

P.A. Vijayan Vs. State of Karnataka

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Court : Karnataka

Decided On : Aug-13-2001

Reported in : 2002CriLJ535; ILR2002KAR1190; 2002(1)KarLJ309

Judge : Mohamed Anwar, J.

Acts : [Prevention of Corruption Act, 1988](#) - Sections 13(1) and 13(2); [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482; [Constitution of India](#) - Article 21; [Indian Penal Code \(IPC\), 1860](#) - Sections 304-A and 338; [Prevention of Corruption Act, 1947](#) - Sections 5(1) and 5(2)

Appeal No. : Criminal Petition No. 751 of 2001

Appellant : P.A. Vijayan

Respondent : State of Karnataka

Advocate for Def. : N.V. Prakash, Additional State Public Prosecutor

Advocate for Pet/Ap. : K.M. Nataraj, Adv.

Disposition : Petition allowed

Judgement :

ORDER

1. Heard the arguments of learned Counsels on both sides.

2. This petition under Section 482 of the Criminal Procedure Code is filed on 28-2-2001 praying to quash the FIR in No. 1 of 1994, registered against petitioner by the Lokayuktha Police, Mangalore, and all further proceedings pursuant thereto, in the interest of justice.

3. A few material undisputed facts are that:

Petitioner joined the Government service in Karnataka Government, as an Excise Sub-Inspector in the year 1969. When he was working as such, in the year 1994, at Bantwal in Mangalore, South Canara District, the said Crime No. 1 of 1994 was booked against him for the offence under Section 13(1)(e) read with Section 13(2) of the [Prevention of Corruption Act, 1988](#) ('the Act' for short) on the complaint of one P. Harishchandra, Police Inspector, B.O.I. (Bureau of Investigation), Karnataka Lokayuktha, Mangalore. The complaint against petitioner-accused was to the effect that during the period between 26-11-1969 and 5-2-1994 he had amassed wealth disproportionate to his known sources of income, to the tune of Rs. 3,70,700/- and was thereby guilty of the said offence under the Act. On registration of the said crime, the petitioner was placed under suspension for some time and then he was reinstated in service by revoking his suspension. Thereafter, he was promoted in service as Excise Inspector and retired as such on 31-1-2000. Since the respondent-Investigating Police had failed to complete its investigation and file the charge-sheet till the date of his retirement, the present petition is filed by him praying to quash the registration of the said crime against him.

4. When this matter was listed on 1-3-2001 for hearing, the learned State Public Prosecutor (S.P.P.), representing the State was directed to have the affidavit of the concerned Investigating Officer ('the I.O.' for short) filed explaining as to why the investigation in the said crime was not yet completed. When that affidavit was not filed within the granted time, an order was passed on 21-3-2001 directing the Registrar, Lokayuktha to keep himself present in Court to inform about the progress and stage of the investigation in said Crime No. 1 of 1994. Then the matter was listed on 22-3-2001, on which date, it was submitted by learned State Public Prosecutor that the final report was filed in the Trial Court on 15-3-2001 on completion of the investigation. Thereafter, on 4-4-2001 the affidavit of the I.O.

was filed in compliance with the direction given on 1-3-2001 furnishing the so-called explanation for the delay caused in filing of the charge-sheet against accused.

5. The certified copy of the entire order sheet of the Trial Court in Special Case No. 36 of 2001 pertaining to the said Crime No. 1 of 1994 is produced by the learned Counsel for petitioner, along with a memo, which discloses that the said charge-sheet filed by the I.O. was received in Court on 23-3-2001.

6. Thus, the total period from the date of registration of the said Crime No. 1 of 1994, i.e., from 4-2-1994 till the date of submission of the final report, i.e., charge-sheet, on 23-3-2001, works out to seven years one month and 19 days. The explanation for this shockingly long delay of seven years one month and 19 days furnished by the I.O. in his said affidavit is that; since 11-7-2000 he has been working as a Police Inspector, Karnataka Lokayuktha Police Station, Mangalore. He took up further investigation of the crime and on completion thereof, the charge-sheet was handed over by him to the concerned Public Prosecutor on 24-11-2000 for its filing in Court, who returned it with certain observations which required rectification in the charge-sheet papers. After attending to the same, the charge-sheet was again given to the said Public Prosecutor on 8-12-2000, who on scrutiny thereof, again returned it to the I.O. for further rectification. Accordingly, it was attended to by the I.O. and then the charge-sheet was given to the Public Prosecutor on 19-3-2001 who then filed it in the Trial Court. We thus find the I.O. or the respondent has offered no explanation, whatsoever, for the delay of about six years five months that was caused in the investigation of the crime, from 4-2-1994 till 11-7-2000 and for the further delay of over four months from 11-7-2000 to 24-11-2000. In the statement of objections filed for respondent what is further stated badly in this regard is that the delay in filing of the charge-sheet caused was because 'four Investigating Officers have investigated this matter time and again and they were under the supervision and directions of their higher authorities, and they have collected hundreds of documents to show that the accused-petitioner amassed excess wealth to the extent of 6,63,430.35 as against his known sources of income'. This reason has remained unsubstantiated on record.

