

**(2012) 07 MAD CK 0066**

**In the Madras High Court**

**Case No :** Criminal O.P. No. 25537 of 2011 and M.P. No. 1 of 2011

P. Manibalan Mala and Another

APPELLANT

Vs

State and Another

RESPONDENT

**Date of Decision :** 12-07-2012

**Acts Referred:**

Constitution of India, 1950 — Article 21

Penal Code, 1860 (IPC) — Section 147, 148, 149, 304A, 307

**Citation :** (2012) MLJ(Cri) 728

**Hon'ble Judges :** S. Nagamuthu, J

**Bench :** Single Bench

**Advocate :** N. Thiagarajan, for K.B. Vivekanandan, for the Appellant; S. Shanmuga Velayutham, Public Prosecutor, Assisted by M. Maharaja, Additional Public Prosecutor, for the Respondent

**Final Decision :** Dismissed

## Judgement

S. Nagamuthu, J.—The petitioners are accused 1 and 12 in Crime No. 377 of 2000 on the file of the first respondent police. The second respondent is de facto complainant. Altogether there are 18 accused including the petitioners. The said case has been registered for offences under Sections 147, 148, 341, 324, 323, 332, 336, 307, 397 and 436 I.P.C., and Sections 3 and 4 of the Tamil Nadu Public Property (Prevention of Damages and Loss) Act, 1992. Seeking to quash the said F.I.R. the petitioners have come up with this petition. This petition was filed on 18.10.2011 and the same was admitted by this Court on 29.10.2011. Thereafter, the matter was listed on several hearings for filing counter by the respondents. Finally, counter was filed before this Court by the first respondent only on 20.6.2012. In the counter filed by the first respondent, it is stated that on completing investigation, final report was filed against the accused before the learned Judicial Magistrate No. 2, Villupuram on 18.6.2012 and the learned Judicial Magistrate has taken cognizance of the offense under Sections 147, 148, 341, 324, 323, 332, 336, 307, 397 and 436 I.P.C., and Sections 3 and 4 of the Tamil Nadu Public Property (Prevention of Damages and Loss) Act, 1992 by order

dated 19.6.2012 in P.R.C. No. 33 of 2012. Thus, according to the counter filed by the first respondent, this petition has become infructuous.

2. But, the learned senior counsel appearing for the petitioners would contend that this petition has not become infructuous because this Court could examine the question as to whether the consequent proceedings in this case could be allowed to go on before the lower Court.

3. In view of the said submission made, this Court permitted the learned counsel on either side to advance their arguments.

4. The facts of the prosecution case would be as follows:

The de facto complainant Mr. Arumugam, was a Conductor employed under the State Transport Corporation at Villupuram. On 1.6.2000, he was on duty in a Bus bearing Registration No. TN 32 N 0774. One Mr. Mohan was the Driver of the said Bus. The Bus was plying between Puducherry to Villupuram. On 1.6.2012 at about 8.30 p.m., the Bus started its journey from Puducherry. The Bus was fully packed with passengers. At about 9.00 p.m., the Bus was stopped at a place known as Thirubuvanai. Suddenly, 5 persons, of age group between 20 and 30 got into the Bus through the front entrance and similarly 5 other persons got into the Bus through the back entrance. The Bus again commenced its journey. The 5 persons who got into the Bus through front entrance, purchased tickets for them to go to Valavanam Village. Then the Conductor came to the back side of the Bus and wanted the other 5 persons to purchase tickets. They told the Conductor that the persons who got into the Bus through the front entrance would take tickets for them also. Therefore, the Conductor again went to the front side of the entrance. At that time, the Bus reached a place known as S.R. Palayam.

5. When the Bus was running, two persons who had already got into the Bus through the front entrance took out knives and brandished the same against the Driver. They directed the Driver to stop the Bus. Yet another person attacked the Driver on his left thigh with a stick. Therefore, the Driver stopped the Bus. All the 10 people came near the front and back entrances and blocked the same so as to prevent the passengers from getting down. Few more persons were found following the Bus in Motor Cycles. They also surrounded the Bus. All these miscreants had knife and stick in their hands. Some of them were holding plastic cans containing fuel. On seeing these things, fearing that some untoward incident would happen, the Conductor wanted the Driver to take off the Bus. But, one of the miscreants in the crowd shouted at the Driver and Conductor and directed the other miscreants to kill the Driver and Conductor and the passengers as directed by their Leader Mr. Thirumavalavan. He also directed the others to set fire to the Bus. One of the miscreants shouted saying "cut and kill these fellows as the people belonging to our community were killed by upper caste people". One miscreant took out a knife, got into the Bus and cut the Conductor on his head. Another person cut him on his right hand fingers. Few others attacked him with sticks on his hand, shoulder and other parts of the

