

(2017) 09 DEL CK 0351

In the Delhi High Court

Case No : Criminal Writ Petition No. 2715 Of 2017

Bir Singh & Ors

APPELLANT

Vs

State Of Nct Of Delhi

RESPONDENT

Date of Decision : 18-09-2017

Acts Referred:

Constitution Of India, 1950 — Article 21, 226, 227
Code Of Criminal Procedure, 1973 — Section 309, 482
Indian Penal Code, 1860 — Section 34, 120B, 419, 420, 467, 468, 471

Citation : (2017) 09 DEL CK 0351

Hon'ble Judges : Vinod Goel, J

Bench : Single Bench

Advocate : B.P. Singh, Ankur Yadav, Sanjay Lao, Megha Bahl, Avi Singh

Final Decision : Disposed Of

Judgement

Vinod Goel, J

Crl.M.A. 15585/2017 (exemption)

Exemption allowed subject to all just exceptions.

Application is disposed of.

W.P.(CRL) 2715/2017

1. Notice. Mr.Sanjay Lao, learned ASC for State, who appears on an advance copy having been served, accepts notice.

2. The petitioners have invoked the writ jurisdiction of this court under Article 226 and 227 of the Constitution of India read with Section 482 of the

Code of Criminal Procedure, 1973 (in short 'Cr.PC') for direction to the trial court for expeditious trial in the case titled as 'State Vs. Krishan

Kumar Mann & Ors.' in FIR No. 92/2000 registered on 03.02.2000 with PS Ali Pur, District North-West, Delhi, on the complaint of their father late

Sh. Hukum Singh under Section 419/420/468/471/34 of Indian Penal Code, 1860 (in short "IPC").

3. Charge sheet was filed against the accused persons on 17.08.2001 before the court of learned MM, Rohini Court, Delhi.

4. The father of the petitioners late Sh. Hukum Singh, who was the complainant, had died on 17.06.2007. Charges were framed by the trial Court vide order dated 25.06.2014 against Krishan Kumar Mann, Gurdev Singh and Jodha Singh under Section 120B/419/420/467/468 of IPC. The case was listed for prosecution evidence for 05.08.2014.

5. The accused Krishan Kumar preferred one Revision Petition before the learned Sessions Judge bearing old CR-17/2014 (new CR-57332/2016).

6. On 08.11.2016, learned ASJ-02 (North), Rohini Court, Delhi made it clear that there would be no stay of impugned order and adjourned the revision petition for arguments.

7. The grouse of the petitioners is that out of 36 listed witnesses not even a single witness has been examined so far by the prosecution. Learned counsel for the petitioner submits that the matter is being adjourned on one pretext or another and the next date of hearing is 26.10.2017 before the learned ACMM (North), Rohini Court, Delhi.

8. It is submitted by the learned counsel for the petitioners that the matter had been dragged on for more than 17 years since criminal machinery was set in motion and thus justice has been denied to them due this inordinate delay.

9. The right to a speedy trial is an extension of the right to liberty and right against arbitrary detention. The right to speedy trial has been famously recognized in the legal maxim "Justice Delayed is justice denied". This right has been recognized as an indispensable right of the accused as well as of the victim by the Hon'ble Supreme Court in a catena of judgments.

10. The Hon'ble Supreme Court in Rattiram v. State of M.P., (2012) 4 SCC 516 while reiterating the importance of a speedy trial for both the accused and the victim held as under:

"59. At this juncture, we would like to refer to two other concepts, namely, speedy trial and treatment of a victim in criminal jurisprudence based on the constitutional paradigm and principle. The entitlement of the accused to speedy trial has been repeatedly emphasised by this Court. It has been

recognised as an inherent and implicit aspect in the spectrum of Article 21 of the Constitution. The whole purpose of speedy trial is intended to

avoid oppression and prevent delay. It is a sacrosanct obligation of all concerned with the justice dispensation system to see that the

administration of criminal justice becomes effective, vibrant and meaningful. The concept of speedy trial cannot be allowed to remain a

mere formality [see *Hussainara Khatoon (1) v. State of Bihar* [(1980) 1 SCC 81 and *Raj Deo Sharma v. State of Bihar* (1998) 7 SCC 507].

