GAHC010103602020

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3060/2020

DANIEL LANGTHASA
S/O- LATE NINDU LANGTHASA, R/O- VILL- SAINJA RAJI, P.O AND P.S- HAFLONG, DIST- DIMA HASAO, ASSAM, PIN- 788819

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT OF ASSAM, ASSAM SECRETARIAT, DISPUR, GUWAHATI, PIN- 781006

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT OF ASSAM
HOME DEPTT
ASSAM SECRETARIAT
DISPUR
GUWAHATI
PIN- 781006

3:THE DIRECTOR GENERAL OF POLICE
ASSAM POLICE HQ
ULUBARI
GUWAHATI
ASSAM

4:THE COMMISSIONER AND SECRETARY
TO THE GOVT OF ASSAM
JUDICIAL DEPTT
ASSAM SECRETARIAT
DISPUR
GUWAHATI
PIN- 781006

5:THE UNION OF INDIA
REP. BY ITS SECRETARY TO THE GOVT OF INDIA
DEPTT OF JUSTICE
NEW DELHI

6:DEBOLAL GORLOSA @ DENIAL DIMASA
CHIEF EXECUTIVE MEMBER
N C HILLS AUTONOMOUS COUNCIL
DIMA HASAO
HAFLONG- 78881

Advocate for the Petitioner : MR. S BORTHAKUR

Advocate for the Respondent : *Mr. K. Goswami, Addl. Sr. Adv.*
Mr. P. Nayak, Adv.

Date of Hearing &
Judgment : 20/12/2021

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT & ORDER (ORAL)

Dated : 20.12.2021

Heard Mr. S. Borthakur, learned counsel appearing on behalf of the petitioner as well as Mr. K. Goswami, learned Additional Senior Govt. Advocate appearing on behalf of the respondent nos. 1 to 4 and Mr. P. Nayak, learned counsel appearing on behalf of respondent no. 6.

1) This is an application under Article 226 of the Constitution of India, whereby a direction was sought from this Court for directing the respondent authority to transfer GR Case no. 77/2008 of the Dihangi P.S. Case No. 02/2008 under section 120(B)/121/12(A)/302/392 of the IPC read with section 27 of the Arms Act 1959 to the Fast Track Court for

early disposal.

2) The facts of the instant case is that on 04.06.2007 one Shri Mongkho Kuki, ABSI, NC Hills, DEF, Halflong lodged an FIR before the Officer-in-Charge, Umrangso Police Station stating that on 04.06.2007 the petitioner's father the then EM of North Cachar Hills Autonomous Council along with the then Chief Executive Member (CEM) of the said Council Purnendu Langthasa were killed by the cadres of the Dima Halam Daogah (Jewel) when they have visited Langlai Hasnu village under Dihangi MAC Constituency for interacting with the village people and also for their socio political development.

3) The said FIR was registered as Umrangso Police Station Case No. 33/2007 under Section 120(B)/121/12(A)/302/392 of the IPC read with section 27 of the Arms Act 1959. Subsequently, the said Umrangso Police Station Case No. 33/2007 was transferred to the Dihangi Police Station and re- registered as Dihangi Police Station Case No. 02/2008.

4) The petitioner's case in brief is that the investigation was carried out in a casual manner for which the petitioner had approached this Court in WP (C) No. 517/2020, seeking a direction to hand over the investigation to an independent investigating authority such as Central Bureau of Investigation. In the said writ petition, the Additional Superintendent of Police (HQ) Dima Hasao filed an affidavit-in-opposition stating inter-alia that during the course of the investigation sufficient evidence were found against the respondent no. 6 herein along with 5 other accused persons. But the charge-sheet could not be filed as they

were waiting for prosecution sanction as required under law. Further, to that during pendency of the WP (C) No. 517/2020, the counsel appearing on behalf of the Govt. of Assam informed this Court that on 25.06.2020, the Govt. of Assam had filed a charge- sheet before the Court of Chief Judicial Magistrate, Dima Hasao bearing Charge sheet No. 2/2020 against the respondent no.6 along with 8 other persons and in that view of the matter, this Court vide an order dated 25.06.2002 disposed of the WP (C) No. 517/2020 in view of such development.

5) Pursuant thereto, on the basis of such charge-sheet Dima Hasao Session Case no. 20/2021 have been registered and is pending disposal before District & Session Judge, Dima Hasao. At this stage, it is relevant to mention that this writ petition had been filed prior to registration of the said case Session's case, as it would be apparent from the fact that the instant petition was filed on 03.08.2020, whereby prayer was made to transfer the G. R. Case No. 77/2008 arising out of Dihangi Police Station Case No. 02/2008 to the Court of Fast Track for an early disposal of the matter.

