
(1998) 10 OHC CK 0020
In the Orissa High Court
Case No : O.J.C. No. 9773 of 1998

Nisamani Mohapata

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 15-10-1998

Acts Referred:

Constitution of India, 1950 — Article 21
Penal Code, 1860 (IPC) — Section 279, 337

Citation : (1998) 10 OHC CK 0020

Hon'ble Judges : P.C. Naik, J;A. Pasayat, J

Bench : Division Bench

Advocate : P.K. Mishra and A.K. Panigrahi, for the Appellant; Additional Government Advocate, for the Respondent

Judgement

A. Pasayat, J.—Petitioner in essence has prayed for quashing the criminal proceedings initiated against him on account of long passage of time. According to him, Article 21 of the Constitution of India creates a right in the accused to be tried expeditiously.

2. Factual position as stated by Petitioner is that GR Case No. 275 of 1986 was instituted in the Court of Judicial Magistrate First Class, Paradeep at Kujang on 26.6.1986. On account of unintended nonappearance, matter could not be taken up for a long time and ultimately he came to know that it has not been disposed of and NEW has been issued for nonappearance. Distance Petitioner's house from the Court is 100kMs. and was depending on the learned Counsel engaged. As proper steps could not be taken by the counsel, there was nonappearance and allegations being of very minor nature, proceedings should be dropped, particularly when he is a Government employee.

3. As observed by apex Court in Abdul Rehman Antulay Vs. R.S. Nayak and another etc. etc., , fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Speedy trial is also in the public interest. It is in the interest of all concerned that guilt or

innocence of the accused is determined as quickly as possible in the circumstances, and right to speedy trial flowing from Article 21 of the Constitution encompasses all the stages, namely, the stage of investigation, enquiry, trial, appeal, revision and retrial. So far as accused is concerned, right to speedy trial imports that period of remand and pre-conviction detention should be as short as possible. But differently, accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction. The worry, anxiety, expenses and disturbance to his vocation and peace, resulting from unduly prolonged investigation, enquiry or trial should be minimal. 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. All criminal prosecutions cause some degree of concern and hardship to the accused, but such side-effects should be kept to a minimum and the trial brought to an end within a reasonable time. What is meant by "a reasonable time" would vary from case to case and would depend on the circumstances and local conditions. The Court has to strike a balance between having an effective system of administration of justice and the protection of individual rights under the Constitution. In carrying out such exercise, Court would consider not only period of delay but the reasons therefor. It is not possible in the very nature of things and present-day circumstances to draw a time limit beyond which a criminal proceeding will not be allowed to go. Wherever a complaint of infringement of right to speedy trial is made the Court has to consider all the circumstances of the case and arrive at a decision whether in fact the proceedings have been pending for an unjustifiable long period. In *Mungroo v. R* (1992) LRC (Const 591: (1991) 1 WIR 1351, Lord Templeman expressed the following view:

Problems which are considered to be complex in one administration may be dealt with more expeditiously and with greater certainty and understanding in another. At the same time the constitutional rights of the individual must not be placed at the mercy of insufficiency. The expressed constitutional right contained in Section 10 to a hearing of a criminal case within a reasonable time injects the need for urgency and efficiency into the prosecution of offenders and demands the provision of adequate resources for the administration of justice but, in determining whether the constitutional rights of an individual have been infringed, the Courts must have regard to the constraints imposed by harsh economic reality and local conditions.

Even in a small young country like Kiribati, High Court there of expressed similar sentiments in *Republic of Kiribati. v. Tepiaki and Anr.*: (1993) 3 LR CW 385.

4. Article 21 of the Constitution declares that no person shall be deprived of his life or property except in accordance with procedure prescribed by law. Right to speedy trial is not expressly guaranteed under the Constitution as a right in India but fair, just and reasonable procedure implicit in Article 21 of the Constitution creates such right in the accused. As observed by apex Court in *A.R. Antulay's*

case (supra), speedy trial is of the essence of criminal justice, and there can be no doubt that delay in trial itself constitutes denial of justice. It cannot however, be lost sight of that it is usually the accused who is interested in delaying the proceedings as it often pointed out "delay is a known defence tactics." But such prosecution should not be allowed to become persecution. Apex Court refused to fix any time-limit for trial of offence and observed that it is neither advisable nor practicable to fix any time limit for trial of offences any such rule is bound to be qualified one. 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.

