

CRM-M-42841 of 2022

2023:PHHC:044516

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-42841 of 2022

Reserved on: 17.03.2023

Date of Pronouncement: 27.03.2023

Raj Kapoor

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Ms. Ayna Vasudeva, Advocate,
for the petitioner.

Mr. Anup Singh, AAG, Punjab.

Mr. Paras Jagga, Advocate,
for respondent No.2.

NAMIT KUMAR, J.

This petition has been filed by the petitioner under Section 482 Cr.P.C. seeking issuance of direction to learned Judicial Magistrate First Class, Ludhiana, in the proceedings of complaint case No.COMA/12928/2018 dated 20.09.2018 CNR No.PBLD030666412018 titled 'Raj Kapoor v. Sunil Chandra Balooni' for deciding the same in a time-bound manner preferably within a period of six months.

Brief facts of the case are that petitioner filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the NI Act') against respondent No.2 on the ground that he was engaged by respondent No.2 for construction of area owned by him.

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Respondent No.2 issued some cheques for discharge of his legal liability towards the petitioner with the assurance that the cheques will be encashed after presentation in the bank. However, when the cheque was presented by the petitioner to his banker, same was dishonoured. Thereafter, petitioner sent legal notice to respondent No.2 through his counsel and after stipulated time complaint under Section 138 of the NI Act was filed by the petitioner. After issuance of notice, respondent No.2 was granted bail by the trial Court on 29.01.2019. Thereafter, notice of accusation was served upon respondent No.2. Petitioner also filed application for assessing and payment of interim compensation under Section 143-A of the NI Act.

In spite of service upon respondent No.2, none has put in appearance on his behalf.

Learned counsel for the petitioner contended that present complaint under Section 138 of the NI Act is pending for the last more than four years and as per Section 143 of the NI Act the complaint filed under Section 138 of the NI Act is treated as summary trial and it shall be disposed of within a period of two years. He further submits that in the present case no effective proceedings are being taken and the same is being intentionally and deliberately delayed by respondent No.2. Thus, he seeks directions from this Court for deciding the complaint in a time-bound manner.

I have heard learned counsel for the parties and perused the record.

Speedy trial in all criminal persecutions is an inalienable right under Article 21 of the Constitution and 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 attending circumstances, and determine in each case whether the right to speedy trial has been denied in a given case or not. Where the Court comes to the conclusion that right to speedy trial has been infringed, it would be open to the Court to make an appropriate orders as it may deem just and equitable, including fixation of time for conclusion of trial.

The Constitution Bench of the Hon'ble Supreme Court in ***Abdul Rehman Antulay v. R.S. Nayak, 1992(2) RCR (Criminal) 634*** has framed guidelines with regard to speedy trials and para 86 of the said judgment reads as under: -

"86. In view of the above discussion, the following propositions emerge, meant to serve as guidelines. We must forewarn 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. These propositions are:

*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.

4. *At the same time, one cannot ignore the fact that it is usually the accused who is interested in delaying the proceedings. As is often pointed out, "delay is a known defence tactic". Since the burden of proving the guilt of the accused lies upon the prosecution, delay ordinarily prejudices the prosecution. Non-availability of witnesses, disappearance of evidence by lapse of time really work against the interest of the prosecution. Of course, there may be cases where the prosecution, for whatever reason, also delays the proceedings. Therefore, in every case, where the right to speedy trial is alleged to have been infringed, the first question to be put and answered is - who is responsible for the delay? Proceedings taken by either party in good faith, to vindicate their rights and*

interest, as perceived by them, cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay. It goes without saying that frivolous proceedings or proceedings taken merely for delaying the day of reckoning cannot be treated as proceedings taken in good faith. The mere fact that an application/petition is admitted and an order of stay granted by a superior court is by itself no proof that the proceeding is not frivolous. Very often these stays are obtained on ex parte representation.

5. 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 workload of the court concerned, prevailing local conditions and so on - what is called, the systemic delays. It is true that it is the obligation of the State to ensure a speedy trial and State includes judiciary as well, but a realistic and practical approach should be adopted in such matters instead of a pedantic one.

6. Each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. As has been observed by Powell, J. in Barker "it cannot be said how long a delay is too long in a system where justice is supposed to be swift but deliberate". The same idea has been stated by White, J. in U.S. v. Ewell in the following words:

'... the Sixth Amendment right to a speedy trial is necessarily relative, is consistent with delays, and has orderly expedition, rather than mere speed, as its essential ingredients; and whether delay in completing a prosecution amounts to an unconstitutional deprivation of rights depends upon all the circumstances.'

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.

7. We cannot recognise or give effect to, what is called the 'demand' rule. An accused cannot try himself; he is tried by the court at the behest of the prosecution. Hence, an accused's plea of denial of speedy trial cannot be defeated by saying that the accused did at no time demand a speedy trial. If in a given case, he did make such a demand and yet he was not tried speedily, it would be a plus point in his favour, but the mere non-asking for a speedy trial cannot be put against the accused. Even in USA, the relevance of demand rule has been substantially watered down in Barker and other succeeding cases.

