

(2000) 11 MP CK 0032
In the Madhya Pradesh High Court
Case No : Writ Petition No. 409/99

Aditya Vallabh Tripathi and others

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 24-11-2000

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 25

Citation : (2001) 1 JLJ 256 : (2001) 1 MPHT 353 : (2001) 1 MPLJ 356

Hon'ble Judges : N.G. Karambelkar, J; Mr. Fakhruddin, J

Bench : Division Bench

Advocate : Shri Praveen Mishra, Mr. R.D. Jain, for the Appellant; Shri K.K. Lahoti, A.A.G., Shri K.B. Chaturvedi, Government Advocate and Shri Padam Singh, Additional Government Advocate, for the Respondent

Judgement

Fakhruddin, J.

This "Public Interest Litigation" has been filed by four petitioners-Advocates, namely Sarvashri Aditya Vallabh Tripathi, Triyugi Narain Dixit, Sanjeev Mishra and Pawan Pathak, showing their concern regarding huge pendency of criminal cases and delay in trials due to non-service of summons/warrants due to withdrawal of Court-moharrirs. Initially, the aim was regarding the nonavailability of Court-moharrirs and inadequate staff of police-force.

On 21-7-1999 the matter had come up for hearing. After considering the pleadings of the parties and specially the stand taken in the counter-affidavit that even if a Court Moharrir (Constable) is withdrawn, it is ensured that other Court-moharrir (Constable) is posted to facilitate the judicial work, the report of the District & Sessions Judge, Gwalior was called for.

The District & Sessions Judge, Gwalior had submitted the reports dated 19-8-99 and 16-9-99. It is mentioned in the reports that in some Courts the Court-moharrirs are there while in some Courts they are provided for half-day to work.

The matter then came up for hearing on 27-7-2000 and it was on that day that Shri R.D. Jain, Sr. Counsel appearing as Amicus-Curiae argued the matter and submitted that because of non-service of summons/warrants, the cases are pending. It was also pointed out that even ADPOs are not in sufficient number and the Courts are functioning without the prosecutors. Under the circumstances, this Court directed that the matter be examined by the respondent Nos. 1, 2 and 3, and the detailed affidavits be filed. The Superintendent of Police, Gwalior/respondent No. 5 was also directed to examine the matter and submit his report.

On 11-8-2000, the report was submitted by Shri Anvesh Manglam, the Superintendent of Police, Gwalior/respondent No. 5. Shri Manglam fairly stated that in Police Regulation No. 524, the post of Court Moharrir is there, but the post is not sanctioned and the letters have been written, to the Police Head Quarters from his office for sanctioning 35 posts of Court-moharrirs in the District Gwalior.

The Principal Secretary, Home Department/respondent No. 1, the Director General of Police, Bhopal/respondent No. 2 and the Director of Public Prosecution/respondent No. 3 also submitted their reports/replies on 17-8-2000, stating that for proper functioning the Court-moharrirs and the Public Prosecutors in the Sessions Court and the Assistant Public Prosecutors in the Magisterial Courts are required and the matter has been referred to the State Government, but since there is a ban, the appointment could not be made and as soon as the ban is lifted the action will be taken.

The order-sheets recorded on various dates by this Court, go to show that the counsel for the parties showed great concern in this matter. It was also pointed out that the huge pendency in Magisterial Courts is due to various reasons and one of them is non-service of warrants and summons to the witnesses, accused-persons and now even the prosecutors are not sufficient in number. The Gwalior was selected as one of the districts and the report therefore was called for from the District & Sessions Judge, Gwalior, who submitted the same. According to the report submitted, the criminal cases pending in the Sessions Court as on 1-8-2000 in total as per the list attached is 2810 while the pendency of criminal cases in the Lower Courts at Gwalior and the Dabra as on 1-8-2000 is shown as 43382 in Regular, 1518 in Summary and 1050 in MJC.

