

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1252 of 2019

Arising Out of PS. Case No.-56 Year-1995 Thana- VIGILANCE District- Patna

Manohar Kumar Verma Son of Late Girish Nandan Prasad Resident of Village
- S.S. Enclave, Flat No.202, Ashiana Digha Road Near Rakhi Complex,
Khajpura, B.V. College, Patna P.S.- Shashtri Nagar, Dist.- Patna.

... .. Petitioner

Versus

1. The State of Bihar through The Director General, Vigilance Govt. Of Bihar,
Patna
2. The Officer in Charge, Vigilance Police station, Patna.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. P.N. Shahi, Senior Advocate
		Mr.Ashok Kumar Mishra, Advocate
For the Vigilance	:	Mr.Arvind Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
CAV JUDGMENT

Date : 22-12-2022

Heard Mr. P.N. Shahi, learned Senior Counsel assisted
by Mr. Ashok Kumar Mishra, learned Counsel for the petitioner
and Mr. Arvind Kumar, learned Counsel for the Department of
Vigilance Investigation Bureau.

2. This writ application has been filed seeking the
following reliefs:-

“i. A writ in the nature of certiorari or any other
appropriate writ/order or direction for quashing of
the Entire criminal Proceeding pending against the
petitioner in Special Case No. 13/95 arising out of
Vigilance P.S. Case No. 56 /95 under Sections
409/120B IPC and under Sections of 13(2) 13(1)
Prevention of Corruption Act pending in the court
of Special Judge, Vigilance 1st, Patna.

ii. Any other appropriate writ/order or direction
which your Lordships may deem fit and proper.”



Brief Facts of the Case:-

3. It is the case of the petitioner that as back as on 04.09.1995, Vigilance P.S. Case No. 56 of 1995 was registered against him under Sections 409/120B IPC and Section 13(1)/13(2) of the Prevention of Corruption Act (hereinafter referred to as 'PC Act').

4. As per the prosecution story, the petitioner being Assistant Electrical Engineer, Barauni lodged one Barauni P.S. Case No. 204 of 1998 for the alleged theft of Transformer Oil under Section 379 of the Indian Penal Code (in short 'IPC'). After investigation of the said case, a final form was submitted stating that the case was untrue and it was recommended to initiate proceeding under Section 182 IPC against the informant. It was found by the investigating agency that the valve and oil of the transformer was not stolen and transformers were supplied by the company with 10% extra oil. The agency took a view that with ill intention and to get personal benefit, Barauni P.S. Case No. 204 of 1988 was lodged after much delay.

5. After lodging of the FIR on 05.09.1995, a charge-sheet was filed against the petitioner on 05.08.1999. The learned court took cognizance of the offence on 16.08.1999. In the charge-sheet, altogether 21 persons have been named as witnesses. The



petitioner surrendered in the learned court below in connection with this case and was granted bail by this Court on 23.07.1997. It is the specific statement of the petitioner in paragraph '10' of the writ application that since 17.06.1997, the petitioner is regularly appearing in the trial court.

6. Learned Senior Counsel for the petitioner has submitted before this Court that in this case, charges were framed as back as on 21.08.2002 but the trial has yet not been concluded. The last witness examined in the trial was on 28.07.2017. The villagers Shri Sachidanand Rai and Vidyanand Rai who were made witnesses in the case to support the prosecution case have turned hostile.

7. Learned Senior Counsel further submits that on 28.01.2009, a petition was filed in the learned trial court on behalf of the petitioner to close the prosecution evidence on the ground that after six years of framing of charge only 4 prosecution witnesses were examined. Thereafter, summons, bailable warrant of arrests and non-bailable warrant of arrests were issued and all processes were issued by the learned trial court for appearance of the witnesses. Out of 21 prosecution witnesses, 19 prosecution witnesses are official witnesses. Except PW-8 and PW-9, who are the villagers, all other prosecution witnesses are only the formal



and official witnesses. It is submitted that the huge delay in conclusion of trial has caused serious prejudice to the petitioner. Earlier, the petitioner faced a departmental proceeding in which vide resolution no. 602 dated 12.05.1997 he was dismissed from service. The said punishment was challenged in this Court in CWJC No. 1924 of 1998. This Court vide its order dated 15.07.2015 passed in CWJC No. 1924 of 1998 quashed the punishment order with all consequential benefits. The Hon'ble High Court directed the respondents to reinstate the petitioner forthwith with all consequential benefits.

