

**Kunaram Vs. State of Rajasthan**

**Kunaram Vs. State of Rajasthan**

**SooperKanoon Citation :** [sooperkanoon.com/770177](http://sooperkanoon.com/770177)

**Court :** Rajasthan

**Decided On :** Mar-06-2000

**Reported in :** 2000(2)WLN506

**Judge :** S.C. Mital, J.

**Appeal No. :** S.B. Criminal Misc. Petition No. 943 of 1999

**Appellant :** Kunaram

**Respondent :** State of Rajasthan

**Disposition :** Petition dismissed

**Judgement :**

**S.C. Mital, J.**

1. This petition arises out of the Criminal Case No. 12/94 (State v. Kunaram) pending in the court of Additional Chief Judicial Magistrate. Sojat City under Section 7 read with 16, Prevention of Food Adulteration Act, 1954 (in short 'P.F.A. Act). The petitioner has prayed for quashing the proceedings of this case against him on the ground of delay in trial which violates his right to speedy trial under Article 21 of the Constitution of India.

2. The sample was taken on 30.4.1993. The charge-sheet was filed on 9.3.1993. The petitioner appeared in the court on 4.2.1994. He applied for the chemical

examination of the second sample. The sample was sent and the report was received on 6.4.1994. The prosecution evidence commenced on 30.6.1994 but the first witness could be examined only on 28.10.1996 because summons were not issued by the office on five dates and on three dates the Presiding Officer was on leave. It is also relevant to note here that the Advocate were on strike on three dates. Thereafter charge was framed on 25.11.97 after five adjournments because the Presiding Officer was on leave and on one date Advocates were on strike. After framing the charge the case was listed for further cross-examination. Though the witness was present on 22.5.1998 but the case was adjourned due to sad demise of the father of Shri Jeevraj, Advocate. Sanwal Singh was further examined on 7.11.1998. Thereafter the case could not make progress because the Presiding Officer was on leave on two dates and on one date the work was suspended on account of the death of an Advocate. P.W. 2 Aadram was examined on 24.4.1999. Thereafter, also the Presiding Officer remained on leave on three dates and on two dates witness was not present.

3. The learned Counsel for the petitioner argued that the petitioner is regularly attending the court for the last six years and the prosecution has not yet completed its evidence because on several dates witnesses were not present. On number of dates the office did not issue the summons. The petitioner's right to speedy trial has been violated and to continue the proceedings against him is abuse of the process of the court. He has also suffered in terms of mental agony, physical strain and financial loss. The learned Public Prosecutor has opposed the above contention.

4. The learned Counsel for the petitioner has placed reliance on 1997 Cr. L.R. (Raj.) 85 (Brahma Nand Agrawal and Anr. v. The State of Raj.) to support his contention that even delay of six years infringes the right to speedy trial. The facts of the case are not applicable because in the above case orders for denovo trial were passed and prosecution evidence had to be recorded denovo and the case was not making any progress; whereas in the instant case the case has made progress definitely as. de novo trial is not being conducted. Similarly the facts of the case Madan Singh v. State of Haryana (Punjab & Haryana) reported in 1991 (2) All India Criminal Law Reporter 859 are distinguishable because instead of

summary trial warrant trial procedure was adopted for which the learned Magistrate did not assign any reason. The case was registered in the year 1983 and no evidence was recorded since 1984. In another case Gagan Das and Ors. v. State of Rajasthan reported in 1998 (2) R.C.C. 589 though the case was registered in the year 1991, but only one witness was examined in six years. The sample was taken in the year 1987 and the complaint was filed with inordinate delay in the year 1991. In other case Kamal Kishore and Ors. v. State of Raj. 1998 Cr. L.R. (Raj.) 298 the warrant trial was to be conducted but the learned trial court passed the order later on for trial by summary procedure even then on five dates witnesses did not turn up. The learned Counsel further relied on 1990 Cr. L.R. (Raj.) 247 (Darshan Lal v. The State of Rajasthan). The facts of this case are also distinguishable because the accused was convicted by using the statements of the witnesses recorded during summary trial by the predecessor and it was an illegality under Section 326 Cr. P.C. resulting in the acquittal of the accused in appeal and remand for re-trial. This Court, in the above facts and circumstances, felt that it was not just and fair to require the accused to meet the charges now after a period of six years. The similar situation as stated above arose in Mahendra Singh Yadav v. State of Haryana 1991 (1) All India Criminal Law Reporter 588 and the order of remand after six years was set aside. In Pritam Singh v. The State of Haryana 1992 (1) All India Criminal Law Reporter 397 (Punjab & Haryana), it was found that the trial which was pending for about six years was liable to take more time and the delay of six years was caused due to change in procedure adopted by the trial court without any progress in the case.

5. In view of the above discussion, it is obvious that all the cases relied upon by the learned Counsel for the petitioner are fully distinguishable on considering the facts and circumstances of the instant case. In the case in hand, the learned trial court has adopted warrant procedure and the charge was framed on 25.11.1997 making further steady progress in the case. Moreover, the delay was not on account of the slackness of the prosecution but due to strike of the Advocates and the Presiding Officer remained on leave. It is true that the accused has an inalienable right of speedy trial under Article 21 of the Constitution of India, but the reasons of delay have to be scrutinised in coming to the conclusion that the delay has resulted in the infringement of this fundamental right. At the same time the

prosecution must be given a reasonable and fair opportunity to lead its evidence by making available the witnesses to the court. More-over, delay in trial is bound to occur even after due diligence if the court is burdened with large number of cases and the court has to adjust in the interest of justice all the parties taking part in the trial i.e. the accused, his counsel, the prosecution and even the witnesses who are expected to attend the court to assist the court in the administration of criminal justice. It is a common experience that the delay in trial of cases is inherent in the procedure prescribed under law and other variety of practical reasons. Therefore, a hard and fast mathematical calculation cannot be applied while calculating the delay in trial and it has to be appreciated keeping in view the facts and circumstances of each case. In the over all facts and circumstances and considering the reasons for the pendency of this case for the last six years, I am of the view that the contention of violation of the right of the petitioner to the speedy trial is untenable.

6. In the result the petition fails. It is hereby dismissed.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**