

Kumar Sushil Vs. the State of Bihar

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Court : Patna

Decided On : Jan-31-2007

Judge : Ghanshyam Prasad, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 147, 148, 153, 188, 307, 309, 309(1), 337, 338, 353 and 482; [Constitution of India](#) - Article 21

Appeal No. : Cr. Misc. No. 11532 of 2006

Appellant : Kumar Sushil

Respondent : The State of Bihar

Advocate for Def. : Deogovind Prasad, Adv. and Gopesh Kumar, A.P.P.

Advocate for Pet/Ap. : Deva Kumar Pd. Sinha, Adv.

Disposition : Application allowed

Judgement :

Ghanshyam Prasad, J.

1. Heard.

2. This application under Section 482 Cr.P.C. has been filed to quash the criminal proceeding so far the petitioner is concerned in Sessions Trial No. 630 of 1988 pending in the court of Fast Track Court III, Patna.

3. It appears from the record that on the basis of fardbeyan lodged by Executive Magistrate, Control Room, Patna on 31.3.1978, a case under Sections 147, 148, 307, 337, 338, 353, 188 and 153 alongwith other sections was registered by Kotwall P.S. against as many as 48 accused persons including this petitioner. This petitioner has been arrayed as accused No. 46. The petitioner made his appearance in the case just after institution of the case, but even after lapse of 29 years, the case has not yet been concluded.

4. A report has been called for from the court below as to the stage of the Sessions Trial which is at flag 'A'. On perusal of the report, it appears that even charge has not yet been framed against this petitioner and other accused persons who are in attendance. The case is pending for appearance of remaining 35 accused persons who are absent since inception of the case.

5. The submission of the learned Counsel for the petitioner is that on perusal of the fardbeyan, it would appear that there is no specific allegation against this petitioner. He has been made accused as a member of unlawful assembly. Sword of prosecution is hanging upon (sic) since last 29 years and there is no chance of commencement of the trial in near future. It is a clear violation of fundamental right of the petitioner enshrined under Article 21 of the Constitution as well as Section 309(1) of the Cr.P.C. It is further submitted that the facts and circumstances of the case coupled with the period of pendency of the trial, this case squarely falls within the parameter laid down by the apex court for quashing of the case in various decisions including in : (1992)1SCC279 , A.R. Antulay v. R.S. Nayak. The learned Counsel for the petitioner has also placed reliance upon a decision of this Court reported in 2004 (3) PLJR 349 (Rakesh Ray v. State of Bihar).

6. Considered the submission of the learned Counsel for the petitioner as well as the allegations levelled in the fardbeyan as also the period of pendency of the case. I am of the opinion that this case squarely falls within the parameter laid down in above decision of, apex court. Continuance of criminal proceeding against the petitioner since such a long period without chance of its conclusion in near future is not only oppressive and unwarranted but also violative of Article 21 of the Constitution as well spirit of Section 309(1) of Cr.P.C.

7. In above decision of the apex court (supra) the question of right of speedy trial has been discussed in the light of Article 21 of the Constitution as well Section 309 Cr.P.C. and has laid down certain guide lines to quash criminal proceeding on the ground of delay in trial. In paragraph 62 of the judgment the power of the High Court to quash criminal proceeding on the ground of delay has been recognised and after placing reliance of some decisions n paragraph 65 it has been held as follows:

65. It is, thus, clear that even apart from Article 21 courts in this country have been cognizant of undue delays in criminal matters and wherever there was inordinate delay or where the proceedings were pending for too long and any further proceedings were deemed to be oppressive and unwarranted, they were put an end to by making appropriate orders.

8. In paragraph 86 of the judgment, certain guidelines have been laid down. This Court would like to refer certain Sub-paras (guidelines) in order to examine as to whether this case in hand is fit to be quashed or not. Those Sub paras (guidelines) are as follows:

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.

(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) However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of accused will also be 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.

9. Having regard to the facts and circumstances of the case, nature of allegation and also period of pendency, this Court has no doubt in mind that how continuance of prosecution of this petition has become persecution. It is oppressive resulting in violation of right enshrined in Article 21 of the Constitution and hence fit to be quashed.

10. In the result, this application is allowed and the prosecution of the petitioner in S.T. No. 630 of 1988 is hereby quashed.

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