

**In the Court of the Additional District & Sessions Judge,  
Fast Track Court – I,  
Basirhat, Dist.- North 24 Parganas**

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Present

Shri Pradip Kumar Adhikary, WBJS,  
J O Code (UID No.) - WB916,  
Additional District & Sessions Judge,  
Fast Track Court – I,  
Basirhat, Dist.- North 24 Parganas.

**CNR No.- WBNP 1000 0344 2022  
Sessions Case No.- 86 of 2022  
(Registration Number)  
ST No.- 03/07/2023  
arising out of  
Swarupnagar PS Case No.- 261 of 2020 dated 17/05/2020**

**Charge framed under section 306 of the Indian Penal Code, 1860**

State

v.

Biva Mondal

Order No.- 12  
19/01/2024

Today is fixed for evidence.

The sole accused on Court bail is present by filing hazira.

The Investigating Officer is absent.

The Investigating Officer sent a message praying for a short date as he is badly engaged in law and order duty under Minakhan PS.

On earlier dates of evidence also the IO was found absent.

On the plea of law and order duty the mandates of the Hon'ble Apex Court as well as our Hon'ble Court cannot be bypassed.

The IO is directed to remain present on the dates fixed for evidence without any silly excuse.

The de-facto complainant Prasenjit Biswas (CWS No.- 01) and his wife Suparna Biswas (CSW No.- 02) are present.

The de-facto complainant has filed a vakalatnama.

The Ld. PP-in-Charge Janab Abdul Mamun is absent without taking any steps.

On repeated calls the Ld. PP-in-Charge is found absent.

Both the witnesses are asked to meet the Ld. PP-in-Charge.

The Ld. Advocates appearing on behalf of the de-facto complainant and his wife are also requested to send the witnesses (de-facto complainant and his wife) to the Ld. PP-in-Charge.

After waiting considerable time the Ld. Advocates on behalf the de-facto complainant have submitted that both the witnesses have been sent to the Ld. PP-in-Charge and they (Ld. Advocates) have also personally approached to the Ld. PP-in-Charge to examine the witnesses but he refused to come to the Court on the plea that CD is not available with him.

On being asked both the witnesses have also stated that the Ld. PP-in-Charge has refused to come to the Court and to adduce their evidence.

The Court further requested the Ld. Advocates on behalf of the de-facto complainant to request the Ld. PP-in-Charge to come to the Court.

Again after waiting considerable time the Ld. Advocates for the de-facto complainant have returned and submitted that in spite of repeated request the Ld. PP-in-Charge has refused to come to the Court. He has submitted that the Ld. PP-in-Charge has conveyed that he has no time to come to the Court as his busy otherwise.

It appears that on **08/02/2023** the Ld. PP-in-Charge appeared before this Court by filing hazira.

Thereafter, several dates have been elapsed but the Ld. PP-in-Charge has not taken any steps on any dates i.e. on 03/05/2023, 02/06/2023, 04/07/2023 and even on the last date i.e. on 18/01/2024 (yesterday).

The Ld. Advocates on behalf of the de-facto complainant have stated that yesterday also both these witnesses came before the Court but as Ld. PP-in-Charge did not take any steps, they could not be tendered for evidence and as such today the de-facto complainant filed vakalatnama.

The case record reveals that on 26/04/2022, 18/01/2023 and 04/07/2023 the de-facto complainant was present before the Court by filing hazira.

The conduct of the Ld. PP-in-Charge clearly demonstrates his arrogance and irresponsibility. The negligence attitude of the Ld. PP-in-Charge is not only harmful for the prosecution but also for the administration of justice. The Ld. PP-in-Charge has displayed a pathetic apathy on the part of the State he is representing to uphold the fundamental right to speedy trial of all the stakeholders in the criminal justice system.

The Court is constrained to highlight another incident of reluctance to examine witnesses as done by the same Ld. PP-in-Charge Janab Abdul Mamun in CNR No.- WBNP 1000 0318 2023 / Sessions Case No.- 108 of 2023 / ST No.- 01 (01) of 2024.