8. Learned Senior counsel submits that the petitioner has retired from service on 30.11.2019 but because of the pendency of the Vigilance case, he has been allowed only 90% of the gratuity and 90% for pension. Reliance has been placed on the judgments of the Hon'ble Supreme Court in the cases of **Hussainara Khatoon (I) vs. Home Secy., State of Bihar** reported in (1980) 1 SCC 81, **Abdul Rehman Antulay v. R. S. Nayak** reported in (1992) 1 SCC 225, **Vakil Prasad Singh Vs. State of Bihar** reported in (2009) 3 SCC 355, **Mahendra Lal Das vs. State of Bihar & Ors.** reported in AIR 2001 SC 2989 and **Bishwanath Prasad Singh vs. State of Bihar** reported in 1994 Supp. (3) SCC 97 to submit that speedy trial has been recognized as a



fundamental right to an accused and such rights have been found embodied under Article 21 of the Constitution of India. It is submitted that the Hon'ble Supreme Court has in the case of **Vakil Prasad Singh** (Supra) quashed the criminal prosecution when the prosecution failed to complete the investigation even after 7 ½ years of the order of re-investigation of the case.

9. Learned Senior Counsel lastly submits that in this case, an extraordinary period of over 27 years have lapsed and the petitioner has faced the turmoils of his life during all these years while facing the criminal case. At this stage, therefore, the prosecution is liable to be quashed.

Submissions on behalf of the Vigilance:-

10. On the other hand, Mr. Arvind Kumar, learned counsel for the Vigilance Investigation Bureau submits that the order passed by the Hon'ble High Court in CWJC No. 1924 of 1998 is not binding in the criminal proceeding. It is submitted that exoneration in the departmental proceeding ipso-facto would not lead to exoneration or acquittal in the criminal case. It is submitted that the petitioner has filed a petition on 27.04.2019 before the learned trial court for closure of the evidence of the prosecution but this fact has not been disclosed in the writ petition. A statement has been made in the counter affidavit that the record



of the case has been transferred to the Special Court, Bhagalpur by order of this Hon'ble Court and the Vigilance undertakes that he will produce the remaining prosecution witnesses before the trial court as soon as available. The counter affidavit has been filed on or about 19th October, 2020 as it appears from the materials available on the record. Till hearing of this writ application, however, the fact remains that no other witness could be examined on behalf of the prosecution.

Consideration:-

11. This Court has heard learned Senior Counsel for the petitioner as well as learned counsel for the Vigilance Investigation Bureau. The admitted position is that in this case, the charges were framed as back as on 21.08.2002, therefore, at the time of hearing of the writ petition, more than 20 years had gone after framing of the charge. The specific case of the petitioner is that during all this period, he has been putting his appearance but the prosecution could not produce witnesses as a result whereof the case has remained pending so far.

12. In such circumstance, the question which arises for consideration before this Court is as to whether the delay in completion of trial in this case is such that it may be taken to have prejudiced the fundamental right guaranteed to the petitioner by way of Right to Speedy



Trial under Article 21 of the Constitution of India and further whether such breach has caused serious prejudice to the petitioner.

13. In the case of **Hussainara Khatoon (Supra)**, the Hon'ble Supreme Court has observed 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 Article 21 as interpreted by this Court in **Maneka Gandhi v. Union of India [(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 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.....”

14. In the case of **Abdul Rehman Antulay (Supra)**, again the Hon'ble Supreme Court considered a similar issue and held as under:-

“The learned Judge, however, posed a question which he left to be answered at a later stage. The question posed was: What is the consequence of denial of this right? Does it necessarily entail the consequence of quashing of charges/trial? That question we shall consider separately but what is of significance is, this decision does establish the following propositions:

(1) Right to speedy trial is implicit in the broad sweep and content of Article 21.

(2) That unless the procedure prescribed by law ensures a speedy trial it cannot be said to be reasonable, fair or just. Expeditious trial and freedom from detention are part of human rights and basic freedoms and that a judicial system which allow incarceration of men and



women for long periods of time without trial must be held to be denying human rights to such undertrials.”