5. In "Common Cause" A Registered Society through its Director v. Union of India and Ors. (1996) 11 OCR (SC) 159 the need for speedy trial was stressed keeping in view Part III of the Constitution of India and the criminal justice system. Slow justice is the antithesis of decent and fair procedure enshrined in Constitution.

6. A report was called for from the learned Magistrate. It reveals that charge-sheet was submitted u/s 279/337 of Indian Penal Code, 1860 (in short, "Indian Penal Code") against the Petitioner on 16.9.1986. Petitioner appeared on 15.5.1997, police papers were supplied on 5.1.1988 and substance of accusation was explained" on the same day. Though an attempt was made to settle the matter at LokAdalat held on 27.3.1988, it could not be disposed of and matter was posted for hearing. As no steps were taken by Petitioner and there was nonappearance, NBW was issued on 13.6.1990. The same could not be executed for nearly five years and ultimately on 13.11.1995 Petitioner surrendered in the Court of JMFC and was released on bail. Thereafter, matter was posted for hearing. Again on 17.4.1997 Petitioner remained absent and NBW was ordered to be issued. The same has not been executed as yet. On 18.8.1998 notice was issued to the bailor and a misc. case has been started against surety as well as Petitioner. The case now stands posted to 22.1.1999 for production of Petitioner.

7. Long passage of time in all cases cannot be a ground for dropping a proceeding. It is more so in a case where delay is on account of non- cooperative attitude of a accused and his default in appearance or seeking prolonged adjournments. Otherwise a patty will derive benefits of his own negligent conduct or effort to avoid clutches of law.

8. What is the remedy if a trial is unduly delayed? In the United States, where the right to a speedy trial is a constitutionally guaranteed right, the denial of a speedy trial has been held to entitle an accused person to the dismissal of the indictment or the vacation of the sentence. But in deciding the question whether there has been a denial of the right to a speedy trial, the Court is entitled to take into consideration whether the Defendant himself was responsible for a part of the delay and whether he was prejudiced in the preparation of his defence by reason of delay. The Court is also entitled to take into consideration whether the

delay was unintentional, caused by overcrowding of the Court's Docket or understanding of the Prosecutors. *Strunk. v. United States* (1973) 37 Law Ed 2d 56 is an instructive case on this point. As pointed out in the first *Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, ,* the right to a speedy trial is not an expressly guaranteed constitutional right in India but is implicit in the right to a fair trial which has been held to be part of the right to life and liberty guaranteed by Article 21 of the Constitution. While a speedy trial is an implied ingredient of a fair trial, the converse is not necessarily true. A delayed trial is not necessarily an unfair trial. The delay may be occasioned by the tactic or conduct of the accused himself. The delay may have caused no prejudice whatsoever to the accused. The question whether a conviction should be quashed on the ground of delayed trial depends upon the facts and circumstances of the case. If the accused is found to have been prejudiced in the conduct of his defence and it could be said that the accused had thus been denied an adequate opportunity to defend himself, the conviction would certainly have to go. But if nothing is shown and there are no circumstances entitling the Court to raise a presumption that the accused had been prejudiced there will be no justification to quash the conviction on the ground of delayed trial only. These aspects were highlighted by the apex Court in *State of Maharashtra Vs. Champalal Punjaji Shah, .*

9. Certain passages of the judgment in *abdul Rehman Antulay's case (supra)*" throw considerable light on the matter. They read as follows:

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 frivolous. Very often these stays are obtained on *exparte* representation.

The principles have been reiterated in *Raj Deo Sharma Vs. The State of Bihar,*

10. This case is a classic example where because of Petitioner's nonappearance, matter has been delayed and more than a decade had passed in the meantime. We therefore, reject prayer for quashing the proceedings. Learned Counsel for

Petitioner states that Petitioner shall appear in the Court of JMFC before the date fixed and shall move for bail. If it is done, the prayer shall be dealt with in accordance with law. On the Petitioner appearing before the Magistrate, he would do well to dispose of the proceedings early.

