

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1512 of 2012

Tarakanta Mohapatra.

....

Petitioner

-versus-

State of Orissa.

....

Opposite Party

CORAM: JUSTICE S.PUJAHARI

ORDER
22.06.2022

Order No.

- 21.
1. This matter is taken up through Hybrid mode.
 2. The petitioner in this application under Section 482 of the Code of Criminal Procedure (for short “Cr.P.C.”) has prayed for quashing of the F.I.R. in Bhubaneswar Vigilance P.S. Case No.12 of 2012 corresponding to V.G.R. Case No.12 of 2012 pending on the file of the learned Special Judge (Vig.), Bhubaneswar.
 3. Learned counsel for the petitioner submits that since no case is made out against the petitioner, inasmuch as the allegation made against him is false and concocted, the prosecution launched against the petitioner may be quashed, more so when the Final Form against him has not been submitted though in the meanwhile ten years have elapsed.

4. As it appears, the F.I.R. was lodged on 17.01.2012. But, in the meanwhile though ten years have elapsed, no Final Form has been filed as gathered from Mr. Pani, the learned Standing counsel appearing for the Vigilance Department. No material is also produced to show that the accused-petitioner has any contribution in such delay in submission of the Final Form. Mr. Pani also could not bring notice of this Court what prevented the Investigating Agency not to complete the investigation for a decade.

5. In the case of *Vakil Prasad Singh vrs. State of Bihar*, reported in (2009) 3 SCC 355, the Apex Court have held as follows:-

“18. 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.⁴, in *Hussainara Khatoon & Ors. Vs. Home Secretary, State of Bihar*⁵, 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 there from flows, without doubt, the right to speedy trial. It was also observed that 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 (1978) 1 SCC 248 (1980) 1 SCC 81 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.*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:

(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 offence, number of accused and witnesses, the work-load of the court concerned, prevailing local conditions and so on--what is called, (1992) 1 SCC 225 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 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.

21. Notwithstanding elaborate enunciation of Article 21 of the Constitution in *Abdul Rehman Antulay (supra)*, and rejection of the fervent plea of proponents of right to speedy trial for laying down time-limits as bar beyond which a criminal trial shall not proceed, pronouncements of this Court in "*Common Cause*" A Registered Society Vs. Union of India (UOI) & Ors.⁷, "*Common Cause*", A Registered Society Vs. Union of India & Ors.⁸, *Raj Deo Sharma Vs. State of Bihar*⁹ and *Raj Deo Sharma II Vs. State of Bihar*¹⁰ gave rise to some confusion on the question whether an outer time limit for conclusion of criminal proceedings could be prescribed whereafter the trial court would be obliged to terminate the proceedings and necessarily acquit or discharge the accused. The confusion on the issue was set at rest by a seven-Judge Bench of this court in *P. Ramachandra Rao Vs. State of Karnataka*¹¹.

22. Speaking for the majority, 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 (1996) 4 SCC 33 (1996) 6 SCC 775 (1998) 7 SCC 507 (1999) 7 SCC 604 (2002) 4 SCC 578 take care of right to speedy trial, it was held that 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 it is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. Nonetheless, 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 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.

25. Where the court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction, as the case may be, may be quashed unless the court feels that having regard to the nature of offence and other relevant circumstances, quashing of proceedings may not be in the interest of justice. In such a situation, it is open to the court to make an appropriate order as it may deem just and equitable including fixation of time frame for conclusion of trial.”

[Underlining is mine]

5. Therefore, in the aforesaid facts and circumstances of the case, so also in view of the aforesaid law laid down by the Apex Court, this Court allow this Criminal Misc. Case. Consequently, the investigation made by the Vigilance Police including the F.I.R. in Bhubaneswar Vigilance P.S. Case No.12 of 2012 stands quashed qua the petitioner. The Vigilance Police shall act on production of the certified copy of this order.

6. Urgent certified copy of this order be granted on proper application.

(S. Pujahari)
Judge

MRS