The relevant portion of the order dated 10/01/2024 of that case is reproduced hereunder :

*Today is fixed for evidence of CSWs in terms of section 231, Cr.P.C.  
The sole accused on Court bail is present by filing hazira.  
The de-facto complainant Krishna Ghosh Nath and two witnesses Chabirani Nath and Gopal Banerjee, CSW Nos.- 01, 02 & 04 appeared by filing vakalatnama.  
The Ld. PP-in-Charge Janab Abdul Mamun is present by filing hazira. But surprisingly, he has not filed any hazira of those witnesses.  
On repeated calls the Ld. PP-in-Charge is found absent.  
The Ld. Advocate on behalf of the accused as well as the Ld. Advocate on behalf of the witnesses have stated that the Ld. PP-in-Charge have refused to examine the witnesses.  
The Ld. PP-in-Charge is called on.  
On being asked to examine the witnesses present before the Court the Ld. PP-in-Charge has submitted the witnesses have not met with him and as such he will not examine them today.  
It is now 2-30 PM. The Ld. PP-in-Charge is requested to have necessary talks with the witnesses, if any, since they are present before the Court and produce and adduce them till the hours of sitting of the Court and if necessary it may continue beyond the ordinary judicial hours of the Court.  
In spite of such request the Ld. PP-in-Charge has flatly denied to examine the witnesses stating that now it will not be possible for him to examine the witnesses and left the Court.*

Since the prosecution shall be conducted by the Ld. PP-in-Charge, in that referred case also the Court was constrained to discharge the witnesses without examination due to above mentioned unfortunate conduct of the Ld. PP-in-Charge imposing cost of Rs. 1,500/- (Rupees one thousand and five hundred only) upon the Ld. PP-in-Charge to be paid to the witnesses.

The duty of the Public Prosecutor is to represent the administrative of justice and he is not merely a representative of the client, namely, the State, but is also an officer of the Court.

The speedy trial is an integral and essential part of the fundamental right to life and liberty of an accused person enshrined in Article 21 of the Constitution of India. No procedure which does not ensure a reasonable quick trial can be regarded as reasonable, fair or just and it would fall out of Article 21. The consequence of the violation of the fundamental right to speedy trial would be that the prosecution itself would be liable to be

quashed on the ground that it is in breach of fundamental right. (***Manka Gandhi v. Union of India*** : AIR 1978 SC 597 and ***Hussainara Khatoon v. State of Bihar*** : AIR 1979 SC 1369)

In ***Swapan Kumar Chakravorti v State Of West Bengal*** : 1995 CriLJ 3090 the Hon'ble Justice Satya Brata Sinha, J. has been pleased to observe that

8. It is implicit in the broad sweep and contents of Article 21 as interpreted by the Hon'ble Supreme Court in ***Maneka Gandhi v. Union of India***, that the constitution confers a fundamental right on every person not to be deprived of his life or liberty except in accordance with the procedure prescribed by law and it is not enough to constitute compliance with the requirement of that Article that some semblance of a procedure should be prescribed by law, but that the procedure should be 'reasonable, fair and just'. If a person is deprived of his liberty under a procedure which is not 'reasonable, fair and just'. Such deprivation would be violative of his fundamental right and secure his release. Now obviously the procedure prescribed by law for depriving a person of his liberty cannot be 'reasonable, fair and just' unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial cannot be regarded as 'reasonable, fair and just' and it would fall foul of Article 21. There can therefore be no doubt that speedy trial of a criminal case is mandated by the Constitution. **Speedy trial is meant reasonably expeditious trial as is an integrated and essential part of the fundamental right to life and liberty enshrined in Article 21.**

24. In ***Abdul Rahman Antulay v. R.S. Nayak***, , the Supreme Court upon taking into consideration its earlier decisions categorically held that High Court has the power to pass appropriate order to prevent abuse of pendency of any Court or otherwise to secure the ends of justice. In the said decision itself the Supreme Court considered a full bench decision of Patna High Court in ***Madhenshwardhari Singh v. State of Bihar***, , wherein another earlier full bench of the same Court in ***State of Bihar v. Maksudan Singh***, , which has also been relied upon by the learned counsel for the petitioner and held that no outer limit can be fixed for conclusion of the trial although the decision of the full bench of the Patna High Court aforementioned was upheld on facts as it was found that the petitioner was not guilty of obstructive tactics and delay was entirely of the prosecution's doing which was prejudicial to the accused. The Supreme Court however, appears to have not agreed with the principle enunciated in the aforementioned full bench decisions of the Patna High Court that a criminal proceedings could be quashed only because a trial could not be completed within ten years. In the aforementioned decision it was held that the principles laid down are not exhaustive. It was stated :- (Para 54 of AIR).