Shri K.K. Lahoti, learned Additional Advocate General for the State submits that the State of Madhya Pradesh in fact has taken the matter very seriously in view of the orders passed by this Court from time to time and especially in Misc. Criminal Case No. 1279/99 (Ram Khiladi Vs. State of M.P.), vide order dated 23-6-2000. It was submitted that the meeting was held under the Chairmanship of the Chief Secretary of the State comprising of the Principal Secretary, M.P., Home Department, Principal Secretary, Law and Legislative Affairs, Director General of Police, Director of the Prosecution, Commissioner and Secretary, Public Health and Family Welfare Deptt., Addl. Secretary, M.P. Govt., Law and Dy.

Secy., M.P. Govt., Medical Education Deptt., on 26-8-2000. The first item taken into consideration was with respect to appointment of Public Prosecutors and Assistant Public Prosecutors in all the Courts. While considering, it was proposed that there are 673 Criminal Courts in the State which were sanctioned in 1997 and there are 385 sanctioned posts of the Assistant Public Prosecutors in the State, out of them 110 posts are lying vacant. It was decided that since there is a ban on the appointment and the matter being urgent, the Home Department shall bring this matter to the notice of the State Cabinet for the relaxation.

The second item relates to the posting of Court-moharrirs in each Courts. The Committee has taken a decision that for posting of Court-moharrirs in each Courts there is need of 557 posts of the Court-moharrirs and the proposal to that effect was already sent by the Police Headquarters to the State Government on 12-11-1999, but since there is a ban on the appointment, it is pending consideration. It was decided that for fulfillment of these posts, the Home Department shall bring this matter to the notice of the Cabinet for relaxation. It was further decided that in future at the time of sanction to establish Criminal Courts, one post of Assistant Public Prosecutor and one post of Court-moharrir may be created for each Courts.

Shri K.K. Lahoti, Addl. Advocate General appearing for the State contended that besides these items, the Committee has considered all the aspects including non-appearance of the Doctors and the Medical Officers in Medico Legal Cases. The Committee took very serious note of non-service of summons and warrants on the witnesses and the accused and the Co-ordinate Committee has been constituted under the Chairmanship of the Chief Secretary of the State comprising of the Principal Secretary, Home, Principle Secretary, Law and the Director General of Police and the Prosecution as members. It is also pointed out that due attention shall now be paid in the District Level Monitoring Cell constituted on 6-9-76 and further reconstituted on 19-3-96 by the State Govt. It is stated that the State has now considered that the Chief Judicial Magistrate of the District be nominated as Member-Secretary and the Convenor and for that the matter is being taken up with the High Court of M.P., at Jabalpur.

We have noted the submissions made by the learned Additional Advocate General and we appreciate the decision of the Committee, but what is disturbing is that in spite of the said decision having been taken on 26-8-2000, there is no material placed as to whether any decision has been taken by the Cabinet regarding relaxation or not as recommended by the Committee. It is the implementation which is material and the Courts have been stressing the need to implement the orders.

As discussed above, the pendency of the criminal cases in Magisterial Courts is more than 45,000 specially in the District Gwalior, which has been chosen as an illustrative one and throughout the State the figures may be above twenty lacs or more so.

The High Court has prescribed the minimum unit of working for the Subordinate Courts and therefore they have to work under the instructions issued by the High Court. The required goal of minimum unit cannot be achieved in the absence of the prosecutors, Court-moharrirs and non-service of summons and warrants. In the absence of prosecutors, the work is paralysed.

A speedy trial of criminal cases is a constitutional requirement and the content of the fundamental right guaranteed under Article 21 of the Constitution of India, as held in *Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna,)* by the Apex Court. The Apex Court in the aforesaid case also held that financial constraints and priorities in expenditure would not enable the Government to avoid its duty to ensure speedy trial to the accused. The same was further observed in *Raj Dev Sharma Vs. The State of Bihar*, reported in 1998 CAR 499, in which the Apex Court after deep consideration of the matter proceeded to supplement the propositions of law laid down by it's Constitution Bench in the case of *Abdul Rehman Antulay Vs. R.S. Nayak and another etc. etc., (Raj Dev Sharma Vs. The State of Bihar)*, the Apex Court had given further additional guidelines in addition to earlier issued on the point of speedy trial.

