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Court : Mumbai

Decided On : Nov-23-1989

Reported in : 1990(1)BomCR39; 1990CriLJ1652

Judge : H. Suresh, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 20, 120-B, 201, 409, 420, 468, 471, 477 and 477-A; Imports and Exports (Control) Act, 1947 - Sections 5; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 342 and 406; [Constitution of India](#) - Article 21

Appeal No. : Criminal Writ Petns. Nos. 103, 104, 224 to 227 and 228 of 1989

Appellant : Narain Singh Yadav

Respondent : The Deputy Chief Controller of Imports and Exports, Kanpur, U.P. and Another

Advocate for Def. : Mr. Jaisinghani

Judgement :

(1) All these petitions are disposed of by this common judgment.

(2) It all began in 1973-74. The Government detected certain serious offences punishable under S. 120-B of the Indian Penal Code read with S. 5 of the Imports and Exports (Control) Act, 1947 and also under Sections 20, 468 and 471 of I.P.C. as against the petitioners and others. The investigation was handed over to the C.I.D., U.P. (E.O.W.), Lucknow. After some investigation, about 8 criminal cases were filed in Bombay, being Criminal Cases Nos. 12, 13, 15, 17, 18, 19, 20 and 21 of 1975 in the Court of the Additional Chief Metropolitan Magistrate, Esplanade, Bombay. Similarly, 5 more cases were filed in the year 1978, being cases Nos. 5791, 5792, 5793, 5794 and 5795 of 1978 in the Court of the Metropolitan Magistrate, G.R.P., Kanpur. All these cases are still pending and they are at the very initial stages. The petitions agree for the purpose of quashing the prosecution on the ground that there has been an inordinate delay in the prosecution and conduct of these cases.

(3) In all these cases, most of the accused are common, namely, G. D. Agnihotri, B. S. Parihar, Ramanlal Parikh and D. P. Khushwaha and N. S. Yadav, being the petitioners in all these petitions. The petitioner and the said B. S. Parihar are from Kanpur. The said D. P. Kushwaha has been made an approver.

(4) Broadly, the prosecution case is that on 24th October 1974 one Shri G. N. Mehra, Commissioner and Director of Industries, U.P., made a complaint to the Government regarding the bogus units floated in U.P. and as to how those bogus units have availed of import facilities. It is the case of the prosecution that on the basis of the Essentiality Certificates, which came to be issued on the recommendations of the said B. S. Parihar, who was then working as an Inspector of Industries in the Office of the Area Development Officer along with Shri B. D. Agnihotri, who was then working as the Area Development Officer, Department of Industries, Kanpur, these import licences came to be issued. According to the prosecution, the petitioner N. S. Yadav is the brain behind this whole episode. He managed, as above, to get the Essentiality Certificates from the Director of Industries, Kanpur, in the name of the firms which did not exist. The information which was provided in the import applications was obviously false. The firms were also similarly registered with the sales tax authorities. The modus operandi was that one of the accused, the said Ramanlal Parikh opened Letters of Credit with

the Central Bank of India, Bombay and also with the Syndicate Bank, Bombay, on the arrival of the goods, and after the retirement of the shipping documents, the imported goods were cleared from the Customs through Clearing Agents. It appears that the bulk of the consignments which came to be imported on the basis of these licences were not then manufactured in India. As soon as the consignments were received, they were immediately sold in Bombay in contravention of the conditions governing the import licences. For this purpose, records were all fabricated. Thus, it is the prosecution case that all these persons, in conspiracy with another, committed various offences, including cheating, fabrication of false documents and also committed acts in contravention of the provisions of the Imports and Exports (Control) Act, 1947. Needless to say that all these offences are of serious nature.

(5) Since the prosecution had filed two sets of cases in two different courts, one set of cases in Kanpur and the other set of cases in Bombay, all in respect of almost the same offences, the petitioner preferred a transfer application (Criminal) No. 76 of 1982 in the Supreme Court of India, invoking the jurisdiction of the Supreme Court of India under Section 406 of the Code of Criminal Procedure with a prayer for transfer of the cases pending against the petitioner in Court of the Additional Chief Metropolitan Magistrate, Esplanade, Bombay, to the Court of the Metropolitan Magistrate, G.R.P., Kanpur. The Supreme Court having issued notice on these petitioners, passed an order, dated 19/7/1982, whereby all the cases which were pending in the Court of the Metropolitan Magistrate, G.R.P., Kanpur, were ordered to be transferred to the Court of the Additional Chief Metropolitan Magistrate, Esplanade, Bombay, with further directions that they be tried along with the other cases, which were already pending in that Court.

