

(1990) 09 BOM CK 0002

In the Bombay High Court

Case No : Criminal Writ Petition No. 35 of 1990

Yoal Maskar and Others

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 20-09-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 12, 14, 197, 397(1), 407
Wild Life (Protection) Act, 1972 — Section 4(1), 55

Citation : (1991) 2 BomCR 485 : (1991) 93 BOMLR 432

Hon'ble Judges : D.J. Moharir, J

Bench : Single Bench

Advocate : S.P. Bhole, for the Appellant; V.V. Nasik, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

D.J. Moharir, J.—By this petition under Articles 226 and 227 of the Constitution of India as also u/s 482, Code of Criminal Procedure, the petitioners pray for quashing of a criminal case pending against them ever since the year 1983. The prosecution in this case is for commission of offence u/s 17(1)(f), 17(1)(g), 39(3) (a) and 40(2) of the Wild Life (Protection) Act, 1972 and which offences are punishable u/s 81 of the said Act and in respect of which the authority to make a complaint has to be as per the provisions of section 35 of the said Act. No Court can take cognizance of any offence unless a complaint is made by the Chief Warden or such other officer as the State Government may authorise in this behalf. Originally two separate complaints were filed. The petitioner No. 1 was proceeded against in Criminal Case No. 37 of 1981 and petitioners Nos. 2 to 6 in Criminal Case No. 36 of 1981, both launched in the Court of the Judicial Magistrate, First Class, Murtizapur, having territorial jurisdiction. The prosecution was launched, in both these cases, however upon the report of the Police Sub-Inspector, Murtizapur. The learned Magistrate who initially took cognizance of the offence in both the cases, u/s 55 of the Wild Life (Protection) Act, subsequently held that the petitioners were being duly proceeded against by the P.S.I. The

petitioners therefore filed Criminal Application No. 206/82 in this Court. The same was decided on 29-7-1982, holding that a Police Sub-Inspector was not a person competent and authorized to prosecute the petitioners for the above said offences. On that short ground this Court by its order quashed the proceedings in the said two Criminal Case Nos. 36/81 and 37/81.

2. Thereupon a fresh criminal case was filed, against all these six petitioners, in the Court of the said Judicial Magistrate, First Class, Murtizapur, but this time in the form of a complaint by the Range Forest Officer having jurisdiction over the area in which the offences were committed. The petitioners as the accused made an application to the learned Magistrate claiming entitlement to a discharge. The application was allowed by an order dated 1-2-1983. The complainant Range Forest Officer moved the Sessions Judge, Akola, invoking his revisional jurisdiction in the Criminal Revision Application No. 226 of 1983. The learned Sessions Judge set aside the order of discharge and then instead of directing the case to be reheard before the Judicial Magistrate, First Class at Murtizapur directed that it be heard by the Chief Judicial Magistrate for the district of Akola. In view of this order dated 29-6-1984, the matter went to the Court of Chief Judicial Magistrate. In that Court also, petitioners then made, similar application again claiming entitlement to an order of discharge. This application dated 6-7-1989 which was opposed by the respondent/complainant by his reply dated 5-8-1989 was heard on 5-9-1989 and by his order dated 20-12-1989 the learned Chief Judicial Magistrate rejected the said application.

3. The contentions which were raised in the application made to the Chief Judicial Magistrate were that inspite of several requisitions sent by the said Court to the Judicial Magistrate, First Class at Murtizapur to send all the records and proceedings of the earlier criminal cases No. 36/81 and 37/81, had not been able to secure the said records and the petitioners were thus kept hanging fire all the time. It was the complainant Range Forest Officer's duty to ensure that the record and proceedings were found and brought before the Court. By reason of this inordinate delay and non-availability of the record and proceedings of the two earlier matters, the petitioners were experiencing extreme difficulty and hardship was caused to them in the matter of being required from one date of hearing to another, several times and it was, even at the time of the application made to the Court of Chief Judicial Magistrate not certain as to how long they would have to keep facing this prosecution. The second submission made before the Chief Judicial Magistrate was that the complaint should be dismissed as barred by limitation inasmuch as the offence in this case was committed as alleged on 26-4-1981 and the charge sheet came to be presented only on 19th of March, 1983. These contentions have also come to be rejected. The present petition has been filed, again praying that the proceedings in Criminal Case No. 262/87 pending before the Chief Judicial Magistrate at Akola be quashed and the petitioners/accused be discharged.

