
(1992) 01 P&H CK 0075

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 5132-M of 1991

Havaladar Hardev Singh (now Retd.)

APPELLANT

Vs

State of U.T.Chandigarh

RESPONDENT

Date of Decision : 13-01-1992

Acts Referred:

Citation : (1992) 1 AICLR 510 : (1992) 2 RCR(Criminal) 115

Hon'ble Judges : Harmohinder Kaur Sandhu, J

Advocate : Alok Jain, Anand Swaroop, G.S. Bhatia, Advocates for appearing Parties

Judgement

Harmohinder Kaur Sandhu, J.

1. This judgment will dispose of Criminal Misc. No. 8029M of 1991 Radhe Shyam v. State of U.T. Chandigarh and Criminal Misc. No. 5132M of 1991 Hardev Singh v. State of U.T. Chandigarh as an identical question of law is raised in both the petitions and the same can be conveniently disposed of by a common order.

2. Both Radhe Shyam and Hardev Singh filed petitions under Section 482 Cr.P.C. for quashing FIR No. 663 of 1982 registered against them at Police Station, Sector 26, Chandigarh (Annexure P1) and order granting sanction for their prosecution on 19.2.1991 (Annexure P8) and all other proceedings arising therefrom.

3. The facts giving rise to these petitions are that the petitioners and one Sarabjit Singh were members of U.T. Home Guards. A complaint was lodged against them by one Chaman Lal volunteer of U.T. Home Guards wherein allegations were made that Radhe Shyam who was deputed to perform night duty of patrolling in June, 1987 remained absent from duty, for about a week and when his office asked him to produced attendance certificate from the Home Guards Authorities, he managed to secure a certificate from Hadev Singh who accepted illegal gratification of Rs. 200/ for issuing such a certificate. Similar certificate was also obtained from Sarabjit Singh on payment of bribe money

although these persons were not authorised to issue certificates under departmental instructions. On these allegations a case under Sections 420, 468, 471 and 120B IPC was registered against Hardev Singh, Sarabjit Singh and Radhe Shyam. Investigation in the case was completed and challan was presented in the Court of Chief Judicial Magistrate Chandigarh, who after trial convicted Hardev Singh and Sarabjit Singh for the offence under Section 120B IPC for criminal conspiracy for the offence under Section 420 IPC and sentenced them to undergo rigorous imprisonment for four months and to pay a fine of Rs. 400/ each. Radhe Shyam was convicted for the offence under Section 420 IPC and was awarded the same sentence as was awarded to his coaccused. Aggrieved by this judgment dated 31.1.1987 recording their conviction all the three persons preferred an appeal, which was accepted by the learned Additional Sessions Judge, Chandigarh vide his judgment dated 2.4.1990 on the ground that Hardev Singh and others could not be prosecuted unless sanction for their prosecution was obtained from the competent authority. The judgement convicting and sentencing them was, therefore, set aside as being unsustainable but it was observed that the prosecution against the accused may be launched after getting sanction of the competent authority as provided under Section 5 of the Punjab Home Guards Act, 1947. The prosecution then moved the competent authorities for grant of sanction. Sanction for the prosecution of Hardev Singh and Radhe Shyam was granted which is Annexure P8. This sanction was granted by the Home Secretary, Chandigarh administration, while Commandant General, Home Guards, Punjab refused to grant sanction for the prosecution of Sarabjit Singh.

4. Both Hardev Singh and Radhe Shyam assailed their prosecution on the ground that their trial had been quite delayed. It was contended that speedy trial is the essence of the criminal justice and delay in trial itself constitutes denial of justice and abuse of the process of the Court Annexure P1 shows that the offence was alleged to have been committed in the year 1983 and after investigation challan was presented in Court which led to the conviction of the petitioners. The conviction was set aside by the Additional Sessions Judge, Chandigarh in April, 1990 but in the year 1991 sanction was again granted for their prosecution for the same offence. A period of more than 8 years had already elapsed when the sanction was granted. Hardev Singh petitioner had already retired from service. Both the petitioners had faced agony of trial for the last more than 8 years and they were in no way responsible for the delay in the trial. They were prosecuted without obtaining sanction from the competent authority. They will be subjected to great harassment, mental agony and expense if they were subjected to another trial for the same offence. It was further contended that inordinate delay of more than 8 years sounded death knell of the prosecution case even though a prima facie case was made out from FIR.

5. The contention of the learned counsel for the petitions is well merited. There is no denial of the fact that the petitioners had faced a trial for the last more than 8 years and now again sanction has been granted for their prosecution. It has been

held in numerous cases that where there is inordinate delay in the disposal of the case that itself calls for the quashing of the proceedings. In the case of *Asa Nand v. State of Haryana*, 1991(1) Recent CR 191 prosecution of the accused under the Prevention of Food Adulteration Act, 1954 was prolonged for more than 7 years. It was held that delay in trial by itself constituted denial of justice and the accused was acquitted. In *Madhesh Wardhari Singh v. State of Bihar*, 1990(3) Recent Criminal Report 302 : AIR 1986 Patna 324, a Full Bench of the Patna High Court observed :

"In all criminal prosecutions the right to a speedy public trial is now an inalienable fundamental right of the citizens under Article 21 of the Constitution. This cannot be allowed to be whittled down on any fanciful ground of the hoary origin of this right in the constitutional history of Great Britain and America nor consideration of affluence of developed countries are even remotely relevant or germane in this context. Therefore, it is not possible to read down the right of speedy and public trial in India for the fact that our society as yet is not as developed or affluent as the Anglo American one."

It was further observed :

"The fundamental right to a speedy public trial extends to all criminal prosecutions for all offences generically, irrespective of their nature. It is not confined or constricted to either serious or capital offences only."

"A callous and inordinately prolonged delay of seven years or more which was not occasioned by any extra ordinary or exceptional reason in investigation and original trial plainly violates the constitutional guarantee of a speedy public trial under Article 21 of the Constitution."

The above mentioned authority is fully applicable to the instant case. The trial of the petitioners was not concluded due to negligence of the prosecution in obtaining sanction for the prosecution at the proper time. Earlier the conviction and sentence awarded to the petitioners were set aside and due to the error committed by the prosecution the petitioners will have to face a fresh trial for the same offence. The petitioners who have already faced trial for the last more than 8 years will be again subject to harassment which will amount to denial of justice and abuse of the process of the Court. It will also amount to negation of fundamental right of speedy trial to which the petitioners are entitled.

6. As a result, I accept both the petitions and quash first information report No. 663 of 1983 Annexure P1, sanction order Annexure P8 and all other proceedings arising therefrom.

JUDGMENT accordingly