(6) Accordingly, all the cases filed in Kanpur came to be transferred to the 38th Court at Ballard Pier, Bombay, and they were renumbered as Cases Nos. 4/S, 5/S, 6/S and 7/S, 8/S, all of 1983. The petitioner says that even though the Supreme Court had directed that all the cases should be tried along with the cases which are pending in the Court of the Additional Chief Metropolitan Magistrate, Esplanade, Bombay, the cases transferred from Kanpur came to be filed in the 38th, Ballard Pier, Bombay, and that till today, the prosecution has taken no steps

to see that all the cases are grouped in one and the same Court.

(7) On or about 15th September 1982, one of the Criminal Cases bearing Case No. 19/S of 1981 came to be committed to the Sessions Court, Bombay, on the Original Accused No. 1 by name Ram Patel turning to be an approver and his statement being recorded. Since then the case is pending in the Sessions Court at Bombay under Case No. 446 of 1982. It appears that at the time the order of committal was passed the petitioner was not in the Court and he was shown as absconding. Therefore, the committal order was restricted only to the other three accused in the same case. The petitioner submits that it was wrongly shown that he was absconding even though it was to the knowledge of the prosecution that he was pursuing the matter in the Supreme Court for the purpose of transfer of the Kanpur cases to Bombay.

(8) A warrant was issued as against the petitioner and the petitioner was arrested on 1/7/1983 in Kanpur and he remained in the custody in Kanpur till 14/9/1983, when he was produced in Bombay. He was released on bail on 26/10/1983. According to the prosecution, he had applied for exemption with regard to his attendance in Bombay on the earlier dates and that, therefore, he could not have been arrested. The petitioner also submits that during all these dates, there was no progress whatsoever, as far as the cases were concerned.

(9) The petitioner says that he had come down to Bombay on several dates of hearing and on each time the cases were not taken up for hearing, and they were adjourned from time to time. In the meanwhile, Mr. Agnihotri filed Criminal Application No. 1220 of 1985 for quashing Criminal Case No. 6/S of 1983 (being one of the cases transferred from Kanpur). The said application was admitted by the High Court and Rule and interim stay was granted on 23-9-1985. Thereafter the said Agnihotri also filed similar applications in respect of Case No. 4/S as also Cases Nos. 5/S and 7/S and on those Criminal Applications, being Criminal Applications Nos. 1416/85, 1515/85, 1513/85 and 1514/85, Rule was issued and interim stay of the prosecution was granted. All those applications are still pending in this Court. There is nothing to indicate as to what steps the prosecution took to have an early disposal of those Criminal Applications. The said Mr. Agnihotri died

sometime in July 1987, which fact is known to the prosecution. But as of today, the prosecution has not taken any steps whatsoever to have the applications placed on board for final disposal or for vacating the stay granted by the Court.

(10) Similarly, one of the co-accused named Ravi Sonali Khushwaha, being the co-accused in Case No. 14/S/81, preferred an Application No. 519 of 1985 in this Court seeking to quash the prosecution as against him and on that Application Rule has been issued and further proceedings have also been stayed. The application is also pending in this Court and the prosecution has not taken any steps for vacating the stay.

(11) The petitioner has annexed a detailed roznama in these cases. The roznama clearly shows that from about 1978, for various reasons, the cases have been adjourned from time to time. On a rough calculation, the cases appear to have been adjourned on or about 75 occasions.

(12) In this background, the petitioner has filed there petitions for the purpose of quashing all the prosecutions. The petitioner submitted that although 15 to 16 years are over after the institution of these cases, no progress whatsoever has been made in any of these cases. The petitioner further submits that even if the prosecution is allowed to proceed with the cases now, the same will not be over for another ten years. Most of the cases may have to be committed to the Court of Sessions and committal proceedings themselves will take considerable time. After the cases are committed to the Court of sessions, the court of sessions, which is already congested with large number of cases, would take at least another decade, for disposal. Since speedy trial, though not specifically enumerated as a fundamental right, is implicit in Article 21 of the [Constitution of India](#), this inordinate delay amounts to denial of justice and denial of fundamental rights of life and liberty of the petitioner and the other accused persons. The petitioner, therefore, submits that it is necessary that all these prosecutions are quashed.