8. Ultimately, the court has to balance and weigh the several relevant factors - 'balancing test' or 'balancing process' - and determine in each case whether the right to speedy trial has been denied in a given case.

9. Ordinarily speaking, where the court comes to the 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. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order - including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded - as may be deemed just and equitable in the circumstances of the case.

10. It is neither advisable nor practicable to fix any time-limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. 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. The Supreme Court of USA too has repeatedly refused to fix any such outer time- limit in spite of the Sixth Amendment. Nor do we think that not fixing any such outer limit ineffectuates the guarantee of right to speedy trial.

11. 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 High Court must, however, be disposed of on a priority basis."

In ***Kartar Singh v. State of Punjab, 1994(2) RCR (Criminal) 168***, the Constitution Bench of the Hon'ble Supreme Court held as under: -

"84. 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. [See Black's Law Dictionary, 6th Edn. page 1400].

85. *The right to a speedy trial is not only an important safeguard to prevent undue and oppressive incarceration, to minimise 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.*

86. *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. In this context, it may be noted that the constitutional guarantee of speedy trial is properly reflected in Section 309 of the Code of Criminal Procedure.*

87. *This Court in **Hussainara Khatoon v. Home Secretary, AIR 1979 Supreme Court 1360**, State of Bihar while dealing with Article 21 of the Constitution of India has observed thus: (SCC p. 89, para 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. 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 free 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." See also (1) Sunil Batra v. Delhi Administration (I), (2) Hussainara Khatoon (I) v. Home Secretary, State of Bihar, (3) Hussainara Khatoon (IV) v. Home Secretary, State of Bihar, Patna, (4) Hussainara Khatoon (VI) v. Home Secretary, State of Bihar, Govt. of Bihar, Patna, (5) Kadra Pahadia v. State of Bihar (II), (6) T.V. Vatheeswaran v. State of T.N., and (7) Abdul Rehman Antulay v. R.S. Nayak.

88. Thus this Court by a line of judicial pronouncements has emphasised and re-emphasised 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."

The Court further observed :

"92. Of course, no length of time is per se too long to pass scrutiny under this principle nor the accused is called upon to show the actual prejudice by delay of disposal of cases. On the other hand, the court has to adopt a balancing approach by taking note of the possible prejudices and disadvantages to be suffered by the accused by avoidable delay and to determine whether the accused in a criminal proceeding has been deprived of his right of having speedy trial with unreasonable delay which could be identified by the factors - (1) length of delay, (2) the justification for the delay, (3) the accused's assertion of his right to speedy trial, and (4) prejudice caused to the accused by such delay. However, the fact of delay is dependent on the circumstances of each case because reasons for delay will vary, such as delay in investigation on account of the widespread ramification of crimes and its designed network either nationally or internationally, the deliberate absence of witness or witnesses, crowded dockets on the file of the court etc."

Thereafter, the Hon'ble Supreme Court in the case of **P.**

Ramachandra Rao v. State of Karnataka, (2002) 4 SCC 578 has held

as under: -

"29. For all the foregoing reasons, we are of the opinion that in Common Cause case (I) [as modified in Common Cause (II)] and Raj Deo Sharma (I) and (II) the Court could not have prescribed periods of limitation beyond which the trial of a criminal case or a criminal proceeding cannot continue and must mandatorily be closed followed by an order acquitting or discharging the accused. In conclusion we hold :

1. The dictum in A.R. Antulay case is correct and still holds the field.

2. *The propositions emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down as guidelines in A.R. Antulay case adequately take care of right to speedy trial. We uphold and reaffirm the said propositions.*

3. *The 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 like a straitjacket formula. Their applicability would depend on the fact situation of each case. It is difficult to foresee all situations and no generalisation can be made.*

4. *It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. The time-limits or bars of limitation prescribed in the several directions made in Common Cause (I), Raj Deo Sharma (I) and Raj Deo Sharma (II) could not have been so prescribed or drawn and are not good law. The criminal courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of time, as prescribed by the directions made in Common Cause case (I), Raj Deo Sharma case (I) and (II). At the most the periods of time prescribed in those decisions can be taken by the courts seized of the trial or proceedings to act as reminders when they may be persuaded to apply their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration the several relevant factors as pointed out in A.R. Antulay case and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time-limits cannot and will not*

by themselves be treated by any court as a bar to further continuance of the trial or proceedings and as mandatorily obliging the court to terminate the same and acquit or discharge the accused.

