

Santosh Singh Vs. State of Orissa

Santosh Singh Vs. State of Orissa

SooperKanoon Citation : sooperkanoon.com/534861

Court : Orissa

Decided On : Feb-28-1996

Reported in : 81(1996)CLT562; 1996CriLJ2651

Judge : R.K. Dash, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 7, 16(1), 20 and 20(1); Evidence Act - Sections 114; Prevention of Food Adulteration Rules; [Constitution of India](#) - Article 21; Code of Criminal Procedure (CrPC) , 1974 - Sections 482

Appeal No. : Criminal Misc. Case No. 2175 of 1993

Appellant : Santosh Singh

Respondent : State of Orissa

Advocate for Def. : Jairaj Behera, Addl. Government Adv.

Advocate for Pet/Ap. : B.P. Ray, Adv.

Disposition : Petition dismissed

Judgement :

R.K. Dash, J.

1. The petitioner by filing this application under Section 482, Cr.P.C., has sought to quash the proceeding in 3(a) C.C. No. 68 of 1985 pending in the Court of the

Additional Chief Judicial Magistrate, Rourkela.

2. Petitioner is the proprietor of Santosh Hotel situated at Biara Road, Rourkela town. On 18-10-84 at about 10 AM the Food Inspector attached to Mobile Analytical Laboratory, Bhubaneswar, inspected the business premises of the said hotel and suspecting 'Ladu' and 'cowmilk' kept for sale for human consumption to be adulterated, served statutory notice and purchased 1399 gms. Ladu and 360 mls. of cowmilk, divided each of the items into 3 equal parts, kept same in dry, clean and empty glass bottles, properly packed, fastened and sealed and sent one of the sample bottles from each item to the Public Analyst for examination and on receipt of the Analyst's report that Ladu and cowmilk were adulterated, launched prosecution against the petitioner and another under Section 16(1)(a)(i) read with Section 7 of the [Prevention of Food Adulteration Act, 1954](#) (hereinafter referred to as 'the Act') after obtaining necessary consent from the Joint Director, Health Services - Local Health Authority. It is alleged that at the relevant time the petitioner was present in the hotel and was looking after the business.

3. Upon complaint, both the accused persons were summoned, but they did not appear. The Court then issued warrant of arrest against them and only thereafter, the present petitioner entered appearance on 8-8-1991. So far as the other accused is concerned, after warrant could not be executed against him, the case was split up. When the matter stood thus, the petitioner failed to attend the Court on two dates for which warrant of arrest was issued to apprehend him. However, on his appearance warrant was recalled. Thereafter hearing commenced in course of which the prosecution examined three witnesses and proved certain documents. On consideration of the evidence, both oral and documentary, the Court was satisfied that there is a prima facie case against the petitioner and consequently framed charge. At this stage the petitioner approached this Court by filing the present case to quash the whole proceeding.

4. The learned counsel for the petitioner raised the following contentions:

(1) That for no fault of the petitioner there has been inordinate delay of 9 years to dispose of the proceeding and right to speedy trial being a fundamental right guaranteed by Article 21 of the Constitution and it being the settled position of law

that if trial is delayed due to callousness or inaction of the prosecution and accused has no contribution for the same, the whole proceeding should be quashed for such delay in exercise of inherent power.

(2) That it has been held by this Court in Criminal Revision No. 269 of 1989, decided on 12-2-1992 that Shri G. C. Patnaik being not qualified to be Public Analyst as per the provisions of the Prevention of Food Adulteration Rules his report is not admissible in evidence and the very same person being the Analyst in the present case, his report cannot be legally accepted to base conviction. So if that report is excluded from consideration, there remains no other acceptable evidence on which the prosecution case can stand.

(3) That there is no valid consent as required under Section 20 of the Act since the authority while according consent did not record reasons.

5. Coming to the first contention regarding delayed trial, it may be reiterated that the petitioner should be blamed more, because it took six years for the Court to apprehend him and not only that, even after appearance, he absented himself on two occasions. In that view of the matter, entire blame cannot be put on the prosecution that for its laches and negligence the case has been dragging on since long. Apart from the factual aspect of the case as aforesaid, it becomes academic whether as a matter of rule a criminal proceeding should be quashed due to long delay.

Shri S. P. Ray, learned counsel for the petitioner, in support of his contention placed reliance on the decision of the Apex Court in *Hussainare Khatoon v. State of Bihar*, AIR 1977 SC 1360 (sic). In the said case 'Hon'ble Justice P.M. Bhagwati (as he was then) speaking for the Court observed:

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* (AIR 1978 SC 597). We have held in that case that Article 21 confers a fundamental right on every person not to be deprived of his life and 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 Article 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 reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 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.

This Court in the case of *Rabindranath Rout v. State of Orissa*, 1992 Cri LJ 2309, quashed the criminal proceeding on the ground of delayed trial holding that the same constituted denial of justice. Very same question regarding right to speedy trial came up again for consideration in *Abdul Rehman Antulay v. R. B. Nayak*, AIR 1992 SC 1701:1992 Cri LJ 2717. It was contended that right to speedy trial does not flow from Article 21. It was only a facet of a fair and reasonable procedure guaranteed by Article 21 and nothing more and therefore, violation of that right does not result in quashing the proceeding. Argument was also advanced that to bring the criminal proceeding to a close, the Court should prescribe a time limit and beyond that no proceeding should be allowed to continue. Having given their anxious consideration to the various contentions raised, their Lordships observed: 'Right to speedy trial is also in public interest or that it serves the social 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.'