7. Mr. Nataraj, learned Counsel for petitioner placing reliance on the decisions of Supreme Court in *Biswanath Prasad Singh v. State of Bihar* and *State of Andhra Pradesh v. P.V. Pavithran*, vehemently contended that the criminal proceeding against petitioner is liable to be quashed on the sole ground of the said unexplained long delay of over 7 years caused by the Investigating Police in filing of the charge-sheet, that too, after the present petition was filed by the petitioner seeking quashment of the said FIR in crime against him and, more so, in view of the fact that the petitioner has already retired about one and a half years prior to its filing.

8. Per contra, learned Additional State Public Prosecutor Mr. N.V. Prakash, representing the respondent-State argued otherwise in support of the charge-sheet and prosecution of the petitioner for the said offence contending that no limitation period being prescribed under Criminal Procedure Code for filing of the charge-sheet therefor, the question of its quashment does not arise. Reliance was sought to be placed by him on a recent two Judge Bench decision of the Supreme Court in *Seeta Hemchandra Shaskittal and Anr. v. State of Maharashtra and Ors.*

9. The Constitution Bench of Supreme Court in *Abdul Rehman Antulay and Ors. v. R.S. Nayak and Anr.*, has gone in detail into all the relevant aspects pertaining to the right of the accused for speedy trial in the light of fundamental right to life and liberty guaranteed under Article 21 of the Constitution. At para 43 of its judgment, the proposition enunciated in its earlier decision in *Hussainara Khatoon v. Home Secretary, State of Bihar, Patna*, was reproduced with approval. The same is extracted below:

'The State cannot avoid its constitutional obligation to provide speedy trial to the accused by pleading financial or administrative inability. The State is under a constitutional mandate to ensure speedy trial and whatever is necessary for this purpose has to be done by the State. It is also the constitutional obligation of this Court, as the guardian of the fundamental rights of the people, as a sentinel on the qui vive, to enforce the fundamental right of the accused to speedy trial by issuing the necessary directions to the State which may include taking of positive action, such as augmenting and strengthening the investigative machinery, setting

up new Courts, building new Court-houses, providing more staff and equipment to the Courts, appointment of additional Judges and other measures calculated to ensure speedy trial'.

In this context of the scope and ambit of the fundamental right guaranteed under Article 21 of the Constitution, the Hon'ble Supreme Court at para 57 of its judgment made a reference of the case in *Srinivas Pal v. Union Territory of Arunachal Pradesh*, where the investigation against appellant was quashed on the ground of delay of about one year in completion of investigation and for further delay of about nine years in taking cognizance of the offence under Section 304-A read with Section 338 of the I.P.C. Again at para 60 of its judgment, Hon'ble Supreme Court referred to its earlier decision in the case of *State of Andhra Pradesh, supra*, on which reliance was placed by Mr. Nataraj, with approval wherein the FIR against a Public Servant, who was an I.P.S. Officer and against whom the crime for an offence under Section 5(2) read with Section 5(1)(e) of the [Prevention of Corruption Act, 1947](#), was quashed, since the investigation in respect thereof was not completed by the investigating Police over a period of about four years.

10. At para 65 of its judgment in *Abdul Rehman Antulay, supra*, on review of the case-law bearing on the question of the accused's right to speedy trial, the Hon'ble Supreme Court observed:--

'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'.

11. It is further held by the Supreme Court in the case of *Abdul Rehman Antulay, supra*, to the effect that accused's right to speedy trial encompasses the stages namely, the stages of investigation, enquiry, trial, appeal, revision and retrial. Following its decision in *Abdul Rehman Antulay's case, supra*, the Hon'ble Supreme Court, in the case of *Biswanath Prasad Singh, supra*, at para 5 of its order, proceeded to quash the FIR, observing:

'It is true that the charges against the appellant relate to misappropriation of public funds. In such a case, we should take a more stricter view as indicated in the Constitution Bench decision in Abdul Rehman Antulay's case, supra. But there are certain circumstances in this case which induce us to interfere in the matter. The most glaring one is that even though the FIR was issued on 10-12-1977, the charge-sheet was filed only on 5-2-1983, i.e., after a lapse of 5 years. No explanation is forthcoming for this extraordinary delay. May be, this being a case of misappropriation of public funds, the investigation may have taken a longer time but it cannot certainly take more than five years, having regard to the facts and circumstances of the case. Added to the said circumstance is the fact that even though there was no stay in this special leave petition/criminal appeal, the case has not progressed much as stated above. Moreover, the appellant has been dismissed from service on these very allegations. His provident fund and gratuity amounts have been forfeited and he has crossed the age of superannuation. Calling upon him now to enter upon defence, after 16 years, in all the facts and circumstances of the case, is bound to cause prejudice to him'.

