

Amk

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 281 OF 1999

The State of Maharashtra	.. Appellant
Vs.	
Rangrao Anna Patil	.. Respondent

Mrs. S. V. Sonawane for the Appellant.
None for the Respondent.

**CORAM : INDRAJIT MAHANTY AND
V. K. JADHAV, JJ.**

Judgment reserved on : **26th NOVEMBER, 2018.**
Judgment pronounced on : **29th NOVEMBER, 2018.**

JUDGMENT (Per V. K. Jadhav, J.)

1. This is an Appeal preferred by the State against the Judgment and Order of acquittal passed by Judicial Magistrate First Class, Islampur dated 02.02.1999 in Regular Criminal Case No. 50 of 1984.

2. Brief facts giving rise to the present Appeal are as follows:

The Respondent-accused was Secretary of Karve Serva Seva Sahakari Society Ltd. (hereinafter referred to as the “said Society”). On 30.01.1981 he was transferred to another co-operative society and one Shri Eknath Dada Patil has replaced him as a Secretary of the said Society. However, the Respondent-accused has not given charge of his office to said Eknath

Dada Patil. Consequently Complainant Shankar Ganpati Patil has reported the matter to the Sub-Registrar, Co-operative Societies, Sangli. On receipt of said complaint, the Sub-Registrar has directed the PSI, Kurlap Police Station to intervene into the matter for handing over charge to said Eknath Dada Patil. On 21.05.1981, PSI, Kurlap Police Station had effected panchnama of the property of the said society. It revealed that at the time of drawing of panchnama that certain properties though mentioned in the Stock Register of the said society were not actually forthcoming. It was also revealed that the ledger books, cheque books, voucher files, stock of Urea, other types of fertilizers amounting to Rs.49,984.50 was also not found with the Society though the said property was entrusted with the Respondent-accused. Thus, on 06.06.1981 Shankar Ganpati Patil, the then Chairman of the said society had filed the complaint in the Police Station. On his complaint, Crime No. 34 of 1981 for the offences punishable under Sections 406, 409 came to be registered in the concerned Police Station. After due investigation, the charge-sheet came to be submitted against the Respondent-accused. Though the charge (Exhibit 9) was framed against the Respondent-accused on 03.06.1985 and the Respondent-accused pleaded not guilty to the said charge, the prosecution has examined PW 1 Rajaram at Exhibit 14 on 05.09.1995 (almost after a gap of 10 years) and thereafter the Complainant PW 2 at Exhibit 19 on 06.02.1996. Even the examination-in-chief of PW 2 remained incomplete on 06.02.1996 as per

the order passed below Report of APP at Exhibit 20. The learned Judge of the trial Court relying upon the directions of the Supreme Court in the case of **Rajdeo Sharma Vs. State of Bihar in Criminal Appeal No. 1045 of 1998 decided on 08.10.1998** closed evidence of the prosecution and acquitted the accused. Hence, this Criminal Appeal preferred by the State against the said Judgment and Order of the acquittal passed by the learned Magistrate.

3. The learned APP submits that the Respondent-accused was entrusted with 31 cement bags of Urea, 22 bags of sufla fertilizers and such other articles worth Rs.49,948.50 in his capacity as a Secretary of the said society and the Respondent-accused has converted the said property for his own use with intent to deceive the said Society. The learned APP submits that the evidence of the Complainant remained incomplete and the learned Magistrate has erroneously closed the evidence of the prosecution. The learned Magistrate has passed the order of acquittal on the ground that there is no incriminating evidence against the Respondent-accused. The learned APP submits that no opportunity was given to the prosecution to complete its evidence and as such the impugned Judgment and order of acquittal is not proper, correct and legal and thus the same is liable to be quashed and set aside.

4. Appointed Counsel from the Legal Aid Panel remained absent when the Appeal was taken up for hearing.

5. In terms of pre-amended provisions of Section 378 (1) subject to provisions of Sections 3 and 5 the Appeal was provided to the High Court from original or appellate order of acquittal passed by any Court other than High Court or an order of acquittal passed by Court of Session in Revision. In terms of pre-amended sub-section 3 of Section 378, no Appeal under sub-section 1 or sub-section 2 shall be entertained except with the leave of the High Court. By Act 25 of 2005 sub-section 1 of Section 378 was substituted w.e.f. 23.06.2006 and in terms of amended sub-section 1 Clause (a) of Section 378, the Appeal is now provided to the Court of Sessions from an order of acquittal passed by the Magistrate in respect of cognizable and non-bailable offence. In view of the same in terms of pre-amended provisions, the present Appeal preferred by the State is maintainable. So also, in terms of sub-section 3 of Section 378 (pre-amendment) by order dated 14.02.2000 this Court has also granted leave.

