

State of Karnataka Vs. Mahadevaiah and Others

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Court : Karnataka

Decided On : Feb-17-1998

Reported in : 1999(4)KarLJ182

Judge : R.P. Sethi, C.J. and ;V. Gopala Gowda, J.

Acts : [Constitution of India](#) - Articles 14, 21, 22, 32, 226 and 227

Appeal No. : Writ Appeal No. 5518 of 1996

Appellant : State of Karnataka

Respondent : Mahadevaiah and Others

Advocate for Def. : Sri S.B. Hegde Hudlamane and ;Sri Harikrishna S. Holla, Adv.

Advocate for Pet/Ap. : Sri U. Abdul Khader, Additional Government Adv.

Judgement :

Acts/Rules/Orders:

[Constitution of India](#) - Articles 14, 21, 22, 32, 226 and 227

Cases Referred:

Usmanbhai Dawoodbhai Memon and Others v. State of Gujarat, AIR 1988 SC 922, (1988) 2 SCC 271;State of Maharashtra v. Champalal Punjaji Shah, AIR

1981 SC 1975, (1981) 3 SCC 610;Hussainara Khatoon v. Home Secretary, Government of Bihar, Patna, AIR 1979 SC 1360, (1980) 1 SCC 115;Raghubir Singh and Others v. State of Bihar, AIR 1987 SC 149, (1986) 4 SCC 481;Mahadevaiah v. State of Karnataka and Others, 1996(2) Kar. L.J. 269

JUDGEMENT

R.P. Sethi, C.J.

1. This appeal is filed against the order of the learned Single Judge passed in W.P. No. 30354 of 1994 by which proceedings FIR bearing Crime No. RG 27 of 1987, dated 29-6-1987 pending in CC 23 of 1989 on the file of the Principal City Civil and Sessions Judge (Special Judge), Bangalore have been quashed. It is contended that the order impugned is against the settled position of law and has been passed in the absence of necessary parties. The facts of the case and the circumstances relevant for purposes of determining the delay, if any, are said to have been not taken note of by the learned Single Judge.

2. The respondent-accused while working as an Upper Division Clerk in the Office of the Regional Provident Fund Commissioner, Bangalore was stated to have abused his official position and admitted to cheating the Department of a sum of Rs. 32,548/- by fabricating false documents to make it appear that one Sri B.A. Achaiah, a provident fund member bearing Account No. KN/5437/185 had made an application for making final withdrawal of his provident fund accumulations and by getting it sanctioned through false notings and representations. An FIR was registered and the case was investigated by the Central Bureau of Investigation. Formal charge-sheet was submitted in the Criminal Court as noted hereinabove. The proceedings of the criminal case pending in the Trial Court was sought to be quashed on the ground of seven years delay in conclusion of trial which allegedly amounted to the violation of fundamental right for speedy trial claimed to be guaranteed under Article 21 of the [Constitution of India](#). It is worth noting that the respondent-accused did not implead the CBI as party-respondent in the case. Relying upon a host of judgments, the learned Single Judge concluded, as there had been delay in concluding the trial, the proceedings pending in the Trial Court were liable to be quashed.

Heard.

3. In the normal circumstances, the High Court in exercise of its powers under Articles 226 and 227 of the Constitution, would not quash the proceedings pending in the Criminal Court or before the Investigating Agency. The prerogative writs are extraordinary remedies intended to apply in exceptional cases in which ordinary legal remedies are deemed to be not adequate. In *Usmanbhai Dawoodbhai Memon and Others v State of Gujarat*, wherein the petitioners were accused of offences under the TADA Act, the Supreme Court took note of the powers of High Court under the Constitution and held as under:

'...the provisions of the Act do not take away the constitutional remedies available to a citizen to approach the High Court under Article 226 and article 227 or move this Court by a petition under Article 32 for the grant of an appropriate writ, direction or order. It must necessarily follow that a citizen can always move the High Court under Article 226 or article 227, or this Court under Article 32 challenging the constitutional validity of the Act or its provisions on the ground that they offend against Articles 14, 21 and 22 or on the ground that a notification issued by the Central Government or the State Government under Section 9(1) of the Act constituting a Designated Court for any area or areas or for such case or class or group of cases as specified in the notification was a fraud on powers and thus constitutionally invalid'.

4. It is almost now settled that the powers of the High Court under Articles 226 and 227 of the Constitution for the purpose of quashing the criminal prosecution are circumscribed and can be exercised only in proper cases for the enforcement of fundamental or legal rights or where it manifestly appears that there was a legal bar against the institution or continuance of the criminal proceedings in respect of the alleged offence where the allegation in the FIR or the complaint, even if they are taken at their face value, are accepted in their entirety. The High Court is not required to embark upon or enquire as to whether the evidence was reliable or not. It would not be a healthy practice to allow an accused person, in all cases, to come to the High Court at the investigation stage or during trial with the prayer of quashing the proceedings on the ground that no offence was made out or there

had been no infringement of any right. In such cases, the High Court would be reluctant to interfere at the initial stage. The exercise of the constitutional power should not be resorted to particularly when alternative, efficacious and adequate remedies are available under the ordinary law i.e., the Code of Criminal Procedure. The accused did not refer to and the learned Single Judge did not notice the existence of any special circumstances justifying the invoking of jurisdiction under Article 226 of the Constitution for the purpose of quashing the proceedings pending in a Court of law. The order impugned is liable to be quashed on this ground alone.

5. However, even on merits, the learned Single Judge was not justified in concluding that the proceedings were liable to be quashed without offering the concerned Investigating Agency an opportunity of explaining the circumstances which prevented the conclusion of the trial or were sufficient to explain the delay. The respondent-accused, apparently appears to have mala fide suppressed the fact of the CBI being the Investigating Agency in the case registered against him. He is also proved to have suppressed this fact by not impleading the CBI as a party-respondent in the case. In the absence of the aforesaid respondent, it was not prudent to rely upon the bald allegation made by the petitioner for coming to the conclusion that the completion of the trial had been delayed or protracted by the respondent justifying its quashing.