The writ application is disposed of accordingly.

P.C. Naik, J.

10. The question involved being of importance, while agreeing with my learned brother Pasayat, J., would like to deal with the subject from another relevant aspect which needs to be attended to if the right to a speedy trial is to become a reality.

11. Menaka Gandhi's case (Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another,) brought about a new dimension to the meaning and purpose of Article 21 which provides that no person shall be deprived of his life or personal liberty except according to the procedure established by law. This Article was engrafted in the Constitution with the object of preventing encroachment upon the personal liberty of a person save in accordance with law and necessarily in conformity with the provisions contained therein. Thus, it became incumbent before depriving of a person of his life or personal liberty to strictly follow the procedure established by law. As a result of the liberal interpretation of the words "life and liberty", it came to be held that right to life would include the right to live with human dignity and would also include an those aspect of life which go to make a man's life meaningful, complete and worth-living. Since incarceration affects a person's right of free movement, it was thought that a person should not be imprisoned awaiting a trial, because imprisonment should follow a judgment of guilt but should not precede it. Thus, the right of a prisoner to a speedy trial was brought within the fold of Article 21.

12. In Hussainara Khatoon and Ors. v. Home Secretary State of Bihar Patna AIR 1979 S.C. 13 and 0, it has been observed:

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.

In the second case, i.e. Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, , it was laid down that the Court could give necessary

directions to the State to enforce the fundamental rights of the accused to a speedy trial. The Supreme Court observed:

the State cannot avoid its constitutional obligation to provide speedy trial to the accused by pleading financial or administrative inability. The State is under a constitutional mandate to ensure speedy trial and whatever is necessary for this purpose has to be done by the State. It is also the constitutional obligation of this Court, as the guardian of the fundamental rights of the people, as a sentinel on the qui vive, to enforce the fundamental right of the accused to speedy trial by issuing the necessary directions to the State which may include taking of positive action, such as augmenting and strengthening the investigative machinery, setting up new Courts, building new Court houses providing more staff and equipment to the Courts, appointment of additional Judges and other measures calculated to ensure speedy trial.

13. Again, in the case of *Kadra Pahadiya and Ors. v. State of Bihar* AIR 1982 S.C. 1367, the Apex Court has observed:

We have already held in *Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna*, that speedy trial is a fundamental right implied in the guarantee of life and personal liberty enshrined in Article 21 of the Constitution and any accused who is denied this right of speedy trial is entitled to approach this Court for the purpose of enforcing such right and this Court in discharge of its constitutional obligation has the power to give necessary directions to the State Governments and other appropriate authorities for securing this right to the accused. We would, therefore, in order to enable us to exercise this power and make this fundamental right meaningful to the prisoners in the State of Bihar request the High Court to inform us as to how many Sessions Judges, Additional Sessions Judges and Assistant Sessions Judges are there in each district in State of Bihar and what is the number of cases year wise pending before each of them...

Thus, though speedy trial has been recognised as a fundamental right, it has to be admitted that it has not been able to fully guarantee it to every prisoner because of various factors which are beyond the control of the Judiciary which is invariably blamed for the delay.

14. In *Raghumani Mandi Vs. State of Orissa and Others*, , while agreeing with the view expressed, I had briefly dealt with the question of infringement of a right for want of a speedy trial. I had clearly indicated therein why, though denial of a speedy trial infringes the right guaranteed under Article 21 of the Constitution of India, it cannot be achieved or wholly guaranteed in the prevailing circumstances and as to why the Courts cannot be blamed if they are not able to speedily conclude matters pending before them. As I had indicated, though the Courts are in existence for administration of justice, the power to establish Court, create posts and provide funds is with the Government which neither readily creates posts nor does readily provide funds for buildings, library, furniture and other

necessary infrastructure so as to better equip the Judiciary for speedy disposal of cases and smooth dispensation of justice. Though the number of laws and cases is alarmingly high and the litigations are increasing in geometrical proportion, the Judge strength and necessary infrastructure is not being increased even in the arithmetical progression. Thus, there is an ocean like gap between the number of cases and the strength of Judges and number of Courts. This is clear from the following chart which shows the Judge strength and the total number of cases civil, sessions and criminal- pending in each judgeship, some of which comprise more than one districts.

