Kadra Pahadiya and Others Vs State of Bihar

Writ Petition No. 5943 Of 1980

Court: Supreme Court of India

Date of Decision: May 6, 1981

Citation: (1983) 2 SCC 104

Hon'ble Judges: V. Balakrishna Eradi, J; P. N. Bhagwati, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

@JUDGMENTTAG-ORDER

1. This writ petition has come up today before us for directions since there are a large number of prisoners in the State of Bihar who have been in

jail for more than 12 months after the commitment of their cases to the court of session and there are also a considerable number of prisoners who

have been in jail for more than 18 months without any enquiry or trial having commenced in the courts of Magistrates. We are glad to learn that the

four petitioners whose case is set in motion have been acquitted after a trial which was denied to them for a period of 8 years. Their acquittal

highlights the tremendous amount of misery and suffering which these four young boys who have been ultimately found to be innocent must have

undergone in jail for a period of 8 years without anyone being there to look after them or to take care of their interest. We are indeed thankful to

Dr. Miss Vasudha for having drawn our attention to the unfortunate case of these four petitioners. Now ordinarily, we would not have proceeded

further with the matter after the immediate relief which was sought by the petitioners was obtained and they were acquitted but the statements

which have placed before us by the State of Bihar and the High Court disclose an alarming state of affairs so far as administration of justice in the

State of Bihar is concerned. We had occasion to make observations in regard to the highly disturbing situation which prevails in the justice system

in the State of Bihar when we made interim orders in Hussainara Khatoon"s case (supra) last year but despite the observations made by us it does

not seem that any improvement has taken place. The position continues to be very distressing and there are large number of prisoners still

languishing in jail without their trial having commenced. The figures furnished by the State of Bihar and the High Court are sufficient to shock the

conscience of any Judge or for that matter even of any citizen of this country because we find that 18133 sessions cases are pending in different

sessions courts in the State of Bihar as on 31st December, 1980 where the commitment was made more than 12 months ago and the sessions trial

have not yet commenced. We are not mentioning here the number of prisoners who are awaiting enquiry or trial before the Magistrate in different

courts in State of Bihar because the list is very long and the number is very large. We fail to understand why necessary steps are not being taken by

the authorities concerned whether they be State Government or the High Court for the purpose of remedying this most unsatisfactory state of

affairs. We asked Mr. Mudgal, learned advocate appearing on behalf of the petitioners to prepare a list giving the particulars of the prisoners

whose cases have been committed to the courts of session prior to 31st December, 1976 and whose trials have not yet commenced. Mr. Mudgal

has prepared such a list from the record furnished to us by the State Government and the High Court and we find from the list that 313 prisoners

are rotting in jail awaiting trial though their cases have been committed to the court of session prior to 31st December, 1976; this list also includes a

large number of prisoners whose cases have been committed even prior to 31st December, 1974. If it incomprehensible to our mind as to how

sessions cases could remain pending in the sessions court in the State of Bihar for 5 to 7 years after commitment. Mr. Mudgal has also prepared

another list from the record before the court giving the details of prisoners who are awaiting commitment since prior to 31st December, 1976. The

number of these prisoners runs to 99 and some of them have been awaiting commitment since prior to 31st December, 1976. This list clearly

shows that even committal enquiries have not been held in the cases of these 99 prisoners for about 5 to 7 years. They have been in jail for such a

long period even before commitment and we shudder to think how much more they would have to remain in jail after commitment before trial is

commenced and brought to an end. It is obvious that some drastic steps are necessary to be taken in order to set right this distressing state of

affairs. We would, therefore, direct the sessions courts where these cases are pending trial after commitments made prior to 31st Dec. 1976 to

take up these cases for trial at the earliest date and to proceed with the trial of the cases from day-to-day and dispose of these cases as early as

possible and in any event not later than six months from today. Whatever steps are necessary to be taken by the prosecution for the purpose of

day-to-day trial of these cases shall be adopted and the trial of these prisoners shall not be delayed on any such count. If any of these prisoners is

unrepresented in court he shall be intimated that he is entitled to legal aid for the purpose of his defence and he shall be provided with a lawyer at

State cost for which the State will put the court in funds. So far as the prisoners awaiting commitment since prior to 31st Dec. 1976 are concerned,

the Magistrates before whom their cases are pending will immediately proceed with the enquiry against them in accordance with law and complete

the proceedings within three months from today. These prisoners also will be provided with legal aid if they are not represented by a lawyer of their

choice and the State will make the necessary funds available to the courts of Magistrates for this purpose.

