

HIGH COURT OF MADHYA PRADESH, JABALPUR

BENCH INDORE

(Single Bench)

(Hon'ble Shri Justice Jarat Kumar Jain)

Misc. Criminal Case No.10205 of 2015

Laxman s/o Daluji Patel

V E R S U S

State of Madhya Pradesh

Shri Virendra Khadav, learned counsel for the applicant.

Shri Peeyush Jain, learned Deputy Govt. Advocate for the Non-applicant/State.

O R D E R

(Passed on this 4th day of July, 2016)

THIS petition under Section 482 of the Code of Criminal Procedure [in brief “the Code”] has been filed for quashing Criminal Case No.1809/1995 pending before JMFC, Indore for last 20 years for the offence under Section 25 (1B) (a) of the Arms Act, 1959 [in brief “the Act”].

[2] Brief facts of this case are that on 05.08.1995 on the basis of secret information applicant apprehended by the police and one unlicensed rifle has been recovered from his possession. On this basis, Crime No.534/1995 for the offence under Section 25 (1B) (a) of the Act has been registered against the applicant. After completing the investigation, final report has been filed on

10.10.1995 against the applicant and one Imran. Learned Magistrate has framed the charge under Section 25 (1B) (a) of the Act and the case has been fixed for evidence on 04.09.1996. Thereafter many dates have been fixed but none of the prosecution witnesses have been examined till 04.11.2015. During the trial, on 23.01.2013 co-accused Imran has been died. Therefore, proceedings against him abetted. The applicant has filed this petition that he is facing the trial for last more than 20 years and none of the witnesses have been examined by the prosecution. He has attended all the dates of hearing and never absent, however, he has to travell from Village Pipal Kota to Indore for attending the hearing. The applicant's right to speedy trial under Article 21 of the Constitution of India has been infringed. In such circumstances proceedings be quashed.

[3] Learned counsel for the applicant submits that the applicant is facing trial before the Magistrate for last more than 20 years and the applicant is regularly attending the Court on all the dates. After filing this petition, this Court has directed for expeditious disposal of the case. The summons were sent for service through DIG Indore, but only 2 witnesses have been produced and the prosecution failed to produce remaining witnesses. He drew attention of this Court towards the report dated 10.03.2016 of Sessions Judge, Indore that more than sufficient opportunities have been given to the prosecution but the prosecution has failed to produce their witnesses. The applicant is aged about 75 years and he has to travell from his village Pipal Kota to

Indore. He has suffered a lot. The applicant's right to speedy trial under Article 21 of the Constitution of India has been infringed. In such circumstances the proceedings should be quashed. For this purpose, placed reliance on the judgment of Rajasthan High Court in the case of Sohanlal v/s State of Rajasthan, reported in – Laws (Raj)-2000-3-28/TLRAJ-2000-0-281.

[4] On the other hand, learned Public Prosecutor for the Non-applicant/State submits that 2 witnesses have already been examined and the Trial Court is trying level best to conclude the trial. In such circumstances he prays for dismissal of this petition.

[5] After hearing learned counsel for the parties, perused the record.

[6] This Court called the status report from the Trial Court and also called the report from the Sessions Judge, Indore as to why the trial is pending for such a long time. A show-cause notice to DIG, Indore has also been sent as to why the action should not be taken against the erring officials for not serving the witnesses. The Police Officers present before this Court and assured that they shall serve the summons on all the witnesses positively and produced them before the Court. However, the trial has not been concluded as yet.

[7] From perusal of the order-sheets and the report of learned Sessions Judge, Indore, it is crystal clear that the criminal case against the applicant is pending since 1995. Charge against the applicant and co-accused Imran

were framed under Section 25 (1B) (a) of the Act and the case was fixed for prosecution evidence on 04.09.1996 and as per the list, the prosecution has to examine only 6 witnesses. Thereafter many dates have been fixed for the prosecution evidence. The relevant portion of the report of the Sessions Judge reads as under :-