"In view of the above discussion, the following propositions emerge, meant to serve as guidelines. We must forewarn that these propositions are not exhaustive it is difficult to foresee all situations. Nor is it possible to lay down any hard and fast rules. These propositions are :-

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 societal 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 retrial.** This is how, this Court has understood this right and there is no reason to take a restricted view.

Refusing deliberately to appear before the Court in spite of being appointed by the State to conduct prosecution of this case as well as constraining the witnesses and the accused to return home with empty hand after waiting considerable time the Ld. PP-in-Charge himself is causing obstruction in the speedy trial of the case which is an integral and essential part of the fundamental right to life and liberty of a person implicit in Article 21. Faith of common man here the de-facto complainant, his wife as well as accused on judiciary is bound to be eroded by this kind of attitude shown by the Ld. PP-in-Charge. How will the judiciary fulfill the expectation of common citizens be it complainant or accused coming to the Court for justice with this type of irresponsibility, negligence and arrogance as demonstrated by the appointee of the State, one of the vital stakeholders of the administration of justice ? - Often it is blamed that judicial is failing to fulfil the expectations

of the commons citizens. Not only the PO but also the Ld. PP-in-Charge and the Ld. Advocate for defense and other stakeholders are required to provide proper access to quality justice.

Since the prosecution shall be conducted by the Ld. PP-in-Charge, the Court is constrained to discharge the witnesses without examination due to above mentioned unfortunate conduct of the Ld. PP-in-Charge imposing cost of Rs. 2,000/- (Rupees two thousand only) upon the State for promoting the ends of justice as well as for preventing the miscarriage of justice.

The District Magistrate, North 24 Parganas is directed to deposit the cost amount to the fund of SDLSC, Basirhat by the next date and filed a receipt of the same.

The District Magistrate, North 24 Parganas is further directed to look into matter seriously and ensure that such type of incident is not repeated further at any cost.

He is further directed to give necessary instruction to the Ld. PP-in-Charge of this case so that he discharges his duties faithfully and diligently in default another Ld. PP-in-Charge may be appointed to conduct prosecution of this case.

Let another copy of this order be also sent to the Ld. Public Prosecution, North 24 Parganas.

The witnesses are directed to remain present on the next date.

The Ld. Advocate on behalf of the accused Shri Bhaskar Sarkar has submitted that his deceased wife's annual funeral ceremony is schedule to be held tomorrow and as such he has prayed for re-scheduling of the date of evidence which is fixed tomorrow.

To 20/05/2024 for filing receipt showing payment of cost by the District Magistrate, North 24 Parganas to the fund of SDLSC, Basirhat and evidence of CSW Nos.- 01 & 02;

To 21/05/2024 evidence of CSW Nos.- 03, 04 & 05;

To 22/04/2024 evidence of CSW Nos.- 06, 07 & 08;

To 24/05/2024 for evidence of rest CSWs in terms of section 231, Cr.P.C.

Let a copy of this order along with xerox copy of hazira of Ld. PP-in-Charge dated 08/02/2023 be sent to the District Magistrate, North 24 Parganas for compliance.

The accused is directed to remain present on the next date.

In compliance with the mandates of the Hon'ble Apex Court as well as our Hon'ble Court the Investigating Officer is directed to remain present during trial.

The Investigating Officer is also directed to keep the witnesses present in Court.

The Officer-in-Charge of the concerned Police Station is directed to ensure the presence of the Investigating Officer on the date(s) fixed along with witness(es).

If due to some unavoidable circumstances it is not possible for the Investigating Officer to remain present before the Court, the Officer-in-Charge shall depute any other competent police officer who shall ensure the presence of witnesses before the Court on the date of recording of evidence.

It is the duty of the Investigating Officer to protect the witnesses and ensure their presence before the Trial Court, for taking to its logical conclusion. It will help both the victim and the accused person, to have speedy justice which pertains to their right to life as well.

The prosecution is directed to issue process for compelling the attendance of the witnesses and / or the production of the document or thing, if any and to inform the Investigating Officer.

Let a copy of this order be sent to the Officer-in-Charge of the concerned Police Station for compliance.

Let another copy of this order be sent to the Superintendent of Police, Basirhat PD with a direction to ensure presence of the Investigating Officer during trial.

Let another copy of this order be sent to the Chairman, SDLSC, Basirhat for information.

The Bench Clerk is directed to do the needful at once.

Typed by me

Additional District & Sessions Judge,  
Fast Track Court – I,  
Basirhat, Dist.- North 24 Parganas.

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