



PRE-TRIAL CONFERENCE AND EXPEDITIOUS TRIAL: A CASE COMMENT ON N.R. BHAT V. STATE BY CBI/SPE, 2016(3) AKR 170; ILR 2016 KARNATAKA 4829

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Hon'ble Judges/ Coram: A.V. Chandrashekar, J.

BACKGROUND

A huge number of cases remains pending in the lower courts of our country and there seems to be no easy way out of this vicious circle of **adjournments** and delays in getting justice. This becomes more of a severe rather serious problem in criminal cases where we see people getting justice in the form of the guilty being punished after several years of the commission of the crime and in this discourse injustice is bound to happen because with the passage of time authenticity of the evidences, availability of the witnesses and with this the hope of the victims to get justice keeps decreasing hence resulting in no proper justice to the victims or their families.

ISSUE TAKEN UP BY THE COURT

In the said case it came to the notice of the court that the trial in the trial court was concluded by the prosecution in 3 years and 3 months after commencement, in addition to that a lot of adjournments were given to record the statements by the trial court. So, the court decided to issue certain guidelines

to avoid inordinate delay in conducting trial referring to Sec. 309 of the CrPC¹.

EXPEDITIOUS TRIAL: SEC 309

As per the above section criminal courts are required to conduct trial on day-to-day basis and adjournments should be allowed only when it is absolutely required and with reasons to be recorded. Furthermore, witnesses must be examined by both the sides on the same day otherwise he/she can be lured or won amounting to travesty of justice. Criminal courts have to ensure fair trial by allowing the trials to proceed

DUTIES OF THE JUDGE: "THE JUDICIOUS JUDICIAL OFFICER"

ADJOURNMENTS: "AWAKE! ARISE!"

According to the Supreme Court it is a tactic of some unscrupulous lawyers to get adjournments for silly excuses till a witness is won over or is tired.³ It is the Court's duty to protect the interest of the society in balance with that of the accused and hence all possible measures are required to be taken by the trial Courts to follow the **spirit of Sec 309** and any breach of such conditions would amount to contempt of court.

If the Court finds that regular examination of witnesses cannot be complied with due to non-cooperation of the accused or his counsel, the court can invoke the sub-section and remand the accused to custody or impose cost on such party or also if accused

¹ The Code of Criminal Procedure, 1973, Sec. 309

² Talab Haji Hussain v. Madhukar Purshottam Mondkar, 1958 SCR 1226

³ Swaran Singh v. State of Punjab, (2000) 5 SCC 668



is not present and the witness is present, court can cancel his bail. Also, it is the duty of the judge to manage all this with the existing infrastructure and he cannot blame the system or other imperfections and has to perform his duty judiciously.

PRE-TRIAL CONFERENCE

To conduct a swift trial one of the measures needed to be taken in this regard is to conduct a conference consisting of presiding officer, public prosecutor, accused and his counsel and the concerned police officer wherein the prosecutor will present the list of witnesses and approximate time to examine them along with a brief background of the case. This conference will be effective in eliminating all those situations in advance which can hinder the swiftness of the trial at a later stage of the trial and this should not be a mere formality but a step to follow Sec 309 in its spirit. The judicial officers who violate the directions should be dealt on the administrative side.⁴ In a nutshell, the officer should figure out the obstacles in holding day-to-day trial and ways to get over them before trial.

ANALYSIS: WORKMEN'S TOOLS

One of the significant observations was that a reasonably expeditious trial is the fundamental right of the accused⁵ but it was also said that the court has to see that if the delay was due to overcrowding or understaffing of the courts, while on the other hand it was asserted by the Court that workmen can't blame his tools to protect his inefficiency, hence, leading to a

contradiction/ anomaly as to the practicality of the guidelines given by the Court. This is because we can't overlook the fact that the workload on the judges is totally inconsistent with the infrastructure that he gets, apart from that in criminal cases where there are a large number of witnesses to be examined, the timeframe of them to appear cannot be ascertained in advance in the pre-trial conference leading to the whole point of conducting a pre-trial conference being infructuous. There is a whole vicious circle of hearings, examination, prosecution and defence in the trial courts where everyone is overburdened with work and **"not for nothing"** plethora of cases are pending in the lower courts of the country.

CONCLUSION: "JUSTICE DELAYED IS JUSTICE DENIED"

Laying guidelines for the judges to refrain from giving adjournments unnecessarily is not enough because **"one swallow does not a summer make"**, so apart from introducing the concept of day-to-day hearings, first of all, the number of qualified judges have to be increased, physical and technological infrastructure needs to be improved, a limited time frame or tab on deciding a particular case can be framed as done in rape cases(Proviso to Sec. 309), pass overs also are like adjournments and should be halted and last but not the least the efficiency of the investigating authorities has to be lifted. This means that in order to give expeditious justice to the stakeholders in criminal cases the overall framework needs to be modified. The Court has done a great job in taking a leap into the reorganisation of the criminal justice system of the country but the duty now is cast upon everyone including the judges, the parties and the investigating

⁴ Deepti v. Akhil Rai, (1995) 5 SCC 751

⁵Hussainara Khatoun v. State of Bihar. AIR 1979 SC 1360



authorities to change their mindset so as to implement the judgment in its spirit and will have to awake and arise to deliver expeditious justice otherwise the time period for which the case remains pending it's a denial of justice to the parties because "*justice delayed is justice denied*".

