
(2008) 05 MP CK 0013
In the Madhya Pradesh High Court

Hardeep Singh Anand

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 14-05-2008

Acts Referred:

Constitution of India, 1950 — Article 21
Penal Code, 1860 (IPC) — Section 34, 420

Citation : (2008) CriLJ 3281 : (2008) ILR (MP) 3068 : (2008) 5 MPHT 172

Hon'ble Judges : A.K. Patnaik, C.J.;Ajit Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

A.K. Patnaik, C.J.—This is an appeal filed u/s 2(1) of the M. P. Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 against the order dated 24-8-2007 passed by the learned single Judge in W.P. No. 4638 of 2007.

2. The relevant facts briefly are that the appellant was running a Coaching Centre named "Deepika Classes" preparing students for taking Pre-Medical Test, Pre-Engineering Test and other tests for admissions to MBBS, Dental, Engineering, IIT courses. On 8-6-1992, a raid was conducted in the house of the appellant at the instance of Shri Raghava Chandra, the then Collector, Jabalpur and thereafter a Criminal Case No. 314 of 2004 under Sections 420 read with Section 34, IPC was registered against the appellant. After investigation, a charge-sheet was filed and after trial, the appellant was acquitted on 26-8-2004. The appellant then filed Writ Petition No. 4368 of 2004 contending inter alia that although the appellant was in police custody in Police Station, Gorakhpur since 10.00 p.m. on 8-6-1992, he was unnecessarily handcuffed by the Police and a number of daily newspapers published his photographs and his sister, who loved him, on seeing his photographs was shocked and expired on 17-6-1992. The appellant also contended in the writ petition that the prosecution knew right from the beginning that the cases registered against the appellant were false and did not deliberately send notices to the three independent witnesses Jitendra,

Shailendra and Arun Chouksey from 1992 up to 2003 and the witnesses were produced before the Court only at the end of 2003 and thus there was violation of the fundamental right to speedy trial guaranteed under Article 21 of the Constitution. In the writ petition, the appellant prayed that the respondents 2 to 20 should be prosecuted under the relevant sections of law and the respondent No. 21 onwards should be prosecuted for criminal defamation and other sections of law.

3. When the writ petition came up for admission before the Court, a learned single Judge in his order dated 24-2-2005 ordered that he was inclined to admit the matter only with regard to issue regarding grant of compensation for causation of delay in disposal of Criminal Case No. 314 of 2004, which arose in relation to the occurrence of the year 1992 and Accordingly directed issuance of notices to respondents 1 and 6 to 17 only.

4. Pursuant to the notices, returns were filed by respondent No. 1 and some other respondents and a learned single Judge of this Court heard the learned Counsel for parties, and after going through the documents filed by the appellant as well as the record pertaining to Criminal Case No. 314 of 2004 held that on a few occasions, time was sought from the trial Court by the prosecution but on most of the occasions trial was adjourned at the instance of the appellant himself and from the proceedings of the trial Court, it cannot be held that unnecessary or deliberate adjournments were sought by the prosecution in order to delay the trial and hence the question of granting compensation for delay in trial to the appellant did not arise and accordingly dismissed the writ petition by order dated 24-8-2007.

5. Thereafter, the appellant filed an application for review of the order dated 24-8-2007 passed by the learned single Judge which is numbered as MCC No. 7325 of 2005 in which the appellant contended that the Additional Advocate General, who appeared on behalf of the State submitted a typed copy of the proceedings of Criminal Case No. 314 of 2004 in which incorrect dates of proceedings were mentioned and for this reason, the learned single Judge held that unnecessary and deliberate adjournments were sought by the appellant in order to delay the trial and dismissed the writ petition. The learned single Judge, however, dismissed the review petition by order dated 12-10-2007 saying that the record of the criminal case was very much available when the matter was argued and the order dismissing the writ petition was passed after perusing the record of the Criminal Case and after scrutinizing the same. Aggrieved, the appellant has filed this appeal.

6. We have heard the appellant in person and Mr. Kumaresh Pathak, learned Deputy Advocate General for the State and we find that the main ground taken in the appeal memorandum is that the learned single Judge has failed to appreciate that the prosecution had delayed the trial by almost six years from 9-3-1998 to 26-8-2004. To consider the aforesaid ground taken in the memorandum of appeal, we have called for the records of Criminal Case No. 314

of 2004 and on perusal of the same, we find that on 9-3-1998, the Court rejected the prayer of the appellant to modify the charges and on 12-3-1998, the charges were framed. Thereafter on 6-4-1998, the case had to be adjourned because the appellant was absent. On 6-5-1998, the case had to be adjourned because the witnesses were absent. On 27-6-1998, the witnesses and the appellant/accused were absent. On 27-7-1998, the witnesses and the appellant were absent. On 7-9-1998, the case had to be adjourned because the witnesses and the appellant were absent. The delay up to 7-9-1998 was, therefore, on account of absence of the witnesses as well as the absence of the appellant.

