IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 112 of 2020

An application under section 482 of the Code of Criminal Procedure, 1973 to quash the proceeding in Chhendipada P.S. Case No. 132/2006 and continuance of the proceeding in C.T. Case No. 1962 of 2006 of the Court of learned J.M.F.C., Chhendipada.

AFR **Binod Bihari Sethy** **..... Petitioner**

-Versus-

State of Odisha **..... Opp. Party**

Advocate(s) appeared in this case :-

For Petitioner	:	M/s. Anirudha Das, A Das, S.C. Mishra, A. Das & A. Sahoo Advocates
For Opp. Party	:	Mr. P.K. Maharaj, Addl. Standing Counsel

CORAM :

JUSTICE SASHIKANTA MISHRA

ORDER
3rd January, 2022

SASHIKANTA MISHRA, J.

An FIR was lodged against the present petitioner on 24.10.2006 by the then Tahasildar, Chhendipada before the Officer-in-Charge, Chhendipada Police Station leading to registration of P.S.

Case No. 132 dated 24.10.2006 for the alleged commission of offence under Sections 447/379/188/294/535/506 of IPC. The said P.S. Case corresponds to C.T. Case No. 1962 of 2006, which is presently pending in the Court of learned J.M.F.C., Chhendipada. Final Report was submitted in the case after more than 15 years. The inaction of the investigating agency complied with inordinate delay is cited as a ground by the petitioner for quashment of the FIR and the consequential criminal proceedings in the present application filed under Section 482 Cr.P.C.

2. A reading of the FIR reveals that the petitioner had allegedly encroached upon three government plots measuring an area of Hc.1.8660 in village Kosala, for which Encroachment Case No. 46 of 2005 was instituted against him. Pursuant to show cause issued, he appeared before the Court (Tahasildar) on 06.07.2005 and admitted the fact of encroachment. Subsequently, the Tahasildar, Chhendipada issued prohibitory orders against the petitioner restraining him from going to the government land or from raising any crops thereupon. It is further alleged that the petitioner did not abide by such orders and raised crops, for which the Tahasildar directed the concerned Revenue Inspector to seize the standing crops as per law. Despite such seizure of crops, the petitioner is alleged to have forcefully entered into the

plots and after harvesting the crops shifted them to the nearby field. When the Revenue Inspector, after coming to know of such fact rushed to the spot, he found the petitioner in the process of shifting and cutting the crops, and dissuaded him from doing so. It is further alleged that instead of acceding to such request, the petitioner abused the Revenue Inspector in filthy language and also threatened to kill him. The Tahasildar thereafter lodged the complaint before Chhendipada Police Station leading to registration of the case as above. The FIR was forwarded to the Court of learned S.D.J.M., Angul on 28.01.2006, on the basis of which the above mentioned C.T. case was instituted. Since then, the case was adjourned from time to time till it was transferred to the Court of learned J.M.F.C., Chhendipada. It has come to light, from the instructions obtained by learned Addl. Standing Counsel that in the meantime, Final Report has been submitted basing on which notice has been issued to the informant but till date, he has not responded.

3. Heard Mr. A. Das, learned counsel for the petitioner and Mr. P.K. Maharaj, learned Addl. Standing Counsel for the State.

4. It is contended by Mr. Das that continuance of the case without Final Form being submitted for as long as 15 years by itself is an abuse of the process of Court. It is further argued that the petitioner

is presently aged about 72 years and has been going through tremendous mental strain and anxiety because of pendency of the criminal case and the uncertainty attached to it. Since right to speedy trial is also a part of fundamental right under Article 21 of the Constitution of India, it is contended that inaction of the investigating agency for an inordinately long period of time directly violates such right, for which the proceedings need to be quashed.

5. Mr. P.K. Maharaj, learned Addl. Standing Counsel while admitting that the Final Form was not filed for as long as 15 years, however, contends that no time limit being prescribed for conclusion of a criminal proceeding, mere delay in submission of Final Form or Final Report, as the case may be, cannot be a ground to quash the proceedings. On being asked by the Court, however, Mr. Maharaj is unable to cite a plausible reason for the inordinate delay in conclusion of investigation.

6. The facts as laid before this Court are not in dispute inasmuch as the FIR was lodged as far back as on 24.10.2006 and Final Report (FRT) was submitted on 31.12.2019 as informed by learned State Counsel. It is no longer a matter of debate that right to speedy trial flows from Article 21 of the Constitution of India. In the case of ***Maneka Gandhi vs. Union of India*** reported in (1978) 1 SCC

248, the Apex Court interpreting the provisions under Article-21 held that any law has to answer the test of reasonableness and fairness inherent in Articles 19 and 14. In other words, such law should provide a procedure which is fair, reasonable and just. Then alone, would it be in consonance with the command of Article 21. Indeed, wherever necessary, such fairness must be read into such law.