6. It appears from the record and proceeding that the learned Magistrate, Islampur vide Exhibit 9 in R.C.C. No.50 of 1984 on 03.06.1985 had framed the charge and the Respondent-accused has pleaded not guilty to the said charge and claimed to be tried. On 05.09.1995 the prosecution

has examined first witness in the case. On perusal of the roznama, it appears after framing of the charge as on 03.06.1985 though the accused remained present continuously on almost each and every date, the hearing of the case was adjourned for want of attendance of prosecution witness. Thus, after a gap of 10 years, the prosecution has examined PW 1 on 05.09.1995 and thereafter on 06.02.1996 the prosecution has examined PW 2-Complainant whose examination-in-chief also came to be adjourned as per the order passed below Report of APP, Exhibit 20. The learned Magistrate in his Judgment and order of acquittal in para 7 has observed that till the order below Exhibit 1 passed on 08.10.1998, the prosecution has not bothered to complete examination-in-chief of witness No.2-Complainant.

7. In backdrop of these facts, the learned Magistrate by referring the case of **Rajdeo Sharma Vs. State of Bihar** reported in (1998) 7 SCC 507 has acquitted the Respondent-accused with the observation that there appears no incriminating evidence against him.

8. In the case of **Rajdeo Sharma Vs. State of Bihar** (supra), the Supreme Court while considering the issue of delay in conduct of trial and also considering the importance of speedy and open trial in para 17 of the Judgment has proceeded to supplement the proposition laid down by the Constitution Bench in a case of **Abdul Rehman Antulay Vs. R. S. Nayak**

reported in (1992) 1 SCC 225. In the said proposition supplemented by the Supreme Court in the aforestated case of **Rajdeo Sharma Vs. State of Bihar** (supra) Clause (iii) which is relevant for the present case is reproduced hereinbelow:

(iii) If the offence under trial is punishable with imprisonment for a period exceeding 7 years, whether the accused is in jail or not, the court shall close the prosecution evidence on completion of three years from the date of recording the plea of the accused on the charge 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, unless for very exceptional reasons to be recorded and in the interest of justice the court considers it necessary to grant further time to the prosecution to adduce evidence beyond the aforesaid time-limit.”

9. The Supreme Court in the case of **Rajdeo Sharma Vs. State of Bihar** (supra) in terms of the said directions in Clause (iii) as reproduced above, directed the Court to close the prosecution evidence on completion of three years from the date of recording the plea of the accused on the charge framed, if the offence under trial is punishable with imprisonment for a period exceeding seven years. The Supreme Court has further granted liberty to the trial Court that for very exceptional reason to be recorded and in the interest of justice the Court considers it necessary to grant further time to the prosecution to adduce evidence beyond the aforesaid time limit.

10. In the year 2002, a Bench of seven Judges of the Supreme Court was constituted to consider whether the dictum in Abdul Rehman Antulay's case still holds the field; if not, whether the general direction of the kind given in the Judgment are permissible in law and should be upheld. Thus, the said Bench consisting of seven Judges of the Supreme Court in the case of **P. Ramachandra Rao Vs. State of Karnataka** reported in **AIR 2002 SC 1856** has considered the five decisions cited in the order of reference as also to few earlier decisions so as to highlight the issue. The Supreme Court has concluded the issue in para 30 of the Judgment and overruled the earlier cases taking the contrary view including the case of **Rajdeo Sharma Vs. State of Bihar** (supra). In para 30, the Supreme Court has made the following observations:

“30. For all the foregoing reasons, we are of the opinion that in Common Cause case (I) (1996 AIR SCW 2279 : AIR 1996 SC 1619 : 1996 Cri LJ 2380) (as modified in Common Cause (II) 1997 AIR SCW 290 : AIR 1997 SC 1539 : 1997 Cri LJ 195 (1998 AIR SCW 3208 : AIR 1998 SC 3281 : 1998 Cri LJ 4596) and Raj Deo Sharma (I) and (II) (1999 AIR SCW 3522 : AIR 1999 SC 3524 : 1998 Cri LJ 4541), the Court could not have prescribed periods of limitation beyond which the trial of a criminal case or a criminal proceeding cannot continue and must mandatorily be closed followed by an order acquitting or discharging the accused. In conclusion we hold:-

(1) The dictum in A. R. Antulay's case is correct and still holds the field.

(2) The propositions emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down as

guidelines in A. R. Antulay's case, adequately take care of right to speedy trial. We uphold and reaffirm the said propositions.

(3) The guidelines laid down in A. R. Antulay's case are not exhaustive but only illustrative. They are not intended to operate as hard and fast rules or to be applied like a strait-jacket formula. Their applicability would depend on the fact situation of each case. It is difficult to foresee all situations and no generalization can be made.

