CASE NO.:
Appeal (crl.) 774 of 2002

PETITIONER:
Moti Lal Saraf

RESPONDENT:
State of Jammu & Kashmir & Another

DATE OF JUDGMENT: 29/09/2006

BENCH:
S.B. SINHA & DALVEER BHANDARI

JUDGMENT:
J U D G M E N T

Dalveer Bhandari, J.

Speedy trial as read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution is the main issue which has arisen for adjudication in this appeal.

Brief facts necessary to dispose of this appeal are as follows.

The appellant was working as a Manager in the State Bank of India, Sumbal, Kashmir in the year 1980. An FIR No. 34 of 1980 under Section 5(2) of the Jammu & Kashmir Prevention of Corruption Act (for short, 'the J & K PC Act') was registered against the appellant, pursuant to which the appellant was arrested on the allegation that he had received a sum of Rs.700/- as illegal gratification, though the amount as alleged was not recovered from him, but from one Gulam Quadir.

On 30.4.1981 a challan under Section 173 Cr.P.C. came to be filed against the appellant before the court of Special Judge, Anti Corruption, Srinagar, Kashmir under Section 5(2) of the J & K PC Act. The appellant challenged the legality of the proceedings of the Court before the High Court of Jammu & Kashmir in Criminal Petition No. 41 of 1982 on the ground that he was not a public servant within the meaning of Section 21 of the Ranbir Penal Code (for short, 'RPC'), as such, he could not be tried under the provisions of the J & K PC Act.

The appellant also urged that the Court had no jurisdiction to try the case because no valid sanction had been obtained for prosecution of the appellant from the competent authority.

The Court, after hearing the parties, held that the appellant was a public servant within the meaning of Section 21 RPC being an employee of the State Bank of India, which was engaged in trading business besides being owned by the Central Government.

The High Court came to a definite finding that under the service rules of the State Bank of India, the supervisory staff was not the General Manager

(Operations). The appellant at the time of the commission of the alleged offence was a Branch Manager and he could be removed from the service by the appointing authority or by an authority which was superior to the appointing authority. That being so, the sanction given by the General Manager (Operations) for prosecution of the appellant on 26.5.1981 was given by an incompetent person who had no jurisdiction or competence to remove the appellant from the service. The sanctioning authority was not even the appellant's appointing authority. However, under Section 6 of the J & K PC Act which provides for initiation of prosecution, there must be a sanction issued by a person who was empowered to remove such an official from service.

The High Court clearly held that it was well settled that no prosecution could be brought before a Court without there being a proper sanction. Existence of a valid sanction was a condition precedent for prosecution under Section 5(2) of the J & K PC Act. In the absence of sanction, the trial Judge had no jurisdiction to take cognizance of the case. The Court, while allowing the petition filed by the appellant, quashed the proceedings pending against the appellant in the trial court under Section 5(2) of the J & K PC Act and under Section 161 RPC.

The appellant, however, was dismissed from service in the departmental proceedings initiated against him, and later, in appeal, the dismissal was converted into removal from the service.

It may be pertinent to mention that the respondents again filed a challan against the appellant before the Court of a Special Judge, Anti Corruption, Srinagar on 25.7.1986, on the same set of facts that the appellant was no more in service and the sanction for prosecution was not required now.

The chronic militancy in Srinagar led to mass migration of the minority community. The appellant being a member of the minority community migrated to Jammu on 23.9.1998. The appellant filed a petition before the High Court of Jammu & Kashmir at Jammu seeking transfer of the case from the Court of the Special Judge, Anti Corruption, Srinagar to the Court of the Special Judge, Anti Corruption, Jammu. The High Court vide its order dated 23.9.1998 transferred the case.

The appellant filed an application before the trial court for quashing of the trial on the plea that the appellant could not be prosecuted without sanction.

The learned Special Judge, Anti Corruption, Jammu after hearing the parties vide order dated 12.3.1999 accepted the application filed by the appellant and discharged him from the offences under Section 5(2) of the J & K PC Act read with Section 161 RPC. The trial court observed in its order that the Vigilance Organization, Kashmir, despite having knowledge that earlier accorded sanction had been quashed, again produced the instant charge-sheet for his trial in the year 1986 on the plea that the accused had been removed from the service, as such, no sanction as contemplated under Section 6 of the J & K PC Act was required.