5. *The criminal courts should exercise their available powers, such as those under Sections 309, 311 and 258 of the Code of Criminal Procedure to effectuate the right to speedy trial. A watchful and diligent trial Judge can prove to be a better protector of such right than any guidelines. In appropriate cases, jurisdiction of the High Court under Section 482 Criminal Procedure Code and Articles 226 and 227 of the Constitution can be invoked seeking appropriate relief or suitable directions.*

6. *This is an appropriate occasion to remind the Union of India and the State Governments of their constitutional obligation to strengthen the judiciary - quantitatively and qualitatively - by providing requisite funds, manpower and infrastructure. We hope and trust that the Governments shall act."*

Hon'ble Supreme Court in ***Mangal Singh and another v.***

Kishan Singh and others, (2009) 17 Supreme Court Cases 303 held as

under: -

"We are unable to agree with the High Court on both the counts. Any inordinate delay in conclusion of a criminal trial undoubtedly has a highly deleterious effect on the society generally, and particularly on the two sides to the case. But it will be a grave mistake to assume that delay in trial does not cause acute suffering and anguish to the victim of the offence. In many cases the victim may suffer even more than the accused. There is, therefore no reason to give all the benefits on account of the delay in

trial to the accused and to completely deny all justice to the victim of the offence. In this case there is nothing to indicate that the appellants or the prosecution were responsible for the delay in trial. We are, therefore of the view that the High Court was not right in substituting the custodial sentence of the respondents to only fines of Rs.3500/-.”

Hon’ble Supreme Court in *Rattiram and others v. State of M.P. through Inspector of Police, 2012(2) R.C.R.(Criminal) 471* held as under: -

“46. At this juncture, we would like to refer to two other concepts, namely, speedy trial and treatment of a victim in criminal jurisprudence based on the constitutional paradigm and principle. The entitlement of the accused to speedy trial has been repeatedly emphasized by this Court. It has been recognized as an inherent and implicit aspect in the spectrum of Article 21 of the Constitution. The whole purpose of speedy trial is intended to avoid oppression and prevent delay. It is a sacrosanct obligation of all concerned with the justice dispensation system to see that the administration of criminal justice becomes effective, vibrant and meaningful. The concept of speedy trial cannot be allowed to remain a mere formality (see Hussainara Khatoon and Ors. V. Home Secretary, State of Bihar, (1980)1 SCC 81, Moti Lal Saraf v. State of Jammu & Kashmir, 2006(4) RCR (Criminal) 637 : 2006(3) Apex Criminal 480 and Raj Deo Sharma v. State of Bihar, 1998(4) RCR (Criminal) 396:1998(37) ACC 834(SC).

47. While delineating on the facets of speedy trial, it cannot be regarded as an exclusive right of the accused. The right of a victim has been given recognition in Mangal Singh and Anr. V. Kishan Singh and ors., AIR 2009 Supreme Court 1535 wherein it has been observed thus :-

“Any inordinate delay in conclusion of a criminal trial undoubtedly has highly deleterious effect on the society generally and particularly on the two sides of the case. But it will be a grave mistake to assume that delay in trial does not cause acute suffering and anguish to the victim of the offence. In many cases the victim may suffer even more than the accused. There is, therefore no reason to give all the benefits on account of the delay in trial to the accused and to completely deny all justice to the victim of the offence.”

48. It is worth noting that the Constitution Bench in Iqbal Singh Marwah and another v. Meenakshi Marwah and another, 2005(2) RCR (Criminal) 178: 2005(1) Apex Criminal 581 : 2005(28) AIC 1 (SC) : 2005(51) ACC 910 (SC) though in a different context, had also observed that delay in the prosecution of a guilty person comes to his advantage as witnesses becomes reluctant to give evidence and the evidence gets lost.”

The right to a speedy trial was first recognised in ***Hussainara Khatoon's case, AIR 1979 Supreme Court 1360***, wherein, the Hon’ble Supreme Court held that a speedy trial is implicit in the broad sweep and content of Article 21 of the Constitution. Subsequently, in a series of judgments, the Hon’ble Supreme Court has held that 'reasonably' expeditious trial is an integral and essential part of the Fundamental Right to Life and Liberty enshrined in Article 21 of the Constitution of India.

While considering the facts of the present case, it has emerged that the trial is pending since the year 2018 and no effective proceedings are going on for the last more than four years. Even the application dated 26.11.2019 filed by the petitioner under Section 143-

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A of the NI Act for directing the respondent to assess and pay interim compensation has not been decided by the trial Court.

In view of the facts of this case having been gone into, it transpires that proceedings in the present case before the trial Court are going on in such manner which raise question upon the system of administration of justice. Justice delayed is justice denied.

In view of the peculiar facts and circumstances of this case, this Court deems it appropriate to issue directions to the trial Court to conclude the trial in the present case preferably within a period of nine months without granting unnecessary and unwarranted adjournments. The parties to the complaint are directed to fully co-operate/assist the trial Court in expeditious disposal of the case.

Copy of this order be sent to the trial Court for immediate compliance.

The petition stands disposed of with the above directions.

27.03.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No