

(2009) 04 OHC CK 0052

In the Orissa High Court

Surjya Kanta Tripathy and Another

APPELLANT

Vs

State of Orissa (G.A.)

RESPONDENT

Date of Decision : 30-04-2009

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 227, 482
Penal Code, 1860 (IPC) — Section 120B, 406, 409, 471, 488

Citation : (2009) 108 CLT 202 : (2009) 2 OLR 113

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.M. Das, J.—The petitioners are two of the accused persons in VGR Case No. 25 of 1998 corresponding to Vig. C.D.P.S. Case No. 8 dated 23.3.1998.

2. Allegations have been made against the petitioners and other accused persons for alleged commission of offences under Sections 409/406/488/471/120B IPC. The petitioners in the charge sheet, who have been made accused, are the then Executive Engineer and the Junior Engineer of Mahanadi North Division respectively and allegation against them is with regard to non-execution of two numbers of spurs of Rs. 90,450/- and non-recovery of royalty charges of stones amounting to Rs. 39,000/- utilized for stone packing and construction of two Nos. of spurs in course of "Bank Protection of Scoured Bank on Karandia Right near village Nankar (Biswal Bank) from 17.00 K.M. to 17.225 K.M.". The other accused persons are the erst-while Assistant Engineer and the Contractor, who are stated to have since expired.

3. It is pleaded on behalf of the petitioners that the charges are based on the technical inspection report of the Executive Engineer (Vigilance), who inspected the work on 10.9.1996 during the rainy season when the water level in the river was about 20" and evidently the submerged spurs could not be located/detected and the Executive Engineer (Vigilance) deferred inspection to a lean season, i.e.

during summer. He, however, could only take the measurements of visible stone packing and also noted that 425 cubic meter of stones were collected for two Nos. of spurs. He, therefore, directed the Engineering Officer (Vigilance) to verify the records to ascertain its utilization. In this application u/s 482 Cr.P.C. the relevant portion of the report of the Executive Engineer (Vigilance) has been quoted, which is as follows:

It casts doubt regarding the execution of entire work and chargeable Head of expenditure. For this, detailed investigation is to be done & the work is to be inspected in lean season to assess the actual execution.

It is further pleaded that the petitioner No. 1 was never called by the Investigating Officer to explain the allegations made against him till submission of charge sheet and he came to know with regard to pendency of this case only after receipt of summons from the Court of the learned Chief Judicial Magistrate, Cuttack.

4. Learned Counsel for the petitioners submitted that cognizance of the offence was taken without due application of judicial mind and charges have been framed on surmises by order dated 11.1.2007 in spite of an application of the petitioners filed u/s 227 Cr.P.C., which was rejected. This application u/s 482 Cr.P.C. has been filed challenging various factual aspects of the case and, inter alia, stating that no case has been made out against the petitioners with regard to the commission of the alleged offences.

5. Mr. Mohapatra, learned Standing Counsel (Vigilance), while admitting that the other two accused persons have expired in the year 1993-94, vehemently argued that the offences have been, prima facie, made out against the petitioners and the documents/events, which the petitioners have brought before this Court in support of their submission that the offences have not been prima facie made out against them, cannot be considered at this stage. He relied upon the decision of the Supreme Court in the case of *State of Orissa v. Debendra Nath Padhi* (2005) 30 OCR 177 : 2005 (I) OLR 357 in support of his contention that this Court should not exercise its inherent power to quash the proceeding as prayed for relying upon the extraneous material produced by the petitioners at this stage of the case.

6. There is no dispute with regard to the law laid down in the case of *State of Orissa v. Debendra Nath Padhi* (supra). However, Mr. Mishra, learned Counsel for the petitioner vehemently argued that the peculiar facts of this case warrant that the prosecution should be quashed on the ground of violation of fundamental rights of the petitioner guaranteed under Article 21 of the Constitution of India. Mr. Mishra further submitted, as admitted, two of the accused persons are already dead. The petitioner No. 1 was 71 years and the petitioner No. 2 was 65 years of age in the year 2007 when this CRLMC was filed. The right to speedy trial has been denied to the petitioners for which, in the interest of justice, the prosecution should be quashed. In the Constitution Bench decision of the