“प्रकरण के अंतिम प्रतिवेदन के अवलोकन से यह विदित होता है कि प्रकरण में 6 साक्षीगण की सूची दी गई है। साक्षी बाबू खां जो कि जप्ती व गिरफ्तारी का साक्षी होना अंतिम प्रतिवेदन के अवलोकन से विदित होता है को जारी गिरफ्तारी वारंट उसके बीमार होने के आधार पर अगली पेशी देने अथवा बाहर होने के आधार पर अदम तामील वापस किया गया है। वर्तमान पीठासीन अधिकारी डॉ धमेन्द्र कुमार टाडा जे.एम.एफ.सी. इन्दौर द्वारा भी आदेशियों की तामीली हेतु समय-समय पर पुलिस के वरिष्ठ अधिकारियों से पत्राचार किया गया है एवं अभियोजन को भी साक्षीगण को उपस्थित रखने हेतु निर्देशित किया गया है। उनके द्वारा बार-बार अंतिम अवसर भी साक्ष्य हेतु अभियोजन को दिया गया है। इस प्रकार उनके द्वारा प्रकरण के शीघ्र निराकरण के प्रयास प्रकरण की लंबित अवधि को दृष्टिगत रखते हेतु किया जाना आदेश पत्रिकाओं के अवलोकन से विदित होता है।

प्रकरण में प्रारंभ में साक्षीगण को तलब नहीं किया गया है एवं औपचारिक रूप से मात्र प्रकरण को आगामी पेशी तारीख के लिए नियत किये जाने, आरोपी इमरान के अनुपस्थित होने से प्रकरण उसकी उपस्थिति के प्रक्रम पर करीब आठ-नौ वर्ष तक नियत होने तथा पश्चात में साक्षीगण को जारी समंस/वारंट के अदम तामील प्राप्त होने पर उसकी उपस्थिति हेतु सख्त कदम नहीं उठाये जाने एवं पुलिस के वरिष्ठ अधिकारियों से पत्राचार पूर्व पीठासीन अधिकारियों द्वारा नहीं किये जाने के कारण एवं आरक्षी केन्द्र संयोगितागंज द्वारा भी न्यायालय द्वारा जारी आदेशिकाओं की तामीली प्रभावी रूप से नहीं किये जाने के कारण ही प्रकरण के निराकरण में इतना विलंब कारित हुआ है। अभिलेख के अवलोकन से यह भी विदित होता है कि आरोपी लक्ष्मण लगभग प्रत्येक पेशी तारीख पर ही उपस्थित हुआ है एवं उसके द्वारा आदेश पत्रिका पर भी अपने हस्ताक्षर किये हैं।”

[8] The applicant is facing trial for more than 20 years and the prosecution has failed to produce only 6 prosecution witnesses. He has been regularly attending the Court for such a long period cooperating with the trial and he has to travel from his Village Pipal Kota to Indore for

attending the Court hearing. The maximum punishment for the offence is 3 years. The applicant, aged about 75 years suffered mental agony and physical discomfort and necessarily financial loss. The applicant's right to speedy trial has been infringed in this case. Thus, the proceedings are liable to be quashed in the interest of justice. In the identical facts, Rajasthan High Court has quashed the proceedings in the case of Sohanlal (supra).

[9] Hon'ble apex Court in the case of P.R.Rao v/s State of Karnataka [2002 (3) MPLJ 3] held in para 21 of the judgment which reads as under :-

“21. In appropriate cases, inherent power of the High Court, under Section 482 can be invoked to make such orders, as may be necessary, to give effect to any order under the Code of Criminal Procedure or to prevent abuse of the process of any Court, or otherwise to secure the ends of justice. The power is wide and, if judiciously and consciously exercised, can take care of almost all the situations where interference by the High Court becomes necessary on account of delay in proceedings or for any other reason amounting to oppression or harassment in any trial, inquiry or proceedings. In appropriate cases, the High Courts have exercised their jurisdiction under Section 482, Criminal Procedure Code for quashing of first information report and investigation, and terminating criminal proceedings if the case of abuse of process of law was clearly made out. Such power can certainly be exercised on a case being made out of breach of fundamental right conferred by Article 21 of the Constitution. The Constitution Bench in A.R.Antulay case (supra) referred to such power, vesting in the High Court (vide paras 62 and 65 of its judgment) and held that it was clear that even apart from Article 21, the Courts can take care of undue or inordinate delays in criminal matters, or proceedings if they remain pending for too long and putting to an end, by making appropriate orders, to further proceedings when they are found to be oppressive and unwarranted.”

[10] Keeping in view the pronouncement of Hon'ble apex Court and considering the aforesaid facts, it is clearly that the applicant's right to speedy trial has been infringed in this case due to undue and inordinate delay in the trial. Therefore, to continue such proceeding is an abuse of process of law. Therefore, this petition is hereby **allowed** and the proceedings in Criminal Case No.1809/1995 pending in the Court of JMFC, Indore is hereby quashed. Resultantly, the applicant is discharged from the aforesaid offence as well as his bail-bonds.

[11] Copy of the order be sent immediately to the Trial Court for compliance.

[**JARAT KUMAR JAIN**]
JUDGE

Sharma AK/*