
(1996) 06 KAR CK 0038

In the Karnataka High Court

Case No : Writ Petition (Habeas Corpus) No. 54 to 62 and 70 of 1996

Ramu Alias Dharya and others

APPELLANT

Vs

State of Karnataka and others

RESPONDENT

Date of Decision : 28-06-1996

Acts Referred:

Constitution of India, 1950 — Article 21

Penal Code, 1860 (IPC) — Section 395, 397

Citation : (1996) 2 ALT(Cri) 798 : (1996) CriLJ 4204 : (1996) 3 KarLJ 562

Hon'ble Judges : P. Krishna Moorthy, J; H.N. Narayan, J

Bench : Division Bench

Advocate : Hasmath Pasha, for the Appellant; H. Kantharaju, Govt. Advocate, for the Respondent

Judgement

1. These are Habeas Corpus petitions filed by the accused persons who are undergoing trial for offences punishable under Sections 395 and 397 of the Indian Penal Code ("IPC" for short) in various Sessions Courts in Karnataka. It is their case that they were arrested initially in Cr. No. 64 of 1987 of Golgumbas Police Station, Bijapur by the Deputy Superintendent of Police, Bijapur on 27-7-1987 and they were charge sheeted for the offence of dacoity in 23 cases punishable under Sections 395 and 397, I.P.C. It is their main grievance that though the petitioners were arrested on 27-7-1987 and continued to be in Judicial Custody, there is no progress in the case and the trial is not yet commenced in many cases. It is further submitted that out of 23 cases, 12 cases ended in acquittal and they were convicted in one case S.C. 29 of 1989 on the file if the learned Principal Sessions Judge, Tumkur, for a period 7 years which was later modified by this court to 5 years rigorous imprisonment. They have already undergone the punishment. But still they continued to be in Judicial Custody in other 10 cases as the trial in the said cases are yet to commence. It is further submitted that the main reason for no commencement of the above trial is due to inaction on the part of the respondent-State in not producing the petitioners before the Courts from Judicial Custody. It is also their case that

though the trial Courts have issued body warrants repeatedly for production of the petitioners before the Courts for trial, respondents have not obeyed the orders of issuing body warrants. The Courts have also not taken serious steps against the respondents for non-production of the petitioners before the Courts. The Courts have extended remand mechanically. The prosecuting agency also has not taken any effective step for completion of trial launched against the petitioners. The lethargic attitude of the prosecution is also responsible for the delay in trial. They have complained to the Court that total period of 9 years pretrial detention suffered by them is not due to the contributory act of the petitioners themselves. They are poor people and are unable to engage any legal practitioners of their choice to defend their cases. However, they are now provided with legal assistance to defend them in the trial. They could not move the bail applications for want of sureties. They have undergone detention for about 9 years without any trial. It complained by them that there is no possibility of trials in various Courts within shortest possible time. Therefore, the period of detention already suffered by them is unfair and unjustifiable. Having regard to the nature of the offences alleged against them the fundamental right of speedy trial guaranteed under Article 21 of the Constitution is denied to them. Therefore, their further detention by Courts is violative of Article 21 of the Constitution and therefore, they are entitled for an order to quash all the proceedings.

2. After notice, the learned High Court Government Advocate prefers to file a counter affidavit of one S. M. Abbai, Senior Superintendent, Central Prison, Bangalore, offering their explanation for delayed trial and non-production of the accused before the various Courts.

3. The sum and substance of the explanation offered in the counter-affidavit is that the timely police escort was not provided as the police had to make elaborate bumboats arrangement during the visit of V.I.Ps. to that particular place and also during festival days. They have also stated that the accused could not be produced before the particular Courts, as they were lodged in a particular place till the completion of trial in that place. While doing so, the State appears to have questioned the maintainability of Habeas Corpus writs on the ground that the detention is not unlawful. According to them, petitions are not maintainable as mala finds or ulterior purpose are not alleged against the State. They tried to assert that non-production of accused persons before the respective Sessions Court is not unreasonable and unfair and hence according to them there is no violation of law much less Article 21 of the Constitution of India. It is also their objection that the petitioners have not availed the procedure contemplated for bail in criminal cases and therefore, they prayed for dismissal of these petitions.

