
(1998) 11 BOM CK 0043
In the Bombay High Court
Case No : Application No. 2515 of 1992

Velerian Thomas Ferriora and another	APPELLANT
Vs	
State of Maharashtra and others	RESPONDENT

Date of Decision : 24-11-1998

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 114, 381

Citation : (1999) 1 BomCR 453 : (1999) 2 MhLj 447

Hon'ble Judges : T.K. Chandrashekhara Das, J

Bench : Single Bench

Advocate : D.S. Jambaulikar, for the Appellant; S.R. Shinde, Assistant Public Prosecutor, for the Respondent

Judgement

T.K. Chandrashekhara Das, J.—This application was filed for quashing the Criminal Proceedings in Case No. 123-P of 1992 pending before the Metropolitan Magistrate, 21st Court at Bandra, Bombay. The main ground of seeking to quash of the proceedings set up by the applicant is that the said proceedings have been unnecessarily continuing by the trial Court without any sufficient reason, and the trial Court was merely adjourning the case by mere asking of the Prosecutor on flimsy grounds. It is alleged in the application that F.I.R. was filed against the petitioner on 24-12-1982, for an offence of theft allegedly committed of the goods worth Rs. 1,78,115.60/- and the police of Jogeshwari Police Station registered the F.I.R. as C.R. No. 861/82. The offence was alleged to have committed during the period from May 1982 to December 1982. The charge-sheet was filed before the Magistrate of 10th Court at Andheri in September 1982. Subsequently, on 5-11-1985 the case has been transferred to the Court of the Metropolitan Magistrate, 44th Court at Andheri and numbered as Case No. 182-P/85.

2. The charge was framed against the petitioner on 14-1-1985 u/s 381 read with section 114 of the I.P.C. On 14-7-1988 evidence of P.W. No. 1 was recorded and

on 28-7-1988 evidence of P.W. No. 2 was recorded. The recording of cross examination of P.W. No. 2 was partly done on 31-3-1989 and completed the cross examination of P.W. No. 2 on 13-7-1989. At that stage case has been transferred again on 26-11-1991 to 21st Court at Bandra and numbered as Case No. 123/92. Under these circumstances when the proceeding was unnecessary continuing, the applicant approached this Court by way of this application for closing the proceeding.

3. The learned Counsel for the petitioner Mr. Jambaulikar brought to my notice the recent decision of the Supreme Court in Raj Deo Sharma Vs. The State of Bihar, where the Supreme Court has laid down the guidelines for closing the proceedings where inordinate delay is occurred in criminal cases protecting the citizen's right under Article 21 of the Constitution of India. One of the guidelines laid down by the Supreme Court in the aforesaid judgment is that :--

"In cases where the trial is for an offence punishable with imprisonment for a period not exceeding seven years, whether the accused is in jail or not, the Court shall close the prosecution evidence on completion of a period of two years from the date of recording the plea of the accused on the charges framed whether the prosecution has examined all the witnesses or not, within the said period and the Court can proceed to the next step provided by law for the trial of the case."

4. The learned Counsel for the petitioner has submitted that in view of the aforesaid observation of the Supreme Court, a direction may be issued to the trial Court to close the proceeding and pass necessary order according to law. The learned Counsel brought to my notice the several instances of adjournment that has been granted by the learned Magistrate without any valid ground. For example, he brought to my notice the instances that the rozanamas of the proceedings on 24-10-1989. On that day the Sub-Inspector Mr. Pawar was absent and the Court had issued bailable warrant against S.I. Pawar and the matter was adjourned to 16-11-1989. On 16-11-1989 it was recorded that the Investigating Officer was absent and the matter was adjourned to 11-12-1989. On 11-12-1989 the Investigating Officer was present but the Magistrate was on leave and therefore adjourned to 8-1-1990. On 8-1-1990 the Investigating Officer again was absent and again bailable warrant was issued against him and the matter was posted on 22-1-1990. Thereafter the case was adjourned for one or the other reasons and on 14-9-1990 the case was transferred to the Metropolitan Magistrate's 21st Court at Bandra. There also it went on adjourning. On 8-6-1992 the Investigating Officer was also absent and the last chance was given to keep the Investigating Officer present and otherwise the statement of the accused will be recorded and the matter was adjourned to 20-7-1992 and on 20-7-1992 also Investigating Officer was absent and the matter again adjourned to 29-7-1992. On 27-9-1992 also Investigating Officer was absent and non-bailable warrant against the Investigating Officer was issued. At this stage the petitioner approached this Court for quashing the proceedings.

5. In the above mentioned facts it is clear that the trial of the case was going on with a snail pace and the grievance highlighted by the applicant is worth consideration. Therefore in the facts and circumstances of the case I think the interest of justice will be met, if I direct the trial Court to close the trial of the case within one month from the date of the receipt of this judgment and pass appropriate order. The petitioner is given liberty to move an application in the meantime before the Magistrate's Court for closing the matter in view of the decision of the Supreme Court in Raj Deo Sharma Vs. The State of Bihar, as aforesaid. Such application shall be moved by the petitioner within a week from the date of the receipt of this judgment.

Rule is discharged in the above terms.

Interim order vacated.

Certified copy expedited.

6. Rule discharged.