15. The Bishwanath Prasad Singh (Supra) went to the Hon’ble Supreme Court against the order of the Patna High Court in dismissing the writ petition filed by the appellant-accused seeking to have the criminal proceedings launched against him quashed on the ground of violation of his right to speedy trial. In the said case the appellant was suspended pending inquiry due to allegation of shortage of fertilizer worth Rs. 1,15,000/- during his posting as Depot Manager under the Bihar State Cooperative Marketing Union at Sitamarhi, he was suspended on 2-7-1977 and later he was dismissed from service and the provident fund and gratuity due to him was also forfeited. The appellant had crossed the age of superannuation when the Special Leave Petition was filed and the investigation remained pending for more than five years but chargesheet had been filed on 09.02.1983 and thereafter, the prosecution evidence was adduced and charges were framed by the court under Sections 408 and 428 of the Indian Penal code and Section 7 of the Essential Commodities Act. In these backgrounds the Hon’ble Supreme Court took note of the fact that there was no explanation coming for the extra ordinary delay of more than five years in completion of investigation. The Hon’ble Apex Court observed: “Maybe, this being a case of misappropriation of public



funds, the investigation may have taken a longer time but it cannot certainly take more than five years, having regard to the facts and circumstances of the case.” The Apex Court took a view that calling upon the appellant now to enter upon defence, after 16 years is bound to cause prejudice to him.

16. In the case of **Vakil Prasad Singh (supra)**, the Hon’ble Supreme Court considered the scope of right to speedy trial enshrined under Article 21 of the Constitution of India in the matter of quashment of the criminal proceeding due to delay even in serious cases. Their Lordships having discussed the case laws on the subject recorded in paragraphs ‘19’, ‘20’ and ‘24’ as under:-

“**19.** The exposition of Article 21 in *Hussainara Khatoon (1) case*⁵ was exhaustively considered afresh by the Constitution Bench in *Abdul Rehman Antulay v. R.S. Nayak*⁶. 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.”

“**20.** For the sake of brevity, we do not propose to reproduce all the said propositions and it would suffice to note the gist thereof. These are: (*A.R. Antulay case*⁶, SCC pp. 270-73, para 86)

(i) fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily;

(ii) right to speedy trial flowing from Article 21 encompasses all the stages, namely, the stage of investigation, inquiry, trial, appeal, revision and retrial;

(iii) in every case, where the speedy trial is alleged to have been infringed, the first question to be put and answered is — who is responsible for the delay?;

(iv) while determining whether undue delay has occurred (resulting in violation of right to speedy trial) one must have regard to all the attendant circumstances, including nature of

5 [(1980) 1 SCC 81 : 1980 SCC (Cri) 23]

6 [(1992) 1 SCC 225 : 1992 SCC (Cri) 93]



offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on—what is called, the systemic delays;

(v) each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of the 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;

(vi) ultimately, the court has to balance and weigh several relevant factors—‘balancing test’ or ‘balancing process’—and determine in each case whether the right to speedy trial has been denied;

(vii) ordinarily speaking, where the court comes to a conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open and having regard to the nature of offence and other circumstances when the court feels that quashing of proceedings cannot be in the interest of justice, it is open to the court to make appropriate orders, including fixing the period for completion of trial;

(viii) it is neither advisable nor feasible to prescribe any outer time-limit for conclusion of all criminal proceedings. 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;

(ix) an objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in the High Court must, however, be disposed of on a priority basis.”

“24. It is, therefore, well settled that the right to speedy trial in all criminal persecutions (*sic* prosecutions) 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.”

17. In the case of **Vakil Prasad Singh (supra)** the allegation against the appellant was that of demanding of a sum of Rs. 1000/- as illegal gratification for release for the civil work executed by him and in the trap laid to catch the culprit chemically treated currency notes were said to have been recovered from appellant's pocket. The FIR was lodged on or about 08.04.1981 and the chargesheet was filed on 28.02.1982 whereupon the learned Magistrate took cognizance on 09.12.1982 but thereafter nothing substantial happened till 06.07.1987 except for dismissal of an application filed by the prosecution for re-investigation of the case. This Court vide its order dated 07.12.1990 had quashed the order of the learned Magistrate taking cognizance with a direction to the prosecution to complete the investigation within a period of three months but thereafter no progress was made in the case till the year 1998. Under these circumstances the appellant had moved application under Section 482 Cr.P.C. in the High court seeking quashing of the entire criminal proceeding against him on the ground that the re-investigation in the matter had not been initiated even after a lapse of seven-and-half years. It is only when the matter was called out for final hearing in the High Court after



nine years i.e. on 11.05.2007. The High Court dismissed the petition acknowledging that there had been substantial delay in conclusion of proceedings against the appellant and some prejudice may have been caused to the appellant in his professional career on account of continuance of criminal case against him but the learned Judge concluded that this reason by itself was not sufficient to quash the entire criminal proceedings against him, particularly keeping in view the seriousness of the allegations.

