
(2012) 03 DEL CK 0638
In the Delhi High Court
Case No : Criminal M.C. 2592 of 2011

Bhawna Karir

APPELLANT

Vs

The State and Another

RESPONDENT

Date of Decision : 20-03-2012

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 309, 482, 82, 83
Penal Code, 1860 (IPC) — Section 120B, 292, 34, 365, 380

Citation : (2012) 03 DEL CK 0638

Hon'ble Judges : M.L. Mehta, J

Bench : Single Bench

Advocate : Chander M. Maini, for the Appellant; Fizani Husain, APP for the State, for the Respondent

Judgement

M.L. Mehta, J.—This petition is filed u/s 482 CrPC seeking quashing of FIR No. 370 of 1994, P.S. Tilak Marg. The present petitioner is one of the co-accused in the aforesaid FIR and is facing trial. The case is at the stage of consideration of charges against the accused persons. The main ground seeking quashing of FIR is inordinate delay of 17 years in the Trial Court proceedings. The brief facts necessitating the disposal of the present petition are that the Complainant/Respondent No. 2 was acting in T.V., Films, etc in the course of which, she was contacted by some partners of M/s. New Era Agency. Accused Dinesh Sharma and Sandeep Singh introduced themselves to be partners of the said firm. They lured the Complainant/Respondent No. 2 to give her lead roles in serials and good money. Sometime in April 1994, after the Complainant got down at the Mandi House Bus Stop while returning from school accused Dinesh Sharma and Sandeep Singh met the Complainant/Respondent No. 2 and asked her to accompany them for a photo session urgently. They did not allow her to inform her parents about the photo session and assured her that she will get free early. Thereafter she was taken to Bhikaji Cama Place where she was made to sign some documents by accused Anand Seth and the petitioner under threat and

duress. The complainant/respondent no. 2 was then taken to sainik farms, where she was asked to pose in an indecent and objectionable manner, to which she protested, however under force and threat, she succumbed to their demands. Thereafter she managed to escape and after 15 days she started receiving threatening calls from the accused persons. It is further alleged that the complainant/respondent no. 2 was also dispossessed of her jewellery comprising of a pair of ear-rings, two rings and bangles by the accused persons. During investigation, the IO seized the July, 94 issue of "Fantasy Magazine" from the possession of accused Rajiv Gautam and the petitioner in which objectionable photographs of the complainant/respondent no. 2 were published. It is alleged that accused Vicky Bhargava, who is the owner of Fantasy magazine use to purchase photographs of young girls from accused Rajiv Gautam and the petitioner and the young girls were incited, lured and brought in to pose by accused Dinesh Sharma and Sandeep Singh. The FIR was registered on 16.09.1994 on the complaint of the complainant/respondent no. 2 and thereafter the chargesheet was filed before the Ld. trial court on 03.12.1994 for offences under sections 365/380/384/386/292/506/120-B & 34 IPC and the trial court vide order dated 03.12.1994 was pleased to take cognizance of the offence.

2. The Ld. counsel of the petitioner submitted that the cognizance of the offence was taken by the Ld. trial court long back in the year 1994, however the charges are yet to be framed against the petitioner. The matter has been pending for 17 years now in the trial Court, however, the delay cannot be attributed to the petitioner. It is further submitted that inordinate delay in the trial amounts to an infringement of the fundamental right of the petitioner to a speedy trial and this Court ought to quash the FIR qua the petitioner. The counsel relies upon various judgments of this Court as well as the Hon"ble Supreme Court namely Kamaldin and Others Vs. CBI, , Karambir Singh Vs. C.B.I., , Abdul Rehman Antulay Vs. R.S. Nayak and another etc. etc., , Madheshwardhari Singh and Another Vs. State of Bihar, , Vakil Prasad Singh v. State of Bihar, 2009 (2) JCC 855, S.G. Nain Vs. Union of India, , Bishwanath Prasad Singh v. State, 1994 Cri. LJ 242 SC & T.J. Stephen and Others Vs. M/s. Parle Bottling Co. (P) Ltd. and Others, to contend that the petitioner ought not to bear the agony of a protracted trial and has prayed for quashing of the FIR qua the petitioner.

3. Being concerned with the state of affairs, this Court vide order dated 17th November, 2011 desired the learned APP to help the court in finding out the causes of delay in this case under following heads:

- (1) Contribution of the accused;
- (2) Contribution of the investigating agency and the prosecution; and
- (3) Contribution of the Court working.

4. In response thereto, both the APP as also the counsel for the petitioner have given the details of the proceedings under the aforementioned three counts. The cause of adjournment at the behest of the accused persons as pointed by the

APP is 23 times and as pointed out by Learned Counsel for the petitioner, it is 21 times. The contribution of the investigating agency and the prosecution as per APP is 43 times and as per counsel for the petitioner is 48 times. The cause of court working as pointed out by APP is 39 times and as per the petitioner, it is 40 times.

5. From the above, it would be seen that all the aforementioned three factors have been responsible for causing the delay in the trial of this case.

