
(1990) 07 P&H CK 0044

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 10796-M of 1989

Sardar Singh Bhatia and ors.

APPELLANT

Vs

Union Territory of Chandigarh

RESPONDENT

Date of Decision : 09-07-1990

Acts Referred:

Citation : (1990) 2 AICLR 259 : (1990) 2 RCR(Criminal) 453

Hon'ble Judges : S.D.Bajaj, J

Advocate : Rajiv Vij, Sunidh Kashyap, Anand Swaroop, G. S. Bhatia, Advocates for appearing Parties

Judgement

S. D. Bajaj, J.

1. The embezzlement alleged against the petitioner while posted as Head Clerk in the office of Senior Town Planner (Rural) Haryana, Chandigarh, is of Rs. 4518/ and pertains to the period 197475.

On pursuation from the Court the petitioner has deposited the allegedly embezzlement amount with the Registry. Registry would remit it to the Senior Town Planner (Rural), Haryana, Chandigarh.

2. in Maheshwardhari Singh and another v. State of Bihar, 1990(3) Recent Criminal Reports 302: AIR 1986 Patna 324 , a Full Bench of the Patna High Court observed;

"In all criminal prosecutions the right to a speedy public trial is now an inalienable fundamental right of the citizen under Art. 21 of the Constitution. This cannot be allowed to be whittled down on any finical ground of the (sic) origin of this right in the constitutional history of Great Britain and America, nor consideration of affluence of developed countries are even remotely relevant or germane in this context; Therefore, it is not possible to read down the right of speedy and public trial in India for the fact that our society as yet is not as developed or affluent as the AngloAmerican one.

The fundamental right to a speedy public trial extends to all criminal prosecutions for all offences generically, irrespective of their nature. It is not confined or constricted to either serious or capital offences only.

The right to speedy public trial is applicable not only to the actual proceedings in Court but includes within its sweep the preceding police investigation in a criminal prosecution as well.

The right of speedy public trial of criminal prosecution is applicable equally to all offences and irrespective of the fact whether the proceedings are a trial. or an appeal against acquittal.

Laying down of an outer time limit to concretise the right to speedy public trial is envisioned both by principle and precedent. A callous and inordinately prolonged delay of seven years or more which does not arise from the default of the accused or is otherwise not occasioned by any extraordinary or exceptional reason) in investigation and original trial for offences other than capital ones plainly violate the constitutional guarantee of a speedy public trial under Article 21. Unless the fundamental right to speedy trial is to be whittled down into a mere pious wish its enforceability in Court must at least be indicated by an outer limit to which an investigation and the trial in a criminal prosecution may ordinarily extend. Holding otherwise would be merely paying lip service to a precious right whilst denuding it of the benefits of its actual enforceability."

The right to a speedy trial was recognised by this Court in *Pirthi Ram alias Prithvi Singh v. State of Haryana*, 1983(1) Recent Criminal Reports 115 : 1983(1) Chandigarh Law Reporter 118 and by the Supreme Court in *State of Punjab v. Kailash Nath*, AIR 1989, SC 558 : 1989(1) Recent Criminal Reports 139 (SC). Their Lordships of the Supreme Court observed

"Lastly, it was urged by learned counsel for the respondents in these appeals that on the same principle on which Criminal Appeal No. 40 of 1987 in the matter of *Des Raj Singhal* was dismissed these appeals also deserve to be dismissed. So far as this submission is concerned, we find substance as regard the appeal against *Kailash Nath*. The First Information Report in this case was lodged on 27th August, 1985, that is, after six years of the accrual of the cause of action or taking place of the events which took place in 1979 and after about three years even from 31st October, 1982 when the respondent retired from service. Now in 1988 it would be pursuing a stale matter. In this view of the matter, we are of the opinion that the order of the High Court quashing the First Information Report as against *Kailash Nath*, respondent in Criminal Appeal No 422 of 1988, deserves to be maintained though on a different ground."

3. In the present case the occurrence is of the year 1974/75. More than 15 years have since elapsed. The inordinate delay entitles the accused petitioner for invocation of the Constitutional right guaranteed to him under Article 21 of the Constitution of India. Speedy trial is the essence of criminal justice and, therefore there can be no doubt that delay in trial by itself constitutes denial of

justice. In this view of the matter, Criminal Misc. No 10796M of 1989 succeeds and is allowed. First Information Report No. 976 dated 20th September, 1977 registered against the petitioner in Police Station, Chandigarh, and all subsequent proceedings based upon it are quashed:

4. It is, however, made clear that the prosecution of the petitioner having been rendered impossible due to inaction on the part of the State in collecting evidence against him during the last more than 15 years, deposit made by him on pursuation from the Court would not adversely affect the service interest/career of the petitioner.