

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.248 of 2018

Arising Out of PS.Case No. -145 Year- 1986 Thana -MEERGANJ District- GOPALGANJ

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Sheojee Upadhyay, S/o Late Ganesh Upadhyay, resident of Village- Nayagoan,
P.S.- Mirganj, District- Gopalganj.

.... Petitioner

Versus

1. The State of Bihar
2. Laxman Rai S/o Late Rajendra Rai.
3. Harendra Upadhyay S/o Late Ramashish Upadhyay,
both resident of Village- Naya Goan, P.S.- Mirganj, District- Gopalganj.
4. Grish Upadhyay, S/o Late Ramashish Upadhyay,
5. Anirudh Rai, S/o Late Rajendra Rai.
Both Resident of Village- Naya Goan, P.S.- Mirganj, District- Gopalganj.
6. Udaymal Singh, S/o Madhav Singh, Resident of Village- Mahaidha, P.S.-
Mirganj, District- Gopalganj.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Raj Dular Sah, Advocate
For State : Mr. Ajay Kumar-1, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 08-08-2018

Heard learned counsel for the petitioner and learned
additional public prosecutor for the State.

2. This application under Section 482 of the Code of
Criminal Procedure (for short 'CrPC') has been filed by the
petitioner for quashing the order dated 15.09.2017 passed by the
Presiding Officer, Fast Track Court-II, Gopalganj in Session Trial
No. 203 of 1991 arising out of Mirganj P. S. Case No. 145 of 1986
whereby and whereunder the petition filed under Section 311 of the



CrPC for summoning the doctor and the investigating officer of the case has been rejected.

3. It is submitted by the learned counsel for the petitioner that the trial court erred in law in refusing the prayer of the prosecution to summon the doctor and the investigating officer of the case as their non-examination would greatly prejudice the case of the prosecution.

4. Learned Additional Public Prosecutor for the State supported the contentions of the petitioner. He contended that the doctor and the investigating officer of the case were not examined during trial. Hence, the court below ought to have allowed the prayer of the prosecution.

5. I have heard learned counsel for the parties and carefully perused the record.

6. The petitioner is the informant of Mirganj P. S. Case No. 145 of 1986 registered for the offences punishable under Sections 148, 149, 307, 324 and 379 of the Indian Penal Code, 27 of the Arms Act and 3 and 5 of the Explosive Substances Act. After completion of investigation, charge-sheet was submitted in the case against the accused persons. After complying with the provisions of Section 207 of the CrPC, the case was committed to the court of sessions for trial. On 13.02.2007, charges were framed against the accused persons. In course of trial, witness no. 1 was examined on



02.03.2009 and the last witness i.e., witness no. 4 was examined, cross-examined and discharged on 24.06.2011. Since then, despite sufficient opportunities given to the prosecution, no witness was produced on behalf of the prosecution till 09.02.2015. On 09.02.2015, the trial court ordered that in case the prosecution fails to examine remaining witnesses, the prosecution evidence would be closed. Despite the said order, on different dates, the prosecution failed to examine any witness and, ultimately, on 27.10.2016, the evidence on behalf of the prosecution was closed and the case was fixed for recording statements of accused under Sections 313 of the CrPC on 12.07.2017. After recording the statements of the accused persons, the case was fixed for defence evidence. Even the defence evidence was closed vide order dated 21.08.2017. After closure of the evidence on behalf of the prosecution and the defence, the case was fixed for arguments on 22.08.2017. Argument in part on behalf of the defence was made on 22.08.2017. Thereafter, the case was fixed on 29.08.2017 for further arguments. At that stage, on 29.08.2017, an application under Section 311 of the CrPC was filed on behalf of the prosecution for summoning the doctor, who had issued the injury report of the injured and the investigating officer of the case. However, the trial court, vide impugned order dated 15.09.2017, rejected the application filed on behalf prosecution on the ground that sufficient opportunities were already given to the



prosecution to produce witnesses and no effort was made on behalf of the prosecution in the past to examine those witnesses.

7. In the opinion of this court, the trial court has committed no error in rejecting the application filed on behalf of the prosecution as for years together the case was kept pending for examination of prosecution witnesses. The application filed by the prosecution at the stage when the arguments were advanced was apparently in order to delay the completion of trial. The power vested in the court under Section 311 of the CrPC is discretionary in nature and such power has to be exercised only with object of discovering relevant facts for a just decision of the case in the ends of justice. It would be highly improper for this Court at this stage, to hold that the court below has exercised its discretion erroneously. The trial is pending since last 22 years. The witnesses, whom the prosecution intend to examine, are official witnesses. If the State failed to examine them between 13.02.2007, the date on which charges were framed and 27.10.2016, the date on which the prosecution evidence was closed, there is no guarantee that even if the petition would have been allowed, the prosecution would have produced the investigating officer and the doctor for their deposition.

