



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.09.2019

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.(MD)No.11972 of 2019

and

Crl.M.P(MD) Nos.7229, 7522 & 7523 of 2019

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N.P.Immanuel

... Petitioner/Sole Accused
Vs

1.State rep by

The Inspector of Police,
Palani Town Police Station,
Dindigul District.
(Crime No.733 of 1999)

... 1st Respondent/Complainant

2.M.Vatsala

... 2nd Respondent/Defacto
Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to Call for the records pertaining to the impugned Charge Sheet in C.C.No.360 of 2003 pending on the file of the learned Judicial Magistrate, Palani, Dindigul District in connection with Cr.No.733 of 1999 on the file of the first respondent police and quash the same as illegal.

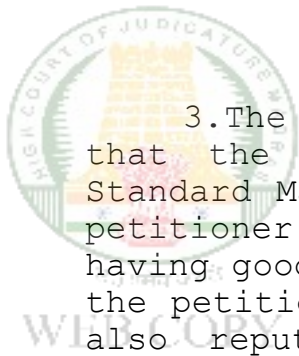
For Petitioner : Mr.I.Lawrance

For 1 : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition has been filed to quash the impugned Charge Sheet in C.C.No.360 of 2003 pending on the file of the learned Judicial Magistrate, Palani, Dindigul District, in connection with Cr.No.733 of 1999 on the file of the first respondent police.

2. The learned Counsel appearing for the petitioner would submit that on the complaint lodged by the second respondent, the case has been registered in Crime No.733/1999 by the first respondent police for the offence under Sections 406, 467, 468, 471 and 379 of IPC. After completion of investigation, they filed a final report and the same has been taken cognizance in C.C.No. 360 of 2003 on the file of the learned Judicial Magistrate, Palani.

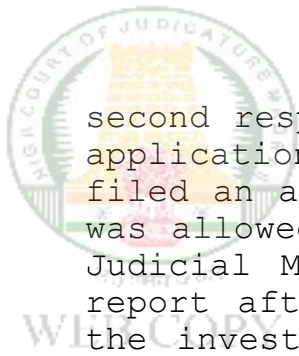


3.The crux of the complaint given by the second respondent is that the second respondent was working as a Correspondent of Standard Matriculation School situated at Lakshmipuram, Palani. The petitioner approached her because she is a highly influential person having good contacts in Educational Department officials. Therefore, the petitioner is capability of increase the number of students and also reputation of School and thus requested to provide job. Therefore, the petitioner was appointed as a Director and there was an agreement between them to run the School. While being so, the petitioner was interested for illegal enrichment of School amounts and demanded a car to be purchased for proper working of the school. The second respondent also spent money for maintaining the car and other expenditure to the tune of Rs.2,43,450/-. Further, the petitioner alleged that she cancelled the agreement entered between them and also committed threatened of students address and also cheques. Hence, the complaint.

4. He further submitted that after completion of the investigation, the first respondent filed a final report and the same has been taken in C.C.No.360 of 2003 and the petitioner is regularly appear before the Trial Court. While being so, in order to drag the proceedings, the second respondent filed a petition for further investigation and it was pending till 2011. Thereafter, the second respondent filed another application for further investigation and the same was allowed by the learned Judicial Magistrate, Palani. The learned Judicial Magistrate directed the first respondent police to file report after conducting further investigation. Eventhough, the first respondent police has not chosen to file report as directed by the learned Judicial Magistrate and therefore, the above said case is still pending without any progress. He further submitted that the claim is of the year 1997 and the complaint lodged in the year 1999 and the same was registered in Crime No.733 of 1999. Thereafter, the first respondent completed the investigation and filed the final report in the year 2003 and it is pending for trial for the past 16 years. Therefore, the delay causes only by the defacto complainant and the prosecution. There is no fault on the petitioner. He is undergoing ordeal trial without committing any fault. He further submitted that there is absolutely no evidence to attract the offence under Sections 406, 467, 468,471 and 379 of IPC as against the petitioner. Therefore, he prayed for quashing the entire proceedings C.C.No.360 of 2003.

