

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRL.P. Nos.1840, 1922, 1923, 1924, 1925 AND 1926 OF 2017

COMMON ORDER:

These petitions are filed to quash the proceedings in Calendar Case Nos.78, 79, 80, 99, 100 and 98 of 2008 respectively, by accused No.1, 3 and 4 respectively, under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code').

2. The respective petitioners herein alleged to have committed the offences punishable under Sections 465, 467, 468 and 471 IPC along with other accused.

3. Heard Sri P.R. Prasad, learned counsel for the respective petitions and the learned Additional Public Prosecutor for the State of Andhra Pradesh.

4. The main submission of the learned counsel for the petitioners is that there has been inordinate delay in disposal of the aforementioned Calendar Cases, and that the delay aforementioned is attributable to the prosecution as the petitioners have been regularly attending the Court on every date of adjournment and, therefore, cannot be attributed to the petitioners.

i) He would submit that respective respondent No.2 - complainant filed the complaints on 14.02.2004 against the respective petitioners and accused No.2 alleging that they all dishonestly and

fraudulently got registered false documents bearing Nos.338, 336, 337, 340, 341 and 339 of 2003, dated 21.04.2003, respectively, before the Sub-Registrar, Alur, Kurnool District, with an intention to grab the property of the complainants and that the accused Nos.2 and 3 in Crl.P. No.1840 of 2017, who are attestors, knowing full well that the respective complainants did not sign the document, still, attested and put thumb impressions as if they identified the complainants. According to him that there were civil litigations between the families as the petitioners and the complainants are interrelated.

ii) He would submit that except during pendency of Criminal Petition No.1374 of 2007 in the crimes filed by the petitioners only for a period of five months there was stay and, thus, though, the complaints were filed in the year 2004, the aforementioned Calendar Cases were registered in 2008 and, thus, there was inordinate delay in taking up the investigation, filing the charge sheets and taking cognizance. This apart, since 2008, there has been no progress till date and the petitioners cannot be compelled to wander to the Court unjustly.

a) It is his submission that the present case squarely falls within the law declared by the Hon'ble Supreme Court and this Court, placing reliance in **Hussainara Khatoon and others v. Home Secretary, State of Bihar, Patna**¹, for the proposition that speedy

¹. AIR 1979 SC 1360

trial is part of fundamental right to life and liberty under Article 21 of the Constitution of India, and the Hon'ble Supreme Court had an occasion to explain the concept of speedy trial and the observations made by the Hon'ble Supreme Court in paragraph No.5 are thus:

“5. There is also one other infirmity of the legal and judicial system which is responsible for this gross denial of justice to the under-trial prisoners and that is the notorious delay in disposal of cases. It is a sad reflection on the legal and judicial system that the trial of an accused should not even, commence for a long number of years. Even a delay of one year in the commencement of the trial is bad enough: how much worse could it be when the delay is as long as 3 or 5 or 7 or even 10 years, Speedy trial is of the essence of criminal justice and there can be no doubt that delay in trial by itself constitutes denial of justice. It is interesting to note that in the United States, speedy trial is one of the constitutionally guaranteed rights. The Sixth Amendment to the Constitution provides that,

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial.”

So also Article 3 of the European Convention, on Human Rights provides that,

“every one arrested or detained - shall be entitled to trial within a reasonable time or to release pending trial.”

We think that even under our Constitution, though speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21 as interpreted by this Court in *Maneka Gandhi v. Union of India* [AIR 1978 SC 597]. We have held in that

case that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except in accordance with the procedure prescribed by law and it is not enough to constitute compliance with the requirement of that Article that some semblance of a procedure should be prescribed by law, but that the procedure should be 'reasonable, fair and just'. If a person is deprived of his liberty under 'a procedure which is not 'reasonable, fair or just', such deprivation would be violative of his fundamental right under Article 21 and he would be entitled to enforce such fundamental right and secure his release. Now obviously procedure prescribed by law for depriving a person of his liberty cannot be 'reasonable, fair or just' unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21. Would he be entitled to be released unconditionally freed from the charge levelled against him on the ground that trying him after an unduly long period of time and convicting him after such trial would constitute violation of his fundamental right under Article 21? That is a question we shall have to consider when we hear the writ petition on merits on the adjourned date. But one thing is certain and we cannot impress it too strongly on the State Government

that, it is high time that the State Government realised its responsibility to the people in the matter of administration of justice and set up more courts for the trial of cases. We may point out that it would not be enough merely to establish more courts but the State Government would also have to man them by competent Judges and whatever is necessary for the purpose of recruiting competent Judges, such as improving their conditions of service, would have to be done by the State Government, if they want to improve the system of administration of justice and make it an effective instrument for reaching justice to the large masses of people for whom justice is today a meaningless and empty word.”

b) He also places reliance in **G. Balchand Varma v. State of Andhra Pradesh**². This Court held that continuance of criminal case for over six years without the prosecution examining a single witness is a clear abuse of process of law, and thereby quashed the proceedings.

c) In **Raj Deo Sharma v. the State of Bihar**³, while holding that every accused has right to speedy trial and inexplicable delay in starting prosecution after institution of FIR would all sufficient enough to quash the entire prosecution against appellant and thereby set aside the order of the High Court passed in writ petition, where the delay was 13 years.

