CASE NO.:
Appeal (crl.) 1167 of 2003

PETITIONER:
State of Rajasthan

RESPONDENT:
Ikbal Hussen

DATE OF JUDGMENT: 08/09/2004

BENCH:
ARIJIT PASAYAT & PRAKASH PRABHAKAR NAOLEKAR

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT,J.

State of Rajasthan questions legality of the judgment rendered by a learned Single Judge of the Rajasthan High Court at Jodhpur holding that the trial against the respondent for alleged commission of offences punishable under Sections 279, 337, 338 and 304(A) of the Indian Penal Code, 1860 (in short the 'IPC'), could not be continued indefinitely. The learned Additional Chief Judicial Magistrate, Gulabpura, Bhilwara, Rajasthan directed acquittal of the respondent who was facing trial for alleged commission of aforesaid offences. The alleged incident took place on 28th March, 1995. The trial court closed the evidence in the light of the decision of this Court in Raj Deo Sharma vs. State of Bihar (1998 (7) SCC 507).

The High Court as noted above, observed that the trial cannot proceed indefinitely and the trial had not come to an end for a period of six years, and, therefore, learned Additional Chief Judicial Magistrate was justified in closing the evidence and directing acquittal.

The correctness of the decisions in two Raj Deo Sharma's cases i.e. Raj Deo Sharma vs. State of Bihar (1998 (7) SCC 507) and (1999 (7) SCC 604) and that of "Common Cause" a Registered Society vs. Union of India and Ors. (1996 (6) SCC 775) and (1996 (4) SCC 33) was considered by seven-judge Bench in P. Ramachandra Rao vs. State of Karnataka (2002(4) SCC 578). In the said case after considering the various decisions it was held as follows :

"For all the foregoing reasons, we are of the opinion that in Common Cause case (I) - (1996 (4) SCC 33 : 1996 SC (Cri) 589) [as modified in Common Cause (II) \026 (1996 (6) SCC 775 : 1997 SCC (Cri) 42) and Raj Deo Sharma (I)- (1998 (7) SCC 507 : 1998 SCC (Cri) 1692 and (II)- (1999 (7) SCC 604 : 1999 SCC (Cri) 1324) the Court could not have prescribed periods of limitation beyond which the trial of a criminal case or a criminal proceeding cannot continue and must mandatorily be closed followed by an order acquitting or discharging the accused. In conclusion we hold:

(1) The dictum in A.R. Antulay case (1992 (1) SCC 225 : 1992 SCC (Cri) 93) is correct and still holds the field.

(2) The propositions emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down as guidelines in A.R. Antulay case (supra) adequately take care of right to speedy trial. We uphold and reaffirm the said propositions.

(3) The guidelines laid down in A.R. Antulay case are not exhaustive but only illustrative. They are not intended to operate as hard and fast rules or to be applied like a straitjacket formula. Their applicability would depend on the fact situation of each case. It is difficult to foresee all situations and no generalization can be made.

(4) It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. The time-limits or bars of limitation prescribed in the several directions made in Common Cause (I), Raj Deo Sharma case (I) and (II) could not have been so prescribed or drawn and are not good law. The criminal courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of time, as prescribed by the directions made in Common Cause case (I), Raj Deo Sharma case (I) and (II). At the most the periods of time prescribed in those decisions can be taken by the courts seized of the trial or proceedings to act as reminders when they may be persuaded to apply their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration the several relevant factors as pointed out in A.R. Antulay case and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time-limits cannot and will not by themselves be treated by any court as a bar to further continuance of the trial or proceedings and as mandatorily obliging the court to terminate the same and acquit or discharge the accused.

(5) The criminal courts should exercise their available powers, such as those under Sections 309, 311 and 258 of the Code of Criminal Procedure to effectuate the right to speedy trial. A watchful and diligent trial Judge can prove to be a better protector of such right than any guidelines. In appropriate case, jurisdiction of the High Court under Section 482 Cr.P.C. and Articles 226 and 227 of the Constitution can be invoked seeking appropriate relief or suitable directions.

This is an appropriate occasion to remind the Union of India and the State Governments of their constitutional obligation to strengthen the judiciary \026 quantitatively and qualitatively \026 by providing requite funds, manpower and infrastructure. We hope and trust that the

Government shall act."

It was held that the dictum of the Constitution Bench in A.R.Antulay's case (supra) continues to hold the field and bars of limitation introduced in Common Cause (I) and Common Cause (II) and Raj Deo Sharma (I) and Raj Deo Sharma (II) cannot be sustained as these decisions were rendered by two or three Hon'ble judges and run counter to the view expressed by the Constitution Bench in A.R. Antulay's case (supra). It was held as follows.