4. In the present petition also the contention which have been raised are that the

criminal case has now been pending without any progress whatsoever since 10-7-1984 and this amounted to squeezing the throats of the principles and a denial of natural justice. The aspect of delay involved had not been duly considered by the learned Chief Judicial Magistrate while rejecting the petitioners' application dated 6th July, 1989. It was also contended that due authorization to the Range Forest Officer, Murtizapur as the complainant in the case, seeking to exercise his power to prosecute u/s 35 of the Wild Life (Protection) Act, 1972, was not indeed there and upto the date of the decision of the said application before the Chief Judicial Magistrate no document establishing due authorisation to the complainant had come to be placed on record. The relevant notification in the Official Gazette of the State came to be placed for the first time only before the learned Sessions Judge while hearing the Criminal Revision Application No. 226/83 and it was an error of law on the part of the learned Sessions Judge to give any credence to this document of a copy of the Official Gazette which was produced before him. The learned Sessions Judge therefore erred, as contended by the petitioners, in taking note of the said document, to come to the conclusion that the learned Chief Judicial Magistrate had rightly found that the complainant Range Forest Officer, Murtizapur, is competent to file a complaint in respect of the contravention of the several offences aforesaid. The petitioners also contended that the learned Chief Judicial Magistrate has no territorial jurisdiction, under the Code of Criminal Procedure to hear and decide the said criminal case and that irrespective of want of territorial jurisdiction, the learned Chief Judicial Magistrate has proceeded to hear the matter only under the orders of the Sessions Judge, Akola, which orders were wrong and illegal. The period of limitation for prosecution of the petitioners had already expired, as per the provisions of section 468 Code of Criminal Procedure, had, also not been duly considered by the learned Chief Judicial Magistrate. The Chief Judicial Magistrate had himself accepted the position that there had been a prolonged delay in this prosecution and that such delay infact tantamounts to inflict undeclared punishment on the accused persons. Even so, he had failed to do so. Thus this was a case of a finding recorded in favour of the petitioners but the order yet passed against them.

5. The petitioners further contended that the record of the earlier two criminal cases which had been filed by the Police Sub-Inspector, Murtizapur in the Court of the Judicial Magistrate, First Class there, being Criminal Case Nos. 36/81 and 37/81 had come to be destroyed since and was no more available. In that view of the matter as also for the reason that the property or articles in the present case had also come to be destroyed, it was not possible to proceed with the prosecution any more and therefore, also the petitioners ought to have been discharged. Another grievance, not too enthusiastically urged one, was that the case law cited before the Chief Judicial Magistrate had not come to be duly considered. So far the petitioner No. 6 Shri P.N. Mitra is concerned it was also contended that his prosecution was entirely bad in law inasmuch as a proper sanction to prosecute him had not been obtained by the respondent/complainant

Range Forest Officer u/s 197 of Code of Criminal Procedure. The very last one of the submissions was that the petitioner No.1 in this case was a patient of derceded cancer and that he should be spared of the further standing of the trial in this case. The petitioners therefore sought an order directing that the proceedings in Criminal Case No. 262/1987 on the file of the Chief Judicial Magistrate, Akola be quashed.