6) The learned counsel for the respondent no.6 submits that the respondent no.6 had also filed an affidavit-in-opposition. It has been specific stand of the respondent no.6 that the issue which have been raised in the instant proceedings has already been dealt before the Division Bench of this Court in PIL No. 51/2020 which was filed for debarring the respondent no.6 from functioning as CEM of NCHAC and the same was duly dismissed. In the said affidavit, it has also been mentioned in paragraph 10 that out of the three cases indicated by the

petitioner in his writ petition, in one case this Court by passing an order dated 21.12.2020 in Criminal Petition No. 1181/2020 had directed to complete the trial within a period of six months. The instant case, as on the date on which the affidavit was filed, only a period of 6 months have been elapsed from the date on which the charge sheet was filed. It has also been contended in the affidavit-in-opposition that the petitioner is a political rival of the respondent no. 6 and the petitioner has not left stones unturned to defame the respondent no. 6 as such, and this petition is another glaring example of the abuse the process of the Court for which the petition is liable to be dismissed as the petitioner has not been able to make out any case.

7) I have heard the respective submission of learned counsels for both the parties.

8) Before deciding the respective submissions made by the parties, it would be relevant herein to take note of the observations of Constitution Bench of the Supreme Court in the Case of ***Abdul Rahman Antulay and another v RS Nayak and others reported in (1992) 1 SSC 225,*** which is a matter pertaining to right to speedy trial and the same being a facet of Article 21 of the Constitution of India. In paragraph 81 & 82 of the said judgement, the Constitution Bench of the Supreme Court emphasis the reasons for the need of the right of speedy trial. The said paragraph 81 & 82 are quoted to herein below:

> "*81. Article 21 declares that no person shall be deprived of his life or liberty except in accordance with the procedure prescribed by law. The main procedural law in this country is the Code of Criminal Procedure 1973.Several other enactments too contain many a*

procedural provision. After Maneka Gandhi, it can hardly be disputed that the 'law' (which has to be understood in the sense the expression has been defined in clause (3)(a) of Article 13 of the Constitution) in Article 21 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. 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? It is both in the interest of the accused as well as the society that a criminal case is concluded soon. If the accused is guilty, he ought to be declared so. Societal interest lies in punishing the guilty and exoneration of the innocent but this determination (of guilt or innocence) must be arrived at with reasonable despatch - 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. It is more so, if he is arrested. If it is a serious offence, the man may stand to lose his life, liberty, career and all that he cherishes.

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."

9) In paragraph no. 86 of the said judgment, the Supreme Court culls out the various propositions of law. In paragraph 86.2, it has been

held that right to speed trial flowing from Article 21 encompasses all the stages, namely, the stage of investigation, inquiry, trial appeal, revision and re-trial and further observes that the said right is not to be taken in a restricted view.

10) In the judgment of the Supreme Court in the case of ***P. Ramachandran Rao Vs. State of Karnataka reported in (2002) 4 SSC 578***, which is a seven judges Bench of the Supreme Court, the majority opinion rendered by the R. C. Lahoti J. as he then was further emphasis the requirement of a speedy trial and to be mandate of Article 21 of the Constitution Paragraph no. 1 of the said majority opinion delivered by R. C. Lahoti J. as his lordship then was is quoted herein below:

> "*1. No person shall be deprived of his life or his personal liberty except according to procedure established by law - declares Article 21 of the Constitution. Life and liberty, the words employed in shaping Article 21, by the founding fathers of the Constitution, are not to be read narrowly in the sense drearily dictated by dictionaries; they are organic terms to be construed meaningfully. Embarking upon the interpretation thereof, feeling the heart-throb of the preamble, deriving strength from the directive principles of State policy and alive to their constitutional obligation, the courts have allowed Article 21 to stretch its arms as wide as it legitimately can. The mental agony, expense and strain which a person proceeded against in criminal law has to undergo and which, coupled with delay, may result in impairing the capability or ability of the accused to defend himself have persuaded the constitutional courts of the country in holding the right to speedy trial a manifestation of fair, just and reasonable procedure enshrined in Article 21. Speedy trial, again, would encompass within its sweep all its stages including investigation, inquiry, trial, appeal, revision and retrial - in short everything commencing with an accusation and expiring with the final verdict - the two being respectively the terminus a quo and*

terminus ad quem - of the journey which an accused must necessarily undertake once faced with an implication. The constitutional philosophy propounded as right to speedy trial has though grown in age by almost two and a half decades, the goal sought to be achieved is yet a far-off peak. Myriad fact situations bearing testimony to denial of such fundamental right to the accused persons, on account of failure on the part of prosecuting agencies and the executive to act, and their turning an almost blind eye at securing expeditious and speedy trial so as to satisfy the mandate of Article 21 of the Constitution have persuaded this Court in devising solutions which go to the extent of almost enacting by judicial verdict bars of limitation beyond which the trial shall not proceed and the arm of law shall lose its hold. In its zeal to protect the right to speedy trial of an accused, can the court devise and almost enact such bars of limitation though the legislature and the statutes have not chosen to do so - is a question of far-reaching implications which has led to the constitution of this Bench of seven-Judge strength."

