

Balabhadra Panda Vs. State of Orissa

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Court : Orissa

Decided On : Sep-19-2001

Reported in : 92(2001)CLT733; 2002CriLJ57; 2001(II)OLR453

Judge : B. Panigrahi, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482; [Prevention of Corruption Act, 1988](#) - Sections 7, 12(2) and 13(1); [Constitution of India](#) - Article 21

Appeal No. : Criminal Misc. Case No. 1564 of 1999

Appellant : Balabhadra Panda

Respondent : State of Orissa

Advocate for Def. : D.K. Mohapatra, Adv.

Advocate for Pet/Ap. : S.K. Mund, ;D.P. Dhal and ;J.K. Panda, Adv.

Disposition : O.A. allowed

Judgement :

B. Panigrahi, J.

1. This is an application under Section 482 of the Code of Criminal Procedure for quashing of the Criminal Proceeding pending against the petitioner in G. R. Case

No. 19 of 1991(V) in the court of the Special Judge. (Vigilance), Berhampur.

2. The gist of the prosecution case as revealed from the F.I.R. and also the final report, is that the petitioner was working as Sub-Collector, Malkangiri, as such he was also acting as Chairman of the regional Marketing Committee, Malkangiri. He had demanded and accepted illegal gratification of Rs. 2,000/- from Gurumurthy Mohanty on 31-8-91 at about 11.20 a.m., while he was present in the official residence of Sub-Collector, Malkangiri to revalidate a cheque bearing No. 56104 for Rs. 15,000/- which was issued by him on 10-7-91 and dishonoured by Koraput Gramya Bank. While accepting illegal gratification, he was caught redhanded and the amount was recovered from the accused. It appears that since the petitioner had retired from service, therefore, there was no occasion for the prosecution to obtain sanction from the competent authority. On the basis of such report, a case was registered under Section 12(2) read with 13(1)(d) and Section 7 of the [Prevention of Corruption Act, 1988](#) and cognizance was also taken on 27-9-93, after wards it was transferred to the Special Judge (Vigilance), Bhubaneswar on 31-8-93. Since the case could be decided by Special Judge, Sambalpur, therefore, the case was transferred from Bhubaneswar to Sambalpur on 6-8-94. Charges have been framed against the petitioner on 17-4-95, P. ws. were summoned, but the trial of the case could not be resumed for the absence of the p. ws. In the meanwhile, the case was transferred to Berhampur on 13-5-98. The accused was released on bail on 4-3-99. On 2-4-99 an application was filed by the petitioner to ask the prosecution for adducing evidence. In the meanwhile, the petitioner without giving any opportunity to the Special Judge (Vigilance) to take up trial, filed the present application for quashing the case on the ground of delay in disposal of the trial,

3. I find that the case could not be disposed of earlier since it had to be transmitted from one court to other for want of jurisdiction. When it could have been disposed of by the Special Judge (Vigilance), Berhampur, the petitioner has filed this case for quashing of the case. In this connection, a judgment of the Constitutional Bench in the case of Abdul Rehman Antulay etc. etc. v. R. S. Nayak and Anr. etc. etc., A. I R. 1992 Supreme Court 1701, has been relied on. It has been stated in paragraphs 53 and 54 that :

(53) 'Another question seriously (Canvassed before us) related to the consequence flowing from an infringement of right to speedy trial. Counsel for accused argued on the basis of the observation in *Sheela Barse* (A. I. R. 1986 S.C. 1773) and *Strunk*, (1973 (37) Law Ed 2d 56), that the only consequence is quashing of charges and/or conviction, as the case may be. Normally, it may be so. But we do not think that is the only order open to court. In a given case, the facts - including the nature of offence - may be such that quashing of charges may not be in the interest of justice. After all, every offence - more so economic offences, those relating to public officials and food adulterations - is an offence against society. It is really the society - the State - that prosecutes the offender. We may in this connection recall the observations of this Court in *Champalal Punjaji Shah* (A. I. R. 1981 S. C. 1675). In cases, where quashing of charges/convictions may not be in the interest of justice, it shall be open to the Court to pass such appropriate orders as may be deemed just in the circumstances of the case. Such orders may, for example, take the shape of order for expedition of trial and its conclusion within a particular prescribed period, reduction of sentence where the matter comes up after conclusion of trial and conviction, and so on.

