

(1991) 11 BOM CK 0047

In the Bombay High Court

Case No : Criminal Application No. 2652 of 1991

R. Mahadevan Iyer

APPELLANT

Vs

State of Maharashtra and another

RESPONDENT

Date of Decision : 27-11-1991

Acts Referred:

Constitution of India, 1950 — Article 20, 21

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1991) 4 BomCR 414 : (1992) CriLJ 1388

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : Vijay Pradhan and I. S. Thakur, for the Appellant; R.F. Lambay, Assistant Public Prosecutor, for the Respondent

Judgement

1. Is there just no enforceable deadline for the termination of State Prosecution, or is an accused committed to suffer in silence indefinitely if such proceedings span decades ? Is it to be assumed that the Constitutional guarantee of a right to a speedy trial only envisages that there is due compliance if the proceedings commence within a reasonable time without any possibility of the end being in sight. In other words, where a citizen is faced with the new rather familiar pattern of a case being part-heard for an indefinite period of time, would the High Court be justified in exercising its inherent powers to quash such proceedings ? The inherent powers u/s 482 of the Code of Criminal Procedure, 1973 are often exercised for purposes of quashing a proceeding where no, prima facie, case is made out, or where the prospects of a conviction appear to be extremely bleak, or in situations where the machinery of a criminal Court is being used for a collateral purpose.

2. Quashing of such proceedings is justified on the ground that it constitutes abuse of judicial process. On the same analogy, if it were to be demonstrated that a prosecuting authority commences a trial after the lapse of 3 to 5 years and then proceeds aimlessly for another 12 years, the High Court would be

within its authority to quash such a proceeding on the ground that it constitutes abuse of legal process. Such a situation constitutes one more category of cases wherein the High Court can and must exercise its powers for purposes of terminating the proceedings and ridding the judicial system of such malignant litigation. Inevitably, reasons of a relatively respectable nature are forthcoming, the safest of them being that the trial Court itself was unable to dispose of the proceeding due to pressure of work. Invariably, in these prosecutions, the trial gets sidelined because of the fact that the accused is on bail and the Court has to accord priority to custody cases. Other reasons such as the limitations on the part of the Police or the other prosecuting authorities are set out and the inevitable argument canvassed is a situation of "helplessness" in the face of which it is submitted that a seemingly guilty person should not go scot-free by default, whatever be the lapses.

3. The obvious answer is that the State, which is the prosecuting authority and which is the authority exercising full control over all the aforesaid authorities and departments, is obliged, as of necessity, to create the necessary infrastructure for the purpose of implementing constitutional guarantees, and if there is failure on its part in this regard, the constitutional safeguards shall prevail. Articles 20 and 21 of the Constitution prescribe that a citizen shall not be deprived of his liberty except through the procedure prescribed by law and, furthermore, that a person accused of a criminal offence shall be guaranteed a speedy trial. Logically, therefore, if a speedy trial cannot be ensured, the citizen's liberty cannot be curtailed and he will, therefore, have to be set free. Where an accused who is facing a trial is in custody or whether he is on bail are matters of little consequence in this regard because the liberty of the citizen is still curtailed completely or partially and this can only be done within the framework of law. It is in this background that the grievance projected by the present petitioner against whom proceedings are pending since the year 1976 and which have far from concluded in 1991 will have to be examined.

4. This petition is one of a group of petitions filed by the original accused whereby he has prayed for an order from this Court for quashing of the prosecution pending against him. The petition arises in rather unusual circumstances, but raises a point of immense and deep importance, in particular, to the field of criminal jurisprudence in the light of well-defined constitutional provisions. The petitioner was at the relevant time a Customs clearing agent and it is alleged that somewhere around the period 1976-77, that he along with one other person committed certain offences in connection with which complaints were lodged and the Central Bureau of Investigation was required to commence investigations. It is of some relevance to mention that the subject-matter of the entire set of proceedings is supposed to be around Rs. 75,000/-, but that aspect, to my mind, is only of passing significance. The deeper issue involved in this petition concerns the question as to whether the continuance of any of the prosecution instituted should be permitted at this point of time having regard to the circumstances in which the accused finds himself placed.