5. Though, notice served on the second respondent, none appeared on behalf of the second respondent.

6. The Additional Public Prosecutor submitted that on the complaint lodged by the second respondent, the case was registered and final report was filed. The Trial Court has taken cognizance in C.C.No. 360 of 2003 on the file of the learned Judicial Magistrate, Palani, and it is pending for trial. While pending the trial, the



second respondent filed a petition for reinvestigation and the said application was pending till 2011. Thereafter, the second respondent filed another application for further investigation and the same was allowed by the learned Judicial Magistrate, Palani. The learned Judicial Magistrate, directed the first respondent police to file report after conducting further investigation. After completion of the investigation, the first respondent police filed a report and confirmed the earlier final report filing by them and no additional charge is framed and the same is pending for trial.

7. Heard, Mr.I.Lawrance, learned counsel for the petitioner and Mr.K.Suyambulinga Bharathi, learned Government Advocate (Crl.Side) appearing for the first respondent.

8. The petitioner is a sole accused. On the complaint lodged by the second respondent alleged that the petitioner cheated the defacto complainant to the tune of Rs.2,44,540/- by purchasing a car and other expenditure made by the second respondent to maintain the car and the school Annual Day celebrations. Further alleged that the petitioner changed the agreement entered between them. Accordingly, the petitioner cheated the defacto complainant. Hence, the charge.

9. On perusal of the records shows that the petitioner was appointed as a Director of the School, which was run by the second respondent. The car purchased by the second respondent for the School and maintained by the second respondent, since she is the correspondent of the School to attract the offence under Sections 406, 467, 468, 471 and 379 of IPC. There is absolutely no material evidence to attract the said charges as against the petitioner.

10. Further, no list of witness has been spoken about the allegations as alleged by the prosecution to prove the charge against the petitioner.

11. That apart, now the petitioner is aged about 71 years. The second respondent lodged a complaint for the occurrence took place in the year 1997. After a period of two years, complaint was registered. After, a period of four years, the first respondent filed the final report and the same has been taken cognizance in C.C.No.36/2003. While being so, the second respondent again filed the petition in Crl.M.P.No.4895 of 2006, after a period of three years. The Trial Court ordered further investigation after a period of five years i.e on 03.11.2011. The first respondent filed a report only on 20.08.2019 i.e., after a period of eight years. Therefore, the entire proceedings is pending for the past 21 years. It is also pertained to note that only on the fault of the respondents, it is pending and no fault on the petitioner side. In this regard, the learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Moti Lal Saraf Vs.State of Jammu and Kashmir and Others** reported in **AIR2007SC56** . (Paragraph 13 to 28)



"13. The appellant, in the instant case, has been facing the criminal prosecution for almost more than two and a half decades. The speedy trial is an integral part of Article 21 of the Constitution. In the instant case, in the last twenty six years, not even a single prosecution witness had been examined. It was urged that for more than one reasons, the prosecution, in the instant case, cannot be permitted to continue. The proceedings taken by the respondents against the appellant were clearly an abuse of process of law. This Court had repeatedly emphasized that the speedy trial is implicit in the spectrum of Article 21 of the Constitution.

14. Reference was made to a Constitution Bench Judgment of this Court in the case of **Abdul Rehman Antulay v. R. S. Nayak Manu/SC/0326/1992 : 1992 Cri LJ 2717**. In this case, the Court held that the right to a speedy trial was a part of fair, just and reasonable procedure implicit in Article 21 of the Constitution. This Court, in this case, observed that each case had to be decided on its own facts. In this case, this Court further observed that it was not advisable and feasible to fix an outer time limit for conclusion of the criminal proceedings.

It was submitted in the said case that the framers of Indian Constitution were aware of the 6th Amendment in the Constitution of the USA providing in express terms the right of an 'accused' to be tried speedily. Yet, similar provision was not incorporated in the Indian Constitution. It was submitted in that case that it is neither permissible nor possible nor desirable to lay down an outer limit of time. The US Supreme Court also had refused to do so.