(54) In view of the above discussion, the following propositions emerge, meant to serve as a guideline. 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 societal 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.

3. The concerns, underlying the right to speedy trial from the point of view of the accused are :

(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to this conviction ;

(b) the worry, anxiety, expense and disturbance to his vacation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and

(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.

4. At the same time, one cannot ignore the fact that it is usually the accused who is interested in delaying the proceedings. As is often pointed out, 'delay is a known defence tactic'. Since the burden of proving the guilt of the accused lies upon the prosecution, delay ordinarily prejudices the prosecution. Non-availability of witnesses, disappearance of evidence by lapse of time really work against the interest of the prosecution. Of course, there may be causes where the prosecution, for whatever reason, also delays the proceedings. Therefore, in every case, where the right , to speedy trial is alleged to have been infringed, the first question to be put and answered is - who is responsible for the delay Proceedings taken by either party in good faith, to vindicate their rights and interest, as perceived by them, cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay. It goes without saying that frivolous proceedings or proceedings taken merely for delaying the day of reckoning cannot be treated as proceedings taken in good faith. The mere fact that an application/petition is admitted and an order of stay granted by a superior court is by itself no proof that the proceeding is not a frivolous. Very often these stays obtained on ex parte representation.

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 work-load of the court concerned, prevailing local conditions and so on - what is called, the systematic 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. Each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. As has been observed by Powell, J, in *Barker* 'it cannot be said how long a delay is too long in a system where justice is supposed to be swift but deliberate'. The same ideal has been stated by White, J. in *U. S. v. Ewell*, (1966) 15 Law Ed 2d 627 in the following words :

'the sixth amendment right to a speedy trial is necessarily relative, is consistent with delays, and has orderly expedition, rather than mere speed, as its essential ingredients; and whether delay in completing a prosecution amounts to an unconstitutional deprivation of rights depends upon all the circumstances.' However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of accused will also be a 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.

7. We cannot recognize or give effect to, what is called the 'demand' rule. An accused cannot try himself; he is tried by the Court at the behest of the prosecution. Hence an accused's plea of denial of speedy trial cannot be defeated by saying that the accused did at no time demand a speedy trial. In a given case, he did make such a demand and yet he was not tried speedily, it would be a plus point in his favour, but the mere non-asking for a speedy trial cannot be put against the accused. Even in U.S.A., the relevance of demand rule has been substantially watered down, in *Barker* and other succeeding cases.

8. Ultimately, the Court has to balance and weigh the several relevant factors- 'balancing test', or 'balancing process'--and, determine in each case whether the right to speedy trial has been denied in a given case.

9. Ordinarily speaking where the Court comes to the conclusion that Right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order - including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded - as may be deemed just and equitable, in the circumstances of the case. .

10. It is neither advisable nor practicable to, fix any time-limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot, also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of Right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the Court to weigh all the circumstances of a given case before pronouncing upon the complaint. The Supreme Court of U.S.A. too has repeatedly refused to fix any 'such outer time limit in spite of the Sixth Amendment. Nor do we think that not fixing any such outer limit ineffectuates the guarantee of right to speedy trial.

11. An objection based on denial of Right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in High Court must, however, be disposed of on a priority basis.'

4. On a close reading of the mandate of the Supreme Court, it appears that if it is an economic offence and the delay is not too long and it could not be attributable to the prosecution, in such situation, the F. I. R. as well as the case cannot be quashed and consequently the case must be left to be decided on its own facts having regard to the principles enunciated by the Supreme Court. In the instant case also it is neither advisable nor feasible to draw or prescribe an outer time limit for the conclusion of the criminal proceeding. In the fact - situation as narrated

above, the delay being not on account of reasons ascribable to the prosecution, it is hereby directed that the prosecution shall produce all witnesses, if any, before the court below, namely. Special Judge (Vigilance) and the Court shall close the case and pronounce the judgment within 4 months from the date of receipt of the record.

With the above observation, the application for quashing the F. I. R. is dismissed.

5. Application dismissed.

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