

investigation was entrusted to one Deputy Superintendent of Police, Cabinet Vigilance Department, Patna and under this situation ignorance has

been shown about the latest position of the case.

7. However, from the counter affidavit filed on behalf of the respondent No. 4, it transpires that under Letter No. 712 dated 20.12.2007, the

Executive Engineer, Kharkai Link Canal Division, Mosabani has requested the Additional Director General of Police, C.I.D., Ranchi to have

recent status of the case from concerned person, whereupon Vigilance Bureau, Ranchi has written a letter to the Chief Engineer to submit report

and the relevant document. Again nothing has been said about the latest position of the case nor anything has been explained as to why such long

time is being consumed in conclusion of the investigation. Thus, the question does arise as to whether criminal proceeding on account of long delay

in conclusion of the investigation warrants to be quashed?

8. Time and again, the Hon^{ble} Supreme Court has been pleased to put emphasis upon the need for speedy investigations and trial as both are

mandated by the letter and spirit of the provision of the Cr.P.C. and the constitutional protection enshrined in Article 21 of the Constitution of

India.

9. In a case of Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, and also in a case of Hussainara Khatoon and Others Vs. Home

Secretary, State of Bihar, Patna, the Hon^{ble} Supreme Court has been pleased to lay down that the speedy trial means reasonably expeditious

trial which is in the integral and essential part of the fundamental right to life and liberty enshrined in Article 21 of the Constitution of India.

Subsequently, the exposition of Article 21 as laid down in Hussainara Khatoon (1) case (supra) was exhaustively considered afresh by the

Constitution Bench in a case of Abdul Rehman Antulay Vs. R.S. Nayak and another etc. etc., .

10. The Hon^{ble} Supreme Court by giving anxious consideration on the right to a speedy trial, a constitutional guarantee formulated as many as

11 propositions to serve as guidelines to ensure speedy trial. Some of those guidelines are being quoted hereunder:

(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 workload 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 the accused will also be a relevant fact. The

prosecution should not be allowed to become a persecution. But when does not 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 on 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 quashing of 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 proceeding, except in a case of grave and exceptional nature. Such proceedings in the

High Court must, however, be disposed of on a priority basis.

In course of time, when such matter again fell for consideration in a case of Orissa Textile and Steel Ltd. Vs. State of Orissa and Others, , the

Hon^{ble} Supreme Court while holding that the guidelines laid down in Abdul Rehman Antulay case (supra) adequately take care of the right to

speedy trial, observed as follows:

guidelines laid down in A.R. Antulay case are not exhaustive but only illustrative. They are not intended to operate as hard-and-fast rules or to be

applied as a straitjacket formula. Their applicability would depend on the fact situation of each case as it is difficult to foresee all the situations and

no generalization can be made.

11. Having noticed the said propositions laid down by the Hon^{ble} Supreme Court in the cases referred to above, the Hon^{ble} Supreme

Court in a case of Vakil Prasad Singh v. State of Bihar came to following conclusion:

It is, therefore, well settled that the right to speedy trial in all criminal persecutions (sic prosecutions) 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.

12. Having come to such conclusion, quashed the proceeding, as the prosecution had 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

Hon'ble Supreme Court while quashing the proceeding also took notice of the fact that the criminal proceeding has been initiated in the year

1981 in which the charge sheet had been submitted, upon which cognizance was taken but that had been quashed and while quashing the order

taking cognizance, the court on 07.12.1990 had directed to complete the investigation within three months but in spite of that, nothing was done for

about 17 long years in a matter where allegation was of a demanding a sum of Rs. 1,000/- as illegal gratification.

13. In the instant case, the first information report seems to have been lodged in the year 1991, wherein allegation of misappropriation of sum of

Rs. 1,74,35,000/-has been alleged, which was earlier investigated upon by the District Police but as per the counter affidavit, the same was

subsequently handed over to the Vigilance Department, the State of Bihar and perhaps after creation of the State of Jharkhand that matter seems

to have been taken over by the Vigilance Department, Jharkhand. However, no explanation was put forth about the delay, which is being

consumed in conclusion of the investigation.

14. Still, in the fitness of the things and in the interest of justice, it would not be appropriate to quash the proceeding rather it would proper to direct

the Investigating Agency, Department of Vigilance, Government of Jharkhand, Ranchi to complete the investigation within three months from the

date of the communication of the order, failing which the petitioner would be at liberty to approach this Court for appropriate relief.

With this direction, this application is disposed of.

Let a copy of this order be handed over to Mr. R.R. Mishra, G.P.II so that the same be communicated immediately to the appropriate authority-

presently conducting investigation. At the same time, this order be communicated to the Superintendent of Police, Vigilance Bureau, Ranchi