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Thangaraj and Others Vs. State

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Court : Chennai

Decided On : Apr-30-1991

Reported in : 1992CriLJ4069

Judge : Janarthanam, J.

Appeal No. : Crl. M.P. No. 9651/1988

Appellant : Thangaraj and Others

Respondent : State

Advocate for Def. : Mr. Hamid Sultan, Govt. Adv. (Crl. Side)

Advocate for Pet/Ap. : V. Ashok, ;Adv. for M/s Malini Ganesh Sarma and; S. Manvizhi

Judgement :
ORDER

1. Arvind Distillery and Chemicals Ltd., was located at Kadambuliyur, South Arcot District. It appears that prior to the expiry of the licence, it had applied for renewal of the licence and no orders appeared to have been passed before the expiry of the licence. As any other distillery, it was also posted with excise, officials, inclusive of the guards.

2. Between August, 1979 and 20-10-1979, the personal connected with the distillery, excise officials and third parties, pursuant to a conspiracy hatched among them, carried on distillation in the factory, after the expiry of the licence, removed the rectified spirit from out of the factory premises and clandestinely sold them to third parties with a view to make illegal profits and gain and thereby offended or violated the relevant provisions of the Tamil Nadu Prohibition Act then in force read with the Tamil Nadu Distillery Rules, 1960. The excise officials, besides being the members of the conspiracy, were also stated to have rendered actual aid in the operation of manufacture, clandestine removal and sale to third parties.

3. In respect of such transactions, a case in Crime No. 513/79 for the alleged offences under sections 4(1)(a), 4(1)(f), 4(1)(jj), 4(1)(i) and 7(iii) of the Tamil Nadu Prohibition Act, 1937 and R. 29 of the Tamil Nadu Distillery Rules, 1960 read with S. 11 of the aforesaid Act has been registered by the Prohibition Enforcement Wing, Villupuram.

4. After completing the formalities of the investigation, a final report under S. 173(2) Crl. P.C. had been laid for the aforesaid offences against 29 persons consisting of the factory officials, excise personnel and other third parties, which was taken on file as C.C. No. 942 of 1980 on the file of the Sub-Divisional Judicial Magistrate, Villupuram.

5. Immediately thereafter, accused I filed Crl. M.P. No. 6563 of 1981 and obtained stay of all further proceedings from this Court. Subsequently, in the year 1983, on transfer to the Judicial First Class Magistrate, Villupuram, the case was registered as C.C. No. 288 of 1983.

6. During the year 1984, accused 2 filed before this Court Crl. M.P. Nos. 9019 and 9020 of 1984 and obtained stay of all further proceedings. Likewise accused 7 filed Crl. M.P. No. 1924 of 1988. In all these Crl. M.Ps. final order were passed on 14-7-1988. Within about for months thereafter viz., on 15-11-1988, accused 8 and 9 the petitioners herein, who are none else than the excise guards, filed the present petition and obtained stay of all further proceedings.

7. Grounds, though manifold appeared to have been taken in the petition in a bid to quash the criminal proceedings against the petitioners, Learned counsel appearing for the petitioners, realising the futility of such exercise, thought fit to urge for consideration the sole and lone ground of right of speedy trial forming an integral part of Art. 21 of the Constitution of India. In elaboration, what he would submit is that nine long years had elapsed without any further progress made in the trial for reasons not at all traceable or attributable to the petitioner, causing inclaculable prejudice to them in the preparation of their defence.

8. Learned Govt. Advocate would however, repeal such a submission and state there is no inaptitude or lethargy on the part of the prosecution in protracting trial without any progress any delay so caused in the trial is solely attributable to one or the other of accused put up in the case by resorting to filing of quash petitions before this Court at various stages on various dates one after another till up to the hearing of this petition.

9. No doubt, speedy trial is an essence of criminal justice and there can be no doubt that delay in trail by itself constitutes denial of justice. Speedy trial had not been expressly recognised as an enumerated fundamental right in the Constitution of India, as had been done in the case of United States. However, the apex of the Judicial Administration of this country had recognised such a right as implicitly guaranteed under Art. 21 of the Constitution, within its broad sweep and content of the decision is Hussaninara Khatoon v. Home Secretary, : 1979 CriLJ1036 where their Lordships expressed in paragraphs 5 thus

'speedy trial is of the essence of criminal justice and there can be no doubt that delay in trial by itself constitutes denial of justice. It is interesting to note that in the United States, speedy trial is one of the constitutionally guaranteed rights. The sixth Amendment to the Constitution provides that :

'In all Criminal prosecutions, the accused shall enjoy the right to a speedy and public trial.

'So also Art. 3 of the European Convention of Human Rights provides that :

Every one arrested or detained .... shall be entitled to trial within a reasonable time or to release pending trial. 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 Art. 21 as interpreted by this Court in Maneka Gandhi v. Union of India. We have held in that case that Art. 21 confers a fundamental right on every person not to be deprived of his life or 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 depirved of his liberty under a procedure which is not 'reasonable, fair or just', such deprivation would be violative of his fundamental right under Art. 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 trail for determination of the guilt of such person. No procedure which does not ensure a reasonable quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Art. 21. There can, therefore, be no doubt that speedy trial, and by speedy trail we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Art. 21.'