15. We deem it appropriate to reproduce the relevant observations made by this Court in the case of **Hussainara Khatoon (I) v. Home Secretary, State of Bihar MANU/SC/0119/1979 : 1069 Cri LJ 1036** as under:

"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 as interpreted by this Court in Article 21 [(1978) 1 SCC 248]. 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 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."

In a number of cases, this Court on consideration of peculiar facts and circumstance of individual cases had quashed the proceedings.

16. In Rakesh Saxena v. State through C.B.I. MANU/SC/0109/1986 : [1987] 1 SCR 173, this Court quashed the proceedings on the ground that any further continuance of the prosecution after lapse of more than six years in the case of the appellant who was merely a trader at the lowest rung of the hierarchy in the Foreign Exchange Division of the Bank is uncalled for, particularly, in view of the complicated nature of the offence charged.

This Court, in the case of **Srinivas Gopal v. Union Territory of Arunachal Pradesh MANU/SC/0581/1988 : (1988) Cri LJ 1803** quashed the proceedings on the ground of delay in investigation and commencement of trial. The investigation commenced in November 1976 and the case was registered on completion of the investigation in September 1977. Cognizance was taken by the Court in March 1986.

17. In T. J. Stephen v. Parle Bottling Co. (P) Ltd. MANU/SC/0528/1988 : (1988) Cri LJ 1095, this Court quashed the charges against the accused under Section 5 of the Import and Exports (Control) Act, 1947. The Court held that it would not be in the interests of justice to allow a prosecution to start and trial to be proceeded with after a lapse of twenty six years even though one of the accused was himself responsible



for most of the delays caused by his mala fide tactics.

18. In Machander v. State of Hyderabad MANU/SC/0029/1955 : (1955) Cri LJ 1644, this Court observed that while it was incumbent on the Court to see that no guilty person escapes, it is still more its duty to see that justice is not delayed and accused persons are not indefinitely harassed. The Court observed that the scales must be held even between the prosecution and the accused. In the facts of that case, the Court refused to order trial on account of the time already spent and other relevant circumstances of that case.

19. In the case of A. R. Antulay (supra), this Court gave propositions meant to serve as guidelines. This Court held that these propositions are not exhaustive. It is difficult to foresee all situations. Nor is it possible to lay down any hard and fast rules. This Court further observed as under:

"(1) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any the less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

(2) Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial. That is how, this Court has understood this right and there is no reason to take a restricted view.

(3) The concerns underlying the right to speedy trial from the point of view of the accused are:

(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;

(b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and



(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.

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This Court also observed that while determining whether undue delay has in fact occurred, one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on what is called, the systematic delays. The sum and substance is that it is neither advisable nor practicable to fix any time limit for trial of offence. Each case has to be decided on its own facts and circumstances.

20. This Court, as per the majority in a seven-Judge Bench, in the case of **P. Ramachandra Rao v. State of Karnataka MANU/SC/0328/2002 : (2002) Cri LJ 2547** came to the conclusion and declared that this Court can interpret the law and in the process remove any lacuna, fill the gaps in the Legislation and even lay down a law with reference to the dispute before it. But it, cannot declare a new law of general application in the manner the Legislature does. In this case, the Court relied upon **Antulay's** case (supra) and refrained from fixing any time limit not because the Court had no power to do so, but because it was "neither advisable nor practicable" to do so. The Court observed that since the law laid down by the Constitution Bench still holds the field, any declaration made in derogation thereof fixing time limit by a smaller Bench is overruled by virtue of the doctrine of binding precedents. The Court also laid down that the question of delay had to be decided by the Court having regard to the totality of circumstances of an individual case. The Court observed that it must be left to the judicious discretion of the court seized of an individual case to find out from the totality of circumstances of a given case if the quantum of time consumed up to a given point of time amounted to violation of Article 21, and if so, then to terminate the particular proceedings, and if not, then to proceed ahead. The test is whether the proceedings or trial has remained pending for such a length of time that the inordinate



delay can legitimately be called oppressive and unwarranted.