11) In the majority opinion of the said judgment, the Supreme at paragraph no. 29 arrived at the conclusions in the reference so made and the said conclusions are contained in paragraph no. 29 which is quoted herein below:

"*29. For all the foregoing reasons, we are of the opinion that in Common Cause case (I) (as modified in Common Cause (II)) and Raj Deo Sharma (I) and (II), 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's case 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's case, adequately take care of right to speedy trial. We uphold and re-affirm the said propositions.

(3) The guidelines laid down in A.R. Antulay's case are not exhaustive but only illustrative. They are not intended to operate as hard and fast rules or to be applied like a strait-jacket 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 (I) and Raj Deo Sharma (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's 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 Code of Criminal Procedure to effectuate the right to speedy trial. A watchful and diligent trial judge can prove to be better protector of such right than any guidelines. In appropriate cases jurisdiction of High Court under Section 482 of Cr.P.C. and Articles 226 and 227 of Constitution can be invoked seeking appropriate relief or suitable directions.

(6) This is an appropriate occasion to remind the Union of India and the State Governments of their constitutional obligation to

strengthen the judiciary-quantitatively and qualitatively by providing requisite funds, manpower and infrastructure. We hope and trust that the Governments shall act.

We answer the questions posed in the orders of reference dated September 19, 2000 and April 26, 2001 in the abovesaid terms."

12) For the purpose of instant case, it is relevant to take note of that the Supreme Court in the said judgment had emphasized that criminal Court should exercise their available powers such as those under Section 309, 311 & 258 of the Code of Criminal Procedure to facilitate the right to speedy trial.

13) In the back drop of the above, it will be relevant to take note of the facts of the instant case. As has been already observed that on 25.06.2020 the charge-sheet was filed against the respondent no. 6 and 8 others.

14) The records of the instant case reveals that the orders of the committing Court i.e. the Court of the Chief Judicial Magistrate, Dima Hasao Halflong was placed on record before this Court. On the basis of the said orders having been placed in connection with PRC No. 70/2020, Dihangi P. S. No. 02/2008 G. R. Case No. 77/2008, this Court had vide an order dated 06.09.2021 observed that amongst the 12 charge-sheeted accused, 10 entered appearance personally through video call from the Central Jail and sub-jail Halflong and two accused person were issued summons and as per the direction of the CJM, Dima Hasao, the concerned police officials were directed to execute summons personally on the accused persons namely, 1. Tsupon Lotha @ Angologha Logha, 2.

Olymbus Newme @ M. Jojo @ Mozem Jengum.

15) It also appears from the submissions made by counsel for respondent no. 6 that after the case was committed to the Session's Court Dima Hasao, the case has been registered on 18.08.2021 as Dima Hasao Session's Case No. 20/2021. From the website of e-court services as produced before this Court in respect to Session's Court Case no. 20/2021 pending before the District & Session's Judge, Dima Hasao, it appears that on 15.09.2021, 28.09.2021, 08.10.2021, the case was fixed for consideration of charge. Thereupon, on 22.10.2021, 02.11.2021, 16.11.2021, 26.11.2021 & 10.12.2021 was fixed for production of the accused and further to that on 22.12.2021 as also the case has been fixed for production of the accused.

16) The order passed by the Division Bench of this Court in PIL No. 51/2020 has been placed before this Court. The said proceedings was a case pertaining to a public interest litigation filed by various persons including the petitioner herein whereby a mandamus was sought for to debar the respondent no. 6 herein from functioning as a Chief Executive Member of North Cachar Hill Autonomous Council and also for a direction that powers be assumed by the respondent no. 3 in terms with the provisions which are given in the Schedule VI of the Constitution of India.

17) In the said case, apart from other charge-sheets filed against the respondent no. 6, the present case was also a subject matter placed before the Division Bench. The Division Bench though dismissed the said

public interest litigation on merits, but made an observation in paragraph 18 which being relevant for the purpose of the instant case is quoted herein below:

> "*18. As regards the expeditious disposal of the cases which are pending against the respondent no. 6, we can only note that there are already directions of the Hon'ble Apex Court for expeditious disposal of the same. We, however, reiterate and direct the Court below where the trial is presently going on to expedite the trial in letter and spirit of Section 309 of Code of Criminal Procedure.*"

18) The observations made by the Division Bench coupled with the judgments of the Constitution Bench of the Supreme Court referred to herein above would go to show that the provision of the Section 309 of the Code of Criminal Procedure, 1973 was to be taking into consideration while conducting the trial of the Session Case No.20/2021.