Supreme Court in the case of P. Ramachandra Rao Vs. State of Karnataka, , a batch of Criminal Appeals were referred to the Constitution Bench, where the appellants, while facing corruption charges under the Prevention of Corruption Act, were acquitted by the Special Courts for failure of commencement of the trial in spite of lapse of two years from the date of framing of the charges in terms of the directions of the Supreme Court in the cases of Common Cause A Registered Society through its Director Vs. Union of India (UOI) and Others, , Common Cause, A Registered Society Vs. Union of India (UOI) and Others, , Raj Deo Sharma Vs. The State of Bihar, , and Raj Deo Sharma Vs. The State of Bihar, . All the appeals were allowed by the High Court without issuing notice to the respective accused persons. A three-Judge Bench of the Supreme Court took the view that the questions in the appeals were, whether the aforesaid decisions of the Court would apply to the prosecutions under the Prevention of Corruption Act and other economic offences and whether time-limits of the nature mentioned in some of these judgments can, under the law, be laid down and that the same should be considered by a Constitution Bench. The Constitution Bench heard the appeals and observed as follows:

The constitutional philosophy propounded as right to speedy trial has though grown image by almost two and a half decades, the goal sought to be achieved is yet a far-off peak. Myriad fact situations bearing, testimony to denial of such fundamental right to the accused persons, on account of failure on the part of the prosecuting agencies and the executive to act, and their turning an almost blind eye at securing the expeditious and speedy trial so as to satisfy the mandate of Article 21 of the Constitution have persuaded the Supreme Court in devising solution by engrafting a bar of limitation beyond which the criminal proceedings or trial shall not proceed. Though the bar of limitation, judicially engrafted, is meant to provide solution but a solution of this nature gives rise to greater problems like scuttling a trial without adjudication, stultifying access to justice and giving easy exit from the portals of justice. Such general remedial measures cannot be said to be apt solutions.

Therefore, it must be left to the judicious discretion of the Court seized of an individual case to find to from the totality of circumstances of a given case if the quantum of time consumed up to a given point of time amounted to violation the of Article 21, and if so, then to terminate the particular proceedings, and if not, then to proceed ahead. The test is whether the proceedings or trial has remained pending for such a length of time that the inordinate delay can legitimately be called oppressive and unwarranted, as suggested in A.R. Antulay (1992) 1 SCC 255.

The dictum in Abdul Rehman Antulay Vs. R.S. Nayak and another etc. etc., is correct and still holds the field. 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. However, 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 fore see all situations and no generalization can be made.

The two or three Judge Bench decision in Common cause cases and Raj Deo Sharma cases run counter to that extent to the dictum of the Constitution Bench in A.R. Antulay case and therefore cannot be said to be good law to the extent they are in breach of the doctrine of precedents. The well-settled principle of precedents which has crystallized into a rule of law is that a Bench of lesser strength is bound by the view expressed by a Bench of larger strength and cannot take a view in departure or in conflict therefrom.

Thus, 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 limitations 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 and 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 cases (I) and (II). At the most the periods of time prescribed in those decisions can be taken by the Courts 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.

7. A seven Judge Bench was constituted for the above purpose. The said Constitution Bench held as follows:

The Constitution Bench judgment in A.R. Antulay case holds that "it is neither advisable nor feasible to draw or prescribe an outer time-limit for conclusion of all criminal proceedings". Even so, the four judgments aforementioned lay down such time-limits. Two of them also lay down to which class of criminal proceedings such time-limits should apply and to which class they should not.

In these circumstances, the Court opined that a seven-Judge Bench should consider whether the dictum aforementioned in A.R. Antulay case still holds the field; if not, whether the general directions of the kind given in these judgments are permissible in law and should be upheld.

8. Applying the ratio as laid down by the Apex Court in the aforesaid Constitution Bench decision to the facts of the present case, it would be amply clear that continuance of the prosecution against the appellants is inevitable to be held as oppressive and unwarranted inasmuch as due to such long delay in completing the trial of the case and the fact that nothing has been brought before this Court that the delay in trial of the case was due to negligence on the part of the

accused and it prima facie appears that the trial has not been completed on account of default on the part of the prosecution where charge sheet itself was submitted after about six years from the date of occurrence, this Court is inclined to quash the prosecution in its entirety by holding that the petitioners have been deprived of their right to speedy trial in violation of the rights guaranteed under Article 21 of the Constitution of India.

9. In the result, the proceeding in VGR Case No. 25 of 1998 pending in the Court of the learned Chief Judicial Magistrate, Cuttack is quashed and the CRLMC is allowed.