It would be pertinent to mention that the Sixth Amendment to the U.S. Constitution states that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed. "These guarantees are the most basic rights preserved by the Constitution; fundamental liberties embodied in the Bill of Rights. The due process clause of the Fourteenth Amendment made them applicable to all States."

21. The Constitutional guarantee is for the protection of both the accused and the society. Even in the United States where there has been a constitutional amendment recognizing speedy trial as an extremely valuable right of the accused even then the Court held that no time limit could be fixed for concluding the criminal trial. It has been held that it depends on the facts and circumstances of each case.

In a celebrated American case, **Beavers v. Haubert** (1905) 198 US 77, 49 L Ed 950, 25 S Ct 573, it was recognized that the right to a speedy trial is necessarily relative, and that it is consistent with delays and depends upon circumstances.

In another case of U.S. Supreme Court, **Pollard v. United States** 1957) 352 US 354, 1 L Ed 2d 393, 77 S Ct 481, it was recognized that whether delay in completing a prosecution amounts to an unconstitutional deprivation of rights depends upon the circumstances, and that the delays must not be purposeful or oppressive.

22. It was recognized that "the constitutional guarantee of a speedy trial is an important safeguard (1) to prevent undue and oppressive incarceration prior to trial, (2) to minimize anxiety and concern accompanying public accusation, and (3) to limit the possibilities that long delays will impair the ability of an accused to defend himself. Adhering to the views expressed in earlier decisions, the Court reiterated that the right to a speedy trial is necessarily relative; that it is consistent with delays; that whether delay in completing a prosecution amounts to an unconstitutional deprivation of rights depends upon the circumstances and that the delay must not be purposeful or oppressive."



23. In **Smith v. Hooey** (1969) 393 US 374, 21 L Ed 2d 607, 89 S Ct 575, it was recognized that the Sixth Amendment guarantee of the right to a speedy trial is essential to protect at least three basic demands of criminal justice: (1) to prevent undue and oppressive incarceration prior to trial, (2) to minimize anxiety and concern accompanying public accusation, and (3) to limit the possibilities that long delay will impair the ability of an accused to defend himself.

In England, from the time of the Magna Carta, an accused, in theory at least, enjoyed the right to a speedy trial, which was secured by the commission of goal delivery, under which the jails were cleared at least twice each year.

24. In **Commonwealth v. Hanley** [337 Mass 384, 149 NE2d 608, 66 ALR2d 222, cert den 358 US 850, 3 L ed 2d 85, 79 S Ct 79], the guarantee of speedy trial has been held to serve a threefold purpose: it protects the accused, if held in jail to await trial against prolonged imprisonment; it relieves him of the anxiety and public suspicion attendant upon an untried accusation of crime; and, like statutes of limitation, it prevents him from being exposed to the hazards of a trial after the lapse of so great a time that the means of proving his innocence may have been lost.

In the case of **State v. Carrillo** [41 Ariz 170, 16 P2d 965], it has been held that an accused who has been denied speedy trial, or who has not been brought to trial within the time required by an implementing statute, can generally move to dismiss the prosecution on that ground.

Rule 48(b) of the Federal Rules of Criminal Prosecution authorizes dismissal if there is unnecessary delay in presenting the charge to a grand jury or in filing an information against an accused who has been held to answer to the district court, or if there is unnecessary delay in bringing an accused to trial. This rule has the same effect in implementing the Sixth Amendment right to speedy trial, as an act of Congress would have had.

25. A Constitution Bench of this Court has, in the case of **Kartar Singh v. State of Punjab (1994) 3 SCC 569**, mentioned that the right to a speedy trial is a derivation from a provision of Magna Carta. This principle has also been incorporated into the Virginia Declaration of Rights of 1776 and from there into the Sixth Amendment of the Constitution of United States



of America which reads, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial...". It may be pointed out, in this connection, that there is a Federal Act of 1974 called 'Speedy Trial Act' establishing a set of time-limits for carrying out the major events, e.g., information, indictment, arraignment, in the prosecution of criminal cases.

