

CRM M-49145 of 2019

2023:PHHC:166974

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

121

CRM M-49145 of 2019
Date of Decision: 08.11.2023

Surinder Singh

...Petitioner

Vs.

State of Punjab

...Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Dinesh Arora, Advocate, for the petitioner.
Mr. Amrish Sharma, AAG, Punjab.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to quash the FIR No. 162 dated 28.09.1994 under Sections 467, 468 and 471 IPC registered at Police Station Kotwali Bathinda and all subsequent proceedings arising therefrom.

2. The FIR in the present case was ordered to be registered on the basis of an application filed by Hari Singh son of Nihal Singh. The English translation of the FIR against the present petitioner reads as under:-

“Copy of application "to SSP Sahib Bathinda Dist. Bathinda:

Subject:-application for registration of case against Kawaljit Singh S/o Jaswinder Singh son of Dialinder Singh R/o House No.545 Phase 1 SAS Nagar Mohali District Ropar and his companions for preparing forged will.

Sir, Application is as under:

1) that Dialinder Singh grandfather of the above said Kawaljit Singh had his land in two villages. Out of which few land was at village Katar Singh Wala Police Station Sadar Bathinda and another at village Main Distt. Patiala. Dialinder Singh had four sons namely Paramjit Singh, Karamjit Singh, Harinderpal Singh, Jaswinder Singh and one daughter Harminder Kaur and wife Harbhajan Kaur. After the death of Dialinder Singh on 27.12.88, the mutation of the land of above said both the villages had sanctioned in favour of the above six legal heirs. The abovesaid all co-sharers are cultivating or letting out their land as per their share.

2). That the Kawaljit Singh son of Jaswinder Singh grandson of the abovesaid Dialinder Singh who was earlier residing at Chandigarh planned to grab the land of the two villages by making a forged unregistered will. Because his uncles are educated and are employees who are residing at Patiala. Kanwaljit Singh is a person of bad reputation who is doing illegal work and other persons are fearing of his bad reputation and are avoiding to entangle with him.

3.) That earlier he had filed a case before the Ld. Trial Court at Patiala and wanted to get the possession of the land on the basis of false Will. That case has been decided on 15.2.1990 in which the GA (Collector) Patiala after getting all the written evidence has decided the case that the unregistered Will presented by the Kanwaljit Singh is a false one and same has been prepared by him. The case was decided against Kanwaljit Singh and further he has not filed any appeal.

4. That a civil suit has been filed by the Kanwaljit Singh with regard to the above said land in the court of

Sh.G.S.Sewak, Sub Judge, Patiala which has been dismissed on 12.1993 due to the lack of proof.

4. That after losing the all the cases, the above said Kanwaljit Singh had been trying to get the possession on the land situated at village Katar Singh Wala, District Bathinda and one civil suit on the basis of the forged Will has been filed in the Ld.Court of Sh.K.K.Kataria which has been dismissed due to non producing the documents on 23.11.1993 and he has not been filed any appeal against that civil suit.

5. That Kanwaljit Singh has filed a suit against the sanctioning of mutation of inheritance in the Court of SDM, Bathinda which has been dismissed on dated 16.4.1991.

6. That the above said case again has been remanded by SDM which has also dismissed on 30.7.1992 and now an appeal against this decision has been filed to prolong the case.

7. That Kanwaljit Singh had also filed 3 different appeals against the Khasra Girdawaris with regard to the land of village Katar Singh Wala and the same has also been dismissed.

8. That a civil suit was also filed in the court of Sh.Lakhvir Singh Sub Judge, Distt. Bathinda in which he has got a temporary stay which has been vacated by the Court of Sh.Rajinder Singh Rai, Sub Judge, Bathinda.

9. That then Kanwaljit Singh got a report from police u/s 145 Cr.P.C with regard to this land which was pending before the SDM Bathinda and the same has also been dismissed on 9.3.1994.

10. That abovesaid Kanwaljit Singh has no legal right with regard to the land of village Katar Singh Wala and

he has a bad eye to take an illegal possession on the basis of forged will. He is conniving with 1-2 persons in village and instigating them to commit a crime.

11. That I have paid the amount of the land to the owners of the land of village Katar Singh Wala and they have had given special power of attorney with regard 27.12.1993, to this land.