². 1985 (2) ALT 433

³. (1998) 7 SCC 507

d) In **Vakil Prasad Singh v. State of Bihar**⁴, the Hon'ble Supreme Court while reiterating that the accused is entitled to speedy trial and right to speedy trial is fundamental right under Article 21 of the Constitution of India and confers a fundamental right on every person not to be deprived of his life or liberty except according to procedure which should be reasonable, fair and just requiring expeditious trial which is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21 of the Constitution of India.

The learned counsel, thus, referring to the aforesaid rulings, would seek to quash the proceedings in the aforesaid Calendar Cases against the petitioners respectively.

5. After hearing the arguments of the learned counsel for the petitioners and the learned Additional Public Prosecutor, the learned Additional Public Prosecutor was required to seek instructions and report the same at 4.00 p.m.

6. At 4.00 p.m., the learned Additional Public Prosecutor brought to the notice of this Court that for a period of one year recently, there has been no Presiding Officer and the post of Judicial Magistrate of First Class, Alur, was vacant. This apart, the learned Additional Public Prosecutor would submit that the delay in proceeding with trial cannot be attributed to the prosecution as

⁴. (2009) 3 SCC 355

prosecution was always ready to produce the witnesses on summons being issued by the Court, but on account of the attitude of accused persons, amongst whom, two were already died, the delay in taking up the trial occurred.

7. When such are the submissions made by the rival parties, more particularly, when the petitioners attribute the delay only to the prosecution while expressing all *bona fides* to themselves and seeking to quash the proceedings in the respective Calendar Cases so far as they are concerned in the offences of forgery and fabrication of a document and using a forged document as a genuine document, certainly, a duty is cast on the petitioners to obtain certified copies of docket proceedings in each of these Calendar Cases and submit for perusal of this Court to analyze whether the stand taken by the respective petitioners is correct or not. In such an event, certainly, the petitioners cannot seek quashment of the proceedings in the aforesaid Calendar Cases without showing that they were ready at all times. Even otherwise, when the law declared by the Hon'ble Supreme Court on this aspect of the case is kept in view, certainly, the delay in the present cases cannot be viewed so serious as to entitle the petitioners to quash the proceedings in entirety against them.

8. The ruling in **P. Ramachandra Rao v. State of Karnataka**⁵ rendered by a seven-judges bench of the Hon'ble Supreme Court

⁵. 2002 CrL.L.J. 2547

requires reference in the present context. In **State through CBI v. Dr. Narayan Waman Nerukar and another**⁶, the Hon'ble Supreme Court while laying down the factors to be considered and observing that each case has to be judged in its own background and special features, if any, but no generalization is possible, extracted the law declared by the Hon'ble Supreme Court in **P. Ramachandra Rao** (Supra 5) thus:

"No person shall be deprived of his life or his personal liberty except according to procedure established by law - declares Articles 21 of the Constitution. 'Life and liberty', the words employed in shaping Article 21, by the founding fathers of the Constitution, are not to be read narrowly in the sense drearily dictated by dictionaries; they are organic terms to be construed meaningfully. Embarking upon the interpretation thereof, feeling the heart-throb of the Preamble, deriving strength from the Directive Principle of state policy and alive to their constitutional obligation, the courts have allowed Article 21 to stretch its arms as wide as it legitimately can. The mental agony, expense and strain which a person proceeded against in criminal law has to undergo and which, coupled with delay, may result in impairing the capability or ability of the accused to defend himself have persuaded the constitutional courts of the country in holding the right to speedy trial a manifestation of fair, just and reasonable procedure enshrined in Article 21. Speedy trial, again, would encompass within its sweep all its stages including investigation, inquiry, trial, appeal, revision

⁶. AIR 2002 SC 2977

and re-trial- in short, everything commencing with an accusation and expiring with the final verdict - the two being respectively the *terminus a quo* and *terminus ad quem* - of the journey which an accused must necessarily undertake once faced with an implication. The constitutional philosophy propounded as right to speedy trial has though grown in age 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 prosecuting agencies and executive to act, and their turning an almost blind eye at securing expeditious and speedy trial so as to satisfy the mandate of Article 21 of the Constitution have persuaded this Court in devising solutions which go to the extent of almost enacting, by judicial verdict bars of limitation beyond which the trial shall not proceed and the arm of law shall lose its hold. In its zeal to protect the right to speedy trial of an accused, can the court devise and almost enact such bars of limitation though the Legislature and the statutes have not chosen to do so - is a question of far-reaching implications which has led to the constitution of this bench of seven-judge strength."

