A.F.R.

Reserved

Court No. - 84

Case :- APPLICATION U/S 482 No. - 23675 of 2022

Applicant :- Madan Mohan Saxena
Opposite Party :- State Of U.P. And 2 Others
Counsel for Applicant :- Bhanu Bhushan Jauhari,Rishi Bhushan Jauhari
Counsel for Opposite Party :- G.A.,Mukesh Kumar Singh

Hon'ble Sameer Jain,J.

1. Heard Sri B.B. Jauhari, learned counsel for the applicant, Sri Mukesh Kumar Singh, learned counsel for the U.P. Power Corporation (opposite party no.3) and Sri Ravi Kant Kushwaha, learned AGA for the State.

2. By way of present application, applicant made a prayer to quash the charge-sheet no. 404 of 2003 dated 01.12.2003 arising out of Case Crime No. 376 of 2003 and proceedings of Case No. 5276 of 2004, under Section 39/49B Electricity Act, Police Station Sadar Bazar, District Shahjahanpur pending in the court of ACJM-I Shahjahanpur.

3. The FIR of the present case was lodged against the applicant on 15.10.2003 under Section 39/49 Electricity Act at Police Station Sadar Bazar, District Shahjahanpur vide Case Crime No. 376 of 2003.

4. As per allegation applicant committed theft of electricity. After registration of the FIR, investigation was commenced and after investigation charge-sheet was submitted against the applicant on 01.12.2003. After submission of charge-sheet, court concerned on 22.01.2004 took the cognizance and issued summons to the applicant. Applicant appeared before the court concerned through counsel on 20.02.2006 and applicant was regularly appearing through counsel and on 06.08.2009 date was fixed 07.10.2009 for framing of charges and dates were being fixed for framing of charges till 30.08.2013 and on 30.08.2013 without framing of charges dates were started being fixed for evidence

and since 30.08.2013 dates were continuously being fixed for prosecution evidence till 13.12.2018 and on 14.01.2019 date was fixed 20.02.2019 for framing of charges and original FIR was summoned and thereafter since 20.02.2019 dates are continuously being fixed for framing of charges and summoning of original FIR. Therefore, it appears that for last about more than 18 years neither charges could be framed in the present matter nor original FIR could be placed on record.

5. Learned counsel for the applicant submits that he is challenging the proceeding of the present case pending against the applicant on the sole ground that proceeding is pending for last about 18 years and although FIR of the present case was lodged in the year 2003 and charge-sheet was submitted in December, 2003 and cognizance was taken in February, 2004 but even till date even charges could not be framed and even original FIR is not on record.

6. He submits that right of speedy trial is a fundamental right of an accused as well as of complainant guaranteed under Article 21 of the Constitution of India and for last about 18 years applicant is facing agony of criminal trial without any fault and proceeding of the present matter is pending for last about two decades. He next submits that according to Article 21 of the Constitution of India no person shall be deprived of his life or personal liberty except according to procedure established by law and such procedure should be reasonable, fair and just and inordinate delay of 18 years in completion of trial cannot be said to be reasonable, fair and just. He further submits, right of speedy trial is, therefore, a fundamental right which has been infringed in the present case. He placed reliance on the following judgements:-

(i) (1986) 2 SCC 414 Bihar State Electricity Board and another Vs. Nand Kishore Tamakhuwala

(ii) 1986 (2) SCC 418 Commissioner of Income Tax Madras Vs. Shivakami Company Private Limited

(iii) (2009) 3 SCC 355 Vakil Prasad Singh Vs. State of Bihar

(iv) 2020 (9) ADJ 15 Mahendra Singh and others Vs. State of U.P. and another

(v) 2020 (9) ADJ 16 Mahipal and another Vs. State of U.P.

(vi) Application U/S 482 Cr.P.C. No. 11924 of 2022 Dr. Meraj Ali and another Vs. State of U.P. and another

7. Per contra, learned AGA for the State and learned counsel for the U.P. Power Corporation (opposite party no.3) although opposed the prayer and submits that it would not be desirable to quash the entire proceeding pending against the applicant on the basis of delay in trial but they could not dispute the fact that applicant is facing agony of criminal trial under Section 39/49B Electricity Act since the year 2004 i.e. for last about 18 years and till date not even charges could be framed and original FIR is also not on record. Both the counsels further could not dispute the fact that there is no fault of applicant and he is regularly appearing before the court concerned either in person or through his counsel.

8. I have heard both the parties and perused the record of the case.

9. The instant application has been pressed on the sole ground that applicant is facing agony of criminal trial for last about 18 years i.e. since the year 2004 and even after 18 years proceeding could not be concluded. Admittedly, the trial of the present case is pending against the applicant since the year 2004 and more than 18 years have been passed but till date not even charges could be framed and from the order-sheet, it appears that applicant is regularly attending the court either in person or through his counsel, therefore, from the record it reflects that delay in trial cannot be attributed to the applicant.

10. The right of speedy trial is a fundamental right enshrined under Article 21 of the Constitution of India. The Apex Court in the case of **Hussainara Khatoon and others Vs. Home Secretary State of Bihar AIR 1979 SC**

1360 has observed that speedy trial is an integral part of fundamental right to life and liberty and observed as:-

> *"5. .....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."*

11. Therefore, in the case of Hussainara Khatoon (supra) the Apex Court very clearly observed that violation of right of speedy trial is the violation of fundamental right guaranteed under Article 21 of the Constitution of India.