12. That on I alongwith Sh. Jaswant Singh Gandu, Retd. DSP and Sh. Ram Sharan Dass, ret. Tehsildar went to see the land where Kamaljit Singh had instigated Bhura Singh, Mithu Singh and Purna Ram, R/o Katar Singh Wala by providing them liquor and Kamaljit Singh had tried to quarrel with us. But we did not respond them and after returning, we told the whole incidents to S. Amrik Singh DSP, and SHO Sadar Bathinda and the same can be verified from them. On the same day at about 6.30PM the above said Kamaljit Singh had registered a report against us at P.S. Sadar Bathinda and narrated the dispute. But that report was totally false and baseless. On the same night, the above said Kamaljit Singh had attempted to register a false case by cutting a little finger of his colleague Bhura Singh son of Gurnam Singh, R/o Katar Singh Wala u/s 326 IPC which has been investigated by the Local Police and later on I.G. Crime Chandigarh and the conclusion report was sent to the SSP, Bathinda and recommended the action against Kamaljit Singh u/s 182, 211 and 120-B IPC and a Kalandra under the above said offences had been submitted on 21.6.1994 by the SHO Bathinda in Court.

13. That kamaljit Singh is a very clever, liar and indulging in a every illegal act. Neither he has any other business nor any source of income and doing

illegal act. He is misleading to the officers and Court by leading false proofs and false applications and the same can be ascertained by checking the record.

14. That forged will prepared by Kamaljit Singh has been proved and he is using the forged will in the courts and using filing the forged Will in the courts is an offence under law. Therefore, appropriate legal action be taken under the above said offence. So, he may not harass the innocent people.

15. That I had sown a Moongi crop and Gwara crop in the land of village Katar Singh Wala and a residential house has been constructed in the land and a electricity meter has been installed in the field on my name and hand pump has been installed and kitchen has also been constructed. With regard to this a spot visit can be made.

16. I will produce all the above facts and written proofs and necessary written proofs has been annexed with the application. Case may be registered and justice be done. With regards. Applicant Hari Singh son of Sh.Nihal Singh, resident of Amrik Singh road, Bathinda dated 30.7.1994”.

3. Learned counsel for the petitioner contends that in the present case, there is no specific allegation against the present petitioner and all the allegations have been levelled against Kawaljit Singh son of Jaswinder Singh with regard to the forging of a Will of his grand-father, namely, Dialinder Singh. Even, it has been alleged that the petitioner had allegedly scribed the Will in question. However, during the course of investigation, no signatures/handwriting samples of the petitioner were collected by the

police for comparison of the same with the hand writing/signatures on the alleged Will and the challan has been presented in an exceptional hurry. Learned counsel further contends that Kawaljit Singh, co-accused being the beneficiary of the Will in question, had instituted a Civil Suit No. 610 dated 11.11.1993 in the Court of Sub-Judge, Patiala. After the presentation of the challan, vide order dated 14.12.1995, the proceedings arising out of the present FIR were ordered to be stayed till the decision of the civil suit by the Sub-Judge, Patiala. Even, the State of Punjab had filed a revision petition before the Court of Sessions Judge, Bathinda and vide judgment dated 07.04.1998, the revision filed by the State of Punjab was ordered to be dismissed by the Court of Shri Bhupinder Singh Sidhu, Additional Sessions Judge, Bathinda. Learned counsel further contends that the FIR in the present case was ordered to be registered on 28.09.1994 and even after a period of 30 years, the prosecution has not even been initiated against him. Learned counsel further contends that even from the perusal of the FIR, no case was made out against the petitioner as he was neither named in the FIR nor was beneficiary of the alleged Will in any manner. Even no samples of signatures/hand writing of the petitioner were taken by the prosecution to compare the same with the signatures/hand writing on the Will in question. Thus, in the absence of any evidence, the continuation of the proceedings against the petitioner is an abuse of the process of the law. Learned counsel further contends that in the

present case, the prosecution cannot be given latitude of protracted conclusion of trial, without any limit of time. The Hon'ble Supreme Court, while interpreting the scope of Article 21 of the Constitution of India has held that every citizen has a right of speedy trial of a case pending against him. He further contends that the right to speedy trial encompasses all the stages, namely, stage of investigation, enquiry, trial, appeal, revision and re-trial. While determining the delay in an appeal, the Court has to decide each case on its own facts having regard to all the attending circumstances including nature of offence, number of accused and witnesses etc., In the present case, the prosecution has miserably failed to explain the delay of more than 30 years in concluding the trial against the petitioner without any legally admissible evidence and holding of trial at this stage, would be a mere formality and exercise in futility. Learned counsel has further referred to death certificates of Hari Singh, complainant and Kawaljit Singh, principal accused and contended that the petitioner, who is the alleged scribe of the Will, is facing the prosecution without any fault on his part.

4. On the other hand, learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioner on the ground that the delay in holding a trial can never be a ground for quashing of a legitimate criminal prosecution. Learned State counsel further submits that in the present case, the record of civil court was missing and could not be produced before this court,

despite best efforts. Thus, the petition deserves to be dismissed by this Court.