Whether the same can be read into the provisions of the Code of Criminal Procedure is also no longer in dispute in view of the authoritative pronouncement of the Apex Court in the case of ***Abdul Rehman Antulay v. R.S. Nayak***, (1992) 1 SCC 225, wherein this was also more or less the question posed which was answered in the following words:

> *"Now, can it be said that a law which does not provide for a reasonably prompt investigation, trial and conclusion of a criminal case is fair, just and reasonable?*
>
> *If the accused is guilty, he ought to be declared so. Social interest lies in punishing the guilty and exoneration of the innocent but this determination (of guilt or innocence) must be arrived at with reasonable dispatch — reasonable in all the circumstances of the case. Since it is the accused who is charged with the offence and is also the person whose life and/or liberty is at peril, it is but fair to say that he has a right to be tried speedily. Correspondingly, it is the obligation of the State to respect and ensure this right. It needs no emphasis to say, the very fact of being accused of a crime is cause for concern. It affects the reputation and the standing of the person among his colleagues and in the society. It is a cause for worry and expense. xxxxxxxxx*

> *82. The provisions of the Code of Criminal Procedure are consistent with and indeed illustrate this principle. They provide for an early investigation and for a speedy and fair trial. The learned Attorney General is right in saying that if only the provisions of the Code are followed in their letter and spirit, there would be little room for any grievance. The fact however, remains unpleasant as it is, that in many cases, these provisions are honoured more in breach. Be that as it may, it is sufficient to say that the constitutional guarantee of speedy trial emanating from Article 21 is properly reflected in the provisions of the Code.*

7. Thus, dealing with the right to speedy trial, the Apex Court in ***Abdul Rehman Antulay's*** case supra laid down several propositions of which, the ones that are relevant for the case at hand are extracted herein below.

> *(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.*
>
> *xx xx xx*
>
> *(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.*
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> *xx xx xx*

8. The facts of the case at hand may now be considered in the light of the propositions discussed above. This is a case of a man against whom an FIR was lodged and investigation continued for as long as 15 years to ultimately end in a Final Report being filed. One can only imagine the stress that the petitioner would have undergone during all these years with the "Sword of Damocles" hanging over his head. As highlighted by the Apex Court, pendency of a criminal proceeding, irrespective of the nature of the offence alleged, are sufficient to cause concern, anxiety and apprehension in the mind of the accused not to speak of the expenses that he may have to incur in

defending himself. What is a matter of greater concern to note is that there is no explanation whatsoever from the side of the investigating agency as to the reasons for non-completion of investigation for all these years. Be it noted here that save and except the offence under Section 506, all the other offences alleged to have been committed by the accused namely, Sections 447/379/188/294/353 of IPC, are punishable with imprisonment for terms ranging from one year to three years at the most. So even if a Final Form had been submitted, the concerned Magistrate would have been hard put to take cognizance keeping in view the provisions under Section 468 of Cr.P.C. However, that is besides the point. The crux of the matter is inordinate delay in completion of the investigation. In view of the discussion on law laid down by the Apex Court in the cases referred above, this Court has no hesitation whatsoever to hold that the inaction of the investigating agency to conclude the investigation for as long as 15 years, that too, without offering even a semblance of explanation is a direct affront to the cherished principle of right to speedy trial ingrained in the provisions of Article 21 of the Constitution of India.

9. It goes without saying that the Court can neither be a mute spectator to the whims and fancies of the investigating agency nor be a party to it, which appears to have occurred in the instant case,

inasmuch as, the Court below had simply been adjourning the matter for all these years by passing the following order on each date:

> "*Record is put up today. FF not received. Put up on …… awaiting FF.*"

10. This amounts to perpetuating the illegal inaction of the investigating agency. In all fairness, the Court below ought to have called for a report from the I.O. as to the status of investigation instead of giving him a free hand to do as he pleases. What is even more disturbing is that after submission of the Final Report on 31.12.2019, notice was supposedly issued to the informant calling upon him to file protest petition but alas, three more years have elapsed in the meantime with the matter being left in a state of suspended animation as it were.

11. The above inaction on the part of the investigating agency as also of the concerned Court is something that cannot be countenanced in law as the same, if allowed to continue indefinitely, would certainly amount to an abuse of the process of Court. This Court is therefore, convinced that this is a fit case to exercise its inherent powers under Section 482 of Cr.P.C. to put an end to the fiasco, once for all, moreso, as the investigation has ended in Final Report True being submitted.

12. Before parting with the case, this Court also deems it proper to observe that the higher police authorities should take note of such inaction on the part of the investigating officer (s) and pass appropriate orders to be followed by all concerned so as to prevent the same from recurring in future.

13. In the result, the CRLMC is allowed. The FIR in Chhendipada P.S. Case No. 132 of 2006 is hereby quashed. Consequentially, the Criminal Proceeding in C.T. Case No. 1962/2006 pending in the Court of learned J.M.F.C., Chhendipada is also quashed.

14. A copy of this order be forwarded to the Director General of Police, Odisha for his information and necessary action.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack
The 3rd January, 2022/ A.K. Rana