(4) 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 limitation 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 Case (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's case and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time-limits cannot and will not by themselves be treated by any Court as a bar to further continuance of the trial or proceedings and mandatorily obliging the court of terminate the same and acquit or discharge the accused.

(5) The Criminal Courts should exercise their available powers, such as those under Sections 309, 311 and 258 of Code of Criminal Procedure to effectuate the right to speedy trial. A watchful and diligent trial Judge can prove to be better protector of such right than any guidelines. In appropriate cases jurisdiction of High Court

under Section 482 of Cr.P.C. and Articles 226 and 227 of Constitution can be invoked seeking appropriate relief or suitable directions.

(6) This is an appropriate occasion to remind the Union of India and the State Governments of their constitutional obligation to strengthen the judiciary – quantitatively and qualitatively – by providing requisite funds, manpower and infrastructure. We hope and trust that the Governments shall act.”

11. The Supreme Court held that the dictum of A. R. Antulay's case is correct and still holds the field. The Supreme Court has also upheld the guidelines in the case of A. R. Antulay's case and further observed that the same are not exhaustive but only illustrative. Their applicability would depend on the facts, situations of the each case. It is difficult to foresee all situations and no generalization can be made. It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for a conclusion of all criminal proceedings.

12. In the case of **Abdul Rehman Antulay Vs. R. S. Nayak** (supra), the Supreme Court has issued certain guidelines 1 to 11 as detailed in para 54 of the aforestated Judgment. The relevant clauses for the purpose of present case, Clause Nos.6 and 10 respectively are only reproduced hereinbelow:

“6. Each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. As has been observed by Powell, J. in Barker “it cannot be said how long a delay is too long in

a system where justice is supposed to be swift but deliberate". The same ideal has been stated by White, J. in U. S. v. Ewell, (1966) 15 Law Ed 2d 627, in the following words :

"the sixth amendment right to a speedy trial is necessarily relative, is consistent with delays, and has orderly expedition, rather than mere speed, as its essential ingredients; and whether delay in completing a prosecution amounts to an unconstitutional deprivation of rights depends upon all the circumstances."

However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case.

10. It is neither advisable nor practicable to fix any time-limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of Right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the Court to weigh all the circumstances of a given case before pronouncing upon the complaint. The Supreme Court of U.S.A. too has repeatedly refused to fix any such outer time limit in spite of the Sixth Amendment. Nor do we think that not fixing any such outer limit ineffectuates the guarantee of right to speedy trial."

13. In view of above ratio laid down by the Supreme Court and in terms of the guidelines issued in A. R. Antulay's case and further approved the said guidelines in the Judgment delivered by the Supreme Court in a case **P. Ramachandra Rao Vs. State of Karnataka** (supra), it would be just and

proper to examine the facts of the present case.

14. In the instant case, almost after 10 years of framing of the charge and recording the plea of the Respondent-accused, the prosecution has examined PW 1. It would not be out of place to mention here that the charge came to be framed by the learned Magistrate against the Respondent-accused on 03.06.1985 in respect of incident that has taken place on 21.05.1981. Thus, after almost 14 years of the incident and 10 years after framing of charge, the prosecution has examined witness No.1 and almost after a year thereafter examined PW 2-Complainant whose examination-in-chief also remained incomplete on the basis of application submitted by learned APP. Even till the year 1998, when the learned Magistrate has closed evidence of the prosecution by passing an order below Exhibit 1, the prosecution has not bothered to complete the examination-in-chief of PW 2-Complainant. The learned Magistrate has passed the order of acquittal by referring the guidelines issued by the Supreme Court in the case of **Rajdeo Sharma Vs. State of Bihar** (supra) as at that time the said dictum was binding upon the learned Magistrate. However, during the course of the pendency of this Appeal, the Supreme Court in the case of **P. Ramachandra Rao Vs. State of Karnataka** (supra) held that the ratio laid down in Rajdeo Sharma's case is no longer good in law. Needless to state that, Appeal is in continuation of original

proceeding. Thus, in the light of guideline issued by the Supreme Court, we are of the considered opinion that the prosecution has failed to justify and explain an inordinate delay in adducing the evidence before the learned Magistrate. Thus, the right to speedy trial of the Respondent-accused has been infringed. We find after going through the record minutely, particularly, the copy of the roznama, that the Respondent-accused was not at fault for the delay in trial. At present, 33 years have been lapsed from the date of framing of the charge and recording plea of the Respondent-accused. In view of the same, we find no substance in this Appeal and the Appeal is, thus, liable to be dismissed.

Hence, the following order:

O R D E R

The Appeal is hereby dismissed.

[V. K. JADHAV, J.]

[INDRAJIT MAHANTY, J.]