18. In Mahendra Lal Das (supra) the appellant was an Executive Engineer, Public Engineering Department, Mechanical Division, Ranchi. He was being prosecuted for the offence under Sections 5(2) read with Section 5(1)(e) of the Prevention of Corruption Act, 1947 wherein it was alleged that the appellant was in possession of disproportionate assets to the extent of Rs 50,600/-. The FIR was sought to be quashed mainly on the ground that despite expiry of over 12 years, the respondent State had not granted the sanction which amounted to the violation of his right of life and liberty as enshrined in Article 21 of the Constitution of India. The High Court dismissed the petition seeking quashing of the FIR, on the ground that mere delay in granting the sanction has not prejudiced the appellant in any manner particularly when he is



already on anticipatory bail. The Hon'ble Supreme Court held that in this case the prosecution has miserably failed to explain the delay of more than 13 years in granting sanction for prosecution of the appellant and keeping in view the peculiar facts and circumstances of the case, permitting further prosecution would be a travesty of justice and a mere ritual or formality so far as the prosecution agency is concerned, and unnecessary burden as regards the court.

19. In the case of Superintendent of Police, Karnataka Lokayukta and Another versus B. Srinivas reported in **(2008) 8 SCC 580**, the Hon'ble Supreme Court once again observed in paragraph '10' as under:-

“**10.** There is no general and wide proposition of law formulated that whenever there is delay on the part of the investigating agency in completing the investigation, such a delay can be a ground for quashing the FIR. It would be difficult to formulate inflexible guidelines or rigid principles in determining as to whether the accused has been deprived of fair trial on account of delay or protracted investigation; it would depend on various factors including whether such a delay was reasonably long or caused deliberately or intentionally to hamper the defence of the accused or whether the delay was inevitable in the nature of things or whether it was due to dilatory tactics adopted by the accused. It would depend upon certain peculiar facts and circumstances of each case i.e. the volume of evidence collected by the investigating agency, the nature and gravity of the offence for which the accused has been charge-sheeted in a given case. The nexus between whole and some of the above factors is of considerable relevance. Therefore, whether the accused has been deprived of fair trial on account of protracted investigation has to



come on facts. He has also to establish that he had no role in the delay. Every delay does not necessarily occur because of the accused.”

20. It is crystal clear from the judgments of the Hon’ble Apex Court that the right to speedy trial is an inalienable right under Article 21 of the Constitution and this right is applicable to the actual proceedings in court. It is not confined to any particular category of cases, this right extends equally to all criminal prosecution.

21. In the light of the judgments of the Hon’ble Supreme Court, when this Court considers the facts of the present case, this Court would come to a conclusion that in this case there is a huge and inordinate delay and the respondent Department of Vigilance Investigation Bureau has completely failed in explaining the reasons for such huge delay. In fact, save and except to say that they will produce further witnesses which also they have failed to do during last 2 years, there is no explanation of the Department as to why during this period of 20 years, the prosecution witnesses could not be produced.

22. To this Court, it appears that the long delay in conclusion of trial has definitely prejudiced the fundamental right of the petitioner to get speedy justice and it has seriously prejudiced



him inasmuch as even three years after his retirement from service he has not received full gratuity and pension.

23. In the given facts and circumstances of the case, this Court is of the considered opinion that it is a fit case in which the criminal prosecution of the petitioner is required to be quashed. This Court, therefore, allows the writ application in terms of the prayer contained in paragraph 1(i) of the writ application.

24. This application is allowed.

(Rajeev Ranjan Prasad, J)

Lekhi/-
Sushma/-

AFR/NAFR	
CAV DATE	18.11.2022
Uploading Date	23.12.2022
Transmission Date	23.12.2022

