
(1984) 08 OHC CK 0034

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 468 of 1984

Shyam Sahu and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 10-08-1984

Acts Referred:

Citation : (1984) 58 CLT 331 : (1984) 2 OLR 929

Hon'ble Judges : B.K. Behera, J

Bench : Single Bench

Advocate : Pradip Mohanty and B.P. Ray, for the Appellant; A. Rath, A.S.C., for the Respondent

Judgement

B.K. Behera, J.—The petitioners are three of the fourteen accused persons facing trial in the Court" of the Assistant Sessions Judge, Bhanjanagar, The petitioners, besides some of the co-accused persons, stand charged u/s 395 of the Indian Penal Code for having committed dacoity in the house of Raghunath Nayak in village Rangamaru in the district of Ganjam during the night of April 21/22, 1982, being armed with guns and lathis in the course of which a number of articles were removed after keeping the intimates of the house under awe and causing hurt to some of them. On the completion of investigation, a charge-sheet was placed after a prima facie case was found out. On commitment, the learned Assistant Sessions Judge found a case for framing the charge against the petitioners. On a perusal of the materials gathered in the course of investigation, it would not be appropriate at this stage to say that there are no materials to connect the petitioners with the commission of the offence. While dealing with a matter of hail, it would not be desirable and proper to go into the sufficiency or reliability of the materials placed" by the investigating agency and this is not the stage for documentation on merits.

2. Inviting my attention to the principles laid down by the Allahabad High Court in Sayeed Ahmad Vs. State, and Rajendra Gosain Vs. Superintendent, District Jail and Another, and by the Rajasthan High Court in 1980 CriLJ 94 Chhitar v. State.

Mr. Mohanty has urged on behalf of the petitioners that there has been no legal and proper remand of the petitioners to custody and the illegal detention constitutes a ground for the grant of bail. In the instant case, however, the orders passed in the order sheet by the learned Assistant Sessions Judge would not indicate that the petitioners are in-illegal detention. The petitioners had been produced in the trial Court for the last occasion on February 20, 1984 when the case was posted to March 14, 1984 for fixing the dates of trial with a direction to issue a letter to the Committing Court to cause production of the material objects. Thereafter on a number of occasions, the petitioners have not been produced in the Court for want of escort patty as intimated to the Court by the police agency. Fresh requisitions have been issued to cause production of the petitioners on different dates and the case now stands posted to August 13, 1984 for production of the petitioners and the other accused persons who are in custody for fixing the dates of trial. The petitioners have been detained in custody being charged u/s 395 of the Indian Penal Code, I would, however, refer to some disquieting features hereinafter with regard to the non-production of the petitioners and the other accused persons in custody on some of the dates to which the case was posted and the lack of effective control over the proceedings by the learned Assistant Sessions Judge which has resulted in gross delay in the trial of the petitioners.

3. The alleged occurrence had taken place during the night of April 21/22,1982. After a prolonged investigation in the course of which the accused persons were arrested in different batches, a charge sheet was placed and it was received by the Subdivisional Judicial Magistrate, Bhanjanagar on October 28,1982. After some adjournments and after the papers to be supplied to the accused persons were made ready and supplied, the order of commitment was passed on February 3,1983.

4. As provided in the Code of Criminal Procedure, sessions cases need expeditious disposal. Rules and instructions have been issued by this Court to the subordinate Courts for disposal of sessions cases within six months from the dates of commitment. This case was, therefore, to be normally disposed of by the end of July, 1983. Not six months, but more than sixteen months have passed and the dates of trial have not yet been fixed.

5. After commitment, the record remained in the Court of the learned Sessions Judge, Ganjam-Boudh, Berbatnpur, until April 8, 1983- when Mr. J. N. Acharya, the then Sessions Judge, transferred the case to the Court of the Assistant Sessions Judge, Bhanjanagar, for disposal in accordance with law. Mr. P. K. Misra, Assistant Sessions Judge, Bhanjanagar, was in seisin of the case there after until the general transfers during the last summer whereafter Mr, B. K. Patnaik, Assistant Sessions Judge, is in seisin of the case.

6. Although the case had been received! on transfer in the Court of the Assistant Sessions Judge on April 18, 1983 and the case was posted to April 28, 1983 for further orders, on the date fixed and thereafter on May 10, 1983 the petitioners