The Special Judge after hearing the parties observed that it was not disputed that earlier sanction accorded to prosecute the accused was quashed by the High Court having not been accorded by a competent authority. Even now, no fresh sanction had been obtained to prosecute the appellant from the competent authority. When the instant charge-sheet was presented, no sanction was in existence. The learned trial Judge interpreted Section 6 of the J & K PC Act and stated that, according to the said Section, sanction was sine qua non for taking cognizance of the offence. We deem it appropriate to reproduce Section 6 of the Act. It reads as follows:

"6. Previous sanction necessary for prosecution \026 (1) No Court shall take cognizance of an offence punishable under section 161 or section 165 of the Ranbir Penal Code, or under sub-section (2) of section 5 of this Act, alleged to have been committed by a public servant, except with the previous sanction ___

(a) in the case of a person who is not removable from his office save by or with the sanction of the Government,

(b) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises whether the previous sanction as required under sub-section (1) should be given by the Government or any other authority, such sanction shall be given by the Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed."

The Court clearly observed that it was immaterial whether at the time of the presentation of the charge-sheet the accused was in service or not, but the fact was that he had committed criminal mis-conduct while discharging his official functions and the cognizance taken against the appellant without sanction was bad in the eyes of law. The accord of sanction was a sine qua non for taking cognizance of the offence against the accused.

It was submitted by the appellant that the order dated 12.3.1999 passed by the Special Judge, Anti Corruption, Jammu was not challenged and, therefore, it became final and binding between the parties.

It was further submitted that it was astonishing that without challenging the validity of the order passed by the Special Judge, Jammu a challan was filed against the appellant on the same set of facts before the Special Judge, Anti Corruption, Jammu on 12.8.2000, by the respondent. By virtue of order dated 12.8.2000 the appellant again came under judicial restraint and was asked to produce sureties for his presence in the Court.

The appellant filed a petition before the High Court for quashing the proceedings pending before the Special Judge, Anti Corruption, Jammu, being Case No. 34 of 1980. The High Court vide impugned judgment dismissed the petition without appreciating the contentions raised by the appellant in proper perspective. The appellant has now challenged the impugned order of the High Court dated 5.9.2001. The appellant submitted that the orders of discharge by the High Court in the first instance and subsequently by the Special Judge, Anti Corruption, Jammu had become final and binding because the respondents did not challenge the said orders. It is also alleged that the respondents could not be permitted to prosecute the appellant on the same cause of action and on the same facts and circumstances for the third time. According to the appellant, this was a clear case of gross abuse of the process of law. He further submitted that how the respondents could be permitted to file a fresh challan for the third time on the same cause of action and on the same facts and circumstances? According to the appellant, the impugned order suffers from serious infirmities. He submitted that the High Court ought to have appreciated that by dismissing the appellant's petition the High Court had in fact reviewed its own order. There was no provision in the Criminal Law which enabled the Court to review its own order.

The appellant further submitted that repeated filing of challans by the respondents without any sanction had caused immense mental, physical and emotional stress and harassment for more than 26 years. The appellant also sought relief on the ground that it was the right of every citizen to seek speedy trial. Continuation of further proceedings against the appellant is contrary to the basic spirit of Article 21 of the Constitution, and consequently, the impugned judgment is liable to be set aside.

In the special leave petition preferred by the appellant, this Court issued a show-cause-notice. Pursuant to that show-cause-notice, a counter affidavit was filed on behalf of the respondents by the Director General/Commissioner of Vigilance Organization of Jammu & Kashmir. It may be pertinent to mention that the basic facts incorporated in the special leave petition regarding the three challans produced by the respondents have not been denied. Admittedly, in the last more than 26 years, not even a single witness has been examined by the prosecution. The appellant, of course, had taken the legal remedy available to him to protect his interests against illegal proceedings initiated against him by the respondents, but that by itself could not be a ground to harass and humiliate the appellant for more than a quarter century.

It was submitted that the appellant could not have been prosecuted without a valid sanction. The respondents were not justified in filing the fresh challan without getting the earlier order of the High Court and the order of the Special Judge, Anti Corruption, Jammu quashed. It was urged that the proceedings initiated against the appellant were totally without jurisdiction and consequently were liable to be set aside.

The appellant, in the instant case, has been facing the criminal prosecution for almost more than two and a half decades. The speedy trial is an integral part of Article 21 of the Constitution. In the instant case, in the last twenty six years, not even a single prosecution witness had been examined. It was urged that for more than one reasons, the prosecution, in the instant case, cannot be permitted to continue. The proceedings taken by the respondents against the appellant were clearly an abuse of process of law.

This Court had repeatedly emphasized that the speedy trial is implicit in the spectrum of Article 21 of the Constitution.

Reference was made to a Constitution Bench Judgment of this Court in the case of Abdul Rehman Antulay v. R. S. Nayak (1992) 1 SCC 225. In this case, the Court held that the right to a speedy trial was a part of fair, just and reasonable procedure implicit in Article 21 of the Constitution. This Court, in this case, observed that each case had to be decided on its own facts. In this case, this Court further observed that it was not advisable and feasible to fix an outer time limit for conclusion of the criminal proceedings.