19) Mr. Borthakur, learned counsel appearing for petitioner further submits that taking into consideration that the respondent no. 6 is an elected representative and functioning as the Chief Executive Member of North Cachar Hill Autonomous Council of Dima Hasao. He further submits that taking into consideration that as per the provisions of the Sixth Schedule to the Constitution of India that the Schedule Autonomous Areas is considered as a State within the State and the elected representatives including the Chief Executive Member exercise varied powers similar to that of a MP or a MLA, the principles laid down by the Supreme Court in the orders passed in the case of ***Ashwini Kumar Upadhyay and others Vs. Union of India and others*** should be applied to the instant case. In that regard, the learned counsel refers to

the order passed by the Supreme Court in the ***Ashwini Kumar Upadhyay and others Vs. Union of India and others, reported in 2020 SCC online SC 1044*** to substantiate his contentions that the observations contained therein should be applied so far as conducting the trial of the case before the Session's Judge, Dima Hasao. In that regard, he has referred to paragraph no. 14, 15 & 20, which for the sake of convenience is quoted herein below:

> "*14. One of the main objectives behind issuing notice in the present Writ Petition, and the various orders that have been passed time to time by this Court, was to ensure that criminal prosecutions against elected representatives (MPs and MLAs) are concluded expeditiously. The Court was of the opinion that such special consideration was required not only because of the rising wave of criminalization that was occurring in the politics in the country, but also due to the power that elected representatives (sitting or former) wield, to influence or hamper effective prosecution. Additionally, as legislators are the repositories of the faith and trust of their electorate, there is a necessity to be aware of the antecedents of the person that is/was elected. Ensuring the purity of democratically elected institutions is thus the hallmark of the present proceedings.*
>
> *15. However, despite all the initiatives taken by this Court in the present petition, there has been no substantial improvement in the situation when it comes to the disposal of pending criminal cases against sitting/former legislators (MPs and MLAs). Now, that we are well equipped with the information and data collected from the various High Courts, and looking at the suggestions made by the learned amicus, the learned Solicitor General and other learned counsel, we are better placed to assess the existing situation.*
>
> *20. We further request the learned Chief Justices of all the High Courts to list forthwith all pending criminal cases involving sitting/former legislators (MPs and MLAs), particularly those wherein a stay has been granted, before an appropriate bench(es) comprising of the learned Chief Justice and/or their designates. Upon being listed, the Court must first decide whether the stay*

granted, if any, should continue, keeping in view the principles regarding the grant of stay enshrined in the judgment of this Court in Asian Resurfacing of Road Agency Private Limited v. CBI, (2018) 16 SCC 299. In the event that a stay is considered necessary, the Court should hear the matter on a day-to-day basis and dispose of the same expeditiously, preferably within a period of two month, without any unnecessary adjournment. It goes without saying that the Covid-19 condition should not be an impediment to the compliance of this direction, as these matters could be conveniently heard through video conferencing."

20) A perusal of the above quoted paragraphs of Supreme Court would go to show that the main objective behind the said proceedings was to ensure that criminal prosecution against elected representatives (MPs and MLAs) are concluded expeditiously on the ground that the Supreme Court was of the opinion that said special consideration was required not only because of the rising wave of criminalization that was occurring in the politics in the country, but also due to the power exercised by elected representatives (sitting or former) wield, to influence or hamper effective prosecutions.

21) Having taking into consideration that the FIR was filed as far as back on 04.06.2007, and in terms with the judgment in the case of ***A. R. Antulay (Supra),*** wherein it has been held that the right to speedy trial flowing from Article 21 encompasses all the stages and subsequently further affirmed by the 7 Judges Constitution Bench of the Supreme Court in the case of ***P. Ramachandra Rao (Supra)*** wherein it has been observed that speedy trial encompasses within its fold all the stages including investigation, inquiry, trial, appeal, revision and re-trial or in short everything commencing with an accusation and expiring with the

final verdict and further, taking into consideration, the observation made in paragraph no. 18 of the order passed by the Division Bench of this Court dated 01.02.2021 in PIL no. 51/2020, the instant petition stands disposed of with the direction that the Session Judge, Dima Hasao shall conduct the proceedings i.e., the Session Case no. 20/2021 by taking into consideration the above quoted observations made by the Division Bench of this Court at paragraph 18 as well as taking into consideration the right of speedy trial is fundamental right and the various orders passed by the Supreme Court in the case of ***Ashwini Kumar Upadhyay (Supra)*** whereby to weed out criminalization in politics have been a top priority.

22) With the above observations and directions, the petition stands disposed of.

JUDGE

Comparing Assistant