"The Constitution makers were aware of the Sixth Amendment provisions in the Constitution of the USA providing in express terms the right of an 'accused' to be tried speedily. Yet this was not incorporated in the Indian Constitution. So long as A.K. Gopalan v. State of Madras (1950 SCR 88) held the field in India, only such speedy trial was available as the provisions of the Code of Criminal Procedure made possible. No proceeding could ever be quashed on the ground of delay. On a proper grievance being made, or suo moto, court could always ensure speedy trial by suitable directions to the trial court including orders of transfer to a court where expeditious disposal could be ensured.

With the decision of this Court in Maneka Gandhi v. Union of India (1978 (1) SCC 248) Article 21 received a new content. Procedure relating to punishment of crime must be fair, just and reasonable. Hussainara Khatoon (I) v. Home Secretary, State of Bihar (1980 (1) SCC 81) and later decisions have spelt out a so-called 'Right to Speedy Trial' from Article 21. It is both a convenient and self-explanatory description. But it does not follow that every incident attaching to the Sixth Amendment right ipso facto is to be read into Indian Law. In the USA, the right is express and unqualified. In India it is only a component of justice and fairness. Indian courts have to reconcile justice and fairness to the accused with many other interests which are compelling and paramount.

Article 21 cannot be so construed as to make mockery of directive principles and another even more fundamental right i.e., the right of equality in Article 14.

The concept of delay must be totally different depending on the class and character of the accused and the nature of his offence, the difficulties of a private prosecutor and the leanings of the government.

The court must respect legislative policy unless the policy is unconstitutional.

Statutes of limitation, limited though they are on the criminal side, do not apply to :

(a) serious offences punishable with more than 3 years imprisonment;

(b) all economic offences.
Corruption by high public servants is not protected for both these reasons.

Right to speedy trial is not a right not to be tried. Secondly it only creates an obligation on the prosecutor to be ready to proceed to trial within a reasonable time;

That is to say without any delay attributable to his deviousness or culpable negligence.

The actual length of time taken by a trial is wholly irrelevant. In each individual case the court has to perform a balancing act. It has to weigh a variety of factors, some telling in favour of the accused, some in favour of the prosecutor and others wholly neutral. Every decision has to be ad-hoc. It is neither permissible nor possible nor desirable to lay down an outer limit of time. The U.S. Supreme Court has refused to do so. Similar view is taken by our court. There is no precedent warranting such judicial legislation.

The following kinds of delay are to be totally ignored in giving effect to the plea of denial of speedy trial:

(A) Delay wholly due to congestion of the Court calendar, unavailability of judges, or other circumstances beyond the control of the prosecutor.

(B) Delay caused by the accused himself not merely by seeking adjournments but also by legal devices which the prosecutor has to counter.

(C) Delay caused by orders, whether induced by the accused or not of the court, necessitating appeals or revision or other appropriate actions or proceedings.

(D) Delay caused by legitimate actions of the prosecutor e.g., getting a key witness who is kept out of the way or otherwise avoids process or appearance or tracing a key document or securing evidence from abroad.

Delay is usually welcomed by the accused. He postpones the delay of reckoning thereby. It may impair the prosecution’s ability to prove the case against him. In the meantime, he remains free to indulge in crimes. An accused cannot raise this plea if he has never taken steps to demand a speedy trial. A plea that proceedings against him be quashed because delay has taken place is not sustainable if the record shows that he acquiesced in the delay and never asked for an expeditious disposal. In India the demand rule must be rigorously enforced. No one can be permitted to complain that speedy trial was denied when he never demanded it.

The core of ’Speedy Trial’ is protection against incarceration. An accused who has never been incarcerated can hardly complain. At any rate, he must show some other very strong prejudice. The right does not protect an accused from all prejudicial effects caused by delay. Its core concern is impairment of liberty.

Possibility of prejudice is not enough. Actual prejudice has to be proved.

The plea is inexorably and inextricably mixed up with the merits of the case. No finding of prejudice is possible without full knowledge of facts. The plea must first be evaluated by the trial court."

In the aforesaid background the decision of the High Court affirming the acquittal of respondent cannot be maintained. We set aside the judgments of the trial court and the High Court. The trial before the trial court shall be revived. Since the trial is pending for a considerable period of time, it would be appropriate for the concerned court to take up the matter on day to day basis, keeping in view the mandate of Section 309 of the Code of Criminal Procedure, 1973 (in short the "Cr.P.C.").

Appeal is accordingly allowed.