(13) The respondent, that is the prosecution, cannot gainsay that these cases have lasted for more than a decade and a half and perhaps will take another decade for effective disposal. I, therefore, asked Mr. Jaisinghani appearing for respondent No. 1 whether he would be able to chart out a scheme or a plan so

that all these cases can be disposed of in a time bound schedule without, at the same time, taking a long period not exceeding about six months from now. Initially, Mr. Jaisinghani assured that he would be able to prepare such a chart. In fact, I adjourned these matters on two/three occasions, each time giving a fairly sufficient long period so as to enable Mr. Jaisinghani to come with a concrete plan. He has not been able to do so, so far. In fact, on the last occasion, the officer, who came down to instruct him in this matter, was totally, a new officer, who was not even conversant with the facts of the cases, nor was he ever associated with the investigation of the cases. This indicated broadly the attitude of the prosecution. Mr. Jaisinghani, on my query, submitted that in these cases there are in all, 91 witnesses, out of whom, 46 are presently officer and 45 are non-officers. Some of the officers have retired. Some of the officers are at Varanasi. The witnesses are at Kanpur, Bombay, Delhi, Allahabad, Jodhpur and Varanasi. This shows that it is impossible, even if the prosecution desires, to have these cases disposed of within a short time. Therefore, the question is whether the cases should be allowed to linger on with no certainty as to when the cases will be taken up and when the cases will be over. Is it in the interests of justice that these criminal cases should be allowed to remain pending for trial for about two decades or more, or is it in the interests of justice that these cases should be quashed

(14) Mr. Jaishighani submitted that the delay was due to variety of factors. Firstly, the delay was due to the fact that investigation had to be done, both at Kanpur and at Bombay. Since some of the accused were in Kanpur and some of the material was in Kanpur, certain cases had to be filed at Kanpur and the other cases had to be filed in Bombay. He then submitted that after the petitioner went to the Supreme Court, the matter remained pending for sometime in the Supreme Court and thereafter the order of transfer was passed. Thereafter, for sometime, the petitioner was absent, so also on some of the occasions some of the accused had remained absent. He then submitted that before they could begin, Mr. Agnihotri filed Criminal Application in 1985 and obtained stay of the trial. The stay still operates. In these circumstances, he submitted that it cannot be said that the prosecution was responsible for the delay in the trial for these cases. He further submitted that the charges are very serious and the amounts involved are fairly substantial in all these cases and, therefore, it is necessary that the accused

should not be allowed to go scot free in all these cases. Further, it is necessary that in the interests of justice there should be a trial and the guilty should be punished.

(15) In support of his submissions, Mr. Chitnis relied on certain cases. Firstly, he cited the case of Machander v. Hyderabad State, reported in : 1955 CriLJ1644 . That was a case where a murder trial was pending for about 4 1/2 years. It appears that the trial proceeded and when the statement of the accused was recorded under Section 342, Cr.P.C. certain questions were not asked, which resulted in the Supreme Court coming to the conclusion that the conviction was not proper. At that point of time, it was suggested on behalf of the prosecution to remand that case. The Supreme Court declined to order retrial because the persons accused of crime are not to be 'indefinitely harassed.' It is true that the guilty must not escape, but at the same time there has to be a balance between conflicting rights and duties. The prosecution becomes an oppression if an accused is kept on the fray indefinitely and, therefore, 'limits must be placed on the lengths to which they may go.'

(16) In the case of State of Bihar v. Uma Shankar, reported in : 1981 CriLJ159 , it has been observed that where the trial had not made much headway even though a period of 20 years had gone by and the High Court had quashed the proceedings, the Supreme Court refused to interfere with the order passed by the High Court. The Supreme Court observed as follows :

'Such protection itself means considerable harassment to the accused not only monetarily but also by way of constant attention to the case and repeated appearances in court, apart from anxiety. It may well be that the respondents themselves were responsible in a large measure for the slow pace of the case inasmuch as quite a few orders made by the trial Magistrate were challenged in higher courts, but then there has to be a limit to the period for which criminal litigation is allowed to go on at the trial stage. In this view of the matter we do not consider the present case a proper one for our interference in spite of the fact that we feel that the allegation disclosed the commission of an offence which we regard as quite serious.'