6. Delay in concluding the trial per se cannot be held to be violative of the fundamental right as enshrined under Article 21 of the Constitution unless it is shown to have taken away some other right of the accused. If in a case the accused is forced to remain in prison on account of the protracted trial, the Court would be justified in holding that his right guaranteed under Article 21 of the Constitution had been violated which required remedial measures. In all the cases referred to by the learned Single Judge, the Court had taken note of the pendency of criminal cases and their protraction wherein the accused persons were proved to have been deprived of their freedom and liberty. In the instant case, it was proved that the accused had not suffered any jail or imprisonment or had been undertrial prisoner as, admittedly, he had been released on bail. In *State of Maharashtra v Champalal Punjaji Shah*, the Apex Court held that where the

accused himself was found responsible for a part of the delay, the proceedings could not be quashed because a fair trial implies speedy trial and to ascertain that, it has to be found as to whether there is denial of the right to speedy trial and whether the accused himself was responsible or not. Relying upon its earlier judgment in *Hussainara Khatoon v Home Secretary, Government of Bihar, Patna*, the Court held:

'What is the remedy if a trial is unduly delayed? In the United States, where the right to a speedy trial is a constitutionally guaranteed right, the denial of a speedy trial has been held to entitle an accused person to the dismissal of the indictments or the vacation of the sentence. But 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. 2d 56 is an instructive case on this point. As pointed out in the first *Hussainara* 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 to 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 could 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. In *Raghubir Singh and Others v State of Bihar*, the Court held that the question whether the right to speedy trial which forms part of the fundamental right to life and liberty guaranteed under Article 21 of the Constitution had been infringed or not was ultimately a question of fairness in the administration of criminal justice. Several questions are required to be taken note of before holding as to whether there has been any delay in concluding the trial or not. The Court posed several questions to itself and observed:

'Was there delay? How long was the delay? Was the delay inevitable having regard to the nature of the case, the sparse availability of legal services and other relevant circumstances? Was the delay unreasonable? Was any part of the delay caused by the wilfulness or the negligence of the prosecuting agency? Was any part of the delay caused by the tactics of the defence? Was the delay due to causes beyond the control of the prosecuting and defending agencies? Did the accused have the ability and the opportunity to assert his right to a speedy trial? Was there a likelihood of the accused being prejudiced in his defence? Irrespective of any likelihood of prejudice in the conduct of his defence, was the very length of the delay sufficiently prejudicial to the accused? In the instant case, five persons were seen in a jeep going towards the Indo-Nepal border, obviously in an attempt to cross the border. The border patrol thought that their movements were suspicious. Their answers to questions regarding their names and parentage were not satisfactory. One of them was identified as a police officer, who had been dismissed from service and who was wanted in connection with an order of detention under the National Security Act. In the light of the documents found in the possession of the accused, the police party suspected that they were crossing the border and going to Nepal in the course of a conspiracy to commit the offences of waging war, etc. Their suspicion was strengthened by the offer of a bribe to be allowed to cross the border. The police officer whom they apprehended, though apparently a Punjabi, had previously served in the State of Maharashtra while the others were from Calcutta. That several persons from different parts of the country with no apparent connection with each other except that they appeared to belong to the same community were together trying to cross the country's frontier, apparently made the police suspect, in the context of the political situation in the country, that they belonged to some group of persons of that community who were

campaigning against the Government, call it what you will, agitating or waging war, a suspicion which must have been further influenced by the letters found in their possession.

Held, as the police officers had some justification for suspecting a conspiracy to wage war they would be well justified in suspecting ramifications of the conspiracy elsewhere in the country necessitating investigation into the conspiracy in Punjab, Delhi, Maharashtra, Calcutta and other parts of the country and such delay as there was in the investigation of the case, considering the extraordinary law and order situation in the country necessitating the placing of a great additional burden on the police, was not wanton and that it was the outcome of the nature of the case and the general situation prevailing in the country. Lulls in investigation for fairly long spells could not be considered to be sinister'.

8. Learned Single Judge appears to have not taken note of any of the four tests laid down by the Supreme Court while allowing the writ petition. If mere delay is permitted to be made a ground for quashing the proceedings, any unscrupulous or clever litigant can succeed in prolonging the investigation or trial and thereafter claim the relief of quashing the investigation or the proceedings. Such a course if allowed, would jeopardise the basic principles of criminal jurisprudence and would be against public policy. No accused person can be rewarded for hoodwinking the Courts and the procedure particularly when the offence is heinous like the one of the which the respondent-accused was charged. The purpose of criminal law is to ensure justice and not to jeopardise justice. It does not mean that the prosecution or the State can prolong the completion of the trial without any limitation. As and when the State or the Investigating Agency is proved on facts to be responsible for the delay in completion of the investigation or the disposal of the enquiry or trial, the accused in such proceedings is at liberty to seek appropriate relief generally under the Criminal Procedure Code and under exceptional circumstances, in exercise of the writ jurisdiction.

9. Under the circumstances, the appeal is allowed and the order of the learned Single Judge is set aside. The Trial Court shall immediately proceed against the respondent-accused and try to conclude the trial within a period of one year by

giving it top priority. The Investigating Agency shall also be apprised of the urgency and necessity of completing the trial of the case. If in any case, but not for the fault of the respondent, the trial is not concluded within the aforesaid period of one year, the respondent shall be at liberty to approach the High Court for quashing of the proceedings in accordance with law and in the light of the observations made hereinabove.

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