Thus, the Constitutional Bench of 7-judges did not incline to fix time-bars for conclusion or termination of trials in order to effectuate right to speedy trial flowing from and recognized in Article 21 of the Constitution of India holding that it would amount to legislation.

9. In the present cases, the offences are punishable Sections 465, 467, 468 and 471 IPC. Offence under Section 465 IPC is

punishable with imprisonment of either description for a term which may extend to two years, or with fine, or with both; offence under Section 467 IPC is punishable with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; offence under Section 468 IPC is punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and offence under Section 471 IPC is punishable in the same manner as if he had forged such document

10. By very nature, the accusations levelled against the respective petitioners and other accused persons are serious in nature. Certainly, the ground of delay as the sole basis for quashment of the proceedings cannot be viewed as amounting to abuse of the process of Court when the law declared by the Hon'ble Supreme Court in the classic decision [**P. Ramachandra Rao's Case**] is to the effect that in its verve to protect the right to speedy trial of an accused, can the court devise and almost enact such bars of limitation though the Legislature and the statutes have not chosen to do so is applied. It would be profitable to refer to what has been held by the Hon'ble Supreme Court in **Dr. Narayan Waman Nerukar** (Supra 6) having referred to the ruling in **P. Ramachandra Rao** (Supra 5) in the context of various factors that require consideration, in paragraph Nos.9 to 12 thus:

“9. While considering the question of delay the court has a duty to see whether the prolongation was on account of any delaying tactics adopted by the accused and other relevant aspects which contributed to the delay. Number of witnesses examined, volume of documents likely to be exhibited, nature and complexity of the offence which is under investigation or adjudication are some of the relevant factors. There can be no empirical formula of universal application in such matters. Each case has to be judged in its own background and special features if any. No generalization is possible and should be done. It has also to be borne in mind that the criminal courts exercise available powers such as those under Sections 309, 311 and 258 of the Cr. P.C. to effectuate right to speedy trial.

10. These aspects have not been considered by the High Court while quashing the proceedings. On that score the judgment under challenge is vitiated. Additionally while dealing with the question as to the proper provisions applicable to the case, the Court has come to the definite finding about maximum sentence. Normally, these aspects are to be left to be decided by the trial court. In the case at hand we find that the High Court came to the conclusion about applicability of a particular provision. Mr. Ramamoorthy has rightly submitted that the court can, in a given case, where factual aspects and the law applicable are clear, come to the conclusion about the provision applicable to the facts. But for coming to such conclusion the factual position must be clear and no doubt should exist about the applicability of a particular provision to the factual scenario. The complex nature of the offence should be deterrent to the courts while going into the question of applicability of a provision.

11. Be that as it may, in view of the conclusion that order of the High Court is to be quashed, we do not think it necessary to bestow out attention to the question as to which provision is applicable to the facts of the case.

12. Accordingly the judgment of the High Court is quashed and the matter is remitted back to the High Court. The High Court shall hear the matter afresh, permit the parties to place materials which according to it will be relevant for the purpose of determination of the dispute before it, and take a fresh decision in accordance with law. As mentioned above, we are not expressing any opinion on the merits of the case.”

The fact-situation in **Dr. Narayan Waman Nerukar** (Supra 6) would show that a Division Bench of the Hon'ble Delhi High Court while quashing the proceedings against respondent No.1 therein considered the ground that there was unnecessary delay in conclusion of the trial by Court. In the said context, the aforesaid decision was rendered.

11. In paragraph Nos.6 and 7 in the above, the petitioners have not chosen to give the relevant factors to show that the delay is attributable to the prosecution and that the petitioners have been regularly attending the Court without suffering issue of non-bailable warrants against them. In proof thereof, the proceeding-sheet recorded by the learned Magistrate in the Calendar Case is not filed. Therefore, the rulings relied on by the learned counsel for the petitioners in **Hussainara Khatoon; G. Balchand Varma; Raj Deo Sharma; and Vakil Prasad Singh** (Supra), would not render

assistance when the submissions made by the learned counsel for the petitioners are examined in the light of the law declared by the Constitutional Bench of the Hon'ble Supreme Court in **P. Ramachandra Rao** (Supra 5) and the ruling in **Dr. Narayan Waman Nerukar** (Supra 6). There is no merit in these petitions.

12. Therefore, all these Criminal Petitions are dismissed. However, keeping in view, that the Calendar Cases were registered in the year 2008, it is desirable to direct the learned Judicial Magistrate of First Class, Alur, to dispose of the Calendar Case Nos.78, 79, 80, 99, 100 and 98 of 2008 within a period of six (6) months from the date of receipt of a copy of the order. The accused persons shall cooperate with the Court to cross-examine the prosecution witnesses and to lead defence evidence, if they so choose without taking unnecessary adjournments.

As a sequel thereto, miscellaneous petitions, if any, pending in the criminal petitions, stand closed.

A. SHANKAR NARAYANA, J

March 10, 2017.
Mgr