(17) In the well known case of Hussainara Khatoon v. State of Bihar, reported in : 1979 CriLJ1036 , Bhagwati, J. (as he then was), expressly stated :

'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 : [1978]2SCR621 . We have held in that case that Art. 21 confers a fundamental right on every person not to be deprived of his life or liberty except in accordance with the procedure prescribed by law and it is not enough to constitute compliance 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 Art. 21 and he would be entitled to enforce such fundamental right and secure his release. 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 reasonable quick trial can be regarded as 'reasonable, fair or just' and it would fall out of Art. 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.' Therefore whatever be the reason for the delay, it is imperative that the prosecution must see that the case is brought to a reasonably expeditious trial and the case is disposed of without inordinate delay.

(18) In the case of S. Guin v. Grindlays Bank Ltd., reported in : 1986 CriLJ255 , the Supreme Court seems to have suggested, in a case of the type which was before the Court where the offence was punishable under Section 341 of the Indian Penal Code, an outer limit of 7 years after the incident. Otherwise it should be considered that the case has to be taken as stale.

(19) A Full Bench of the Patna High Court in the case of Madheshwardhari Singh v. State reported in : AIR1986 Pat324 , observed as follows :

'The core issue is as to what does a speedy public trial in a criminal prosecution truly connote Does it include within it the preceding police investigations in the case also or is it confined only to the period of time when the portals of the court are entered in a regular trial On principle I am clearly of the opinion that in the majestic sweep of the fundamental right of a speedy public trial in the context of a criminal prosecution, initiated at the State's instance, it necessarily connotes all the period from the date of the levelling of the criminal charge of the date of the rendering of the judgment in Court. Unless it is so held, the cherished fundamental right herein would be whittled down to a teaching mirage, where the investigation of the offences itself may protract on for years (as is well manifested in the present case), and thus rendering the very concept and purpose of a speedy trial purely illusory. Therefore, a speedy trial in a criminal prosecution herein includes within it both the police investigation of the crime and the later adjudication in Court based thereon.'

Therefore, it is not so much a matter as to who is at fault, as is a matter of constitutional guarantee that every trial has to be conducted with reasonable speed and despatch.

(20) Mr. Chitins drew my attention to a judgment of this Court, being the case of Narayan Sambhaji Shinde v. State of Maharashtra, reported in 1989 Mh LJ 844. In that case, the offence was committed sometime in 1974 and the complaint was filed on or about 21-3-1974 under various charges under Sections 409, 420, 477, 477A, 201 and 120B of the Indian Penal Code. The amount involved was to the extent of more than Rs. 254000.00 whereas the allegation was defalcation of over Rs. 16 lakhs. A charge was framed in the said case on or about 18-4-1979. But for more than 9 years, no evidence whatsoever was led. The accused then filed a writ petition for quashing the prosecution and Deshmukh, J. relying on several cases of the Supreme Court quashed the prosecution.

(21) I am inclined to agree that despite the enormity of the charges, and the plurality of factors that virtually stalled the progress of these cases, having regard to the static approach of the prosecution, it is not in the interests of justice to keep the cases pending indefinitely. There is no reasonable hope of any of these cases,

even if allowed to be proceeded with, coming to an end within a very short time from now. By the very nature of the complaint, the cases may have to be committed to the Court of Sessions. Taking into account the large number of witnesses who have to come from different parts of the country. I am sure that the committal proceeding will itself last for a long time. Thereafter, if one takes into account the time that is normally taken in the Sessions Court, especially in the present context of heavy congestion in that Court, the cases will continue indefinitely for at least another 10 years, which means at the trial stage these cases will last for more than 25 years. Such a situation is clearly contrary to Article 21 of the [Constitution of India](#).