2. We have already held in Hussainara Khootan"s case (supra) that speedy trial is a fundamental right implicit in the guarantee of life and personal

liberty enshrined in Art. 21 of the Constitution and any accused who is denied this right of speedy trial is entitled to approach this court for the

purpose of enforcing such right and this Court in discharge of its constitutional obligation has the power to give necessary directions to the State

Governments and other appropriate authorities for securing this right to the accused. We would, therefore, in order to enable us to exercise this

power and make this fundamental right meaningful to the prisoners in the State of Bihar request the High Court to inform us as to how many

Sessions Judges, Additional Sessions Judges and Assistant Sessions Judges are there in each district in State of Bihar and what is the number of

cases yearwise pending before each of them. We should also like the High Court to inform us as to what are the norms of disposals which it has

fixed for Sessions Judges, Additional Sessions Judges and Assistant Sessions Judges and whether the disposal of Sessions Judges, Additional

Sessions Judges and Assistant Sessions Judges in the State conform to the norms of disposal laid down by the High Court and what steps, if any,

are being taken by the High Court to ensure conformity with the norms. The High Court will also supply information to this court as to whether

having regard to the pending files before the Sessions Judges, Additional Sessions Judges and Assistant Sessions Judges and the norms of disposal

fixed by the High Court there is need for any additional courts in any of the districts and if there is such need whether steps have been taken by the

High Court for establishing such additional courts. If no steps have been taken so far, the High Court may immediately address a communication to

the State Government stressing the need for creation of additional courts and requesting the State Government to take necessary action for setting

up such courts and appointing Judges to man such courts and the State Government, we are sure, will take the necessary steps for this purpose.

We hope and trust that this exercise will be carried out and necessary steps in that behalf will be taken before the writ petition comes up for further

hearing on the reopening of the court after summer vacation.

3. We may also point out that in the statements which have been submitted to us by the State Government giving the names of prisoners who have

been in jail for more than 12 months after committal of their cases to the court of session there are a large number of instances where the dates of

admission to the jail have not been given and it is, therefore, not possible for the Court to find out as to how long they have been in jail before their

cases were committed to the court of session. We would, therefore, direct the State Government to ascertain from each jail the date of admission

of these prisoners whose names are given in the list and to inform us as to when they were admitted to the jail. We may also point out that so far as

prisoners who are awaiting commitment since before 31st Dec. 1976 and whose particulars have been given to us by Mr. Mudgal in the list

submitted by him are concerned, the Magistrates may consider whether they should not be released on bail in appropriate cases. This may be

considered by the Magistrates when these prisoners are produced before them either for the purpose of remand or at the time of holding the

enquiry. So also if there are any other undertrial prisoners who are awaiting commitment or against whom trials have not commenced in the courts

of Magistrates the question of granting bail to them may also be considered suo motu by the Magistrates and if they are eligible to be released on

bail in accordance with the principles laid down by this Court in Hussainara Khatoon''s case they may be released on bail. Action in this regard

should be taken by the Magistrates at the time when such prisoners are next produced before the Magistrates. We hope and trust that the

principles laid down and the directions given by us in the various judgments delivered in Hussainara Khatoon''s case will be strictly and

scrupulously observed by the Magistrates and Sessions Judges in the State of Bihar. We would suggest that copies of these judgments may be

supplied to the Magistrates and Sessions Judges in the State of Bihar by the High Court with a direction that the law laid down in these judgments

shall be followed by the Magistrates and Sessions judges.

4. The writ petition will now stand adjourned to 3-8-1981.