



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO.1037/2024

Pravin Devidas Patel Vs. The State of Maharashtra and another

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Mr. Rupesh B.Hake and Rahul Vyawahare, Advocates for petitioner
Mr. A.J. Gohokar, APP for the respondent.

CORAM : NITIN W. SAMBRE & MRS. VRUSHALI V. JOSHI, JJ.
DATE : APRIL 4, 2025.

1. Heard finally by consent of the learned counsels appearing for the parties.

2. The prayers in the petition are as under:

"A. Criminal writ petition may kindly be allowed.

B. Record and proceedings in S.C.C.no.0322972/2015 pending before the 13th Civil Judge Junior Division and Judicial Magistrate First Class Nagpur City may kindly called for.

C. The proceedings in pursuant to First Information Report bearing no.5022/2015 and subsequent charge-sheet bearing no.2279/2015 in S.C.C.no. 0322972/2015 pending before the 13th Civil Judge Junior Division and Judicial Magistrate First Class Nagpur City may kindly be quashed and set aside in the interest of justice against the petitioner".

3. It is the case of the petitioner that in an offence, which has occurred on 25th October, 2015 at an open place punishable under Section 12 of the Maharashtra Prevention of Gambling Act, 1887 came to be registered being Crime No.5022/2015. In the said offence, the petitioner is arrayed as accused

no.5 and accordingly, charge-sheet was filed in the matter. It is claimed that as on date the trial being Summary Criminal Case No.0322972/2015 is pending on the file of the Judicial Magistrate First Class, Nagpur City alleging that the maximum punishment provided for the offence in question is three months and in such an eventuality the trial is being kept pending for a period of 10 years. It is urged that there is an infringement of fundamental right guaranteed under Article 21 of the Constitution of India.

4. So as to substantiate the contentions, reliance is placed on the judgments of the Apex Court in the matters of ***Sirajul and ors. Vs. State of U.P. and Anr.*** reported in ***ABC 2015 (ii) 113 SC, Sunil Kumar Vs. State of U.P. & Anr in Criminal Appeal No.2255/2023*** and ***Pankaj Kumar Vs. State of Maharashtra in Criminal Appeal No.1067 of 2008***. According to the learned counsel for the petitioner, once it is demonstrated that the trial was unnecessarily kept pending for a period of 10 years against the petitioner the same leads to denial of fundamental right to have a speedy trial which amounts to infringement of his fundamental right. In such an eventuality, the Apex Court has held that the prosecution against the petitioner can be quashed.

5. As against above, the learned Additional Public Prosecutor Mr. Gohokar, would submit that the Court must consider the extent to which the petitioner has cooperated in the matter for deciding the trial in question expeditiously. According to him, at the level of the prosecution, there is no delay and that being so, the petition is liable to be dismissed.

6. We have considered the submissions.

7. The alleged incident which led to the registration of offence occurred on 25th October, 2015 and the petitioner came to be booked in Crime No.5022/2015 for an offence punishable under Section 12 of the Maharashtra Prevention of Gambling Act. It is not in dispute that the maximum punishment is three months in case if the offence referred above is proved.

8. In such an eventuality, if we proceed to appreciate the contentions of the petitioner viz. the undue delay in deciding the trial, it has to be appreciated that the trial remained pending against the petitioner for almost 10 years.

9. In response to the Court's query, the Counsel for the petitioner has stated that even the Charge is also not framed against the petitioner.

10. It appears from the Roznama that even the summons was not served to the accused i.e. petitioner.

11. In that view of the matter, it has to be held that there is a denial of right to speedy trial of the petitioner. We are fortified in our view based on the observations of the Apex Court in the matters of ***Sirajul and ors. Vs. State of U.P. and Anr and Pankaj Kumar Vs.State of Maharashtra and others*** (supra).

12. Apart from above, it is already held by the Apex Court ***in the matter of Hasmukhlal D.Vora & anr Vs. The State of Tamil Nadu reported in 2022 LiveLaw (SC)1033*** that it is for the prosecution to demonstrate that there was no delay in conducting the trial and the delay is required to be explained by the prosecution. In this case, the prosecution has failed to explain the delay and that being so, rightly so, the petitioner has established that for last 10 years neither the summons is served nor trial is concluded.

13. That being so, the petition stands allowed in terms of prayer clause-C of the petition, which reads thus:

"The proceedings in pursuant to First Information Report bearing no.5022/2015 and subsequent charge-sheet bearing no.2279/2015 in S.C.C.No.0322972/2015 pending before the 13th Civil Judge Junior Division and Judicial Magistrate First Class Nagpur City may kindly be quashed and set aside in the interest of justice against the petitioner."

(MRS.VRUSHALI V. JOSHI, J.) (NITIN W.SAMBRE, J.)

Mukund Ambulkar