(22) Mr. Jaisinghani relied on the case of Diwan Naubat Rai v. State, Delhi Administration, reported in : 1989 CriLJ802 . In that case, the prosecution was launched in 1978. In 1987, petitions were filed in the Supreme Court for quashing the proceedings. Those petitions were dismissed and Supreme Court gave directions that the trial of the case should go on from day to day after the learned Additional Sessions Judge fixes a date of commencement of the trial, sometime in the third week of August 1987. Thereafter the accused filed a petition on 23/7/1988 alleging that the case was not disposed of despite the direction given by the Supreme Court and that, therefore, the prosecution should be quashed on account of non-disposal of the case after 13/7/1987 till the filing of the writ petition. The Supreme Court took note of the fact that the learned Additional Sessions Judge had made an effort to proceed with the case, as far as possible, from day to day and in that process, in the period of about one year, nearly 110 days had been fixed for the case. The Supreme Court also found that out of these 110 days, only on about 10 dates, the case had been adjourned at the instance of the prosecution. It was on these facts, the Supreme Court dismissed the petition. I am afraid, this case will have no bearing on the facts of the case before me. In the case which are all pending in the Court of the learned Additional Chief Metropolitan Magistrate, and the 38th Court, Ballard Pier, Bombay, the adjournments were for want of time on the part of the Court, sometime by consent, sometime because of learned Magistrate was absent and on number of occasions because the learned prosecutor was absent and on very few occasions, at the instance of the accused. There is hardly any evidence of the prosecution having

made any effort to proceed with cases in all earnestness. In our system of justice based on rule of law, the sword cannot be kept hanging forever. In this view of the matter, these petitions will have to be allowed.

(23) I am told that the Criminal Cases Nos. 12/S, 15/S, 17/S and 19/S of 1975 have been numbered as case Nos. 12/S, 15/S, 17/S and 19/S of 1981. Cases Nos. 12/S, 15/S and 17/S of 1981 are now pending in the Court of Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Bombay. As regards the case No. 19/S of 1981, the same has been committed to the Court of Sessions and has been numbered as Sessions Case No. 446 of 1982.

(24) I further understand that the remaining cases, namely, criminal cases Nos. 13/S, 18/S and 20/S of 1975 have been renumbered as criminal cases Nos. 132/S, 133/S and 134/S of 1981 respectively and are now pending in the Court of the Additional Chief Metropolitan Magistrate, 32nd Court, Esplanade, Bombay.

(25) As regards the other cases transferred from the Kanpur Court, they all have been transferred to the Court of the Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Bombay. As stated above, they are all stayed by virtue of the various petitions filed by the said Mr. G. D. Agnihotri. Since the said Mr. Agnihotri died during the pendency of those petitions, those petitions will automatically abate. However, since I am quashing the prosecutions in all the petitions filed by the present petitioner before me and since all the cases are kept with one another, it is proper and in the interest of justice that I should quash all the prosecutions in all the cases that are pending in the Court of the Additional Chief Metropolitan Magistrate, 32nd Court, Esplanade, Bombay, and also in the Court of the Additional Chief Metropolitan Magistrate, 38th Court, Ballard pier, Bombay and as also which is pending in the Court of Sessions for Greater Bombay. It is true that some of the other accused are not before me. But, I think, that that should not make any difference, inasmuch as after quashing the prosecutions, which are the subject matter of these petitions, if those accused come forward and make a similar application, this Court would naturally have to grant the same and such applications will be only a formality.

(26) Having regard to these circumstances, I pass the following order :

Rule made absolute in terms of prayer clauses (a) and (b) in all these petitions. The prosecutions under Criminal Cases Nos. 132/S/1981, 133/S/1981, 134/S/1981, at present pending in the Court of the Additional Chief Metropolitan Magistrate, 32nd Court, Esplanade, Bombay, and the Criminal Cases Nos. 12/S/1981, 15/S/1981, 17/S/1981 and 19/S/1981, at present pending in the Court of Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Bombay, are hereby quashed. Bail bonds of each of the accused in each of the above Criminal Cases are cancelled. Sureties discharged.

Similarly, all the prosecutions under Criminal Cases Nos. 4/S/1983, 5/S/1983, 6/S/1983, 7/S/1983 and 8/S/1983, which are all pending in the Court of the Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Bombay, are also quashed. Similarly, Sessions Case No. 446 of 1982 pending in the Court of Sessions for Greater Bombay is also quashed.

Bail bounds of each of the accused in these cases are also cancelled Sureties discharged.

At the request of Mr. Jaisinghani, the operation of my order with regard to cancellation of bail and discharge of the sureties in each of the above cases is stayed for a period of eight weeks from today.

(27) Order accordingly.

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