

(1990) 05 P&H CK 0048

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 401-DBA of 1989

State of Punjab

APPELLANT

Vs

Babu Lal

RESPONDENT

Date of Decision : 16-05-1990

Acts Referred:

Citation : (1990) 2 BC 396 : (1990) 2 RCR(Criminal) 232

Hon'ble Judges : S.D.Bajaj, J and K.S.Bhalla, J

Advocate : S.C. Chhabra, D.N. Rampal, Advocates for appearing Parties

Judgement

S. D. Bajaj, J.

1. While posted as Sub Postmaster in Post Office, Ramsara of Ferozepur district, accusedrespondent Babu Lal is said to have embezzled a sum of Rs. 18,700/ from three Saving Bank Account Nos. 990323, 990329 and 990330 in the Post Office in the name of Om Parkash PW2, Chuni Lal PW3 and Harjit Kaur PW1 respectively during the period June, 1983 to 2nd April, 1984. Since the prosecution against the accused respondent was launched before the learned trial court in criminal case Nos. 63/2 on 23rd July, 1985 without obtaining sanction for prosecuting him, learned trial Court acquitted him on 30th January, 1989.

2. State of Punjab has filed Criminal Appeal No. 401DBA of 1989 against the acquittal of accusedrespondent aforesaid. Leave to appeal was granted by a Division Bench of this Court on 18th September, 1989.

3. We have heard Shri D.N. Rampal, Advocate for the Stateappellant, Shri S.C. Chhabra, Advocate for the respondentaccused and have carefully gone through the evidence on record.

4. out of the amount of Rs. 18,700/ allegedly embezzled by respondentaccused a sum of Rs. 5,000/ was deposited by him in Post Office, Abohar, on 23rd May, 1984. Another amount of Rs. 3,000/ was deposited by the accused in Abohar

Branch of the same Post Office on 8th May, 1984. For the balance amount of Rs. 10,700/ respondentaccused has produced in court Demand Draft No. OLA 15475360 dated 24th April, 1990 drawn by the Sector 17, Chandigarh Branch of the State Bank of India in the name of Postmaster on their Abohar Branch. The entire amount allegedly embezzled by respondentaccused has thus been duly paid back by him to the concerned Branch of the Post Office at Abohar. Registry would despatch the Demand Draft aforesaid to the Postmaster, Abohar, by registered post acknowledgement due.

5. In *Madheshwardhari Singh and another v. State of Bihar*, 1990(3) RCR(CrL.) 302 (Patna) : AIR 1986 Patna 324 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 citizens under Article 21 of the Constitution. This cannot be allowed to be whittled down on any financial ground of the hoary 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 as 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."

6. The right to speedy trial was recognised by this Court in *Prithi Ram alias Prithvi Singh v. State of Haryana*, 1983(1) Recent Criminal Reports 115 and by the Supreme Court in *State of Punjab v. Kailash Nath*, 1989(1) Recent Criminal

Reports 139 : AIR 1989 SC 558. 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 about 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. 442 of 1988, deserves to be maintained though on a different ground."

7. In the present case the occurrence is of the period between June 1983 to 2nd April, 1984. More than six years have since expired. The inordinate delay entities the accused for invocation of the Constitutional right guaranteed to him under Article 21 of the Constitution of India. Speedy trial is of the essence of criminal justice and, therefore, there can be no doubt that delay in tirla by itself constitutes denial of justice in this view of the matter, we find no merit in the State appeal and the same is hereby dismissed.

8. It is, however, made clear that the prosecution of the respondent having been rendered impossible for inaction on the part of the State Government in obtaining sanction of competent authority and the respondent having reimbursed the State of the allegedly embezzled amount the employee would be wholly justified in claiming reinstatement in service.