Their Lordships issued certain guidelines in regard to speedy trial as under:

(1) '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 tactics'. Since the burden of proving the guilt of the accused lies upon the

prosecution, delay ordinarily . prejudices the protection. Non-availability of witnesses, disappearance of evidence by lapse of 'time really work against the interest of the prosecution. Of course, there must be cases 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?

(2) 'Each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. 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.' .

(3) '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 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 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.

(4) 'Originally speaking, where the Court comes to the conclusion that right to speedy trial of an accused has been infringed the charge of 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.

6. From the above what appears is that their Lordships were of the view that criminal proceedings, regardless of the nature and gravity should not be quashed on the ground of infringement of the accused's right to speedy trial. Abhorrent nature of crime which has social impact, economic offences and offences which affect the health of the individuals should not be brought to a halt on the ground of delayed trial. The Courts in such cases should be asked to take up expeditious hearing and if need be a time limit should be fixed to conclude the hearing. In the case in hand, the petitioner for his allegedly selling adulterated food has been prosecuted. Such type of crimes which affect the society at large are on the rise and therefore, the legislature as a deterrent measure has provided punishment of six months imprisonment as the minimum. If a person dealing in adulterated food goes unpunished on the ground of delayed trial, for which he has also some contribution, it may not be possible to bring such crimes to a halt. I am, therefore, of the view that merely on the ground of delay the present proceeding cannot be quashed.

7. Regarding the question of requisite qualification of Shri G. C. Patnaik to be appointed as a Public Analyst, the petitioner's contention was that it has been adjudicated by this Court in a similar case of this nature in Criminal Revision No. 269 of 1989 that Shri Patnaik was not qualified to be appointed as such. The observation, if any, in the aforesaid case, in my opinion, cannot be said to be laying down the proposition of law to be applied in other cases. That case was decided on the basis of the available evidence. In the present case, if such a contention is raised that the Analyst had no requisite qualification, the prosecution may bring in evidence to prove that the Analyst concerned was a qualified one to be appointed as such.

8. Coming to the question of validity of consent, Section 20(1) of the Act postulates that no prosecution for an offence under the Act shall be instituted except by or with the written consent of the Central Government or the State Government or a person authorised in this behalf by general or special order of the Central or State Government, as the case may be. Undisputedly in the present case consent was obtained from the Health Authority to launch prosecution as per Ext. 9. The grievance of the petitioner, however, is that since the authority did not record

'reasons' that launching of prosecution was in public interest, consent so accorded cannot be said to be valid one and in support thereof he placed reliance on the decision reported in 1988 Cri LJ 48, Gahininath Bhimrao Patekar v. State of Maharashtra. In the said reported case, the accused being found guilty under Section 16(1) of the Act ultimately approached the Bombay High Court challenging his conviction. His sole contention was that the sanction order did not demonstrate that the authority had applied its mind to the relevant facts to be satisfied that a prima facie case existed for which granting of sanction was necessary and therefore, the prosecution was bad in law. The learned single Judge on consideration of the evidence and relying upon two decisions of the Supreme Court held that since reasons were not recorded for grant of sanction nor was it pointed out that launching of the prosecution was in the public interest, the ultimate finding of guilt recorded against the accused cannot be sustained. The said decision, in my opinion, has no application to the present case, since trial has not yet been concluded. Right of the prosecution to lead further evidence is not over. To satisfy the Court that there was sufficient compliance of Section 20 of the Act, the prosecution can lead some more evidence even by examining the authority concerned who accorded consent. So it is premature now to say that the authority failed to record reasons to launch prosecution.

9. A pari materia provision is there in the Prevention of Corruption Act where sanction is a condition precedent to launch criminal prosecution against a public servant. It is the usual argument advanced in all such cases that there being no proper sanction and pre-requisite legal condition having not been satisfied, the accused should be acquitted of the charge. The similar question was raised before the Apex Court in the case of State of Bihar v. P. P. Sharma, IAS, 1992 Supp (I) SCC 222. Their Lordships while considering the intent and purport of sanction as provided in the said Act observed: The order of sanction is only an administrative act and not a judicial one nor is a lis involved. Therefore, the order to sanction need not contain detailed reasons in support thereof as contended by Shri Jain.... Proper application of mind to existence of prima facie evidence and the commission of offence is only a precondition to grant or refuse to grant sanction, then the Government accorded sanction, Section 114(c) of the Evidence Act raises a presumption that official acts have been regularly performed....

In view of the aforesaid authoritative pronouncement, the submission of the learned counsel for the petitioner that there is want of valid consent does not merit any consideration at this stage.

10. In view of the foregoing discussion, I find no reason to quash the proceeding in exercise of inherent power under Section 482, Cr.P.C. In the result, the Criminal Misc. Case falls and the same is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com