

(1989) 10 MP CK 0015

Madhya Pradesh High Court

Case No: Miscellaneous Criminal Case No. 1385 of 1986

Ramesh Kumar

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision: Oct. 24, 1989

Acts Referred:

- Constitution of India, 1950 - Article 14, 19, 21

Citation: (1991) CriLJ 856 : (1990) 2 LLJ 427

Hon'ble Judges: K.L. Shrivastava, J

Bench: Single Bench

Advocate: S.K. Sharma, for the Appellant; G. Desai. Advocate, for the Respondent

Final Decision: Allowed

Judgement

K.L. Shrivastava, J.

This is an application u/s 482 Cr.P.C. for quashing the proceedings in Criminal Case No. 2150 of 1986 pending against the petitioner in the Court of 2nd Additional Chief Judicial Magistrate. Indore.

2. Circumstances giving rise to this petition are these: The petitioner was employed as Inspector in the office of the Co-operative Societies, Indore and under a working arrangement, he was also the Recovery Officer in the District Land Development Bank, Indore.

3. According to the prosecution, the petitioner committed criminal breach of trust in respect of various sums as Recovery Officer and also committed cheating and, therefore, stands prosecuted.

4. The contention of the learned Counsel for the petitioner is that the criminal case was instituted against the petitioner several years back and on the facts and in the circumstances of the case, his fundamental right of speedy public trial under Article 21 of the Constitution of India stands violated and the case deserves to be dropped.

5. Relevant details relating to the aforesaid Criminal case may conveniently be stated in a tabular form as follows:-

No. of case & date of institution	Amount involved	Particulars of offence with date of charge.	Total number of witnesses listed examined.
1.	2.	3.	4.

6. Learned counsel for the petitioner has urged that apart from the fact that the prosecution against the petitioner is false, he is a patient of heart and also suffers from paralysis. It has further been urged that in execution of the decree passed against the petitioner in the suit instituted by the Bank for recovery of the various amounts allegedly embezzled, a sum of Rs. 43,076.10p. in deposit in Account No. 27, Indore Premier Co-operative Bank, Branch Maharani Road, Indore already stands attached.

7. The point for consideration is whether the petition deserves to be allowed.

8. Article 21 of the Constitution is in these terms:

"No person shall be deprived of his life or personal liberty except according to procedure established by law."

9. It may be pointed out that Articles 14 19 and 21 are not mutually exclusive. They sustain strength from and nourish each other. They are available to prisoners as well as to free men. The procedure contemplated in Article 21 to deprive a person of his life or liberty must be just, fair and reasonable. It implies a right to free legal services, when one cannot avail them and also implies a right to speedy trial. Reference in this connection may usefully be made to the decision in Vasanta Vs. State of Maharashtra,

10. In the decision in Madheshwardhari Singh and Another Vs. State of Bihar, it has been pointed out that fundamental right of speedy public trial is implicit in Article 21 of the Constitution. The decision in Gajrat Singh's case (1983 MPLJ 430) may also be usefully perused.

11. In the decision in Sheela Barse's case 1986 C.Cr.J.S.C.24, it has been held that consequence of violation of fundamental right of speedy trial would be that the prosecution itself would be liable to be quashed on the ground that it is in breach of the fundamental right.

12. In the decision in Madheswardhari's case (supra) it has been pointed out that in a given case delay itself may defeat and negate justice. According to the decision in S. Guin and Others Vs. Grindlays Bank Ltd., in the circumstances of a given case, delay itself can be held as defeating justice irrespective of the question of default and apportionment of blame in the matter. According to the decision, in cases involving minor offence there can be no justification for subjecting the accused persons to a long drawn trial to their great harassment and hardship and in a given case patent prejudice may be shown even before the lapse of seven years which may be taken as the outer limit fixed for conclusion of original trial in all offences irrespective of their nature.

13. On the question of delay, reference must also be made to the decision in V.K. Agrwal's case (A.I.R) 1988 S.C. 1106. It relates to serious crime under the Gold Control Act, 1968. Therein delay of 20 years since the date of the seizure, in initiation of proceedings was not permitted to be successfully urged for not proceeding further with the matter as the offence was a serious economic offence undermining the economy of the nation.

14. Courts exist for doing justice between the rival parties. It is therefore not desirable to lay down specific periods for trial of different kinds of criminal cases so that the delay beyond specified periods may be urged as involving violation of the fundamental right of speedy trial and consequently fatal to the connected proceeding.

15. On a careful consideration, I am of the view that the question whether the delay in a given case amounts to infraction of the fundamental right of speedy trial under Article 21 of the Constitution furnishing foundation for an order for dropping the connected proceeding on the ground that it is in breach of the fundamental right has necessarily to be determined on consideration of various factors involved in the case. Only by such an approach failure of justice can be avoided.

16. In Misc. Cr.Case No. 1281 of 87 also the petitioner had sought quashing of these proceedings amongst others and after due consideration, this Court while disposing of the case had observed thus in paragraph 17 of the order of 28th March 1989: "I consider it necessary in the interest of justice that the prosecution is allowed time till the end of August 1989 for leading evidence. If for no fault of the petitioner, the prosecution evidence is not concluded by the end of August 1989, he may again move this Court u/s 482 for quashing of the proceedings."

17. A perusal of the record of the connected criminal case shows that after the aforesaid order dated 28th March 1989, there were five hearing dates and the

prosecution examined witnesses as under :-

Dated	5th May 89	None
Dated	25th May 89	None
Dated	14th June 89	(4 witnesses)
Dated	23rd June 89	(1 witness)
Dated	27th September	
	89	(1 witness)

Learned Counsel for the petitioner submits that about 95 witnesses still remain to be examined.

18. On a careful consideration of the facts and circumstances of the case, including the fact of attachment referred to in paragraph 6 above, I am of the view that the application deserves to be allowed.

19. In the result, the application is allowed. The proceedings in Criminal Case No. 2150/1986 pending in the Court of 2nd Additional Chief Judicial Magistrate, Indore are quashed and the petitioner is released from his bail bonds.