5. The accused had earlier been directed to furnish a bank guarantee because he had prayed that the amount of money that had been seized from his custody be returned to him. This bank guarantee was required to be renewed from time to time and the record indicates that in the year 1988, Sugla, J. (as he then was), while directing the renewal of the bank guarantee, took serious note of the fact that the criminal cases against the petitioner had been pending for a long time "without any justification". The Court, therefore, directed the concerned Magistrate to dispose of the pending criminal cases expeditiously, but not later than two years from the date of the receipt of the writ. Pursuant to this order, the proceedings continued before the trial Court and once again in March 1991, the State of Maharashtra filed an application for extension of time. On 26-4-1991, while disposing of this application, Sugla, J. observed that the trial Court was obliged to complete the trials by 30th May 1990. No application had been made for extension of time. The application before the Court had been filed as late as on 20th March, 1991, praying for one year's further time for the completion of the trial. The Court refused the application for renewal of the bank guarantee and further observed :-

"However, having regard to the nature of the proceedings, I allow further period of six months from the date of the receipt of the writ of this Court on the Cri. Application to the Metropolitan Magistrate to complete the trial. It is made clear to the Public Prosecutor who is present and to the Metropolitan Magistrate through the order that in case the trial is not completed within the period of six months as stated above, the respondent shall be acquitted honourably."

The order in question was passed by Sugla, J. on 26-4-1991. The six months' period was to elapse on 30-10-1991. It is relevant to point out that the order in question was accepted by the State of Maharashtra, that no appeal was filed against the order and that it, therefore, became final. Prior to 30-10-1991, Criminal Application No. 2437 of 1991 was filed by the State of Maharashtra on 4-10-1991 wherein it was prayed that the earlier order dated 26-4-1991 be modified and that a further time of one year be granted to the trial Court for completion of the cases. The application was strongly opposed by learned Counsel for the present petitioner on a variety of grounds, the most important of which being that no justifiable purpose would be served by pleading on with the existing trials and that in the special circumstances of these cases the Court should not grant the extension as prayed for. I have heard the Criminal Application on merits and I have already dismissed that application, the principal ground being that it is not permissible in law for this Court to either modify, recall or review a final order in a criminal proceeding and that, consequently, the order in question has taken effect. In view of the orders passed in that Criminal Application, one of the consequence would be that on and after the end of October 1991, the criminal proceedings would not survive and the accused shall be deemed to have been acquitted. However, in the course of the arguments of that application, learned counsel for the petitioner submitted that the only prayer in that application was to the effect that the time period which was to expire on

30-10-1991 be extended and that if for any reason the final orders passed in that application were to be set aside that the merits of the matter would still remain to be decided and for this purpose the petitioner has presented a composite application u/s 482 of the Code of Criminal Procedure, 1973 through this petition, contending that on an overall view of the matters as they stand now, that continuance would constitute abuse of judicial process and, therefore, that the criminal proceedings be quashed on merits.

6. It is unnecessary to go into the question as to why the criminal proceedings before the trial Court had not been disposed of even though more than 12 years have elapsed since the charge-sheet has been filed. Some vague references were made by the learned A.P.P. to the effect that in the course of the last 6 months the accused had asked for time. On a perusal of the record, I find that a bunch of documents had been handed over to the accused at a belated stage and time was asked for on the ground that these documents required to be scrutinised and studied. Such an application was perfectly legitimate, but this is not the ground on which the proceedings have not been concluded for the last 12 years. Whether it was a question of the Court not having time or whether it was a case of the prosecution not having been vigilant about proceeding with the matter are also non-issues because today we are faced with the situation whereby over the lapse of 12 years the original Investigating Officer having died, five of the witnesses having died and a majority of others having ceased to be in service, the greater number of others being not traceable/available, the question arises as to whether judicial time should be expended to an empty exercise of further prosecuting these cases.