In this case, this Court further observed as under: "The right to a speedy trial is not only an important safeguard to prevent undue and oppressive incarceration, to minimize anxiety and concern accompanying the accusation and to limit the possibility of impairing the ability of an accused to defend himself but also there is a societal interest in providing a speedy trial. This right has been actuated in the recent past and the courts have laid down a series of decisions opening up new vistas of fundamental rights. In fact, lot of cases are coming before the courts for quashing of proceedings on the ground of inordinate and undue delay stating that the invocation of this right even need not await formal indictment or charge."

The concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted.

26. This Court in **Hussainara Khatoon (I)** (supra) further observed as under:

"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."

This Court in a number of cases has reiterated that speedy trial is one of the facets of the fundamental right to life and liberty enshrined in Article 21 and the law must ensure 'reasonable, just and fair' procedure which has a creative connotation after the decision of this Court in **Maneka Gandhi's** case (supra).

27. When we examine the instant case in the light of the aforementioned decisions of this Court and of the US Supreme Court, it becomes abundantly clear that no general guideline can be fixed by the court and that each case has to be examined on its own facts and circumstances.

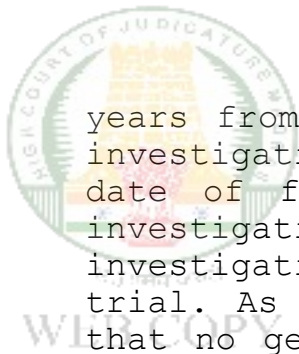
It is the bounden duty of the court and the prosecution to prevent unreasonable delay.

The purpose of right to a speedy trial is intended to avoid oppression and prevent delay by imposing on the courts and on the prosecution an obligation to proceed with reasonable dispatch.

In order to make the administration of criminal justice effective, vibrant and meaningful, the Union of India, the State Governments and all concerned authorities must take necessary steps immediately so that the important constitutional right of the accused of a speedy trial does not remain only on papers or is a mere formality.

28. In the instant case not a single witness has been examined by the prosecution in the last twenty six years without there being any lapse on behalf of the appellant. Permitting the State to continue with the prosecution and trial any further would be total abuse of the process of law. Consequently, the criminal proceedings are quashed. The appeal is accordingly allowed and disposed of."

12. As discussed above, in the case on hand, it is pending for trial from the year 2003. The second respondent after a period of 3
<https://hcservices.ecourts.gov.in/hcservices/>



years from the date of final report, filed a petition for further investigation. It was ordered after a period of 5 years from the date of filing. It was ordered by the Trial Court for further investigation after a period of 8 years from the date of further investigation. Therefore, it causes 21 years delay in the process of trial. As the judgment held by the Hon'ble Supreme Court of India that no general guideline can be fixed by the Court and that each case has to be examined on its own facts and circumstances. It is the bounden duty of the Court and the prosecution to prevent unreasonable delay. The purpose of right to a speedy trial is intended to avoid oppression and prevent delay by imposing on the Courts and on the prosecution an obligation to proceed with reasonable dispatch. The prosecution failure to initiate the trial proceedings for the past 21 years without there being any lapse on behalf of the petitioner herein. Thus, permitting the State to continue with the prosecution and trial any further would be total abuse of process of law. So far, the petitioner had undergone the ordeal trial for the past 21 years, the pendency of the trial would not serve any purpose and as such it is liable to be quashed.

13. Hence, the impugned Charge Sheet in C.C.No.360 of 2003 pending on the file of the learned Judicial Magistrate, Palani, Dindigul District, is hereby quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

14. Further, the personal appearance of the petitioner is dispensed with and he shall be represented by a counsel after filing appropriate application. The petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Judicial Magistrate, Palani,
Dindigul District.

2. The Inspector of Police,
Palani Town Police Station,
Dindigul District.



3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.J.LAWRANCE, Advocate (SR-90305[F] dated 30/09/2019)

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