

113/1 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-14909-2016

Date of Decision: 13.09.2023

Surjit Thind and another

...Petitioners

vs.

State of Punjab and another

...Respondents

Coram : **Hon'ble Mr. Justice N.S.Shekhawat**

Present : Mr. Navjot Narang, Advocate with
 Mr. S.P.S.Sidhu, Advocate
 for the petitioners.

Mr. M.S.Joshi, Additional Advocate General, Punjab.

N.S.Shekhawat J. (Oral)

1. The petitioners have filed the present petition under Section 482 of the Code of Criminal Procedure with a prayer to quash the complaint No.23 dated 16.07.2010, titled as “Gurtej Singh Vs. Surjit Singh and other” (Annexure P-1) and the summoning order dated 08.03.2011(Annexure P-2) passed by the Court of Sub-Divisional Judicial Magistrate, Samana, whereby the petitioners have been summoned under Sections 323, 324, 452, 148, 149 of IPC, to face trial.

2. Learned counsel for the petitioners contends that a false complaint under Sections 307, 323, 341, 452, 148, 149 of IPC (Annexure P-1) was filed by respondent No.2/ complainant against the petitioners and others. After recording the preliminary evidence, vide order dated 08.03.2011 (Annexure P-2), the Court of Sub-Divisional Judicial Magistrate, Samana summoned the

petitioners and other accused to face trial under Sections 323, 324, 452, 148, 149 of IPC. Learned counsel further contends that in fact, both the petitioners are real brothers and are non-resident of Indians and were not involved in any crime. In reality, respondent No.2/complainant along with four other accused had committed the murder of Darshan Singh son of Aroor Singh and a case vide FIR No.9, dated 03.01.2010 under Sections 302 and 34 IPC and Sections 25/27/30 of Arms Act, at Police Station Ghagga was ordered to be registered against them. Just to create a false defence and to make a cross version of that occurrence, the present complaint (Annexure P-1) was filed by respondent No.2/complainant against the present petitioners. Learned counsel further contends that co-accused of the complainant, namely, Randhir Singh, Baldev Singh and Sukhpal Singh were tried by the Court of Additional Sessions Judge, Patiala and vide judgement of conviction dated 05.07.2014 and order of sentence dated 08.07.2014, passed by the Court of Additional Sessions Judge, Patiala (Annexure P-3), they were ordered to be convicted under Sections 324, 302, 34 of IPC and were sentenced to undergo rigorous imprisonment for life. On the other hand, the petitioners were never served in the present complaint case dated 16.07.2010 (Annexure P-1) by respondent No.2/complainant. However, their co-accused, namely, Karnail Singh, Nirmal Singh, Laddi @ Jaswinder Singh and Darshan Singh were tried by the Court of Additional Sessions Judge, Patiala and vide judgment dated 29.09.2015 (Annexure P-4), they were ordered to be acquitted by the trial Court. Learned counsel further contends that at the time of filing of the complaint as well as passing of the summoning order, the petitioners were not residing within the jurisdiction of the Judicial Magistrate and the Court was bound to follow the provisions of Section

202 Cr.P.C. Even no prayer was made by respondent No.2/complainant before the trial Court for compliance of the mandatory provisions of Section 210 Cr.P.C. Learned counsel further contends that the complaint as well as subsequent proceedings arising therefrom are abuse of process of law as the co-accused of the petitioners have already been ordered to be acquitted, on the basis of the same evidence. Thus, the complaint dated 16.07.2010 (Annexure P-1), summoning order dated 08.03.2011 (Annexure P-2) and all proceedings emanating therefrom are instruments of misuse of process of law and are liable to be quashed by this Court.

3. On the other hand, learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioner. Learned counsel submitted that summoning order dated 08.03.20211 (Annexure P-2) has been passed by the Court by taking into consideration the preliminary evidence led by the complainant and the petition is liable to be dismissed by this Court.

