Herald Stephen Benson Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Sep-16-1987

Reported in : 1988CriLJ1008

Judge : K.L. Shrivastava, J.

Appellant : Herald Stephen Benson

Respondent : State of M.P.

Judgement :
ORDER

K.L. Shrivastava, J.

1. This order under Section 482 of the Cr. P.C. 1973 (for short 'the Code') pertaining to the Criminal Case No. 4697/75 pending in the Court of II Additional Chief Judicial Magistrate, Indore shall also dispose of M. Cr. Cases 1306/87 and 1307/87 filed by the same petitioner for similar reliefs of quashing the proceedings respectively in Criminal Cases Nos. 4698 and 4665 of the year 1975 pending in the same Court.

2. Circumstances giving rise to this petition are these. In pursuance of three first information reports lodged by the Director Public Instruction, Bhopal at the M.G. Road Police Station, Indore in the year 1975 crimes under Section 408 IPC were registered against the present petitioner who was the Principal of a Higher

Secondary School (Nutan Vidyalaya Kramank J), Indore, and one Neelkanth the Accountant.

3. After investigation the aforesaid three criminal cases were filed against the present petitioner and Neelkanth. In all the three cases charges under Section 409 IPC were framed on 29-3-1976.

4. Despite 36 hearings for evidence given in the span of about twelve years the prosecution evidence is yet not closed.

5. It has further been stated that the Accountant Neelkanth is dead, his date of death being 14-11-1986.

6. The contention of the petitioner's learned Counsel is that delay in the trial is violative of Article 21 of the Constitution of India which guarantees speedy trial. It has further been contended that because of the prosecution the applicant who is aged 73 years has been deprived of retiral benefits and it is in the interest of justice that the criminal case are dropped.

7. Learned Counsel for the State contends that the State is making sincere attempts at the disposal of the cases and the applications deserve to be rejected.

8. The point for consideration is whether the applications deserve to be allowed.

9. As pointed out in the decision in Sheela Barse's case 1986 Cur Cri J (SC) 249 : 1986 Cri LJ 1736 (SC) right to speedy trial is a fundamental right implicit in Article 21 of the Constitution of India and the consequence of its violation would be that the prosecution itself, would be liable to be quashed on the ground that it is in breach of the fundamental right. The case relates to a delinquent child and six months' period for inquiry under the Bal Adhiniyam 1970 was held proper. Therein it has also been observed that total inadequacy of strength of the Presiding Officers of Courts is one of the primary reasons why trial of criminal cases are delayed. In the decision in Suk Das's case 1986 Cur Cri J (SC) 165 : 1986 Cri LJ 1084 (SC) conviction of the appellants was quashed on the ground that looking to the offence and the circumstances it was held that they had the fundamental right under the Article to free legal assistance at State cost and that the same was not

provided to them. It was also held that it was in the interest of justice that no fresh trial should be held.

10. In this very connection the decision in the FB decision in Madheshwar Dhari's case : AIR1986 Pat324 also makes an illuminating reading. The following observations are pertinent :-

Laying down of an outer time limit to concretise the right to speedy public trial is envisioned both by principle and precedent. A callous and inordinately prolonged delay of seven years or more (which does not arise from the default of the accused or is otherwise not occasioned by any extraordinary or exceptional reason) in investigation and original trial for offences other than capital ones plainly violates the constitutional guarantee of a speedy public trial under Article 21. Unless the fundamental right to speedy trial is to be whittled down into a mere pious wish, its enforceability in court must at least be indicated by an outer limit to which an investigation and the trial in a criminal prosecution may ordinarily extend. Holding otherwise would be merely paying lip service to a precious right whist denuding it of the benefits of its actual enforceability.

11. In the decision in Mohd. Hanif v. Aminabai (1986) 2 MPWN 65 it has been pointed out that though justice has got to be administered according to law, the ends of justice are higher than the ends of mere law and the amplitude of the inherent powers under Section 482 of the Code as the words 'nothing in the Code' used in the section disclose is not affected by Section 397 ibid regarding bar of revision. Therefore, in suitable cases the inherent powers under Section 482 of the Code designed to achieve a salutary public purpose have to be invoked irrespective of the label of the petitioner.

12. In the instant case, one of the co-accused is already dead. In the circumstances of the case the delay in the trial has to be held as violative of the petitioner's fundamental right implicit in Article 21 of the Constitution. It is also not in the interest of justice that this aged petitioner who during all these years also stands deprived of his retiral benefits is subjected to any further agony resulting from the pending prosecutions in the trial Court.

13. In the result, the applications succeeds and are allowed. The proceedings in the three criminal cases referred to above are quashed.