It was submitted in the said case that the framers of Indian Constitution were aware of the 6th Amendment in the Constitution of the USA providing in express terms the right of an 'accused' to be tried speedily. Yet, similar provision was not incorporated in the Indian Constitution. It was submitted in that case that it is neither permissible nor possible nor desirable to lay down an outer limit of time. The US Supreme Court also had refused to do so.

We deem it appropriate to reproduce the relevant observations made by this Court in the case of Hussainara Khatoon (I) v. Home Secretary, State of Bihar (1980) 1 SCC 81 as under:

"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 [(1978) 1 SCC 248]. We have held in that case that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except in accordance 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."

In a number of cases, this Court on consideration of peculiar facts and circumstance of individual cases had quashed the proceedings.

In Rakesh Saxena v. State through C.B.I. (1986) Supp. SCC 505, this Court quashed the proceedings on the ground that any further continuance of the prosecution after lapse of more than six years in the case of the appellant who was merely a trader at the lowest rung of the hierarchy in the Foreign Exchange Division of the Bank is uncalled for, particularly, in view of the complicated nature of the offence charged.

This Court, in the case of Srinivas Gopal v. Union Territory of Arunachal Pradesh (1988) 4 SCC 36 quashed the proceedings on the ground of delay in investigation and commencement of trial. The investigation commenced in November 1976 and the case was registered on completion of the investigation in September 1977. Cognizance was taken by the Court in March 1986.

In T. J. Stephen v. Parle Bottling Co. (P) Ltd. (1988) Supp. SCC 458, this Court quashed the charges against the accused under Section 5 of the Import and Exports (Control) Act, 1947. The Court held that it would not be in the interests of justice to allow a prosecution to start and trial to be proceeded with after a lapse of twenty six years even though one of the accused was himself responsible for most of the delays caused by his mala fide tactics.

In Machander v. State of Hyderabad (1955) 2 SCR 524, this Court observed that while it was incumbent on the Court to see that no guilty person escapes, it is still more its duty to see that justice is not delayed and accused persons are not indefinitely harassed. The Court observed that the scales must be held even between the prosecution and the accused. In the facts of that case, the Court refused to order trial on account of the time already spent and other relevant circumstances of that case.

In the case of A. R. Antulay (supra), this Court gave propositions meant to serve as guidelines. This Court held 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. This Court further observed as under:

"(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 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.

(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.

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This Court also observed that while determining whether undue delay has in fact occurred, one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on \026 what is called, the systematic delays. The sum and substance is that it is neither advisable nor practicable to fix any time limit for trial of offence. Each case has to be decided on its own facts and circumstances.

This Court, as per the majority in a seven-Judge Bench, in the case of P. Ramachandra Rao v. State of Karnataka (2002) 4 SCC 578 came to the conclusion and declared that this Court can interpret the law and in the process remove any lacuna, fill the gaps in the Legislation and even lay down a law with reference to the dispute before it. But it, cannot declare a new law of general application in the manner the Legislature does. In this case, the Court relied upon Antulay’s case (supra) and refrained from fixing any time limit not because the Court had no power to do so, but because it

was "neither advisable nor practicable" to do so. The Court observed that since the law laid down by the Constitution Bench still holds the field, any declaration made in derogation thereof fixing time limit by a smaller Bench is overruled by virtue of the doctrine of binding precedents. The Court also laid down that the question of delay had to be decided by the Court having regard to the totality of circumstances of an individual case. The Court observed that 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 up to 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.

It would be pertinent to mention that the Sixth Amendment to the U.S. Constitution states that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed. "These guarantees are the most basic rights preserved by the Constitution; fundamental liberties embodied in the Bill of Rights. The due process clause of the Fourteenth Amendment made them applicable to all States."

The Constitutional guarantee is for the protection of both the accused and the society. Even in the United States where there has been a constitutional amendment recognizing speedy trial as an extremely valuable right of the accused even then the Court held that no time limit could be fixed for concluding the criminal trial. It has been held that it depends on the facts and circumstances of each case.

In a celebrated American case, Beavers v. Haubert (1905) 198 US 77, 49 L Ed 950, 25 S Ct 573, it was recognized that the right to a speedy trial is necessarily relative, and that it is consistent with delays and depends upon circumstances.

In another case of U.S. Supreme Court, Pollard v. United States 1957) 352 US 354, 1 L Ed 2d 393, 77 S Ct 481, it was recognized that whether delay in completing a prosecution amounts to an unconstitutional deprivation of rights depends upon the circumstances, and that the delays must not be purposeful or oppressive.