body. Yet another person attacked him on his left eye. Unable to bear the attack, the Conductor jumped out of the Bus and ran away to save his life. One of the miscreants in the crowd, snatched away the Conductor's bag containing Rs. 5,500/- and the invoice together with the ticket books. Then some of the miscreants attacked the Driver by pulling him out of the Bus and attacked him indiscriminately. Thereafter, they damaged the Bus and caused extensive damage to the wind-screens. The passengers were all frightened. They jumped out of the Bus through windows. Then the miscreants shouted and directed them to set fire to the Bus. The person who had petrol cans poured petrol on the Bus and set fire. The bus was totally engulfed in fire. The Conductor came to know that these miscreants belong to an Organisation known as "Vidudhalai Siruthaigal". They were aggrieved over a murder of the people belonging to their Organization on an earlier occasion. Some of the miscreants were previously known to the Conductor. Thereafter, the Conductor and Driver and others proceeded to the Police Station and preferred complaint against 18 miscreants and others for offence under Sections 147, 148, 341, 324, 323, 332, 336, 307, 397 and 436 I.P.C., and Sections 3 and 4 of Tamil Nadu Prevention of Public Properties Damages Act, 1992.

6. The main ground urged for of quashing the proceedings is the delay of 12 years in filing the final report. According to the learned senior counsel appearing for the petitioners, if the trial is allowed to be conducted in this case, at this length of time, it would be a serious violation of the constitutional right guaranteed under Article 21 of the Constitution of India. The learned senior counsel would further point out that the delay has not been satisfactorily explained and that is the main ground for quashing the proceedings.

7. But, the learned Public Prosecutor appearing for the first respondent would vehemently oppose this petition. The Inspector of Police, Kanchanur Police Station has filed an additional affidavit dated 25.6.2012 before this Court and has also explained the delay. In paragraph No. 5 of the affidavit, he has stated that the investigation was completed in this case even in the month of July 2008 itself. As a matter of fact, opinion of the Additional Public Prosecutor concerned was also obtained on 16.7.2008. He would further state that however, charge sheet was not filed before the Court in time since, the case records were unfortunately mixed up with destruction documents and at that time, this was not noticed by the respondent police. In paragraph No. 6 of the affidavit, he would state that only after filing of the present Criminal Original Petition, when the present Inspector of Police verified the records, he had to ascertain the whereabouts of the records and documents. Thereafter, only he found that the case records were mixed up with the destructed documents in a damaged condition. It is further stated that all the case records pertaining to the above case were destroyed due to natural calamities. Thereafter, the first respondent police recollected all the case records and filed charge sheet before the learned Judicial Magistrate on 18.6.2012. Thus, according to the first respondent, the delay is not willful.

8. The learned Public Prosecutor would submit that going by the gravity of the offence and also the explanation offered by the Inspector of Police for the delay, on the ground of the said delay, the entire proceedings cannot be quashed.

9. But, the learned senior counsel appearing for the petitioner, in order to substantiate his contention, would rely on a number of judgments of the Hon''ble Supreme Court. The first and foremost judgment upon which reliance has been made by the learned senior counsel for the petitioner is in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, wherein, the Hon''ble Supreme Court has laid down that the speedy trial is the sine qua non of Article 21 of the Constitution of India.

10. The learned senior counsel would nextly rely on the judgment of the Hon''ble Supreme Court in Srinivas Gopal Vs. Union Territory of Arunachal Pradesh (Now State), . In that case, the accused was prosecuted for offence u/s 304-A and 338 I.P.C. The charge sheet in the said case was filed by the police after 91/2 years from the date of occurrence. The main question before the Hon''ble Supreme Court was as to whether the trial after 91/2 years from the date of occurrence would be violative of Article 21 of the Constitution of India. While considering the said question, in paragraph Nos. 8 and 9 of the said judgment, the Hon''ble Supreme Court has held as follows:

8. The High Court in the instant judgment under appeal held that this aspect of the matter was not considered by the Magistrate and the High Court quashed the charges against the appellant and remitted the case to the Magistrate for considering the case afresh. In the instant case, the broad facts that emerge are that the alleged offence took place in November 1976, and until the High Court's order in August 1987 no investigation had taken place. The offence is of rash and negligent driving. It is, as such, neither a grave and heinous offence nor an offence against the community as such, though all criminal offences are crimes against society.

