
(2006) 12 AHC CK 0022
In the Allahabad High Court

Medni Bhooshan and Anil Kumar

APPELLANT

Vs

State of U.P. and Dinesh Chandra

RESPONDENT

Date of Decision : 12-12-2006

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 309, 482
Penal Code, 1860 (IPC) — Section 427, 504, 506

Citation : (2007) 1 ADJ 613

Hon'ble Judges : Vinod Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vinod Prasad, J.—The two brothers Medni Bhushan and Anil Kumar both sons of Bhagwant Prasad, resident of 9 Kasturba Ghandhi Marg, Katchehari Road, Police Station Colonelganj, District Allahabad have preferred this application u/s 482 Cr.P.C. with the prayer to quash the proceeding of criminal case No. 1263 of 1991 State v. Medni Bhushan and Anr., under Sections 504, 427 I.P.C., Police Station Colonelganj, district Allahabad pending in the court of A.C.J.M., Room No. 2, Allahabad. The further prayer is for stay of the aforesaid criminal case during the pendency of this application in this Court.

2. The facts of the case are that a first information report was lodged against the applicants along with their father at police station Colonelganj, Allahabad on 30.11.1991 at 9.30 P.M., under Sections 506, 427 I.P.C. by informant Dinesh Chand son of Gopal Chand resident of 10 Old Katra, Colonelganj previously resident of 9 Kasturba Ghandhi Marg, Katchehari Road, Police Station Cobnelganj, District Allahabad. It was alleged that the complainant was resident of 9 Kasturba Ghandhi Mafg, Katchehari Road, Police Station Colonelganj, District Allahabad where he owned a godowns and at the relevant time of the incident he was residing in house No. 10 Purana Katra, Allahabad. On 26.11.1991 at 8.00 A.M. Bhagwant Prasad, father of the present applicants armed with his licensee

revolver, accompanied by his sons and other anti-social elements armed with rifle started demolishing the boundary wall of the aforesaid premises at 9 Kasturba Gandhi Marg, Katchehari Road, Police Station Colonelganj, District Allahabad. The servant of the complainant Younus, who was residing in the said premises, tried to stop them but the present applicants threatened to shoot him dead. Harun son of Yakoob, Mobin son of Idreesh had witnessed the incident. Regarding the said premises civil litigation was going on between Bhagwant Prasad and Meena Gupta in the court. The police after the regular investigation submitted a charge sheet on 25.8.1992 u/s 504 and 427 I.P.C. in the court against the two applicants only and found the implication of Bhagwant Prasad, the father, to be false. Charge sheet resulted into registration of case No. 1263 of 1991 in the court on 7.1.1993. The accused were summoned on 5.1.1994 by the learned Magistrate and 30.5.1994 was the date fixed in the case. The accused appeared in the court on that date. Since then, the case is going on and has not been concluded as yet. Consequently, the present application u/s 482 Cr.P.C. invoking inherent power of this Court has been filed to quash the above noted proceeding being as case No. 1263 of 1991 pending before A.C.J.M. Room No. 2, Allahabad as State v. Medni Bhushan and Anr.

3. I have heard Sri N.K. Mishra, learned Counsel for the applicants at a great length and also the learned A.G.A.

4. The learned Counsel for the applicant contended that the pendency of the prosecution against them for a period of 12 years is nothing but malafidy and deserves to be quashed. He contended that the maximum punishment for the offences for which the applicants had been summoned is two years only, which is triable as a summons case and for 12 years applicants accused have been harassed without examination of any witness, and therefore, prosecution deserves to be quashed. The learned Counsel for the applicants further contended that for the period of 12 years the prosecution has not been able to start the evidence and the order sheet dated 21.9.05 indicates that the prosecution is not interested in producing any witness and therefore, the last opportunity was afforded to the prosecution to lead evidence, in the case, but inspite of that no evidence was led on 5.10.2005 and even on the next date 13.11.05 and the trial is going on without examination of any witness, which is nothing but malafidy and therefore the proceeding should be quashed.

5. Learned A.G.A. on the other hand contended that the prosecution cannot be quashed and must go on.

6. As the facts indicates that the two applicants were arrayed as an accused for offences under Sections 427 and 504 I.P.C. These twin offences are punishable with a maximum punishment of two years and are non-cognizable, bailable and triable by any Magistrate. The Apex Court has held in the case of State of U.P. Vs. Kapil Deo Shukla, that if there is an unwarranted delay then the prosecution can be quashed to prevent the harassment of the accused. The apex was of the opinion that because of the delay, it is not possible to hold a fair trial. The same

view was reiterated by the Apex Court in the case reported in 1994 JIC 406 Santosh Dev v. Archana Gupta. The Supreme Court has further held in the case of Rajdev Sharma v. State of Bihar 1998 ACC 834 that the speedy trial is one of the fundamental rights guaranteed under Article 21 of the Constitution of India. In the case of Ramanand Chaudhari v. State of Bihar AIR 1994 S.C. 94 and AIR 1981 S.C. 641 State of Bihar v. Uma Shankar Jaiswal 1992 S.C.C 93, Abdul Rahman Antuky v. R.S. Nayak the same view has been expressed. The Supreme Court has laid down in Antuley's case (supra) that the prosecution can be quashed on the ground of delay as the speedy trial is the fundamental right guaranteed to the accused under Article 21 of the Constitution of India and prolonged trial is violation thereof. It has been held by the Apex Court in the aforesaid judgment as follows;

The constitutional guarantee of speedy trial emanating from Article 21 is properly reflected in Section 309 of the Code of Criminal Procedure. This Section must be read with Section 482 of the Code which saves the inherent powers of the High Court.

7. In the backdrop these guidelines when I examined the facts of the present case, I find that in the instant case, the accused have been harassed for more than 12 years on a petty matter of demolishing of boundary wall. The order sheet annexure No. 8 filed by the applicants indicates that the prosecution is not interested in prosecuting the applicants and they have been lethargic in their attempt to produce any evidence in the case. It is perceptible from the charge sheet that the charges were framed after five years on 15.7.1999 and since then, the dates were fixed for examination of prosecution witnesses in the case but not a single witness was examined. On the facts of the present case and keeping the petty nature of the offence and the maximum sentence, which can be awarded to the applicants, I consider that the continuation of the prosecution will be only be a harassment of the present applicants.

8. In the result this criminal miscellaneous application is allowed. The prosecution of the applicants in Criminal complaint case No. 1263 of 1991 State v. Meni Bhushan and Anr. under Sections 427, 504 I.P.C. pending before A.C.J.M., Room No. 2, Allahabad is quashed.

9. A copy of this order be sent to the trial court for its intimation.