60. While delineating on the facets of speedy trial, it cannot be regarded as an exclusive right of the accused. The right of a victim has

been given recognition in *Mangal Singh v. Kishan Singh* [(2009) 17 SCC 303 wherein it has been observed thus: (SCC p. 307, para 14)

“14. Any inordinate delay in conclusion of a criminal trial undoubtedly has a highly deleterious effect on the society generally, and

particularly on the two sides of the case. But it will be a grave mistake to assume that delay in trial does not cause acute suffering and

anguish to the victim of the offence. In many cases the victim may suffer even more than the accused. There is, therefore, no reason to

give all the benefits on account of the delay in trial to the accused and to completely deny all justice to the victim of the offence.”

11. A constitutional bench of the Hon^{ble} Supreme Court in *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569 elaborated the importance of a fair

and speedy trial in safeguarding the rights of the accused as well as the victim. The relevant paragraphs of this judgment are reproduced below:

“85. The right to a speedy trial is not only an important safeguard to prevent undue and oppressive incarceration, to minimise

anxiety and concern accompanying the accusation and to limit the possibility of impairing the ability of an accused to defend himself but

also there is a societal interest in providing a speedy trial. This right has been actuated in the recent past and the courts have laid down a series

of decisions opening up new vistas of fundamental rights. In fact, lot of cases are coming before the courts for quashing of proceedings on the ground

of inordinate and undue delay stating that the invocation of this right even need not await formal indictment or charge.

86. The concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and

preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent

incarceration and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible

prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates

into a finality, can be averted. In this context, it may be noted that the constitutional guarantee of speedy trial is properly reflected in Section 309 of

the Code of Criminal Procedure.

87. This Court in *Hussainara Khatoon (I) v. Home Secretary, State of Bihar*[(1980) 1 SCC 81 : 1980 SCC (Cri) 23 : (1979) 3 SCR 169(I)] while

dealing with Article 21 of the Constitution of India has observed thus: (SCC p. 89, para 5)

“No procedure which does not ensure a reasonably quick trial can be regarded as ‘reasonable, fair or just’ and it would fall

foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an

integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as

to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment

as a result of a long delayed trial in violation of his fundamental right under Article 21. Would he be entitled to be released unconditionally freed from

the charge levelled against him on the ground that trying him after an unduly long period of time and convicting him after such trial would constitute

violation of his fundamental right under Article 21.”

12. This Court in *Sanjeev Nanda v. State*, 2009 SCC OnLine Del 2039 while reiterating the importance of a speedy trial in the criminal justice system

held as under:

“115. With the aforesaid legal position there does not remain even an iota of doubt that the right to speedy trial in all criminal proceedings is an

inalienable right not only flowing from Article 21 of the Constitution of India, but is a well recognized right under Section 309 of the Code of Criminal

Procedure. It is both in the interest of accused as well of the society that a criminal case is concluded as expeditiously as feasible. Societal interest lies

in punishing the guilty and exoneration of the innocent, but one cannot shut his eyes from the cumbersome procedure involved before the final

culmination of the trial proceedings. “Justice delayed is justice denied” is a popular adage. But not in every case delay in trial results in denial of

justice and it is only when there is an inordinate delay which is proved to be oppressive and unwarranted. It is the right of both, the accused and the

victims that the trial should culminate as expeditiously as possible. But there are certain factors which we cannot ignore while considering whether the

delay in trial was oppressive and unjustifiable.”

13. In the present case, the trial has not yet commenced even though the Charge-sheet was filed way back on 17.08.2001 and point of charge was

decided after about 13 years on 25.6.2014.

14. In these circumstances, this petition is disposed of with the direction that the learned ACMM (North), Rohini Court, Delhi shall make all endeavour

at his command to record the prosecution evidence and conduct the trial expeditiously as possible and dispose of the case within a period of six months

from the date of receiving the copy of this order.

15. It is noticed that the Revision Petition bearing No.CR 57332/2016 (Old No.CR-17/2014) has been pending before learned ASJ-2, North District,

Delhi for the reasons best known to him. It is expected from the learned ASJ that on the next date of hearing, he shall hear arguments in the petition

positively and dispose it of in accordance with law.

16. The petition is disposed of accordingly.