9. It is not necessary in the facts and circumstances of the case to decide whether cognizance was properly taken. It is also not necessary to decide whether the extension of period of limitation u/s 473 must precede the taking of the cognizance of the offence. It is also not necessary to decide whether cognizance in this case was taken on 8.9.1977 as held by the learned Magistrate or on 31.3.1986 as held by the High Court. Having regard to the nature of offence there is enormous delay in proceeding with the criminal prosecution by the respondent-91/2 years for a trial for rash and negligent driving, is too long a time. Quick justice is a sine qua non of Article 21 of the Constitution. Keeping a person in suspended animation for 91/2 years without any cause at all-and none was indicated before the learned Magistrate or before the High Court or before us-cannot be with the spirit of the procedure established by law. In that view of the matter, it is just and fair and in accordance with equity to direct that the trial or prosecution of the appellant to proceed no further. We do so accordingly

11. Relying on the above judgment, the learned senior counsel would submit that in the instant case, the delay is about 12 years from the date of occurrence for which, there is no explanation and therefore, the proceedings should be quashed as violative of Article 21 of the Constitution of India.

12. In this regard, the learned Public Prosecutor would submit that the principles stated in the said judgment cannot be made applicable to the facts of the present case because here, the facts are totally distinguishable. In the case before the Hon''ble Supreme Court, the alleged offence was only under Sections 304-A and 338 I.P.C., which are not graver offences compared to the offences said to have been committed by the accused in this case.

13. I find some force in the said argument of the learned Public Prosecutor. As we have noticed above, the Hon''ble Supreme Court has taken note of the fact that the offence is rash and negligent driving and as such the same is neither a grave and heinous offence nor an offence against the community as such, through all criminal offences are crimes against society. It is in this back ground, since the offence is neither grave nor heinous, the Hon''ble Supreme Court held that allowing the prosecution to go ahead with the trial after 91/2 years of the date of commission of the offence would be violative of Article 21 of the Constitution of India. But in the case on hand, undoubtedly, the offences are not only grave but also heinous.

14. As I have already narrated, the Bus which is a public property worth rupees several lakhs was burnt to ashes; the Conductor and Driver of the Bus were attacked indiscriminately with dangerous weapons; the passengers had to jump out of the Bus through windows to save their lives and the cash bag of the Conductor was snatched away by the miscreants. This, in my considered opinion, is undoubtedly a very grave and heinous offence. The innocent Conductor and Driver of the Bus against whom the accused had no grudge had been attacked indiscriminately with dangerous weapons and the Government property was damaged fully. Therefore, going by the gravity of the offence and the heinous nature of the same, simply because there is a delay in filing charge sheet, the entire proceedings cannot be quashed.

15. In my considered opinion, for the fault committed by the Investigating Officer to file charge sheet in the year 2008 itself though the investigation was completed, the accused cannot be allowed to escape from the clutches of law without facing the trial. In this regard, the learned Public Prosecutor would rely on a judgment of a Constitution Bench of the Hon''ble Supreme Court in P. Ramachandra Rao Vs. State of Karnataka, The question for consideration before the Constitution Bench was as to "whether in its zeal to protect the right to speedy trial of an accused, can the Court devise and almost enact such bars of limitation though the legislature and the statutes have not chosen to do so?" The Hon''ble Supreme Court felt that the said question had far reaching implications and therefore, the Constitution Bench consisting of 7 Judges was constituted.

16. In the said judgment, speaking for the majority, Hon"ble Mr. Justice R.C. Lahoti re-emphasised the need for speedy trial in the following words:

No person shall be deprived of his life or his personal liberty except according to procedure established by law-declares Article 21 of the Constitution. Life and liberty, the words employed in shaping Article 21, by the founding fathers of the Constitution, are not to be read narrowly in the sense drearily dictated by dictionaries; they are organic terms to be construed meaningfully. Embarking upon the interpretation thereof, feeling the heart-throb of the preamble, deriving strength from the directive principles of State policy and alive to their constitutional obligation, the Courts have allowed Article 21 to stretch its arms as wide as it legitimately can. The mental agony, expense and strain which a person proceeded against in criminal law has to undergo and which, coupled with delay, may result in impairing the capability or ability of the accused to defend himself have persuaded the constitutional Courts of the country in holding the right to speedy trial a manifestation of fair, just and reasonable procedure enshrined in Article 21. Speedy trial, again, would encompass within its sweep all its stages including investigation, inquiry, trial, appeal, revision and retrial-in short everything commencing with an accusation and expiring with the final verdict-the two being respectively the terminus a quo and terminus ad quern-of the journey which an accused must necessarily undertake once faced with an implication. The constitutional philosophy propounded as right to speedy trial has though grown in age by almost two and a half decades, the goal sought to be achieved is yet a far-off peak. Myriad fact situations bearing testimony to denial of such fundamental right to the accused persons, on account of failure on the part of prosecuting agencies and the executive to act, and their turning an almost blind eye at securing expeditious and speedy trial so as to satisfy the mandate of Article 21 of the Constitution have persuaded this Court in devising solutions which go to the extent of almost enacting by judicial verdict bars of limitation beyond which the trial shall not proceed and the arm of law shall lose its hold.

17. Finally, the Constitution Bench has held that the dictum in A.R. Antulay case is correct and still holds the field. In A.R. Antulay case, the Constitution Bench has held as follows:

It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings.