Therefore, the State cannot stop or stay a criminal trial by mere refusing to appoint a prosecutor. The appointment of a prosecutor is a compelling constitutional necessity, obligatory under the Code of Criminal Procedure also. The State is therefore wrong if it assumes that there is no administrative necessity to make an appointment of prosecutors. The financial constraints cannot absolve the State of its constitutional obligations. If functioning of Criminal Courts is a necessity, the post of a prosecutor to conduct the prosecution as well as Court-moharrirs for issuance of summons/warrants is an absolute necessity.

At this stage, it would be relevant to refer the decision of the Kerala High Court in the case of *P.M. Sunny Vs. State of Kerala and others*, reported in 1986 Cri.LJ 1517, in which it is held in Para 20 that :--

"Financial constraints" seem to be the second reason advanced for not making the appointments. Financial constraints cannot absolve the State of its constitutional obligations. Moreover, there is no case that the Government have not created posts in recent times in spite of financial strain. The Government can create posts; the Government do create posts. But it shall be so done with due regard to financial commitments. That seems to be the principle underlying the temporary ban on making appointments. It does not mean that when there is a compelling -necessity, when there is a constitutional demand when there is a statutory obligation, the Government cannot create posts. If functioning of Criminal Courts is a necessity, the post of a prosecutor to conduct the prosecutions is an absolute - necessity. Just as abolition of all Courts due to "financial constraints" cannot even be visualised, so also, the non-appointment of a prosecutor to conduct cases in Criminal Courts cannot be tolerated. Moreover, if no Prosecutor is appointed, Chief Judicial Magistrate may have to direct the

appointment of a prosecutor for each case. This is the mandate of Section 25 of the Code."

The Criminal Procedure Code enjoins in Section 25 that the State Government shall appoint in every district one or more Assistant Public Prosecutors for conducting prosecutions in the Court of Magistrates. And when no Assistant Public Prosecutor is available for the purpose of any particular case, the Chief Judicial Magistrate may appoint any other person to be the Assistant Public Prosecutor in charge of that case. Thus an Asst. Public Prosecutor is an integral part in the functioning of a Criminal Court, charged with the duty of conducting prosecutions.

Keeping in view the aforesaid decisions of the Apex Court and the High Court of Kerala and taking into consideration the facts and circumstances, as noted above, the State is directed to make appointments of the Public Prosecutors and the Court-moharrirs after due sanction of the posts, as required/recommended and we do hope that the State would consider this matter and take a prompt decision in the appointments of prosecutions and the Court-moharrirs.

Learned counsel for the petitioners submits that so far as prosecutors are concerned, the posts are already vacant there and even if the relaxation is granted, the fulfilment of the vacancies will take a long time.

Under the circumstances, the State is directed to consider the gravity of the matter and take a decision preferably within one month from today. So far as prosecutors are concerned, it is stated that they are to be selected through Public Service Commission and the process for filling up the vacancy will naturally take a long time. The Courts are faced with the difficulties and as mentioned hereinabove, about more than 45,000 cases are pending in the Criminal Courts at Gwalior and in the absence of Prosecutor/ APP/ADPOs, the functioning of the Courts sometimes itself disrupted. The State to consider and to take such steps which are permissible including one as envisaged in the case of P.M. Sunny Vs. State of Kerala and others (1986 Cr.LJ 1517). The District Magistrate may in suitable cases be given power to appoint prosecutor in such case or clause of cases as the situation may arise.

With this observation and the direction, the petition is disposed of,

C.C. as per rules.

Photocopy to all concerned.