

(2017) 04 OHC CK 0038

In the Orissa High Court

Case No : 2010 of 2016

(Sri) Purushottam Lal Kandoi and another

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 07-04-2017

Acts Referred:

Constitution of India, Article 21, Article 226, Article 227 - Amendment of the Schedule - Power of High Courts to Issue certain writs - Power of superintendence over all co

Citation : (2017) 04 OHC CK 0038

Hon'ble Judges : B.K. Nayak

Bench : SINGLE BENCH

Advocate : B.P. Tripathy, D. Pradhan, G.S. Das, P.K. Pani

Judgement

1. This petition under Section 482, Cr.P.C. has been filed to quash the proceeding in Vig. G.R. Case No. 52 of 1992 pending before the learned S.D.J.M. (S), Cuttack on the ground mainly of inordinate delay in trial and disposal of the said case. 2. During the pendency of this petition, petitioner No.2 Sri Bimal Kumar Kandoi expired and the G.R. Case in respect of him has abated by order dated 23.12.2016 passed by the Trial Court. 3. The aforesaid Vigilance G.R. Case was initiated on the basis of FIR lodged by Inspector of Police Vigilance, C.D., Cuttack dated 21.12.1992 alleging that the petitioners and others being the Board of Directors of M/s. Aditya Steel Industries Limited supplied steel of various sizes to Paradeep Phosphates Limited and had submitted bills claiming Rs. 3,22,461.61p. towards octroi tax showing the same to have been paid to the Municipality during the year, 1987-88 and received payment from Paradeep Phosphates Limited ("in short PPL"). But on inquiry it was found that M/s. Aditya Steel Industries Limited did not deposit the octroi tax amount which the petitioners" received from PPL. It was, therefore, alleged that they have committed offences under Sections 420/406/34 IPC. 4. Learned counsel for the petitioners submitted that the prosecution against the petitioner was launched in the year, 1992 of an alleged

occurrence of 1987-88 and though charge-sheet was submitted in the year 1994, five years thereafter the trial started and in November, 1999 prosecution witnesses No. 1 (P.W.1) was examined. Thereafter, P.W.2 was examined and cross-examined. Thereafter, P.W.2 was examined and cross-examined and on 01.03.2001 the Manager, Accounts of PPL was examined as P.W.3. Nearly a year thereafter, the Assistant Manager, Project of PPL was examined as P.W.4 and thereafter only the Investigating Officer was left to be examined, but since February, 2002 the prosecution failed to examine any further witness, though the petitioners used to attend the Court and as such they are facing immense harassment both physically and mentally. 5. It is stated that only on 06.02.2015, the petitioners could not be able to appear personally before the Trial Court because of a wrong date noted by their counsel in his diary, as a result of which the Trial Court passed order issuing N.B.W. against the petitioners, Challenging the said order petitioners filed CRLMC No. 2962 of 2015 before this Court under Section 482, Cr.P.C., wherein this Court directed the petitioners to surrender before the Trial Court and accordingly the petitioners surrendered on 09.07.2015 and were released on fresh bail. Thereafter, though the petitioners approached the Trial Court for expeditious hearing and disposal of the case, no further prosecution witness was examined in spite of issuance of summons to some charge-sheet witnesses. On the other hand the prosecution has filed a petition on 14.10.2015 under Section 311, Cr.P.C. praying for examination of three persons as witnesses for the prosecution even though those persons have not been shown as witness in the charge-sheet. In the said petition the prosecution has also indicated that the informant-investigating Officer, Mr. D.D. Rout, another inspector of Vigilance Mr. B.B. Tripathy are already dead, and that one Nityananda Dalai, Ext. D.S.P., (Vigilance), Cuttack, who is not a charge-sheet witness, but his name has been mentioned in the case diary, should be examined. 6. It was submitted by the learned counsel for the petitioners that a bare perusal of the order-sheets of the Trial Court records would go to indicate that the investigation as well as trial of the case is continuing in a snail's pace since twenty-four years and the petitioners, who are quite old, are suffering for an alleged imaginary offence of deceiving the Cuttack Municipality. It is thus submitted that the petitioners' Fundamental Right to speedy trial as envisaged in Article 21 of the Constitution has been violated, and, therefore, the entire prosecution against the petitioners should be quashed. 7. It was also submitted by the learned counsel for the petitioner's that the evidence of three prosecution witnesses examined so far, who are said to be material witnesses do not disclose anything incriminating against the petitioners, and that the Investigating Officers having already died further continuance of the trial would end in fiasco and allowing such prosecution to continue further would be an abuse of the process of the Court. 8. Learned Additional Standing Counsel for the Vigilance Department contended that delay in trial ipso facto cannot be a ground for quashing the criminal proceeding. Question of delay has to be decided having regard to the totality of the circumstances of each individual case. Unless the delay can be called oppressive or un-warranted, it would not be violative of