8. In **Vakil Prasad Singh vs. State of Bihar [(2009) 3 SCC 355]**, the Supreme Court observed :



“19. Time and again this Court has emphasized the need for speedy investigations and trial as both are mandated by the letter and spirit of the provisions of the [Cr.P.C.](#) (In particular, [Sections 197, 173, 309, 437](#) (6) and 468 etc.) and the constitutional protection enshrined in [Article 21](#) of the Constitution. Inspired by the broad sweep and content of [Article 21](#) as interpreted by a seven-Judge Bench of this Court in *Maneka Gandhi Vs. Union of India & Anr.* [(1978) 1 SCC 248] and in *Hussainara Khatoon & Ors. Vs. Home Secretary, State of Bihar* [(1980) 1 SCC 81], this Court had observed that [Article 21](#) confers a fundamental right on every person not to be deprived of his life or liberty except according to procedure established by law; that such procedure is not some semblance of a procedure but the procedure should be “reasonable, fair and just”; and therefrom flows, without doubt, the right to speedy trial. It was also observed that:

“5. ... 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](#).

The Court clarified that speedy trial means reasonably expeditious trial which is an integral and essential part of the fundamental right to life and liberty enshrined in [Article 21](#).

19. The exposition of [Article 21](#) in *Hussainara*



Khatoon's case (supra) was exhaustively considered afresh by the Constitution Bench in Abdul Rehman Antulay & Ors. Vs. R.S. Nayak & Anr. [(1992) 1 SCC 225]. Referring to a number of decisions of this Court and the American precedents on the Sixth Amendment of their Constitution, making the right to a speedy and public trial a constitutional guarantee, the Court formulated as many as eleven propositions with a note of caution that these were not exhaustive and were meant only to serve as guidelines.

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22. Speaking for the majority, in P. Ramchanda Rao [(2002) 4 SCC 578], R.C. Lahoti, J. (as his Lordship then was) while affirming that the dictum in A.R. Antulay's case (supra) as correct and the one which still holds the field and the propositions emerging from [Article 21](#) of the Constitution and expounding the right to speedy trial laid down as guidelines in the said case adequately take care of right to speedy trial, it was held that:

“(3). ...guidelines laid down in the A.R. Antulay's case (supra) are not exhaustive but only illustrative. They are not intended to operate as hard and fast rules or to be applied [as] a strait-jacket formula. Their applicability would depend on the fact-situation of each case [as] it is difficult to



foresee all situations and no generalization can be made.”

23. It has also been held that:

“(4) It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. Nonetheless,

(5) The criminal courts should exercise their available powers such as those under [Sections 309, 311 and 258](#) of Cr.P.C. to effectuate the right to speedy trial.... In appropriate cases, jurisdiction of the High Court under [Section 482](#) Cr.P.C. and Articles 226 and 227 of the Constitution can be invoked seeking appropriate relief or suitable directions”.

The outer limits or power of limitation expounded in the aforementioned judgments were held to be not in consonance with the legislative intent.

24. It is, therefore, well settled that the right to speedy trial in all criminal persecutions (sic prosecuton) is an inalienable right under [Article 21](#) of the Constitution. This right is applicable not only to the actual proceedings in court but also includes within its sweep the preceding police investigations as well. The right to speedy trial extends equally to all criminal prosecutions and is not confined to any particular category of cases. In every case, where



the right to speedy trial is alleged to have been infringed, the court has to perform the balancing act upon taking into consideration all the attendant circumstances, enumerated above, and determine in each case whether the right to speedy trial has been denied in a given case.”

9. It is, thus, evident that right to speedy trial in criminal prosecution is a constitutional right under Article 21 of the Constitution. The person facing the trial has to undergo extreme mental stress. Hence, an accused facing the trial cannot be compelled to await for conclusion of trial for an endless period even after lapse of more than three decades after institution of the FIR.

10. Having regard to the manner in which the trial has been conducted, in the opinion of this Court, no error can be found in the order impugned whereby the prayer made by the prosecution under Section 311 of the CrPC has been rejected.

11. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
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