5. After hearing learned counsel for the parties and perusal of the record, this Court is of the considered opinion that the present petition deserves to be allowed by this Court. The Hon'ble Supreme Court has held in number of judgments that the State is under a Constitutional mandate to ensure the speedy trial and whatever is necessary for this purpose, has to be done by the State. Further, it is held that the Constitutional obligation of this Court as a guardian of the fundamental rights of the people to enforce the rights of the accused to speedy trial. Even, the Hon'ble Supreme Court has held in the matter of Abdul Rehman Antulay and others Vs. R.S. Nayak and another 1992(2) R.C.R (Criminal) 634 as under:-

28. This decision does establish in unmistakable terms that the law and procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Articles 19 and 14. It establishes that the procedure prescribed by law within the meaning of Article 21 must be right and just and fair and not arbitrary, fanciful or oppressive. It is this principle of fairness and reasonableness which was construed as taking within its purview the right to speedy trial. In the first Hussainara Khatoon decision, 1979CriLJ1036 Bhagwati, J. observed as follows :

“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, AIR 1978 Supreme Court 597. 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 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 relief. Now obviously procedure prescribed by law for depriving a person of his liberty cannot be "reasonable fair or just" unless that procedure ensures a speedy trial for determination of the guilt of such person. 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 of life and liberty enshrined in Article 21.

The learned Judge, however, posed a question which he left it 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 ensure 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 under trials.

Learned counsel for the accused particularly relied upon the following passage from the opinion of Bhagwati, J. (AIR 1979 Supreme Court 1360, Para 5).

There is also one other infirmity of the legal and judicial system which is responsible for this gross denial of justice to the under trial prisoners and that is the notorious delay in disposal of cases. It is a bad reflection on the legal and judicial system that the trial of an accused should not even commence for a long number of years. Even a delay of one year in the commencement of the trial is bad enough; how must worse could it be when the delay is as long as 3 or 5 or 7 or 10 years. Speedy trial is of the sense of criminal justice and there can be no doubt that delay in trial by itself constitutes denial of justice”.

6. Still further, the Hon’ble Supreme Court considered the applicability of the right to speedy trial in **State of Maharashtra Vs. Champalal Punjaji Shah : 1981(1) SCR 299: AIR 1981 Supreme Court 1675.** Chinnappa Reddy, J. speaking for himself and A.P. Sen and Baharul Islam, JJ. affirmed the principle of Hussainara Khatoon and observed as under :

“In deciding the question whether there has been a denial of the right to a speedy trial the court is entitled to

*take into consideration whether the defendant himself was responsible for a part of the delay and whether he was prejudiced in the preparation of his defence by reason of the delay. The Court is also entitled to take into consideration whether the delay was unintentional, caused by over-crowding of the court's docket or under-staffing of the Prosecutors. **Strunk v. United States, 1973(37) Law Ed 2 d 56**) is an instructive case on this point. As pointed out in the first Hussain Ara case (supra), the right to a speedy trial is not an expressly guaranteed constitutional right in India but is implicit in the right to a fair trial which has been held to be part Of the right of life and liberty guaranteed by Article 21 of the Constitution. While a speedy trial is an implied ingredient of a fair trial, the converse is not necessarily true. A delayed trial is not necessarily an unfair trial. The delay may be occasioned by the tactic or conduct of the accused himself. The delay may have caused no prejudice whatsoever to the accused. The question whether a conviction should be quashed on the ground of delayed trial depends upon the facts and circumstances of the case. If the accused is found to have been prejudiced in the conduct of his defence and it would be said that the accused had thus been denied an adequate opportunity to defend himself, the conviction would certainly have to go. But if nothing is shown and there are no circumstances entitling the Court to raise a presumption that the accused had been prejudiced there will be no justification to quash the conviction on the ground of delayed trial only”.*

7. Still further, the Hon'ble Supreme Court has held in the matter of **Mahendera Lal Das Vs. State of Bihar, 2001(4) R.C.R. (Criminal) 589** as follows:-

“5.It is true that interference by the court at the investigation stage is not called for. However, it is equally true that the investigating agency cannot be given the latitude of protracting the conclusion of the investigation without any limit of time. This Court in Abdul Rehman Antulay & Ors. v. R.S. Nayak & Anr, [1992] 1 SCC 225 while interpreting the scope of Article 21 of the Constitution held that every citizen has a right of speedy trial of the case pending against him. The speedy trial was considered also in public interest as it serves the social interest also. It is in the interest of all concerned that guilty or innocence of the accused is determined as quickly as possible in the circumstances. The right to speedy trial encompasses all the stages, namely, stage of investigation, enquiry, trial, appeal, revision and re-trial. While determining the alleged delay, the court has to decide each case on its facts having regard to all attending circumstances including nature of offence, number of accused and witnesses, the work-load of the court concerned, prevailing local conditions, etc. Every delay may not be taken as causing prejudice to the accused but the alleged delay has to be considered in the totality of the circumstances and the general conspectus of the case. Inordinate long delay can be taken as a presentive proof of prejudice.