It was recognized that "the constitutional guarantee of a speedy trial is an important safeguard (1) to prevent undue and oppressive incarceration prior to trial, (2) to minimize anxiety and concern accompanying public accusation, and (3) to limit the possibilities that long delays will impair the ability of an accused to defend himself. Adhering to the views expressed in earlier decisions, the Court reiterated that the right to a speedy trial is necessarily relative; that it is consistent with delays; that whether delay in completing a prosecution amounts to an unconstitutional deprivation of rights depends upon the circumstances and that the delay must not be purposeful or oppressive."

In Smith v. Hooey (1969) 393 US 374, 21 L Ed 2d 607, 89 S Ct 575, it was recognized that the Sixth Amendment guarantee of the right to a speedy trial is essential to protect at least three basic demands of criminal justice: (1) to prevent undue and oppressive incarceration prior to trial, (2) to minimize anxiety and concern accompanying public accusation, and (3) to limit the possibilities that long delay will impair the ability of an accused to defend himself.

In England, from the time of the Magna Carta, an accused, in theory at least, enjoyed the right to a speedy trial, which was secured by the commission of goal delivery, under which the jails were cleared at least twice each year.

In Commonwealth v. Hanley [337 Mass 384, 149 NE2d 608, 66 ALR2d 222, cert den 358 US 850, 3 L ed 2d 85, 79 S Ct 79], the guarantee of speedy trial has been held to serve a threefold purpose: it protects the accused, if held in jail to await trial against prolonged imprisonment; it relieves him of the anxiety and public suspicion attendant upon an untried accusation of crime; and, like statutes of limitation, it prevents him from being exposed to the hazards of a trial after the lapse of so great a time that the means of proving his innocence may have been lost.

In the case of State v. Carrillo [41 Ariz 170, 16 P2d 965], it has been held that an accused who has been denied speedy trial, or who has not been brought to trial within the time required by an implementing statute, can generally move to dismiss the prosecution on that ground.

Rule 48(b) of the Federal Rules of Criminal Prosecution authorizes dismissal if there is unnecessary delay in presenting the charge to a grand jury or in filing an information against an accused who has been held to answer to the district court, or if there is unnecessary delay in bringing an accused to trial. This rule has the same effect in implementing the Sixth Amendment right to speedy trial, as an act of Congress would have had.

A Constitution Bench of this Court has, in the case of Kartar Singh v. State of Punjab (1994) 3 SCC 569, mentioned that the right to a speedy trial is a derivation from a provision of Magna Carta. This principle has also been incorporated into the Virginia Declaration of Rights of 1776 and from there into the Sixth Amendment of the Constitution of United States of America which reads, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial...". It may be pointed out, in this connection, that there is a Federal Act of 1974 called 'Speedy Trial Act' establishing a set of time-limits for carrying out the major events, e.g., information, indictment, arraignment, in the prosecution of criminal cases.

In this case, this Court further observed as under:

"The right to a speedy trial is not only an important safeguard to prevent undue and oppressive incarceration, to minimize anxiety and concern accompanying the accusation and

to limit the possibility of impairing the ability of an accused to defend himself but also there is a societal interest in providing a speedy trial. This right has been actuated in the recent past and the courts have laid down a series of decisions opening up new vistas of fundamental rights. In fact, lot of cases are coming before the courts for quashing of proceedings on the ground of inordinate and undue delay stating that the invocation of this right even need not await formal indictment or charge."

The concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted.

This Court in Hussainara Khatoon (I) (supra) further observed as under:

"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. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21. Would he be entitled to be released unconditionally freed from the charge levelled against him on the ground that trying him after an unduly long period of time and convicting him after such trial would constitute violation of his fundamental right under Article 21."

This Court in a number of cases has reiterated that speedy trial is one of the facets of the fundamental right to life and liberty enshrined in Article 21 and the law must ensure 'reasonable, just and fair' procedure which has a creative connotation after the decision of this Court in Maneka Gandhi's case (supra).

When we examine the instant case in the light of the aforementioned decisions of this Court and of the US Supreme Court, it becomes abundantly clear that no general guideline can be fixed by the court and that each case has to be examined on its own facts and circumstances.

It is the bounden duty of the court and the prosecution to prevent unreasonable delay.

The purpose of right to a speedy trial is intended to avoid oppression and prevent delay by imposing on the courts and on the prosecution an obligation to proceed with reasonable dispatch.

In order to make the administration of criminal justice effective, vibrant and meaningful, the Union of India, the State Governments and all concerned authorities must take necessary steps immediately so that the important constitutional right of the accused of a speedy trial does not remain only on papers or is a mere formality.

In the instant case not a single witness has been examined by the prosecution in the last twenty six years without there being any lapse on behalf of the appellant. Permitting the State to continue with the prosecution and trial any further would be total abuse of the process of law. Consequently, the criminal proceedings are quashed. The appeal is accordingly allowed and disposed of.