4. We directed the Registrar (Judicial) of this court to get the report for cause for delay in the trial and the progress made in these cases. The Registrar (Judicial) submitted the report stating that in all 10 sessions cases are pending against the accused out of total 23 cases. The petitioners in W.P. 54/96 are facing a trial in S.C. 109/90 on the file of the I Additional Sessions Judge, Hubli. The charge

against the accused was framed in December, 1995. The accused were not produced before the Court from February, 1996 till June, 1996. This is not the reason why the learned Sessions Judge could not fix the date for trial.

5. Petitioners in W.P. 55/96 are facing the trial in S.C. 12/90 before the I Additional Sessions Judge, Bangalore Rural District, Bangalore, and 6 witnesses have been examined. The learned Sessions Judge has summoned the witnesses for further trial on 8-7-1996.

6. Petitioners in W.P. 56/96 are the accused in S.C. 144/90 on the file of the I Additional Sessions Judge, Belgaum. The accused were not produced for a long time and now the case is posted for production of the accused to 17-7-1996, to fix a date for trial.

7. Petitioners in W.P. 57/96 were facing the trial in S.C. 87/94 on the file of the Sessions Judge, Chitradurga. In this case accused prayed for time to engage a counsel and therefore the case was adjourned to 18-4-1996. However, they were not produced before the Court on the next dates of hearing and the case is adjourned to 17-7-1996.

8. Petitioners in W.P. 58/96, 59/96 and 60/96 are the accused in S.C. 36/90, 65/93 and 66/93 on the file of the II Additional Sessions Judge, Mysore. The reason assigned by the learned Sessions Judge for non-commencement of the trial is he is awaiting records from the Principal Sessions Judge, Bijapur and the cases are now posted to 12-7-1996.

9. Petitioners in W.P. 61/96 are the accused in S.C. 14/87 pending on the file of I Additional Sessions Judge, Tumkur. The said case was disposed of on 27-2-1991. However, S.C. 37/89 is another case against the same accused pending on the file of the I Additional Sessions Judge, Tumkur not only for non-production of the accused, but also for other reasons viz., the absence of the Presiding Officers and for want of records.

10 W.P. 62/96 relates to S.C. 63/91 pending on the file of Sessions Judge, Kolar. In this case 4 witnesses were examined on 27-5-1996. The learned Sessions Judge has issued summons to some witnesses and the case is adjourned to 1-7-1996 for further trial.

11. W.P. 70 of 1996 refers to S.C. 35/95 which is pending before the II Additional Sessions Judge, Dharwad. The case was adjourned from 16-12-1996 to 10-1-1996 on which date charge was framed and the case was set out for trial to 24-6-1996. The accused were not produced on the said date. Therefore, the trial is not fixed.

12. These facts extracted above disclose that the accused were arrested on 27-7-1987. It appears from the perusal of the records that the accused are involved in as many as 23 heinous offences viz., dacoity. The records also disclose that charge sheets were filed in some of the cases in the years 1989, 1990, 1993 and 1994. We find from the report submitted by the Registrar

(Judicial) that the accused were committed to trial in the year 1990 in the following Courts :-

1. I Addl. Sessions Judge, Hubli in S.C. 109/90.
2. I Addl. Sessions Judge,, Bangalore Rural District, Bangalore in S.C. 12/90.
3. I Addl. Sessions Judge, Belgaum in S.C. 144/90.
4. Sessions Judge, Chitradurga in S.C. 87/94.
5. II Addl. Sessions Judge Mysore in S.C. 36/90, 65/93 and 66/93.
6. I Addl. Sessions Judge, Tumkur in S.C. 37/89.
7. Sessions Judge, Kolar in S.C. 63/91.
8. II Addl. Sessions Judge, Charwad in S.C. 35/95.

13. Admittedly, there is a delay in disposal of these sessions cases by the learned Sessions Judges. We may at the outset state that the reasons assigned by the learned Sessions Judge for non-commencement or completion of the trial is unacceptable. The core of contentions raised by the petitioners in these writ petitions is the safeguard guaranteed to the accused under Art. 21 of the Constitution of India. The right of a prisoner to a speedy trial is a fundamental right guaranteed under Article 21 of the Constitution vide Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, and Kadra v. State of Bihar AIR 1982 SC 1167. Article 21 mandates that :

"No person shall be deprived of his life or personal liberty except according to procedure established by law."