were not produced in the Court for want of guards as intimated by the Superintendent of Police, Ganjam, for which fresh escort requisitions had been issued by the Court. On June 3, 1983, the petitioners in custody were produced before the Subdivisional Judicial Magistrate because of the absence of the Assistant Sessions Judge and an order was passed for production of the petitioners in custody on the day following which was the date fixed for the case. The learned Assistant Sessions Judge adjourned the case to June 27, 1983 for hearing on the question of charges. On that date, the counsel appearing for the State was not prepared and the case was posted to July 11, 1983 on which date, the case against another accused person in connection with the same case which had been committed to the Court of Session was clubbed together with this case and the case was adjourned to August 16, 1983, without a specific mention as to its purpose. On August 16, 1983, however, charges were framed against the petitioners and the other co-accused persons and instead of fixing the dates of trial, the case was adjourned to nearly a month to be put up on September 14, 1983 to fix the dates of trial. On September 14, 1983, the petitioners in custody were not produced for non-availability of the escort party as intimated by the Superintendent of Police and the case was adjourned to October 3, 1983 to fix the dates of trial. On the date fixed and thereafter on November 3, 1983 and November 30, 1983, the petitioners in custody were not produced for which steps were taken for their production in the Court. On December 22, 1983, the petitioners were produced in custody. On that day, two of the accused persons, namely, Laxman Behera and Sundarsan Naik (not petitioners herein) expressed that they did not have means to engage an Advocate for which an Advocate was engaged by the Court at the cost of the State and a direction was given for supply of the brief. The case was adjourned to January 17, 1984. No steps had previously been taken for production of the material objects by the learned Assistant Sessions Judge although the case had been received in his Court in April, 1983. For the first time, an order was passed on December 12, 1983 to address a letter to the Committing Court for production of the material objects. On January 17, 1984, to which the case had been fixed, the petitioners in custody were produced and as the learned Assistant Sessions Judge was on leave, the case was posted to February 20, 1984 on which date the petitioners were also produced. The brief was supplied to the learned Advocate engaged at State cost for two of the accused persons and an order was passed to write to the Committing Court to cause production of the material objects posting the case to March 14, 1984 to fix the dates of trial. On March 14, April 4, April 27, May 18, June 26 and July 20, 1984, the dates on which the case had been posted, the petitioners were not produced in custody due to want of escort party as intimated to the Court and it is thus that the case stands posted to August 13, 1984, for production of the accused persons and to fix the dates of trial. In the meantime, several orders had been passed for causing production of the material objects.

7. It is, indeed, unfortunate that no appropriate steps have been taken by the

police agency for production of the petitioners and other accused persons in custody on a number of dates. There might have been other exigencies for which the police personnel might be necessary. But it must be realised that the expeditious disposal of a sessions trial involving under-trial prisoners is no less important. For lack of prompt steps being taken by the learned Assistant Sessions Judge for an expeditious trial, the case has suffered a number of adjournments although the petitioners and some of the other persons are in custody. The sessions trials in which the accused persons are in custody should get priority over the other cases. General Rules and Circular Orders of this High Court on the criminal side have been published in 1977 and Chapters VIII and IX of Part I thereof contain the instructions for the commitment of sessions cases and the sessions business. Rule 57 in Chapter IX provides that sessions cases should usually be given preference over civil and criminal matters, but every Sessions Judge should arrange, as he finds most convenient, for the disposal of urgent civil and criminal matters Rule 58 provides:

"Sessions trials should ordinarily be held in the order in which commitments are made. Sessions Judge should, however, exercise his discretion in the matter of giving priority to certain cases, particularly cases involving the capital sentence subsequently received judging the seriousness of the offence and the convenience of the accused. It should always be the endeavour of every Sessions Judge to see that the sessions trial is brought to a close with due expedition and without unnecessary adjournments."

Rule 352 in Chapter II of Part V provides:

"Sessions Judge shall also submit quarterly to the High Court, a statement showing the result of commitments to the Court of Sessions and of appeals and applications for revision made to them. The Additional or Assistant Sessions Judge, if any, will furnish similar return for his own Court and the Chief Judicial Magistrates in respect of appeals only to the Sessions Judge, who will exhibit the figures separately in his return. Along with the quarterly statement, the Sessions Judges shall submit explanation of causes of delay in disposal of sessions cases pending over six months from the date of commitment and of appeals and revisions pending over six months and three months respectively from the date of their filing."

Evidently, the learned Assistant Sessions Judge had not kept these instructions and principles in mind.

8. The orders passed in the order sheet exhibit lack of effective control by the learned Assistant Sessions Judge over the Court proceedings. As has been submitted at the Bar, the sub-jail where the petitioners have been lodged at Bhanjanagar is about a kilometre away from the Court. The production of material objects for which the case has suffered a number of adjournments was to be secured from the Court of the Sub-divisional Judicial Magistrate sitting by the side of the Court of the Assistant Sessions" Judge, The orders passed by the

learned Assistant Sessions Judge would not show that ha had at any stage addressed a letter either to the Sessions Judge or to the Chief Judicial Magistrate intimating that on a number of occasions, the petitioners in custody were not being produced in the Court. Had such a step been taken, the higher judicial authorities could have taken up this matter with the Superintendent of Police to remedy this malady.