12. In the recent case of Seeta Hemchandra Shashittal, supra, the delinquent public servant was charge-sheeted together with his mother and mother-in-law for the offence under Section 5(2) of the [Prevention of Corruption Act, 1947](#). The investigation and certain other enquiries conducted by the Investigating Police revealed that the said accused public servant had acquired the assets of worth Rs. 33.44 lacs in the year 1986 in excess of his known sources of income. After investigation, the final report was submitted in July 1990 by the Investigating Officer to his Superior Officer. Then, the final report was forwarded to the Government on 6-4-1991 for obtaining sanction to prosecute the delinquent public servant. The requisite sanction order was accorded by the Government on 22-1-1993. Thereafter, the charge-sheet was laid against all the three accused on 4-3-1993 before the Special Court dealing with the offences under the Prevention of Corruption Act. While considering the question whether the criminal proceeding against the accused is liable to be quashed on the ground of delay, the Supreme Court referring to the following proposition laid in para 7 of P.V. Pavithran's case, supra, has held that:

'There is no denying the fact that a lethargic and lackadaisical manner of investigation over a prolonged period makes an accused in a criminal proceeding to live every moment under extreme emotional and mental stress and strain and to remain always under a fear psychosis. Therefore, it is imperative that if investigation of a criminal proceeding staggers on with tardy pace due to the indolence or inefficiency of the investigating agency causing unreasonable and substantial delay resulting in grave prejudice or disadvantage to the accused, the Court as the protector of the right and personal liberty of the citizen will step in and resort to the drastic remedy of Quashing further proceedings in such investigation'.

(emphasis supplied)

13. Further, the Supreme Court proceeded to take note of another pertinent observation made in the case of State of Andhra Pradesh, *supra* that: ' It is not possible to formulate inflexible guidelines or rigid principles of uniform application for speedy investigation or to stipulate any arbitrary period of limitation within which investigation in a criminal case should be completed'.

14. Referring to the decision of the Constitution Bench in Abdul Rehman Antulay's case, *supra*, the Supreme Court further proceeded to observe at para 16 of its order in the case of Seetha Hemchandra Shashittal, *supra*, thus:

'While laying down the propositions the Constitution Bench encompassed investigation as part of the amplitude for registering speedy trial. At the same time the Bench struck a note of caution that a realistic and practical approach should be made regard being had to 'all attending circumstances, including the nature of the offences, the number of accused and witnesses etc.' Each case, therefore, must be considered on its own facts, without being pedantically persuaded merely because delay had occasioned during investigation stage'.

Further, at para 20 of its judgment as regards the delay caused by the Government in according sanction for prosecution, the Supreme Court had this to observe:

'The delay taken for obtaining sanction from the Government cannot be attributed to the Investigating Officers. As pointed out earlier, sanction was applied for on 6-4-1991 and the Government accorded sanction on 21-2-1993. Though we are unable to approve the said time of two years for the Government to decide the question of giving sanction, considering the number of desks over which the matter had to pass, and the voluminous records to be studied at all levels, we hesitate to hold that the said interval was so unreasonably long as to affect the fundamental right of the appellants. The charge-sheet was laid within a few days of obtaining the sanction'.

15. Therefore, what transpires from the aforestated authoritative pronouncements of Supreme Court is that, the question whether the criminal proceeding against the accused has to be quashed or not depends upon the particular facts and circumstances of each case, the volume of evidence collected by the I.O., and the nature and gravity of the offence for which the accused stands charged. There must be a rational nexus between the delay and these factors. In the instant case, as has been already indicated above, it is not the case of the Investigating Officer made out in his affidavit that the delay was on account of the collection of any bulky evidence in support of the charge against the accused. There is no mention in his entire affidavit about the nature of material evidence and its collection in course of investigation and any period involved. Nor is it his case that any part of the evidence, documentary or otherwise, collected during investigation was not readily available and was beyond his reach at particular stage of investigation. On the other hand, the manner in which the Investigating Agency has conducted itself in the instant case calls for reprobation. The charge-sheet has been laid by it subsequent to the filing of the petition to save its own face from any serious censure by the Court. The petitioner has admittedly retired from service long before filing of the charge-sheet. The lethargy and utterly indifferent attitude displayed by the agency in the matter of conduct and conclusion of investigation and submission of the charge-sheet has, undoubtedly resulted in untold misery, mental torture for over 7 years, and in grave prejudice to the petitioner-accused in effective defence of the case. Therefore, without more, there being absolutely no legal justification whatever for such unreasonably long delay in submission of the final report i.e., charge-sheet, to the Court by the Investigating Police, the criminal proceeding

against petitioner will have to be quashed in the ends of justice.

16. Hence, the petition is allowed. The criminal action in Crime No. 1 of 1994, booked against petitioner by the respondent-Police and the entire criminal proceeding in Special Case No. 36 of 2001 pending on the file of the Court below against petitioner, are quashed.

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