6. The respondent No. 2 Range Forest Officer has stoutly opposed these contentions submitting that sanction to prosecute petitioner No. 6 was not at all necessary. The prosecution in this case was not barred by limitation; that he-the complainant Range Forest Officer was a person duly authorised by the Chief Wild Life Warden, in the complainant's capacity as an Assistant Wild Life Warden subordinate to the Chief Wild Life Warden, for taking steps or exercising power under the provisions of section 55 of the Wild Life (Protection) Act; nor was it correct that the Chief Judicial Magistrate, Akola did not have the territorial jurisdiction to entertain, hear and decide the criminal case against the petitioners. As for the delay over which the petitioners appear to crying hoarse, it was categorically submitted that delay if any, protraction if any, of the proceedings was only a matter for which the petitioners were to be blamed and none else. It was entirely false that the respondent was persisting in continuing the prosecution for ensuring harassment of the petitioners. It was pointed out that this respondent had never objected to the petitioners claiming exemption from personal attendance at certain hearing in the criminal case-whenver they applied for the same. As for the contention that the proceedings were now an entirely fruitless exercise, by reason of the destruction of any records and documents or by reason of the destruction of any property or articles, this respondent submitted that the documents, as were found to have been destroyed, had since come to be reconstructed and placed on the record of the case. So far as the articles of the property in the criminal case were concerned, such as pistol etc., these had come to be delivered in the custody of the petitioners, from whom these had been seized, for the purpose of ensuring proper maintenance thereof during the course of the trial. Therefore to the production of these articles and property as and when these would be required by the Court at the trial, the petitioners thus would be responsible and this respondent would be in a position to take appropriate steps in that behalf also. For these reasons, the respondent No. 2 submitted that the petition was without any merit whatsoever and deserved to be dismissed with costs.

7. At the hearing of this petition, learned Counsel Shri Bhole appearing for the petitioners has in the first instance canvassed the fact for the criminal case being barred by limitation, cognizance taken of the offences, by the learned Chief Judicial Magistrate or for that matter by the Judicial Magistrate, First Class, Murtizapur before whom the said complaint was presented by the respondent No. 2 as the person as the official competent u/s 55 of the Wild Life (Protection) Act was illegal. The basic facts material for determination of the question of limitation are only that the offence in this case was alleged to have been

committed on 26th April, 1981 and the charge-sheet in this case has come to be filed on the 19th of March, 1983. Several offences enumerated above, with the commission of which the petitioners are charged have one particular section as the Penal Code. It is section 51, the provisions being that any provision of the Act if contravened would be punishable with imprisonment upon two years or fine or with both. The offence being therefore, punishable with imprisonment upto two years only, the provisions of section 468(2)(c) would apply in this case and the limitation for launching the prosecution would be three years from 26-4-1981; the complaint filed on 19-3-1984 was therefore, clearly within the period of limitation prescribed.

8. The second submission which was advanced and which would appear to concern not all but only the petitioner No. 6 out of them is that prosecution is bad for want of sanction to prosecute petitioner No. 6. He is described as being the Superintendent of the District Central Prison at Akola. The learned Addl. Public Prosecutor does not dispute the fact that so far as the position and status of this petitioner is concerned he is no doubt an officer of the Class I in the State Services, and that an order for his removal from service would therefore, whenever occasion arises and or is required, would have to be passed by the Governor. However, the other requirement of section 197 of the Code of Criminal Procedure is that, cognizance of the offence against such person would be taken, only when the offence committed by him is one which has been committed by him while acting or purporting to act in the discharge of his official duty. The offences which he has alleged to have complained in the present criminal case are however, entirely personal, entirely unconcerned with the discharge of his official duties as the Superintendent of the District Central Prison and a public servant as such. This limb of the argument would therefore also have to fail.

9. As observed earlier the charge-sheet against these petitioners was initially filed by the Police Station Officer, Murtizapur. When his locus-standi, to prosecute the petitioners was challenged by a writ petition in this Court being Criminal Application No. 206 of 1982, this Court held in its Judgment dated 27-9-1982 that a Police Officer did not indeed have the power u/s 55 to lodge a complaint against the petitioner in regard to the contravention of the provisions of the Wild Life (Protection) Act, 1972. It is for that reason that the proceedings, Criminal Case Nos. 36/81 and 37/81 were both quashed and the petitioners were discharged. Thereafter the complaint as filed on 19-3-1983 was at the instance of Range Forest Officer, Murtizapur. This submission, it appears had also been advanced before the learned Sessions Judge, Akola and has been dealt with at length. Reference has been specifically made to the Notification dated 8th May, 1977 published in the Official Gazette dated 16th June, 1977 that in exercise of the power conferred by clauses (b) and (c) of sub-section (1) of section 4 of the Wild Life (Protection) Act and in supersession of the order issued under the Government, Revenue and Forests Department, No. WLP 1073/199279-PI, dated 19th June, 1976, as also under the Government Forest and Revenue Department order of even number dated 20th November, 1976, the Government of