6.In this case the prosecution has miserably failed to explain the delay of more than 13 years by now, in granting the sanction for prosecution of the appellant-

accused of possessing disproportionate wealth of about Rs. 50,600. The authorities of the respondent-State also appear to be not satisfied about the merits of the case and were convinced that despite granting of sanction the trial would be a mere formality and exercise in futility.

7. In cases of corruption the amount involved is not material but speedy justice is the mandate of the Constitution being in the interests of the accused as well as that of the society. Cases relating to corruption are to be dealt with swiftly, promptly and without delay. As and when delay is found to have been caused during the investigation, inquiry or trial, the concerned appropriate authorities are under an obligation to find out and deal with the persons responsible for such delay. The delay can be attributed either to the connivance of the authorities with the accused or used as a lever to pressurise and harass the accused as is alleged to have been done to the appellant in this case. The appellant has submitted that due to registration of the case and pendency of the investigation he lost his chance of promotion to the post of Chief Engineer. It is common knowledge that promotions are withheld when proceedings with respect to allegations of corruption are pending against the incumbent. The appellant has further alleged that he has been deprived the love, affection and the society of his children who were residing in foreign country as on account of the pendency of the investigation he could not afford to leave the country

*8. This Court in **Ramanand Chaudhary v. State of Bihar & Ors., AIR (1994) SC 948** quashed the investigation against the accused on account of not granting the sanction for more than 13 years. The facts of the present*

case are almost identical. No useful purpose would be served to put the appellant at trial at this belated stage.”.

8. Still further, the Hon’ble Supreme Court against reiterated in **Moti Lal Saraf Vs. State of Jammu and Kashmir and another 2006(4) R.C.R. (Criminal) 637** that right to speedy trial was a part of fair, just and reasonable procedure implicit in Article 21 of the Constitution of India and held as follows:-

*“44.A Constitution Bench of this Court has, in the case of **Kartar Singh v. State of Punjab (1994) 3 SCC 569**, mentioned that 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.*

45. In this case, this Court further observed as under: "The right to a speedy trial is not only an important safeguard to prevent undue and oppressive incarceration, to minimize 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."

46. 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.

47. This Court in Hussainara Khatoon (I) (supra) further observed as under:

"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 freed 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."

48. This Court in a number of cases has reiterated 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's case (supra).

49. When we examine the instant case in the light of the aforementioned decisions of this Court and of the US Supreme Court, it becomes abundantly clear that no general guideline can be fixed by the court and that each case has to be examined on its own facts and circumstances.

50. It is the bounden duty of the court and the prosecution to prevent unreasonable delay.

51. The purpose of right to a speedy trial is intended to avoid oppression and prevent delay by imposing on the courts and on the prosecution an obligation to proceed with reasonable dispatch".

9. In the present case also, the criminal prosecution was initiated on the basis of the complaint moved by Hari Singh son of Nihal Singh, who is no more alive as per the death certificate placed before this Court. Even, all the allegations with regard to the forgery of an alleged Will of Dialinder Singh were levelled against Kawajit Singh, who has also expired in the present case. Further, in the present case, from a perusal of the FIR (Annexure P-1), it is evident that neither any allegation had been levelled against the present petitioner nor his complicity could be inferred from any of the averment made

in the present FIR. On the other hand, the present petitioner, who is stated to be an alleged scribe of the Will in question, is facing the prosecution for the last more than 30 years. Even, the present case is not of grave magnitude and diabolic in nature, which may affect the society at large and the prosecution in the present case cannot be allowed to continue after such an inordinate delay.

10. Keeping in view the peculiar facts and circumstances of the present case as well as the law laid down by the Hon’ble Supreme Court, I am inclined to quash the proceedings against the petitioner as ordering further prosecution would be travesty of justice and mere ritual of formality and unnecessary burden as regards the Courts.

11. Consequently, the petition is allowed and the FIR No. 162 dated 28.09.1994 under Sections 467, 468 and 471 IPC registered at Police Station Kotwali Bathinda and all subsequent proceedings arising therefrom are ordered to be quashed.

08.11.2023

(N.S.SHEKHAWAT)

amit rana

JUDGE

Whether reasoned/speaking

:

Yes/No

Whether reportable

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Yes/No