9. The trial has suffered a number of adjournments for non-production of the material objects from a Court by the side of the Court of trial and unduly long dates have been fixed for this purpose. This is in violation of the instructions contained in the Circular Letter No. 10752-A/XI.4/72, dated the 1st July, 1975 issued by this Court in supersession of the previous instructions issued in the year 1973. I would quote below the relevant extract:

"...In the above premises the Courts direct that the posting of sessions cases for trial. should not await the report of the Chemical Examiner and the material objects. If by the date of commitment the material objects and the report of the Chemical Examiner have not been received back, the Committing Magistrate should in his forwarding letter intimate the Sessions Judge the number and date of the letter in which the material objects were sent to the Chemical Examiner for his examination and report. On receipt of the notification of the commitment the Sessions Judge should verify whether production of the material objects and proof of the report of the Chemical Examiner are necessary for the decision of the case. If he finds that they are necessary, but have not been received, he should take effective steps for securing them from the Chemical Examiner concerned with reference to the correspondence of the Committing Magistrate with the Chemical Examiner. Simultaneously, he should fix up the trial of the case and should always be on guard that material objects and the Chemical Examiner's report are received by him by the date fixed for taking evidence in the case. The Courts further direct: that if a sessions trial is adjourned on the ground of either non-receipt of material objects or Chemical Examiner's report the Court concerned should furnish a detailed report as to the steps taken for securing them along with the statement of adjournment of sessions cases."

In spite of these specific directions and instructions which normally should find a place in the guard file to be maintained by every Court of Session, the sessions trial has suffered adjournments for obtaining the material objects,

10. As has been observed by the Supreme Court in Nimeon Sangma and Others Vs. Home Secretary, Government of Meghalaya and Others, , criminal justice breaks down at a point when expeditious trial is not attempted, while the affected parties are languishing in jail.

In the case of Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, the Supreme Court has held:

"We think that even under our Constitution, though speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content

of Article 21 as interpreted by this Court in *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.....

* * * 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 *Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna*, , the Supreme Court has observed :

"It is, therefore, absolutely essential that persons accused of offences should be speedily tried, so that in cases where bail, in proper exercise of discretion, is refused, the accused persons have not to remain in jail longer than is absolutely necessary."

11. Instructions have been issued from time to time by this Court for the guidance of the subordinate Courts for exercising proper control over the criminal proceedings involving under-trial prisoners so that such cases are disposed of with "utmost expedition. General Letter No. 1 of 1980 (Criminal) has been issued by this Court in this regard drawing the attention of the subordinate Courts to the principles laid down by the Supreme Court regarding the desirability of expeditious trials of such cases and in-particular, giving specific instructions to be observed by the Magistrates. These instructions and directions of this Court issued from time to time, if observed by the subordinate Courts, would ensure quick disposal of the cases of under-trial prisoners.

12. When bail is refused by this Court or the subordinate Courts in cases involving capital punishment or in cases relating to heinous offences, the trial Courts have a duty and responsibility to see that such cases are disposed of with utmost expedition keeping in mind the principle laid down by the Supreme Court that speedy trial is a part of the fundamental rights of a citizen.

13. The sessions cases-should not be tried piecemeal and should be tried from day-to-day.

In *Lt. Col. S.J. Chaudhary Vs. State (Delhi Administration)*, , the Supreme Court has observed and held :

"We think it is an entirely wholesome practice for the trial to do on from day-to-day. It is most expedient that the trial before the Court of Sessions should proceed and be dealt with continuously from its inception to its finish. Not only will it result in expedition, it will also result in the elimination of manoeuvre and mischief. It will be in the interest of both the prosecution and the defence that the trial proceeds from day-to-day. It is necessary to realise that sessions cases must not be tried piecemeal. Before commencing a trial, a Sessions Judge must satisfy himself that all necessary evidence is available . If it is not, he may postpone the case, but only on the strongest possible ground and for the

shortest possible period. Once the trial commences, he should except for a very pressing reason which makes an adjournment inevitable, proceed de die in diem until the trial is concluded."

The Courts of Session must keep the aforesaid principles in mind and make an earnest effort for the expeditious disposal of sessions cases.

14. If a Criminal Court is to be an effective instrument in dispensing Justice, the presiding Judge must cease to be a spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent and active interest by putting questions to the witnesses in order to ascertain the truth without unduly trespassing upon the functions of the public prosecutor and the defence counsel, without any hint of partisanship and without appearing to frighten or bully witnesses. (See Ram Chander Vs. State of Haryana, . In order that a Court of Session is to be an effective instrument in dispensing justice, the presiding officer of the Court should himself come prepared after going through the record including the case diary.

15. The inordinate delay and disquieting features noticed in this case have prompted me to record the principles of law, legal procedures and some thoughts with a hope that similar other cases involving under-trial prisoners are taken up and concluded as expeditiously as possible.

16. The question that remains for consideration in the instant case is as to whether on the ground of delay in the trial only, the petitioners should be admitted to bail. Regard being had to the nature of the offence and the materials against the petitioners, placed by the investigating agency, it would not be reasonable and proper, in my view, to release the petitioners on bail merely because of the delay in their trial.

17. While rejecting the application for bail, I would direct the learned Assistant Sessions Judge to take up the trial with utmost expedition and make an earnest endeavour for its conclusion within three months hence and intimate the fact of disposal of the case to this Court.

18. With these observations, I would reject the application for bail. The Miscellaneous Case is accordingly dismissed.

The record be sent down at once, to the Court of trial through a special messenger as the date fixed is August 13, 1984. The Registrar (Judicial) shall send copies of this order to all the District and Sessions Judges in this State for their intimation and communication to the Courts of Session in their Sessions Divisions.