Maharashtra, for the purposes of the said Act, upon a Range Forest Officer, including those serving in the Forest Development Corporation, Maharashtra, as Assistant Wildlife Wardens. The complainant in this case i.e. the respondent No. 2 here, is a Range Forest Officer and as such an Assistant Wild Life Warden under the provisions of the Wild Life (Protection) Act, 1972. Therefore, under the provisions of section 55 of the said Act, he become a person who is subordinate to the Chief Wild Warden and is duly authorized by him in this behalf. The notification of this authorisation is also admittedly shown. The submission of the petitioner, as one revealed in the petition was, that this notification appointing the complainant Range Forest Officer as Assistant Wild Life Warden and therefore, a person competent, u/s 55 of the Act, to make a complaint in regard to the contravention of offences under the Act was not produced or filed before the Chief Judicial Magistrate, Akola, when the application claiming discharge was heard by him. Instead, it came to produced before the learned Sessions Judge while he was hearing the Criminal Revision Application No. 226 of 1983. That circumstance hardly makes any change in my opinion. For the authority to complain about the commission of the offences was already vested in the said Range Forest Officer, as an Assistant Wild Life Warden under the provisions of Wild Life (Protection) Act even before the present complaint came to be filed on 26-4-1961. It is not a contention that the investment of authority had taken place after the presentation of complaint by complainant as a Range Forest Officer. In the circumstances this contention must also fail.

10. The other contention advanced is pertaining to the order passed by the learned Sessions Judge in the Criminal Revision Application No. 226 of 1983. The learned Sessions Judge heard the said Criminal Revision Application and set aside the order dated 1-2-1983 passed by the Judicial Magistrate, First Class, Murtizapur, discharging the accused persons from the case. In the ordinary course, the matter would have gone back to the Court of the Judicial Magistrate, First Class, Murtizapur, as having, under the provisions of section 177 of code of Criminal Procedure, the territorial jurisdiction to try the offences. Instead the learned Sessions Judge preferred to direct the complaint to be thereafter heard and decided by the Chief Judicial Magistrate. The reason for this as put forth by the learned Addl. Public Prosecutor and which I am, without any hesitation, inclined to agree is that the Sessions Judge must have been of the view that the Judicial Magistrate, First Class at Murtizapur having once taken a view that the complaint is not tenable, might not be free of the impressions earlier carried, in regard to the non-maintainability of the complaint or in favour of the petitioners already exonerated once, as they were before him, therefore then order setting aside the discharge directed by the Judicial Magistrate, First Class without further directing that the criminal case be heard by the Chief Judicial Magistrate, Akola was unsustainable.

11. Whether the Chief Judicial Magistrate does not have the territorial jurisdiction to try the case is another question which is raised in the petition. It can only be shortly answered. While exercising powers of revision u/s 397(1) of Code of