18. In A.R. Antulay case, the Constitution Bench laid down number of propositions relating to speedy trial. Some of them are (i) fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily; (ii) right to speedy trial flowing from Article 21 encompasses all the stages, namely, the stage of investigation, inquiry, trial, appeal, revision and retrial; (iii) who is responsible for the delay and what factors have contributed towards delay are relevant factors. Attendant circumstances, including nature of the offence, number of accused and witnesses, the workload of the Court concerned, prevailing local conditions and so on-what is called the

systemic delays must be kept in view; (iv) each and every delay does not necessarily prejudice the accused as some delays indeed work to his advantage. Guidelines (8), and (9) are relevant for our purpose and hence are extracted and reproduced hereunder:

(8) Ultimately, the Court has to balance and weigh the several relevant factors-"balancing test" or "balancing process"-and determine in each case whether the right to speedy trial has been denied in a given case.

(9) Ordinarily speaking, where the Court comes to the conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the Court to make such other appropriate order-including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded-as may be deemed just and equitable in the circumstances of the case.

19. Referring to A.R. Antulay case, in P. Ramchandra Rao v. State of Karnataka (supra) case, the Constitution Bench has further held as follows:

(3) The guidelines laid down in A.R. Antulay case are not exhaustive but only illustrative. They are not intended to operate as hard-and-fast rules or to be applied like a straitjacket formula. Their applicability would depend on the fact situation of each case. It is difficult to foresee all situations and no generalization can be made.

(4) It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. The time-limits or bars of limitation prescribed in the several directions made in Common Cause (I) 3, Raj Deo Sharma (I) and Raj Deo Sharma (II) could not have been so prescribed or drawn and are not good law. The criminal Courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of time, as prescribed by the directions made in Common Cause case (I) 3, Raj Deo Sharma case (I and II). At the most the periods of time prescribed in those decisions can be taken by the Courts seized of the trial or proceedings to act as reminders when they may be persuaded to apply their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration the several relevant factors as pointed out in A.R. Antulay case and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time-limits cannot and will not by them-selves be treated by any Court as a bar to further continuance of the trial or proceedings and as mandatorily obliging the Court to terminate the same and acquit or discharge the accused.

20. A close reading of the above judgment of the Constitution Bench in P. Ramchandra Rao v. State of Karnataka (supra) case will keep things beyond any

pale of doubt. As has been held earlier in the another Constitution Bench in A.R. Antulay case, though right to speedy trial is a fundamental right, in a given case, to assess as to whether the delay has infringed Article 21 of the Constitution of India, the Court is required to take into account various factors including the possible prejudice to the accused in his defence and the gravity of the offence.

21. If we apply the above tests to the facts of the present case, as I have held, the gravity of the offence, as already concluded herein above, the manner in which it was allegedly executed, the explanation offered by the prosecution and all the other attending circumstances would only go to clearly establish that there is no likelihood of any prejudice being caused to the accused in his defence due to the delay and there is no likelihood of infringement of Article 21 of the Constitution of India.

22. Next, the learned senior counsel would submit that absolutely there is no material available against the accused making out any offence. The identification of the accused in this case is doubtful, he contended. This argument does not persuade me. A perusal of the F.I.R. would go to show that the names of these petitioners do find a place as A.1 and 12. The Conductor of the Bus has stated that he knew these accused even prior to the occurrence. There are also statements of other witnesses implicating these petitioners. Therefore, it cannot be said that there are no materials at all against these petitioners.

23. Lastly, the learned senior counsel would submit that the first petitioner is a B.Sc degree holder with Computer Diploma and Cartography and the second petitioner has got M.Sc, B.Ed and M.Phil degrees to his credit. Further, the second petitioner was working as a temporary Teacher in a local school. Therefore, according to him, it is highly impossible that they would have been present at the time of occurrence. In this regard, I have to state that while considering the request for quashing, it is not possible for this Court to make a roving enquiry. Whether the petitioners would have been present at the time of occurrence or not is to be appreciated only at the time of trial by the trial Court.

24. Next, the learned senior counsel would further submit that there is no specific overt act attributed against the petitioners. Admittedly, there is a charge u/s 149 I.P.C. It is needless to point out that the presence of the accused, being a member of the unlawful assembly, would be suffice to punish them for the act of the other accused who have committed the main offence in prosecution of the said common object. Therefore, this argument also is liable only to be rejected. In view of the above, I do not find any merit in this petition. Hence, the Criminal Original Petition fails and accordingly, the same is dismissed. However, the teamed Judicial Magistrate is directed to commit the case to the Court of Sessions as early as possible without any further delay and on such committal, the Court of Sessions is directed to give top priority to dispose of this case at the earliest. Consequently, connected miscellaneous petition is closed.