7. The first witness on behalf of the prosecution, namely K. C. Jain (P.W. 1), City Magistrate was examined on 15-3-1999. Thereafter, on a number of dates, the case had to be adjourned because the summons could not be served on the witnesses and on 28-6-2000, the trial Court issued show cause notice to the Station Officer. Even thereafter, witnesses were not served with summons on various dates. On 22-3-2002, Rekha Jain (P.W. 2) and Yogendra Pal Singh (P.W. 3) were examined. On 10-12-2002, although the appellant applied for closing the prosecution case, the trial Court rejected the prayer and fixed the case for 3-2-2003 for examining the remaining witnesses. On 6-3-2003, the trial Court pulled up the prosecution for not producing the remaining witnesses and fixed the case for 5-5-2003 for further evidence. On 5-5-2003, the trial Court again took serious note of the delay caused by the prosecution and directed the prosecution to produce the witnesses on the next date. On 9-10-2003, Arun Kumar (P.W. 4) was examined by the prosecution. To examine the two remaining witnesses Jitendra and Shailendra, the Public Prosecutor took time. On 16-10-2003, Jitendra (P.W. 5) was partly examined and his evidence could not be completed in absence of the seized articles. Although Shailendra (P.W. 6) was also present on 16-10-2003 but he could not be examined.

On 3-12-2003, C. N. Dubey was present but he could not be examined since the record of the trial Court had been called for inspection by the, Additional District Judge. On 15-12-2003, Shailendra (P.W. 6) was examined. On 16-1-2004, bailable warrants were issued to two witnesses left for examination. On 22-1-2004, the application filed by the appellant for re-examination of C.N. Dubey was rejected. On 6-5-2004, examination of Jitendra (P.W. 5) was completed and the prosecution case was closed. Thereafter, the defence witnesses were examined on 25-5-2004 and 11-6-2004 and the defence evidence was closed on 13-8-2004. Arguments were heard on 20-8-2004 and the appellant was acquitted on 26-8-2004. The aforesaid discussion would show that the State took four years from 15-3-1999 to 6-5-2004 to produce and examine its witnesses in the trial.

8. We may now examine the returns filed by the State in W.P. No. 4368 of 2004 to find out whether the prosecution had any reasonable explanation for the delay. In para 9 of the return filed by the State in W.P. No. 4368 of 2004, it is stated that the appellant has not filed any documents to show that the delay was

caused because of the reasons on the part of the answering respondent and that the appellant ought to have approached the appropriate forum to get directions for speedy trial of the criminal case and having not availed the said remedy, he cannot now raise such a ground in this writ petition. In the additional return filed on behalf of the respondent No. 1 State on 19-2-2007, it is stated that the State was not at all responsible for causing any delay in conclusion of the trial but delay has been caused because the Court has been quite lenient and sympathetic towards the appellant and granted every prayer made on behalf of the appellant and thus, it is not correct that the delay has been caused by any laches on the part of the respondent No. 1 -State. But as we have seen from the order-sheets of the Criminal Case No. 314 of 2004, the delay is not on account of the leniency and sympathy shown by the Court towards the appellant but because of the prosecution failing to produce and examine the witnesses on the various dates to which the case was fixed. In the return and the additional return, therefore, no explanation as such has been furnished by the State for the delay in producing and examining the witnesses on behalf of the prosecution during the period 15-3-1999 to 6-5-2004. We accordingly hold that the delay of five years was on account of the respondent No. 1 State not taking timely steps in producing and examining the witnesses on behalf of the prosecution and that the findings of the learned single Judge in the impugned order that on most of the occasions trial was adjourned at the instance of the appellant and that from the proceedings of the trial Court, it cannot be said that unnecessary adjournments were sought by the prosecution in order to delay the trial are not correct.

9-10. Speedy trial was held as an integral and essential part of the fundamental right to life and liberty of a person, guaranteed under Article 21 of the Constitution. P.N. Bhagwati, J. (as he then was) speaking for himself and A.D. Koshal, J. held:

...If a person is deprived of his liberty under a procedure which is not "reasonable, fair or just", such deprivation would be violative of his fundamental right under Article 21 and he would be entitled to enforce such fundamental right and secure his release. Now obviously procedure prescribed by law for depriving a person of his liberty cannot be "reasonable, fair or just" unless that procedure ensures a speedy trial for determination of the guilt of such person. 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.