Criminal Procedure, in respect of any proceedings before the order passed, the Sessions Judge can call for and examine such records of any inferior Criminal Court situate within his local jurisdiction, for the purpose of satisfying himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed or as to the regularity of any proceedings of such inferior Court. In the event of passing any order whereby such proceedings would be successfully challenged, the Sessions Judge has also further powers in regard, for example in case of a remand as here, to direct transfer of such a criminal case from one where the proceedings were initiated in the first instance. Section 407 of Code of Criminal Procedure is therefore material according to me. Section 407 of Code of Criminal Procedure provides that whenever it is made to appear to the High Court that an order under this section is required, by any provisions of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice, then the High Court may order that any particular case or appeal or class of cases or appeals be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior, jurisdiction. It requires to be further noted that sub-section (2) of section 407, Code of Criminal Procedure, further provides that the High Court may act either on the report of the lower Court or on the application of any party interested, or on its own initiative. Obviously in the present case it is on his own initiative that the Sessions Judge has directed the transfer of this criminal case. The power which the High Court exercises thus are also exercisable as provided in sub-section (3) of section 408 of Code of Criminal Procedure by the Sessions Judge. Therefore there was no illegality committed, no commission or error indulged in, when the learned Sessions Judge set aside the order of discharge of the petitioners passed by the trial Court and directed that the case, be thereafter heard by the Chief Judicial Magistrate. It is also to be further noted that u/s 12 of the Code of Criminal Procedure it is provided that in every district the High Court shall appoint a Judicial Magistrate, First Class to be the Chief Judicial Magistrate. Basically therefore the Chief Judicial Magistrate, is a Magistrate of First Class, such as the Judicial Magistrate, First Class at Murtizapur who was entitled to take cognizance of the complaint when it was first filed in the year 1981 or when it was by an order of remand sent back to him for trial. Section 14 of Code of Criminal Procedure provides that the Chief Judicial Magistrate may from time to time define the local limits of the area within which the Magistrates appointed u/s 11 or u/s 13 of the Code of Criminal Procedure, may exercise all or any powers with which they may respectively be invested under this Code and this has to be read in conjunction with section 15 which makes a Judicial Magistrate, First Class as a subordinate to the Chief Judicial Magistrate, subject to the general control of the Sessions Judge. In the circumstances the Chief Judicial Magistrate, Akola could not be said to be a Magistrate who did not have the territorial jurisdiction in respect of the offences, the jurisdiction vested in him cover the entire district of Akola. The criminal case could therefore, be properly dealt by him as per orders passed by the Sessions Judge, Akola in Criminal Revision Application No. 226/83.

12. The continuance of the present criminal case, after four years of pendency, is according to the petitioners entirely unwarranted inasmuch as the prospects of the prosecution succeeding therein are bleak by the reason of the fact that the material documents upon which the prosecution relies have come since to be destroyed. So also the property or the articles produced along with the complaint has also come to be destroyed. This position as the learned Addl. Public Prosecutor clarifies is not correct. According to him such all the documents which came to be returned to the petitioners, after the order of discharge was passed in the first instance on 1-8-1983, were sought to be called back from them and upon disinclination expressed or gathered, of the petitioners to produce them again on record, the documents came to be appropriately reconstructed and placed on record once again. So far as the articles in this criminal case are concerned, it is pointed out that these have not been destroyed but merely returned to the petitioners, for being produced as and when required, that is the delivery of the articles as property in this case to the petitioners is only u/s 451 of the Code of Criminal Procedure, whereunder the petitioners would be bound to produce the said articles of which custody has been handed over to them only during the pendency of the criminal case. Therefore there is no substance in the contention that the chances of the prosecution succeeding by reason of non-availability of any document or property in the criminal case are only bleak or that the prosecution should stand wiped out only for that reason.

13. That brings me to the last but the most vehemently advanced contention of the petitioners. According to them they have been subjected to extreme difficulty and hardship has been caused to them by reason of being required to attend the Court from time to time since 1983. That tenor of the allegations is that all this delay has been caused by the complainant, that this delay has, whether deliberately or inadvertently resulted is causing harassment to the petitioners that the petitioners should no longer be subjected to further such harassment and the Court would find this one as a fit case for directing a discharge on that ground only. A plethora of authorities has been cited, infact a very substantial number of pages in the petition from 27 to 39 have been devoted just to the reproduction of the decisions in several authorities, mostly from the Supreme Court. A look at some of these authorities may be taken. In *Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna*, . Their Lordships of the Supreme Court held that even under the Constitution, though speedy trial is not specifically enumerated as a fundamental right, it was implicit in the broad sweep and content of Article 21 as interpreted by the Court earlier that Article 21 confers a fundamental right on every person not to be deprived of his right or liberty except in accordance with the procedure prescribed by law and that such procedure should be reasonable, fair and just. Their lordships further held that there could be no doubt that speedy trial, by which their aim to reasonably expeditious trial, was an integral part of the fundamental right to life and liberty shriend in Article 21. In *State of Karnataka Vs. L. Muniswamy and Others*, , the Supreme Court again held that the saving of the High Court's inherent powers,