Article 21 of the Constitution. 9. Perusal of the lower Court records revealed that for the alleged occurrence of 1987-88 F.I.R. was registered on 21.12.1992 and the charge-sheet, on completion of investigation, prepared on 18.12.1993 was filed before the Chief Judicial Magistrate (CJM), Cuttack on 13.06.1994. The Case suffered several adjournments for supply of police papers to the accused-petitioners, which were ultimately supplied on 08.01.1996. Thereafter by order dated 22.02.1996 the case was fixed for framing of charge. After some adjournments, on 28.10.1996, in absence of the accused persons who were represented by their counsel, charges were framed under Section 420/406 and 34, IPC and the defence counsel pleaded not guilty, and therefore, summons were issued to prosecution witnesses fixing the case to 16.12.1996 for trial. From 16.12.1996 till 06.09.1999 the case suffered twenty adjournments for non-attendance of prosecution witnesses. On all these dates the accused were represented by their counsel under Section 317, Cr.P.C. on 15.11.1999 the first prosecution witness (P.W.1) Sri K. Janaki Rao was examined, cross-examined and discharged and summons to other witnesses were issued. On 06.01.2000 P.W.2 was examined. After more than a year P.W.3, Kamalkanta Sashtri was examined on 01.03.2001. P.W.4 was examined on 11.04.2002. Since then till 01.12.2006 the case suffered several adjournments. On 01.12.2006 a prosecution witness sought for time on ground of illness which was allowed and the case was directed to be put up 11.10.2007 for further orders. And again in the next breath by the same order the C.J.M., transferred the case to the file of S.D.J.M., Cuttack for disposal according to law stating that the offences are under Sections 406/420, IPC. Though the record was transferred, some original documents were not sent to the Court of the S.D J M and on the prayer of the Public Prosecutor the S.D.J.M. passed order on 30.10.2007 calling for original documents from the Court of the C.J.M., Cuttack. The case was thereafter adjourned twenty-nine times till 24.01.2012 by the S.D.J.M. awaiting receipt of documents from the C.J.M. From 24.01.2012 the case was further posted to 20.03.2012 awaiting documents from the Office of the C.J.M. Order dated 20.03.2012 of the S.D.J.M., however does not indicate whether original documents were received from the C.J.M. or not. However the S.D.J.M. directed for issuance of summons to the prosecution witness posting the case to 11.04.2012 for hearing. Since then till 06.02.2015 the S.D.J.M. mechanically passed orders on twenty occasions for issuance of summons to charge-sheet witnesses without indicating whether summons earlier issued were served or not served. The accused persons (petitioners) were present on two to three occasions and on reset of the dates during the period they were represented by their advocate under Section 317, Cr.P.C. 10. On 06.02.2015 in the absence of the accused persons and their counsel, learned S.D.J.M. directed for issuance of N.B.W. against the petitioners. The petitioners having challenged that order of issuance of N.B.W. before this Court in CRLMC No. 2962 of 2015, they were allowed by order dated 02.07.2015 of this Court to surrender before the S.D.J.M , to be released on fresh bail. Accordingly the petitioners surrendered before the S.D.J.M. on 09.07.2015 and were released on bail and the case was then fixed to 16.08.2015 for hearing.

