
(1996) 04 BOM CK 0032

In the Bombay High Court

Case No : Criminal Writ Petition No. 1114 of 1986

S.N. Puri and Others

APPELLANT

Vs

N. Banerjee and Another

RESPONDENT

Date of Decision : 22-04-1996

Acts Referred:

Constitution of India, 1950 — Article 21, 227
Criminal Procedure Code, 1973 (CrPC) — Section 482
Imports and Exports (Control) Act, 1947 — Section 5, 6

Citation : (1997) BomCR(Cri) 83

Hon'ble Judges : V.H. Bhairavia, J

Bench : Single Bench

Advocate : Raja S. Bhonsale and R.J. Mane, for the Appellant; M.K. Patwardhan, for R.M. Agrawal, for the Respondent

Final Decision : Allowed

Judgement

V.H. Bhairavia, J.—This petition under Article 227 of the Constitution of India and section 482 of the Code of Criminal Procedure is filed by the petitioners praying for a declaration that the provisions of sections 5 and 6 of the Import and Export Control Act, 1947, are illegal, unconstitutional and ultra vires the Constitution of India and further praying for quashing and setting aside the criminal prosecution in Criminal Case No. 2253/W of 1972 on the ground that it is in violation of the fundamental rights guaranteed under Article 21 of the Constitution of India on the ground of inordinate, callous, inexplicable and incomprehensible unexplained delay.

2. Petitioner Nos. 1 to 4 are directors of petitioner No. 5-Company. A complaint was lodged against the petitioners on the accusation that the petitioners have committed offences punishable u/s 120-B, I.P.C. and section 5 of the Import and Export Control Act, 1947, and section 135 of the Customs Act, 1962.

3. It is stated that a raid was carried out in the year 1967 and a complaint was filed in the year 1972 in the Court of the learned Additional Chief Metropolitan

Magistrate, Bombay. A writ petition was filed in 1973 on the Original Side of this High Court complaining of discrimination in the matter of permission between the petitioners and another company viz., M/s. Wellman (India) Pvt. Ltd., doing the same business. It reveals from the record that the said petition was dismissed for default. Against the said dismissal order, petitioners filed a SLP in the Supreme Court. That petition also came to be dismissed as withdrawn. Thereafter, the proceedings before the Magistrate's Court was revived. However, the petitioners filed an application u/s 395 of the Code of Criminal Procedure raising various contentions regarding making a reference to the High Court and obtaining High Court's verdict regarding the validity of the prosecution launched against the petitioners. The learned Magistrate dismissed the said application on 30th June, 1986. Against the said dismissal order, the present petition has been filed in this Court.

4. It reveals that an order was passed by Daud, J., on 16th July, 1992 directing the Union of India to consider as to whether the prosecution launched against the petitioners to be continued or withdrawn. However, it reveals that no decision has so far been taken by Union of India. Under these circumstances, without going into the merits of the case, the question before me is :---

Whether it would be justified and fair to allow to continue the prosecution after a lapse of nearly 30 years?

5. Mr. Bhonsale, learned Counsel appearing for the petitioners, has vehemently argued that delay in completing the prosecution deprives the liberty of a citizen and violates Article 21 of the Constitution of India. In support of his arguments, he has cited several authorities.

6. The most important question that requires to be considered by me is :

Does it deprive the personal liberty and life of a citizen in violation of Article 21 of the Constitution of India?

In the case of Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, , it has been observed thus:---

"Now obviously procedure prescribed by law for depriving a person of his liberty cannot be "reasonable, fair or just" unless that procedure ensures a speedy trial for determination of the guilt of such person. 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."

7. The above view is also reflected in the Full Bench Judgment in Madheshwardhari Singh and Another Vs. State of Bihar, , wherein it has been observed thus :---

"In all criminal prosecutions the right to a speedy public trial is now an

inalienable fundamental right of the citizen under Article 21 of the Constitution 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."