12. The exposition of Article 21 of the Constitution of India in the case of **Hussainara Khatoon (supra)** was exhaustively considered by the Constitution Bench of the Apex Court in the case of **Abdul Rehman Antulay Vs. R.S. Naik (1992) 1 SCC 225**. Referring to number of decisions of the Apex Court and American Precedent of the VIth amendment of their Constitution making the right to a speedy trial a constitutional guarantee the Apex Court formulated as many as 11 proposals with a note of caution that these were not exhaustive and were meant only to serve as guidelines. These 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.*
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> *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 his conviction;

(b) the worry, anxiety, expense and disturbance to his vocation 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 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? 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 systemic 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 loo long in a system where justice is supposed to be swift but deliberate". The same idea has been stated by White, J. in U.S. v. Ewell 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 more speed, as its essential ingredients; and whether delay in completing a prosecution amounts to an un-constitutional 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 prosecution, again depends upon the facts of a given case.

(Emphasis supplied)

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 accussed's plea of denial of speedy trial cannot be defeated by saying that the accused did at no time demand a speedy trial. If 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.

(Emphasis supplied)

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 as 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 in effectuates 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."

13. The Constitution Bench in case of Abdul Rehman Antulay (supra) thus observed that although each and every delay does not necessarily prejudiced the accused but inordinate long delay may be taken as presumptive proof of prejudice and prosecution should not be allowed to become a persecution and if court arrived at the conclusion that right of speedy trial of the accused has been infringed then proceeding pending against him shall be quashed.

14. The issue has again came up before seven judges Constitution Bench of the Apex Court in the case of **P. Ramachandra Rao Vs. State of Karnataka (2002) 4 SCC 578**. The seven judges Bench of the Apex Court in the case of P. Ramachandra Rao (supra) approved the law laid down by the Constitution Bench in case of Abdul Rehman Antulay (supra)

and stated that guidelines laid down in Abdul Rehman Antulay (supra) are not exhaustive but only illustrative and their applicability would taken upon facts of each case. The seven judges Constitution Bench in the case of P. Ramachandra Rao (supra) observed that in appropriate cases jurisdiction of the High Court under Section 482 Cr.P.C. and Article 226 and 227 of the Constitution of India can be invoked seeking appropriate relief or suitable direction and observed as:-

> *"28. It must be left to the judicious discretion of the court seized of an individual case to find out from the totality of circumstances of a given case if the quantum of time consumed upto a given point of time amounted to violation of Article 21, and if so, then to terminate the particular proceedings, and if not, then to proceed ahead. The test is whether the proceedings or trial has remained pending for such a length of time that the inordinate delay can legitimately be called oppressive and unwarranted, as suggested in A.R. Antulay. In Kartar Singh's case the Constitution Bench while recognising the principle that the denial of an accused's right of speedy trial may result in a decision to dismiss the indictment or in reversing of a conviction."*

15. Therefore, from the dictum of the Apex Court in the case of Hussainara Khatoon (supra), Abdul Rehman Antulay (supra) and P. Ramachandra Rao (supra), it is evident that right of speedy trial is a fundamental right and its violation causes prejudice even to the accused person.

16. The Apex Court in the case of **Vakil Prasad Singh Vs. State of Bihar (2009) 3 SCC 355** (relied by the applicant) after discussing the earlier judgments of the Apex Court including the judgments of Hussainara Khatoon (supra), Abdul Rehman Antulay (supra) and P. Ramachandra Rao (supra) observed that if the Court comes to the conclusion that right to speedy trial of the accused has been infringed, the charges or the conviction as the case may be, may be quashed unless the Court feels that having regard to the nature of offence and other relevant circumstances quashing of the proceedings may not be in the interest of justice.

17. In the case of **Pankaj Kumar Vs. State of Maharashtra and another (2008) 16 SCC 117**, the Apex Court observed that the prosecution has failed to show any exceptional circumstance, which could possibly be taken into consideration for condoning the prolongation of the trial and on the basis of inordinate delay of over eight years quashed the proceedings pending against the accused after observing that his constitutional right to speedy trial has been denied.

18. Therefore, from the discussion made above, it is evident that right to speedy trial of an accused is a fundamental right enshrined under Article 21 of the Constitution of India and if Court finds that it has been violated then proceeding pending against the applicant should be quashed but only after considering following factors:-

(i) whether delay can be attributed to the accused himself
(ii) nature of offence
(iii) whether quashing is in the interest of justice.
(iv) whether inordinate delay can be termed as oppressive and unwarranted.

19. In case at hand, from the perusal of the record it appears that the inordinate delay in completion of the trial cannot be attributed to the accused applicant as order-sheet suggests that he is regularly attending the court either in person or through his counsel and trial of the case relates to Section 39/49B of Electricity Act, which cannot be said to be a heinous crime and trial of the same is pending since the year 2004 i.e. for last about 18 years and prosecution failed to provide any exceptional circumstance to condone such inordinate delay. Therefore, unexplained inordinate delay of 18 years should be termed as oppressive and unwarranted. Therefore, under the facts and circumstances of the case, I am of the view that fundamental right to speedy trial of applicant has been violated.

20. From the discussion made above, this Court is of the view that further continuance of the criminal proceedings pending against the applicant is unwarranted, therefore, to secure the ends of justice proceeding pending against the applicant in the present matter is hereby **quashed**.

21. The instant application stands **allowed**.

Order Date :- 19.1.2023
AK Pandey