After three adjournments, in absence of any witness for the prosecution, on 14.10.2015 the Assistant Public Prosecutor filed a petition under Section 311, Cr.P.C. and the case was posted to 10.11.2015 for filing of objection to the said petition and at the same time awaiting receipt of original documents from the Court of the C.J.M. Surprisingly, during the last about twenty-five dates there was no mention in the order-sheets about receipt or non-receipt of the original documents from the C.J.M. From 10.11.2015 till 01.08.2016 the case suffered ten adjournments and on all those dates the accused persons were represented by their counsel under Section 317, Cr.P.C. and during this period on four occasions the S.D.J.M. issued reminders to the C.J.M., Cuttack for sending original documents. Nothing was indicated about the petition dated 14.10.2015 filed by the prosecution under Section 311, Cr.P.C. for summoning some persons to be examined as prosecution witnesses, nor the said petition was heard on 01.08.2016 the prosecution filed another petition under Section 311, Cr.P.C. for recalling some prosecution witnesses and accordingly the case was adjourned for filing objection to the said petition and awaiting receipt of original documents from the Court of the C.J.M. The counsel for the defence filed a petition before the S.D.J.M. stating about the pendency of the present CRLMC under Section 482, Cr.P.C. before this Court for quashing of the criminal proceeding. Even though the S.D.J.M. became cognizant of the fact that no order of stay was passed by this Court in the CRLMC, instead of hearing the petitions under Section 311 Cr.P.C. the Court below adjourned the hearing of the case on seven occasions awaiting intimation from this Court and ultimately on the direction of this Court transmitted the Lower Court Records on 16.01.2017, till which date the original documents have not been received from the Court of the C.J.M. nor hearing on the petition under Section 311, Cr.P.C. have been taken up. 11. Both the counsels relied on some decisions of Hon'ble Apex Court with regard to right of the accused for speedy trial. Considering the correctness of the propositions laid down in *Raj Deo Sharma v. State of Bihar* : (1998) 7 SCC 507; *Raj Deo Sharma (II) v. State of Bihar* : (1999) 7 SCC 604 and *Common Cause, a Registered Society v. Union of India*: (1996) 4 SCC 33, a seven Judge Constitution Bench of the Hon'ble Supreme Court in the case of *P. Ramachandra Rao v. State of Karnataka* : (2002) 4 SCC 578 affirmed the view expressed in the case of *A.R. Antulay v. R.S. Nayak* : (1992) 1 SCC 225 and summed up the principles relating to right to speedy trial in Paragraph-29 of the judgment as follows :- "29. For all the foregoing reasons, we are of the opinion that in *Common Cause* case (I) [as modified in *Common Cause* (II) and *Raj Deo Sharma* (I) and (II) the Court could not have prescribed periods of limitation beyond which the trial of a criminal case or a criminal proceeding cannot continue and must mandatorily be closed followed by an order acquitting or discharging the accused. In conclusion we hold : (1) The dictum in *A.R. Antulay* case is correct and still holds the field. (2) The propositions emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down as guidelines in *A.R. Antulay* case adequately take care of right to speedy trial. We uphold and reaffirm the said propositions. (3) The guidelines laid down in *A.R. Antulay* case

are not exhaustive but only illustrative. They are not intended to operate as hard-and-fast rules or to be applied like a straitjacket formula. Their applicability would depend on the fact situation of each case. It is difficult to foresee all situations and no generalization can be made. (4) It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. The time-limits or bars of limitation prescribed in the several directions made in Common Cause (I), Raj Deo Sharma (I) and Raj Deo Sharma (II) could not have been so prescribed or drawn are not good law. The criminal Courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of time, as prescribed by the directions made in Common Cause case (I), Raj Deo Sharma Case (I) and (II). at the most the periods of time prescribed in those decisions can be taken by the Court seized of the trial or proceedings to act as reminders when they may be persuaded to apply their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration the several relevant factors as pointed out in A.R. Antulay case and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time-limits cannot and will not by themselves be treated by any Court as a bar to further continuance of the trial or proceedings and as mandatorily obliging the Court to terminate the same and acquit or discharge the accused. (5) The Criminal Courts should exercise their available powers, such as those under Sections 309, 311 and 258 of the Criminal Procedure Code to effectuate the right to speedy trial. A watchful and diligent Trial Judge can prove to be a better protector of such right than any guidelines. In appropriate cases, jurisdiction of the High Court under Section 482, Cr.P.C. and Articles 226 and 227 of the Constitution can be invoked seeking appropriate relief or suitable directions. (6) This is an appropriate occasion to remind the Union of India and the State Governments of their constitutional obligation to strengthen the judiciary-quantitatively and qualitatively-by providing requisite funds manpower and infrastructure. We hope and trust that the Governments shall act. We answer the questions posed in the orders of reference dated 19.09.2000 and 26.04.2001 in the above said terms." 12. In the case of Vakil Prasad Singh v. State of Bihar: (2009) 3 SCC 355 the Hon"ble Supreme Court while considering the power of the High Court under Section 482, Cr.P.C. to quash the criminal proceeding, held as follows :- "15. The power passed by the High Court under the said provision is undoubtedly very wide but it has to be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the Courts exist. The inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. It is trite to state that the said powers have to be exercised sparingly and with circumspection only where the Court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of the process of the Court or that the ends of justice require that the proceedings ought to be quashed. (See Kurukshetra University v. State of Haryana, Janata Dal v. H.S. Chowdhary and State of Haryana v. Bhajan Lal.)" After taking note of the propositions laid down

in the case of A.R. Antulay (supra) and P. Ramachandra Rao (Supra) the Hon'ble Court in Paragraph-24 further held as follows :- "24. It is, therefore, well settled that the right to speedy trial in all criminal prosecutions (sic prosecutions) is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in Court but also includes within its sweep the proceeding police investigations as well. The right to speedy trial extends equally to all criminal prosecutions and is not confined to any particular category of cases. In every case, where the right to speedy trial is alleged to have been infringed, the Court has to perform the balancing act upon taking into consideration all the attendant circumstances, enumerated above, and determine in each case whether the right to speedy trial has been denied in a given case."