Name of the No. of No. of different Total No. judgeship.

Judges cases pending of pending, Civil Sessions Criminal cases.

1	2	3	4	5	6	Balasore	29	24253	426	11104	35783	Bolangir	24	4837	142	7698	
12677	Cuttack	63	37276	971	21540	59787	Dhenkanal	21	5524	116	10471	16111	Ganjam	40	10620	604	26663
37887	Kalahandi	15	3289	84	7033	10406	Keonjhar	12	2958	362	6874	10221	Khurda	23	12573	480	9189
22242	Koraput	33	4542	553	26984	32079	Mayurbhanj	21	4596	121	5549	10266	Phulbani	13	1523	141	7366
9030	Puri	27	16455	682	12654	29791	Sambalpur	37	7652	494	15234	23380	Sundargarh	22	4457	459	8949
13865	Grand Total:	380	140382	5635	177308	323325	From the above chart, it is evident that there are a total number of 380 Judicial Officers in the State who are responsible for disposing of 323325 cases. It is no doubt true that civil cases include original suits, appeals, revisions, execution cases, misc. cases and misc. judicial cases. and likewise, criminal cases include trials, appeals and revisions and misc. cases. But, the total figure gives an idea of the volume of work which is to be attended to by 380 judicial officers who are actually presiding over different Courts.										

15. Though in the western countries there are Judges varying between 90 and 150 per one million population, in our country have only 11 Judges for the same number of people. Thus, the pressure of work of Judiciary in our country is very high. So, it is not that the Judiciary is not conscious of the right of a prisoner to a speedy trial. Also it is not that it is shirking from its duties or responsibilities to protect the right of a prisoner to a speedy trial, but in spite of its concern, it is finding the same difficult to guarantee this right to every prisoner.

16. I may hasten to add that the particulars which have been given above about the judge strength and the pendency are not by way of an excuse but have been mentioned with the sole intention of placing on record the strain under which the Judiciary in our State is functioning. In fact, it is suffering from a double strain financial and manpower. This is because of the low priority given to the Judiciary. When the number of districts in our State was increased from 13 to 30 and care has been taken by the Government to provide for and post district-level officers Administrative and Police, they did not think it proper to also place a Head of the District Judiciary, a District Judge in each district. Though they have been able to augment resources and finances for a Collector and Superintendent of Police and

other District Officers, they have not been able to augment funds and finances for a District Court and a District Judge. This indicates the lowest priority that is given to the Administration of Justice the third Wing of the State which has to depend on the Government for every rupee it requires. Though this third Wing of the State is headed by the Chief Justice, who is the best person to know about the problems faced by this particular Wing and its needs, he is helpless as he does not have the power to create posts as per requirement nor the finance. All that can be done by him is to make a recommendation and await the sanction. There is no reason why the power to determine the needs of the Judiciary should not be with the Head of the Judiciary who is the best person to know about its expansion and its requirements. The Judiciary should be made financially independent and not to be given the low priority which it has.

17. Thus, in case a right to a speedy trial, which is desirable, it being a guaranteed right; is to become a reality, a fresh look is necessary for strengthening the Judiciary both by increasing the Judge strength and also by making it financially independent to equip itself to deal with the arrears and the alarmingly high number of cases coming before it. The power to create posts and Courts and so also the funding should be with the Chief Justice.

18. In conclusion, I would say that it would be wrong to as same that the Judiciary is concerned about the right of a prisoner to a speedy trial. Yes, to some extent it may also take the blame upon it for not being able to guarantee it, but it would be wrong to lay the entire blame at its doorsteps in view of what has been stated above. Thus, the hurdle in the way of a speedy trial lies not on the head of the Judiciary but elsewhere.

Criminal Revision No. 559 of 1995, Decided on 9th jan, 1998.