4. In the present case, the petitioners have been ordered to be summoned under Sections 323, 324, 452, 148, 149 of IPC. Even at the time of filing of the complaint and at the time of summoning of the petitioners, they were not in India and were abroad. No doubt, in the facts of the present case, the bar under Section 468 Cr.P.C. would not be applicable. However, even if, the case is not covered by the statutory bar of limitation, still the proceedings were liable to be quashed on the ground of violation of right of speedy trial under Article 21 of Constitution of India. The complaint in the present case was filed after long and unexplained delay by respondent No.2/complainant, just to create a cross version of the FIR registered against them and after due

appreciation of the evidence led by respondent No.2/complainant, the similarly placed co-accused were ordered to be acquitted by the trial Court. Hence, there would be no justification in sending the petitioners to face trial, on the strength of the same set of evidence after several years.

5. The Hon'ble Supreme Court has held in the matter of ***“Vakil Prasad Singh Vs. State of Bihar”, 2009(1) RCR (Criminal) 802;*** as follows:-

"18. Time and again this Court has emphasised the need for speedy investigations and trial as both are mandated by the letter and spirit of the provisions of CrPC [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 v. Union of India* [(1978) 1 SCC 248] and in *Hussainara Khatoon (1) v. State of Bihar* [(1980) 1 SCC 81] 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 therefrom flows, without doubt, the right to speedy trial. It was also observed that: [Hussainara Khatoon (1) case, SCC p. 89, para 5].

"5. ... 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 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 (1)* case was exhaustively considered afresh by the Constitution Bench in *Abdul Rehman Antulay v. R.S. Nayak* [1992(2) RCR (Criminal) 634 : (1992) 1 SCC 225]. 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.

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22. Speaking for the majority in P. Ramachandra Rao [2002(2) RCR (Criminal) 553 : (2002) 4 SCC 578, R.C. Lahoti, J. (as His Lordship then was) while affirming that the dictum in A.R. Antulay case 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 take care of the right to speedy trial, it was held that:

(P. Ramachandra case, SCC p. 603, para 29)

"(3) ... guidelines laid down in A.R. Antulay case are not exhaustive but only illustrative. They are not intended to operate as hard-and-fast rules or to be applied [as] a straitjacket formula. Their applicability would depend on the fact situation of each case [as] [i]t is difficult to foresee all situations and no generalisation can be made."

23. It has also been held that: (P. Ramachandra case, SCC p. 603, para 29)

"(4) It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings."

Nonetheless,

"(5) the criminal courts should exercise their available powers, such as those under Sections 309, 311 and 258 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"**.

(emphasis added)

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 (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."

6. In the present case, it is apparent that one FIR No.9, dated 03.01.2010 under Sections 302 and 34 IPC and Sections 25/27/30 of Arms Act, at Police Station Ghagga was ordered to be registered against respondent No.2/complainant and his four accomplices for the murder of Darshan Singh. The accused were tried and Randhir Singh, Baldev Singh and Sukhpal Singh were ordered to be convicted by the trial Court. However, respondent No.2/complainant also filed the present complaint under Sections 452, 323, 324, 148, 149 of IPC against the petitioners and four others. However, four other co-accused were finally ordered to be acquitted by holding that the version put forward by respondent No.2/complainant in the present case was not believed in the trial arising out of FIR No.9/2010. Thus, from the perusal of the judgment dated 05.07.2014, passed by the Court of Additional Sessions Judge, Patiala (Annexure P-3) and judgment dated 29.09.2015(Annexure P-4)

passed by Additional Sessions Judge, Patiala, the version of the respondent No.2/complainant in the present complaint has been disbelieved twice by the competent Courts of law. Thus, no purpose would be served at such a belated stage by initiating the criminal prosecution against the present petitioners, on the basis of the same set of evidence.

7. In view of the above discussion, the present petition is allowed and the complaint No.23 dated 16.07.2010, titled as “Gurtej Singh Vs. Surjit Singh and other” (Annexure P-1) and the summoning order dated 08.03.2011(Annexure P-2) passed by the Court of Sub-Divisional Judicial Magistrate, Samana, whereby the petitioners have been summoned under Sections 323, 324, 452, 148, 149 of IPC, to face trial along with all consequential proceedings arising therefrom, are hereby ordered to be quashed.

13.09.2023.
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(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No