both in civil and criminal matters , was designed to achieve a solitary public purpose which was that a Court proceeding ought not to be permitted or degenerate into a weapon of harassment or prosecution in a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceedings in the interest of justice. The ends of justice, as the Supreme Court held, were higher than mere law though justice had to be administered according to the laws made by the Legislature. Though not cited during the hearing of this petition, one may refer to the most recent decision of the Supreme Court on the very same point in *Madhu Mehta Vs. Union of India and Others*, , in which Their Lordships have held that "the Court is entitled and indeed obliged to consider the question of inordinate delay in the light of all circumstances of the case to decide whether the execution of sentence should be carried out or should be altered into imprisonment for life. No fixed period of delay can be considered to be decisive. It has to be emphasised that Article 21 is relevant in all stages. Speedy trial is criminal cases though may not be fundamental right is implicit in the broad sweep and content of Article 21. Speedy trial is part of one's fundamental right to life and liberty. This principle is no less important for disposal of mercy petition. It has been universally recognised that a concerned person has to suffer a degree of mental torture even though there is no physical mistreatment and no primitive torture". What is therefore important, as laid down in this decision, in addition to the earlier once considered is that a Court is no doubt bound to examine the nature of the delay caused and the circumstance that ensued in causing further delay in expeditious hearing and decision of the present case.

14. What is the present petition however needs to be noted is that upon the facts as are revealed is the reply filed by the respondent No. 2 complainant is the finger of responsibility being pointed clearly to the petitioners themselves explaining the pendency of the petition from the year 1984, the respondent has filed Annexure-II to his reply showing the dates of hearing in the said criminal case on which the petitioners were absent and on some datesailable warrants had to be issued against one or other of them, thus there were hardly any dates of hearing in the said criminal case on which all the six accused were present. One or the other of them was invariably found to have remained absent, only inevitably stalling the proceedings. The plea of harassment at the instance of respondent No. 2 must also be held as entirely unfounded when the synopsis of these dates of hearing duly shows that such date of hearing when one or the other accused persons remained absent, exemption from personal appearance was sought by the accused's Counsel and the prayer was not, at any time, opposed by the complainant. This conduct on the part of respondent No. 2, as rightly argued by Shri Naik, does not reveal any animosity towards the petitioners /accused nor a bias against them nor desire to harass them but in fact to be condemning so far as their actions were concerned. The said inventory of dates of hearing starts on 23rd April, 1983 and in right upto 22nd February,

1989. The present petition has been filed on 14th March, 1989, and itself shows that no part of the blame for the pendency of the criminal case could properly and justifiably be laid at the door of the respondent No. 2. In the circumstances the contentions as have been advanced must, each one and all of them, fail resulting in dismissal of this petition.

15. Before parting with the matter it may be observed that though the very substance of the petition is a grievance on account of the delay in hearing and disposal of the criminal case ever since 1974, so far as the hearing in this petition before this Court are concerned, there are intact innumerable adjournments which have been sought by the learned Counsel, at the final hearing in the in the case. Inasmuch as the petitioners claim to be desirous of speedy and expeditious disposal of the criminal case, it is only to be hoped that they will hereafter attend the hearing in the criminal case regularly, that all of them will remain present without exception and without- excuse to assist the Court in an early disposal of the matter. The learned Chief Judicial Magistrate is also directed that in view of the long pendency of the present criminal case it be hereafter taken up for trial day to day as soon as the accused persons put their appearance, that the criminal case shall not in any case be allowed to remain on board at the end of the year 1990. With these observations the petition is dismissed.