

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.40802 of 2015

Arising Out of PS. Case No.-14 Year-1994 Thana- SARAN GRP CASE District- Saran

Krishna Nandan Sahay @ K.N. Sahay, S/o - Mahesh Nandan Sahay, resident of village - Sekhopur, P.S. - Desri, District - Vaishali, LR ASM/BIDUPUR.

... .. Petitioner

Versus

Union of India through the Senior Divisional Security Commissioner, Railway Protection Force, Sonapur.

... .. Opposite Party

Appearance :

For the Petitioner/s	:	Mr. N.K. Agarwal, Sr. Advocate Mr. Kumar Manish, Advocate Mr. Amrit Anand, Advocate
For the Opposite Party/s :		Mr. Mahesh Prasad, Advocate Mr. Siddhartha Prasad, Advocate Mr. Tarkeshwar Nath Thakur, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

6 18-04-2023 This application has been filed for quashing of the order dated 12.06.2015 passed by learned Judicial Magistrate, Railway, Sonapur, Saran, in Trial No.09 of 2015, arising out of Sonapur RPF Case No.14 of 1994, whereby the learned Magistrate has rejected the application filed by the petitioner for discharge under section 245(1) of the Criminal Procedure Code.

As per the F.I.R., the allegation against the petitioner, who at the relevant time, was the Assistant Station Master, is that instead of unloading 1400 litres of diesel in nine drums, an extra drum was taken and thus at the time of search, 1590 litres of diesel were recovered. As he was holding the keys of the go-down, the onus of allegation came on him.



Learned senior counsel for the petitioner submits that during the course of investigation nothing was found against the petitioner. His name has come only on the basis of the confessional statement of co-accused-Balram Jha. He further submits that at the relevant time, the petitioner was on substitute duty at Sahadai Bujurg Railway Station and his only responsibility was for train passing and ticket booking and he had no concerned for the station store.

Learned senior counsel for the petitioner further submits that the present F.I.R. has been lodged on 23.10.1994 and even after 28 years the trial has not concluded and therefore, the prosecution of the petitioner cannot continue in view of decisions of the Hon'ble Supreme Court rendered in the case of ***Santosh De vs Archna Guha And Others*** reported in (1994) ***Suppl. 3 SCC 735*** and in the case of ***Pankaj Kumar vs State of Maharashtra & Ors.*** reported in (2008) ***16 SCC 117***.

Learned counsel for the Railway does not dispute the fact that still the trial of this case has not concluded.

I have considered the submissions of the parties and perused the materials available on record. From the record, it appears that the F.I.R. was lodged on 23.10.1994 and cognizance was taken against the accused persons in this case on



14.09.1996. In this case, the petitioner filed a petition for discharge in the year 2014 and the same was dismissed in the year 2015. From the record, it further appears that there was no development in the case till 2015. In this case, charges have not been framed against the petitioner and ultimately trial is hanging in balance. In this way, there is unwarranted inordinate delay in investigation of the case as well as in the trial for commission of petty offence. On account of pendency of investigation as well as trial, the petitioner being a Government servant has already suffered mental and physical agony. Further, nothing could be shown by the State to attribute the aforesaid inordinate delay which was in any way caused by the petitioner. Therefore, this Court is of the opinion that right of the petitioner for speedy trial has been infringed.

The Hon'ble Supreme Court in the case ***Pankaj Kumar vs State Of Maharashtra & Ors.*** (supra) has held in paragraph nos. 22 to 28 as follows:-

“22. It is, therefore, well settled that the right to speedy trial in all criminal 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.

23. *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. 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 for the conclusion of trial.*
24. *Tested on the touchstone of the broad principles, enumerated above, we are of the opinion that in the instant case, the appellant's constitutional right recognised under Article 21 of the Constitution stands violated. It is common ground that the first information report was recorded on 12-5-1987 for the offences allegedly committed in the year 1981, and after unwarranted prolonged investigations, involving aforesaid three*



financial irregularities; the charge-sheet was submitted in court on 22-2-1991. Nothing happened till April 1999, when the appellant and his deceased mother filed criminal writ petition seeking quashing of proceedings before the trial court.

25. *Though, it is true that the plea with regard to inordinate delay in investigations and trial has been raised before us for the first time but we feel that at this distant point of time, it would be unfair to the appellant to remit the matter back to the High Court for examining the said plea of the appellant. Apart from the fact that it would further protract the already delayed trial, no fruitful purpose would be served as learned counsel for the State very fairly stated before us that he had no explanation to offer for the delay in investigations and the reason why the trial did not commence for eight long years. Nothing, whatsoever, could be pointed out, far from being established, to show that the delay was in any way attributable to the appellant.*

26. *Moreover, having regard to the nature of the accusations against the appellant, briefly referred to above, who was a young boy of about eighteen years of age in the year 1981, when the acts of*



omission and commission were allegedly committed by the concerns managed by his parents, who have since died, we feel that the extreme mental stress and strain of prolonged investigation by the Anti-Corruption Bureau and the sword of Damocles hanging perilously over his head for over fifteen years must have wrecked his entire career.

27. Be that as it may, the prosecution has failed to show any exceptional circumstance, which could possibly be taken into consideration for condoning the prolongation of investigation and the trial. The lackadaisical manner of investigation spread over a period of four years in a case of this type and inordinate delay of over eight years (excluding the period when the record of the trial court was in the High Court), is manifestly clear.

28. Thus, on facts in hand, we are convinced that the appellant has been denied his valuable constitutional right to a speedy investigation and trial and, therefore, criminal proceedings initiated against him in the year 1987 and pending in the Court of the Special Judge, Latur, deserve to be quashed on this short ground alone.”



Similar view has been taken in the case of ***Santosh De vs Archna Guha And Others*** (supra).

In view of the foregoing discussions as well as nature of offence and in the interest of justice, prosecution launched against the petitioner is fit to be quashed.

Accordingly, this application is allowed and the F.I.R. vide Sonapur R.P.F. Case No.14 of 1994 and all consequential proceeding arising out of the aforesaid F.I.R. including the order dated 12.06.2015 passed by learned Judicial Magistrate, Railway, Sonapur, Saran, in Trial No.09 of 2015 are hereby quashed with respect to present petitioner only.

(Sandeep Kumar, J)

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