In the instant case, it is apparent that there is considerable delay under one or the other pretext in completing the prosecution. As indicated above, a raid was carried out in the year 1967 and after 5 years a complaint was filed in the Magistrate's Court. Thereafter a writ petition was filed in this High Court in the year 1973 and the said matter went upto the Supreme Court. Again, the matter went back to the Magistrate's Court in the year 1982 and in the year 1983 the petitioners filed an application u/s 395 of the Code of Criminal Procedure for referring the issue in question to the High Court which was dismissed in the year 1986. Against that order of rejection, this petition was filed in the year 1986. Rule was issued and interim stay was granted in the said petition. Since then the trial could not be started in the trial Court. As further indicated above, an order was passed by Daud, J., directing the Union of India to consider whether they wanted to continue the prosecution or withdraw the same, in the changed circumstances. However, the Union of India has so far not considered that issue and thus this petition came for final hearing before me.

8. In the case of Hussainara cited supra, it has been further observed thus:---

"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 *Mrs. Maneka Gandhi Vs. Union of India* (UOI) and *Another*, . We have held in that case that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except in accordance with the procedure prescribed by law and it is not enough to constitute compliance with the requirement of that Article that some semblance of a procedure should be prescribed by law, but that the procedure should be "reasonable, fair and just". If a person is deprived of his liberty under a procedure which is not "reasonable, fair or just", such deprivation would be violative of his fundamental right under Article 21 and he would be entitled to enforce such fundamental right and secure his release. Now, obviously procedure prescribed by law for depriving a person of his liberty cannot be "reasonable, fair or just", unless that procedure ensures a speedy trial for determination of the guilt of such person. 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."

9. In the case of *Abdul Rehman Antulay Vs. R.S. Nayak and another etc. etc.*, , after considering the various Judgments delivered by the Apex Court and various High Courts, the Supreme Court has laid down some guidelines regarding speedy trial viz.,

(1) Whether the accused is responsible for delay?

(2) Whether he is prejudiced by such delay in any manner? Of course, in some

case the delay may itself amount to prejudice.

(3) Nature of offence with which the accused is charged.

Further ---

(1) Whether the fundamental right to a speedy trial enshrined in Article 21 of the Constitution of India by precedential mandate is confined to only capital offences or is attracted to all offences generically?

(2) Whether the aforesaid right to a speedy trial is applicable only to the proceedings in Court *stricto sensu* or includes with its sweep the preceding Police investigation as well?

(3) Is a speedy trial equally mandated by both the letter and spirit of the Code of Criminal Procedure, 1973?

(4) Whether the ratio in *State of Bihar Vs. Ramdaras Ahir and Others*, and in *The State Vs. Maksudan Singh and Others*, are applicable equally to all offences and irrespective of the fact whether the proceedings are a trial or an appeal against acquittal?

(5) Whether an outer limit to concretise the right to a speedy public trial is envisioned by principle of President?

10. Having regard to the facts and circumstances of the case, in my view, the apparent inordinate delay in completing the prosecution will deprive the right enshrined under Article 21 of the Constitution of India to the petitioners or it can be held that the prosecution launched against the petitioners is in violation of Article 14 of the Constitution of India. In my opinion, the petitioners are entitled to succeed on the first point that there is inordinate delay in completing the prosecution. There is, in fact, a delay of 30 years. In the instant case, after filing the complaint against the petitioners, their licence for carrying on their business was suspended for 10 years and they were out of business for a pretty long time. There is, therefore, an apprehension that free, fair, reasonable and just trial would not be guaranteed to the petitioners by the prosecution. That would amount to deprivation of fundamental right guaranteed under Article 21 of the Constitution of India. It is true that, as held by the Supreme Court, there is no time limit for speedy trial. But reasonable time for fair and just trial is further guaranteed to a citizen, so that no mischief would be played or misuse of power would be done with some ulterior motive. A citizen cannot be kept on hanging for an indefinite period and time; that the petitioner waiting for 27 years, the petitioner would lose all faith and hope in the administration of justice, thus it will be breach of right of free and fair justice. "Delay justice is denial of justice," the theory no doubt is a golden guideline for the administration of free and fair justice to a citizen. The onus of proof of delay is subsections physiognomy --- it should not be allowed to use or interpreted always in favour of the prosecution. Therefore, in my view, the prosecution launched against the petitioners, which could not be completed even after 27 years under one pretext or the other, at

this stage it is liable to be quashed and set aside.

11. In the result, the petition is allowed. The proceedings in Criminal Case No. 121 of 1984 pending on the file of the learned Additional Chief Metropolitan Magistrate, 8th Court, Esplanade, Bombay, are hereby quashed, as also the Criminal Case No. 2253/W/1972 is also quashed.