7. Mr. Pradhan, learned counsel appearing on behalf of the petitioner, has advanced the submission that the Supreme Court as also several of the High Courts have repeatedly taken the view that in spirit, Article 21 of the Constitution confers on an accused the right of a speedy trial. By speedy trial one presupposes that it will be a trial which will be completed within a reasonable period of time and that every effort will be made to avoid delay. Under these circumstances, where a proceeding has not been completed after 12 years have elapsed, it cannot, by any shade of imagination, be argued that the spirit of the rights guaranteed under Article 21 of the Constitution has not been infringed upon. There is another aspect to proceedings of this type, particularly criminal proceedings, which a Court of law requires to take very serious cognizance of. Not only is the Prosecution seriously handicapped due to the passage of time because inevitably some or many of the witnesses may not be available and there is a possibility of the record getting lost or misplaced, but, more importantly, where the burden of establishing the charges vests heavily on the oral evidence of the prosecution witnesses, it would be rather far-fetched to expect that witnesses deposing to facts and circumstances that are more than one decade old would be able to do so with any serious degree of exactness. If the evidence that is to be presented is inevitably uncertain and thereby tainted, it would be a complete waste of judicial time going through such an empty

exercise on the basis of which the prosecution can never hope to succeed.

8. A more serious angle which needs to be borne in mind in such situations is that a criminal prosecution, particularly one of the present type, is a very serious matter because lapses on the part of the defence would inevitably result in penal consequences to the accused which could entail a heavy jail sentence and fine. Under these circumstances, the law presupposes that the accused shall also be afforded a fair opportunity to defend himself. In criminal trials, there are several situations whereby a heavy burden is cast on the accused; sometimes the onus shifts to the accused in criminal proceedings. Under these circumstances, it is just and necessary that the accused be placed in a position whereby he can fairly conduct his defence. If the incidents in question are extremely old in point of time, the accused himself would be heavily prejudiced in his defence. There are also situation wherein the accused is required to produce evidence to contradict or to correct the prosecution witnesses and there are also instances when an accused may be required to summon defence witnesses, all of which would become almost impossible in instances where the delay has been abnormal. If these factors, which cannot be lost sight of, are taken cognizance of, the question that arises is as to whether even if the prosecution is in a position to fairly conduct its case, whether it would be fair to subject the accused to the rigours of that prosecution at a belated point of time. To my mind, if the accused is required to defend under these several handicaps, it cannot be argued by any stretch of imagination that he has been afforded a fair opportunity of defending himself.

9. My attention was drawn to certain decisions, the first of them being in the case of Madheshwardhari Singh and Another Vs. State of Bihar, , wherein the Full Bench of the Patna High Court had occasion to interpret Article 21 of the Constitution and to hold that in the absence of a speedy trial, the rights guaranteed under Article 21 of the Constitution would stand infringed. The Court in this case had occasion to consider a number of decisions of different Courts and finally concluded that it appeared reasonable to the Full Bench to hold that a delay of seven years would be a good ground on which such a prosecution was liable to be quashed. My attention was also drawn to a decision of this Court in the case of Narain Singh Yadav v. The Deputy Chief Controller of Imports and Exports, Kanpur, (Criminal Writ Petns. Nos. 105 of 1989) dated 23-11-1989 (reported in Narain Singh Yadav Vs. The Deputy Chief Controller of Imports and Exports, Kanpur, U.P. and another, wherein Suresh, J. (as he then was) quashed a series of prosecution relating to the year 1983 on the ground that they had been pending for 15 years.

10. Lastly, Mr. Pradhan relied on a decision of the Calcutta High Court in the case of Mihir Kumar Ghosh Vs. State of West Bengal and Others, , wherein once again the Calcutta High Court held that where a criminal proceeding had been pending for 15 years from the date of the offence that the same constituted a violation of the constitutional right to speedy trial of a fair, just and reasonable procedure

recognised under Article 21 of the Constitution and that the accused was entitled to be released from the travails of a prosecution and, consequently, quashed the pending prosecution.

11. In the light of the now well-settled law that the prosecutions of the present type cannot be permitted to continue if they have been going on for an abnormally long period of time and if, on an overall view of the case, the High Court is satisfied that no useful result would be achieved by allowing the continuance thereof, this Court would be justified in exercising its powers u/s 482 of the Code of Criminal Procedure. In this view of the matter, to my mind, the present prosecution is liable to be quashed. The rule is accordingly made absolute. The Petition to stand acquitted and his bail bond to stand cancelled. In the circumstance of the case, there shall be no order as to costs.

12. Rule made absolute.