13. In the instant case the trial in respect of an occurrence that allegedly took place in 1987-88 is still pending even after 29 years of the occurrence. It took the state more than four years from the date of the alleged occurrence for registering the FIR in 1992. Even though investigation was completed in about two years, charge was framed two years thereafter. It is found from the order-sheets of the Trial Court record very casually the Chief Judicial Magistrate passed orders, date after date, directing for supply of police papers to the accused persons stating that the police papers were not ready. The Court below did not take care to find out why police papers were not made ready promptly after submission of the charge-sheet. After framing of charge it took three years to examine only four prosecution witnesses after trial was started. It also that after examination of P.W. 4 in April, 2002 till transfer of the case by the C.J.M. to the Court of the S.D.J.M. in December, 2006, without examining any further witness apparently no effective step was taken for procuring attendance of the other prosecution witnesses. Even when on 01.12.2006, the C.J.M. directed to put up the case on 11.10.2007 for further order, by the same order again he transferred the part-heard case to the Court of the S.D.J.M. merely because of the nature of the offences involved This appears to be wholly unjustified. Even though the case record was transferred to the Court of S.D.J.M , the C.J.M. even did not bother to send the original documents pertaining to the case, and the S.D.J.M. went on adjourning the hearing of the case awaiting receipt of original documents from the Court of the C.J.M. Even after sometime the S.D.J.M. forgot about non-receipt of original documents from the C.J.M. and therefore nothing was mentioned in the order-sheets for several dates about the documents. It was only in 2016 and 2017, shortly before transmission of the Lower Court Records to this Court the S.D.J.M. was suddenly reminded of non-receipt of documents from the C.J.M., and therefore, thought it appropriate to issue reminders to the C.J.M. to send the original documents. The order-sheets do not show receipt of documents till the LCR was sent to this Court. 14. From the side of the prosecution no effort was made to procure the attendance of the prosecution witnesses. Belatedly two petitions, one in 2015 and the other in 2016, were filled by the prosecutor under Section 311, Cr.P.C. for summoning some persons who were not shown in the charge-sheet as prosecution witnesses and for recalling some P.Ws already examined. Even the petition filed in 2015 has not yet been

heard and no order has been passed thereon. Even the prosecutor did not pray for early hearing of the petitions. A reading of the order-sheets of the Lower Court Records manifests utter callousness, insensitivity and lackadaisical attitude of the Presiding Officers of the Trial Court and the prosecutors who dealt with the matter. 15. It is not known what would be the result of the two petitions filed by the prosecutor under Section 311, Cr.P.C. It is also not known when they are going to be heard and disposed of. Decision of the Court below on those two petitions is likely to be challenged in higher Courts by the party who would be aggrieved by such orders, which will further delay the Trial. On prosecutions' own showing the material Investigating Officers are already dead, and therefore, it would not be possible on the part of the defence to bring out contradictions in the evidence of other P.Ws. to the notice of the Court for want of confronting such contradictions to the concerned Investigating Officers. 16. The prosecution allegations are that a sum of rupees three lakh and some odd collected persons from P.P.L. towards octroi tax were not deposited or paid to the Municipality. Having regard to the amount involved and the nature of offence alleged, pendency of the prosecution for more than twenty-five years, which may continue further several years, is nothing but sheer harassment to the accused persons. 17. On a very few dates the defence sought for adjournments and on one occasion because of the absence of accused persons N.B.W. was issued against them and this Court allowed the petitioners to surrender before the Trial Court and go on bail. The earlier CRLMC before this Court filed by the petitioners remained pending only for a few months. Otherwise the petitioners mostly were represented before the Trial Court by their counsel under Section 317 Cr.P.C. The delay in the trial in the instant case therefore cannot be attributed to the accused persons. 18. Thus, on the facts in hand as noticed above, the Court is of the opinion that the delay in trial clearly violates the petitioner's constitutional right to speedy trial under Article 21 of the Constitution. This Court feels that under the circumstances, further continuance of the criminal proceeding against the accused-petitioner No.1, who has in the meantime grown quite old, is unwarranted and deserves to be quashed. Consequently, this application is allowed and Vig, G.R. Case No. 52 of 1992 pending on the file of the S.D.J.M. (S). Cuttack is hereby quashed. The CRLMC is thus disposed of, LCR be sent back forthwith. Appeal disposed of.