

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

113 CRM M-63979 of 2023 (O&M)
Date of Decision:19.12.2023

Karamjit Singh ...Petitioner
Versus
State of Punjab ... Respondents

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

Present : Mr. Mohit Vashishat, Advocate, for the petitioner.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 of the Cr.P.C. with a prayer to direct the revisional Court/Additional Sessions Judge, Rupnagar to decide the revision petition, expeditiously.
2. Learned counsel for the petitioner had moved an application before the Court of Chief Judicial Magistrate, Rupnagar for releasing the vehicle, i.e., Truck bearing No. PB-13S-6535 on superdari and vide order dated 31.03.2022, the Court of Chief Judicial Magistrate, Rupnagar, allowed the superdari application on depositing the bank guarantee in the shape of FDR of Rs. 6,00,000/- of any nationalized bank in the Court. Since, the petitioner was not in a position to furnish the guarantee as directed by the Chief Judicial Magistrate, Rupnagar, the petitioner filed a revision petition in the Court of Sessions Judge, Rupnagar.

3. Learned counsel while referring to the various interim orders (Annexure P-3), submits that the revision petition is pending before the Court of Additional Sessions Judge, Rupnagar, since 26.04.2022 and has been repeatedly adjourned to several dates. Consequently, he prayed that the directions may be issued to the revisional Court to decide the revision petition expeditiously and within certain fixed time frame.

4. Notice of motion.

5. On the asking of Court, Mr. M.S. Bajwa, DAG, Punjab accepts notice on behalf of respondent-State.

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

7. In view of the fact that only limited prayer has been made for issuance of directions to the revisional Court to decide the revision in a time bound manner and any order passed by this Court is not likely to prejudice the opposite side in any manner, this Court deems it appropriate not to issue notice to the other parties, at this stage, which would save their time, energy and expenses also.

8. The Hon'ble Supreme Court laid down certain propositions, which govern the basic human right to a speedy trial in a criminal prosecution in the matter of Abdul Rehman Antulay and others Vs. R.S. Nayak and another 1992(2) RCR 634 as follows:-

54. 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 societal 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 retrial. 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 a frivolous. Very often these stays 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 work-load 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 ideal has been stated by White, J. in U.S. v. Ewell, 15 Law Edn. 2nd 627, 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 more speed, as its essential ingredients; and whether delay in completing a prosecution amounts to an un-constitutional 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 prosecution, again depends upon the facts of a given case.

7. We cannot recognize 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

U.S.A., 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 U.S.A. too as repeatedly refused to fix any such outer time limit inspite of the Sixth Amendment. Nor do we think that not fixing

any such outer limit in effectuates 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”.

9. I have considered the submissions made by the learned counsel for the parties. From the zimini orders (Annexure P-3), it is evident that the matter has been taken up by the Revisional Court on several occasions and the record is also available at the same station. Still further, in case, the revision is not disposed off expeditiously, the present petitioner may suffer an irreparable loss, keeping in view the peculiar facts and circumstances of the present case.

10. Consequently, in view of the above, the revisional Court/Additional Sessions Judge, Rupnagar, is directed to decide the revision petition within a period of 04 months from today, after affording opportunity of hearing to all the concerned parties.

11. The petition is disposed off.

19.12.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No