6. There cannot be any dispute that right to speedy trial is part of fair, just and reasonable procedure implicit in Article 21 of the Constitution and is reflected in Section 309 CrPC. There also cannot be any dispute that in case of unexplained and inordinate delay in conclusion of proceedings, this Court has the discretion u/s 482 CrPC to quash the proceedings having regard to the attendant, circumstances and relevant factors. The Supreme Court has time and again emphasized the need for speedy investigation and trial as both are mandated by letter and spirit of the provisions of the Criminal Procedure Code and the constitutional protection as enshrined under Article 21. In the case of A.R. Antulay & Ors. (supra), the Supreme Court propounded few propositions meant to serve as guidelines while stating that those propositions are not exhaustive. It will be relevant to reproduce those observations as enunciated by the Supreme Court, which read thus:

1. Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the societal interest also, does not make it any-the-less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

2. Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. That is how, this Court has understood this right and there is no reason to take a restricted view.

3. The concerns underlying the Right to speedy trial from the point of view of the accused are:

(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;

(b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and

(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.

4. At the same time, one cannot ignore the fact that it is usually the accused who is interested in delaying the proceedings. As is often pointed out, "delay is a known defence tactic". Since the burden of proving the guilt of the accused lies upon the prosecution, delay ordinarily prejudices the prosecution. Non-availability of witnesses, disappearance of evidence by lapse of time really work against the interest of the prosecution. of course, there may be cases where the prosecution, for whatever reason, also delays the proceedings. Therefore, in every case, where the Right to speedy trial is alleged to have been infringed, the first question to be put and answered is-who is responsible for the delay? Proceedings taken by either party in good faith, to vindicate their rights and interest, as perceived by them, cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay. It goes without saying that frivolous proceedings or proceedings taken merely for delaying the day of reckoning cannot be treated as proceedings taken in good faith. The mere fact that an application/petition is admitted and an order of stay granted by a superior court is by itself no proof that the proceeding is not a frivolous. Very often these stays obtained on ex-parte representation.

5. 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. It is true that it is the obligation of the State to ensure a speedy trial and State includes judiciary as well, but a realistic and practical approach should be adopted in such matters instead of a pedantic one.

6. Each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. As has been observed by Powell, J. in *Barker* "it cannot be said how long a delay is too long in a system where justice is supposed to be swift but deliberate". The same ideal has been stated by White, J. in *U.S. v. Ewell*, 15 Law Edn. 2nd 627, in the following words:

the sixth amendment right to a speedy trial is necessarily relative, is consistent with delays, and has orderly expedition, rather than more speed, as its essential ingredients; and whether delay in completing a prosecution amounts to an unconstitutional deprivation of rights depends upon all the circumstances.

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 prosecution, again depends upon the facts of a given case.

7. We cannot recognize or give effect to, what is called the "demand" rule. An accused cannot try himself; he is tried by the court at the behest of the prosecution. Hence, an accused's plea of denial of speedy trial cannot be defeated by saying that the accused did at no time demand a speedy trial. If in a

given case, he did make such a demand and yet he was not tried speedily, it would be a plus point in his favour, but the mere non-asking for a speedy trial cannot be put against the accused. Even in U.S.A., the relevance of demand rule has been substantially watered down in Barker and other succeeding cases.

8. Ultimately, the court has to balance and weigh the several relevant factors-"balancing test" or "balancing process"-and determine in each case whether the right to speedy trial has been denied in a given case.

9. Ordinarily speaking, where the court comes to the 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. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order-including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded-as may be deemed just and equitable in the circumstances of the case.

10. It is neither advisable nor practicable to fix any time-limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. 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. The Supreme Court of U.S.A. too as repeatedly refused to fix any such outer time limit inspite of the Sixth Amendment. Nor do we think that not fixing any such outer limit in effectuates the guarantee of Right to speedy trial.

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

7. Undisputedly, the case has delayed inordinately and one of the factors which have contributed to the delay is the number of the accused persons and their being represented by different advocates. It is also seen that non-appearance of one or the other accused and notices to their sureties followed by proceedings u/s 82/83 CrPC has been another major cause for delay. In addition to these, the accused themselves have sought as many as 21 or 23 adjournments. Though, there has been delay and laxity on the part of the prosecution and also the working of the court, but the accused persons are also equally responsible for the delay that has occasioned. The reason for the delay on the part of the prosecution does not appear to be anyone other than laxity and the lack of seriousness. Equal is the responsibility of the court below in easily entertaining

the requests for adjournments. Thus, I am of the opinion that the conduct of the petitioner and the accused persons during the trial is also equally responsible for causing delay in the trial proceedings. It is settled proposition of law as laid down in the afore-cited judgments that each and every case has to be weighed and analyzed on its facts and circumstances to see as to whether the inordinate delay in the trial has caused any prejudice to the accused or not. Having regard to the nature of allegations against the petitioner, the delay does not seem to have prejudiced the accused, but the prosecution. As per the observations of the Supreme Court in A.R. Antulay (supra), the non-availability of witnesses, disappearance of evidence by lapse of time really works against the interest of the prosecution.

8. In the given facts and circumstances, being guided by the propositions laid down by the Supreme Court in the case of A.R. Antulay (supra), I do not find it to be a case of quashing of FIR in the interest of justice. Rather, having regard to the conduct of the accused persons as also the prosecution, it is desired from the Trial Court to follow the guidelines laid down by Supreme Court in A.R. Antulay case (supra) in its letter and spirit and expeditiously proceed to pronounce its verdict on the charges and then, proceed for trial as speedily as possible and try to conclude the recording of material witnesses within a span of about one year.

9. With these directions, the petition is disposed of. Copy of this order be circulated amongst judicial officers of District Judiciary.