Having regard to this mandate of the constitution, whether explanation/excuse offered by the State is acceptable at all. The apex Court has repeatedly cautioned in the Criminal Courts in this regard. Various circulars and copies of judgment circulated to the Criminal Courts for speedy trial in cases where the accused are in custody for long time appears to have fallen to the deaf ears of the Presiding Officers handling these cases. The State appears to be the major partner in this lapse. We do not appreciate the casual explanation offered by the State for non-production of the accused before several Sessions Courts hampering the speedy trial. The concerned authorities appear to have ignored the mandates of the Constitution for speedy trial. We have come across number of instances wherein the progress of the criminal trial is hampered for non-production of the accused, even on trivial pretext, non-production of the accused has become more of a rule than an exception. The State Government has necessarily to take steps to avoid this practice. We only remind all the concerned the anxiety expressed by the apex Court in its judgment in "Common Cause" A Registered Society through its Director v. Union of India in W.P. (C) No. 1128 of 1986 issuing general directions with respect to cases pending in criminal Courts all over the country to quash the criminal proceedings or to release the accused

on bail in the circumstances explained in the judgment.

14. The contentions raised by the learned Government Advocate in the counter affidavit filed by him are bereft of merit. It is true that the detention is not unlawful but the accused who are in detention are not put to trial adopting the procedure in accordance with established law. The State cannot detain the accused person alleged of an offence without trial within a reasonable time as it violates the right guaranteed to a citizen under Article 21 of the Constitution of India. The contentions are unacceptable. Therefore, rejected. We caution the concerned authorities to be vigilant in these matters and assist the Courts in speedy disposal of the cases where the accused are in detention for long time. It is not only the duty of the Courts but also the duty of the prosecution agency and the prison authorities to assist the Courts in speedy disposal. We do not wish to advert further to these aspects.

15. The learned Government Advocate assures the Court that the State would endeavour to give all assistance to speedy trial without causing any hindrance. In the light of this assurance, we think it proper to issue the following directions and dismiss the writ petitions as that would satisfy the request of the writ petitioners.

16. Sri Hasmath Pasha-learned counsel for the petitioners suggests that some of the cases may be posted at 3 separate places to hasten the speed of the trial without causing inconvenience to the witnesses etc. Having regard to the facts and circumstances of these cases and having regard to the powers of the High Court u/s 407(2) of the Code of Criminal Procedure, we think it proper to issue directions as follows in these cases and also a general direction to all the Criminal Courts in the State.

(1) S.C. 109/90 on the file of the I Additional Sessions Judge, Hubli, S.C. 87/94 on the file of the Sessions Judge, Chitradurga and S.C. 144/90 on the file of I Additional Sessions Judge, Belgaum, are withdrawn and they are placed at the disposal of II Additional Sessions Judge, Dharwad.

(2) S.C. 37.89 pending on the file of the I Additional Sessions Judge, Tumkur, is withdrawn and placed at the disposal of I Additional Sessions Judge, Bangalore Rural District, Bangalore, where S.C. 12/90 is pending trial.

(3) The learned Sessions Judge where connected Sessions case are pending in respective Courts viz., the I Additional Sessions Judge, Bangalore Rural District, Bangalore; the II Additional Sessions Judge, Dharwad and the II Additional Sessions Judge, Mysore and Sessions Judge, Kolar, are directed to avoid written correspondence to secure the records, but they shall keep in touch with his counter part in securing the records at the earliest possible time.

(4) The learned Sessions Judges shall take up these matters on the next hearing date for trial without loss of time and shall continue from day-to-day. The respondents shall see that the accused shall be kept in one place till the trial is

over and produce the accused persons to the Court without fail under any pretext.

(5) These cases shall take precedence of all the pending cases in their Courts notwithstanding any order or direction or emergent order issued earlier by this Court.

Writ petitions are disposed of with the above observations.

17. Order accordingly.