Again in Anukul Chandra Pradhan Vs. Union of India (UOI) and Others, , the Supreme Court took a view that trial of those involving public men should be

concluded more expeditiously and this was the requirement of speedy trial guaranteed under Article 21 of the Constitution. Para 6 of the judgment of the Supreme Court in *Anukul Chandra Pradhan v. Union of India* (supra) is quoted hereinbelow:

We may also observe, that the Court concerned dealing with the above matters has to bear in mind that utmost expedition in the trial and its early conclusion is necessary for the ends of justice and credibility of the judicial process. Unless prevented by any dilatory tactics of the accused, all trials of this kind involving public men should be concluded most expeditiously, preferably within three months of commencement of the trial. This is also the requirement of speedy trial read into Article 21.

11. With regard to handcuffing, in *Prem Shankar Shukla Vs. Delhi Administration*, Krishna Iyer, J. speaking for himself and Chinnappa Reddy, J. made the following observations in para 22 at page 537 of the SCC : (at p. 937 of Cri LJ):

Handcuffing is prima facie inhuman and, therefore, unreasonable is over-harsh and at the first flush arbitrary. Absent fair procedure and objective monitoring, to inflict "irons" is to resort to zoological strategies repugnant to Article 21. Thus, we must critically examine the justification offered by the State for this mode of restraint. Surely, the competing claims of securing the prisoner from fleeing and protecting his personality claims barbarity have to be harmonized. To prevent the escape of an under-trial is in public interest, reasonable, just and cannot, by itself, be castigated. But to bind a man hand-and-foot, fetter his limbs with hoops of steel, shuffle him, defile his dignity, vulgarise society and foul the soul of our constitutional culture. Where then do we draw the humane line and how far do the rules err in print and praxis?

12. In the instant case, the appellant was well educated person and was coaching students for entrance tests and examinations for admission to MBBS, Engineering, IIT etc. and it is alleged in para 5.6 of the writ petition that when he was already in Police custody in Gorakhpur Police Station at 10.00 p.m. on 8-6-1992, he was unnecessarily handcuffed by the police and number of daily newspapers published the photographs of the appellant handcuffed and his sister, who loved him as son, saw the photographs in the newspapers and was shocked and expired on 17-6-1992. The appellant has produced before us a newspaper in which his photograph with the handcuff has been published. In paragraph 8 of the return filed on 4-2-2006, the respondent No. 1 denied that the appellant was unnecessarily handcuffed, but no reasons have been given in the return why such handcuffing was necessary.

13. The next question is whether the appellant is entitled to any compensation from the respondent No. 1 -State for delay of five years in the trial and for handcuffing in violation of his fundamental rights under Article 21 of the Constitution. In *Rudul Sah Vs. State of Bihar and Another*, the Supreme Court

has taken a view that one of the effective ways in which violation of fundamental rights under Article 21 of the Constitution can reasonably be prevented, is to direct the State to pay compensation to the person whose rights under Article 21 of the Constitution is affected. In the language of the Supreme Court (Para 10):

...Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and the compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilization is not to perish in this country as it has perished in some others too well-known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers.

14. In fact, in *State of Maharashtra and Others Vs. Ravikant S. Patil*, , the Supreme Court referring to the *Rudul Sah Vs. State of Bihar and Another*, upheld the award of compensation of Rs. 10,000/- by the High Court of Bombay to an under-trial prisoner who had been handcuffed and taken through the streets in a procession by the police during investigation. We are, thus, of the view that the appellant is entitled to compensation for violation of his fundamental rights guaranteed under Article 21 of the Constitution to speedy trial and not to be handcuffed without valid justification.

15. The next question is how much compensation the appellant is entitled? In *D.K. Basu Vs. State of West Bengal*, , the Supreme Court, after examining the liability of the State to its citizens for infringement of their fundamental right laid down the principle for assessment of compensation to be paid by the State as under (para 55):

In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortuous act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf. The

relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not interrogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit.

During the five years of delay in the trial from 15-3-1999 to 6-5-2004 caused by the State, the appellant's liberty was not affected inasmuch as he was not under imprisonment but was on bail. Hence, the appellant will not be entitled to a huge amount of compensation as claimed by him. Nonetheless, the appellant was handcuffed without a valid justification and his dignity as a human being had been seriously affected. In the circumstances, an expeditious trial and his acquittal would have restored his personal dignity as early as possible. But the State instead of taking timely steps to produce and examine the prosecution witnesses delayed the trial for long five years. In the facts and circumstances of the case, we award a compensation of Rs. 70,000/-(Rupees seventy thousand only) to the appellant. This compensation will be without prejudice to any claim that the appellant may make in a civil Court for damages.

16. In the result, the impugned order passed by the learned single Judge is set aside and the appeal is allowed. We accordingly direct the respondent No. 1-State to pay the appellant a sum of Rs. 70,000/-(Rupees seventy thousand only) as compensation within a period of three months from today. No order as to costs.