10. What then is the remedy if a trial is unduly delayed had been answered in a land mark judgment by the Supreme Court in State of Maharashtra v. Champalal, : 1981 CriLJ1273 . The answer had been provided by their Lordships in paragraph 2 of the judgment by expressing in the following terms :-

'What is the remedy if a trial is unduly delayed In the United States, where the right to a speedy trail is a constitutionally guaranteed right, the denial of a speedy trail has been held to entitle an accused person to the dismissal of the indictment or the vacation of the sentence. But in deciding the question whether there has been a denial of the right to a speedy trial, the Court is entitled to take into consideration whether the dependent himself was responsible for a part of the delay and whether he was prejudiced in the preparation of his defence by reason of the delay. The Court is also entitled to take into consideration whether the delay was

unintentional, caused by over-crowding of the Court's Docket or under-staffing of the prosecutors. Strunk v. United States (1973) 37 Law Ed 56 is an instructive case on this point. As pointed out in the first Hussainara case, : 1979 CriLJ1036 the right to a speedy trial is not an expressly guaranteed constitutional right in India but is implicit in the right to a fair trial which has been held to be part of the right of life and liberty guaranteed by Art. 21 of the Constitution. While a speedy trial is an implied ingredient of a fair trial, the converse is not necessarily true. A delayed trial is not necessarily an unfair trial. The delay may be occasioned by the tactic or conduct of the accused himself. The delay may have caused no prejudice whatsoever to the accused. The question whether a conviction should be quashed on the ground of delayed trial depends upon the facts and circumstances of the case. If the accused is found to have been prejudiced in the conduct of his defence and it could be said that the accused had thus been denied an adequate opportunity to defend himself, the conviction would certainly have to go. But if nothing is shown and there are no circumstances entitling the Court to raise a presumption that the accused had been prejudiced there will be no justification to quash the conviction on the ground of delayed trial only.'

11. In the instant case, there is no denial of the fact that there is a delay of about nine long years without any progress having been made in the trial. The question mooted to be considered here is as to whether the delay so caused is because of the inaptitude or lethargy of the prosecution or because of the tactic or conduct of the accused in somehow or other protracting the trial for no reason whatever. The narration of the facts as above would indicate that there was no delay at all on the part of the prosecuting agency either during the course of investigation or subsequent to the filing of the final report before a competent Court. Considering the nature of the investigation extended to various places in South Arcot district and examination of as many as 85 witnesses, it cannot be stated that the time taken for completing the formalities of the investigation from the date of commission of the offences was unduly long affecting the interests of the accused in causing any prejudice in their defence.

12. Even after the filing of the final report nothing is shown as to the delay caused in the further progress of the trial. The sordid fact is that more or less immediately

after the filing of the final report one or other of the accused from among the arraigned accused in this case resorted to file some petition or other before this Court and obtaining stay of further proceedings and this sort of an exercise continued except for a small break of four months from the date of the filing of the final report till up to the hearing of this petition, and that period of four months is between 14-7-1988 the date on which this Court passed final orders in Crl. M.P. Nos. 9019 and 9020 of 1984 and 1824 of 1988 and 17-11-1988, on which interim stay had been obtained in the present action. It appears that it is well nigh possible that the prosecution could not have made any progress during the period of four months because before the trial Court could fix a date for trial, on receipt of necessary orders from this Court and the records, if any, the petitioners seem to have knocked at the doors of this Court and obtained stay making further progress of the trial an impossible feat.

13. It is however to be mentioned here that learned counsel for the petitioners went to the extent of arguing that even if one or the other of the accused had successively obtained orders of stay from this Court, it is, for the prosecuting agency to be agile and file necessary petition for vacating order of stay so obtained and their failure or inaction to do so has to be construed, as the real reason for the delay so caused and in this view of the matter, the petitioners accused 8 and 9 had been prejudiced in preparation of their defence. Such an argument cannot at all be countenanced in the set up for the system of administration of justice we have.

14. It is of course the privilege of the person accused of an offence to rush to this Court and obtain orders or stay of further proceedings. It is conceivable for the prosecuting agency to have come forward with petitions for vacating stay so obtained. The fact that no such petition had been filed by the other side is not proof positive of the fact to show their lethargy or inaptitude, in further prosecuting the case. Judicial Notice has to be taken note of that in cases of this nature, even petitions filed for vacating stay are not normally taken up and disposed of as such an exercise is to consume valuable judicial time and that perhaps is the reason instead of disposing of vacate-stay petition, the main petition itself is listed for final disposal and disposed of once and for all terminating the proceedings from this

Court enabling the trial Court to make speedy progress in the trial. Quash the petitions once filed and stay orders obtained therefor are listed chronologically and disposed of and in this process, of course, an unduly long time is consumed, for such petitions to reach their terminal points obviously because of the explosion of Dockets in Courts. The delay so caused is inbuilt in the system of administration of justice and consequently such delay is unintentional, which cannot at all be avoided despite best of efforts. In such a situation, the delay cannot at all be stated to be attributable to the prosecuting agency but, if at all to one or the other of the accused arraigned in this case, including the petitioners.

15. As such, the petition deserves to be dismissed and is accordingly dismissed.

16. Petition dismissed.

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