

Before S. A. Mahmood, J
MUHAMMAD HUSSAIN-Petitioner
Versus
THE STATE-Respondent

Criminal Miscellaneous No. 1967 of 1958, decided on 4th February 1959.

(a) Delay-Inordinate delay in disposal of criminal case-An abuse of process of Court---Criminal Procedure Code (V of 1898), S. 561-A.

If the prosecution does not take care to see that a case against an accused person is proceeded with expeditiously and allows it to linger on inordinately or delays its progress, the fault must lie at its door, whether for non-production of sanction, the witnesses, the co-accused from jail, or by frequent transfers of case from Court to Court, by change of law or by the conduct of the Prosecutor. The intention of the law is that a criminal case must be expeditiously disposed of without unnecessary delay. It is a mockery of law to allow criminal cases to proceed for four or five years without any progress. It is revolting to the conscience of a Judge under any system of law that a criminal case should take so long and still not be decided. If the prosecution fails persistently without reasonable cause to produce its witnesses, or seeks adjournments unjustifiably, it is the duty of a Court to proceed to judgment expeditiously and without unnecessary delay, Justice delayed is justice denied for the defence of the accused must suffer by lapse of time and the prosecution may also suffer likewise. A fair and speedy trial is the essence and essential of judicial administration in a civilised country. Protracted proceedings are a mockery of the law and must be deemed to be an abuse of process of Court. In such cases the High Court has ample powers to set aside the proceedings in exercise of powers under section 561-A of the Criminal Procedure Code.

Malik Fazal Karim v. The State P L D 1957 Lah. 837 rel.

The Crown v. Piru and another P L D 1956 Sind 227 ; Muhammad Tufail v. The State Cr. Misc. No. 352 of 1957 ; Rash Behary v. Corporation of Calcutta A I R 1926 Cal. 102 ; Motiram Jaimal v. Emperor A I R 1943 Sind 10, Jahangir v. Gangaram 10 S L R 148 ; Agha Nazarali v. Emperor A I It 1941 Sind 186 and Emperor v. Muhammad Ibrahim and others A I R 1942 Cal. 219 ref.

(b) Criminal Procedure Code (V of 1898), S. 344---Adjournment not to be granted mechanically and without good cause-Reasonableness of cause and recording of reasons for adjournment necessary.

Section 344 of the Criminal Procedure Code, requires the Court to record (1) reasons for every adjournment (2) to consider the reasonableness for, and (3) the period for which an adjournment is to be granted. The section indicates that adjournments can be made for absence of witnesses or for any other reasonable cause. Any cause other than the absence of witnesses must be for a cause necessitating or justifying an adjournment on reasonable grounds. What is a reasonable ground is a question of fact in each case. The Court must apply its mind to its reasonableness and should not grant an adjournment mechanically and without good cause. The recording of reasons is as necessary a condition as the reasonableness of the cause for which adjournment is granted. The law also lays emphasis on the reasonableness of the time for which adjournment is granted. The provision has been made deliberately to avoid unnecessary delays and adjournments so as to ensure speedy decision.

(c) Criminal Procedure Code (V of 1898), S. 526 (J)-Transfer by High Court suo motu.

It is not for the High Court to order a transfer of a case on its own in order to help the prosecution out of a difficult situation, where it has been shown that the prosecution has been responsible for the delay or has been hopelessly incompetent or utterly careless in the conduct of a case.

S. M. Malik for Petitioner.

Ijaz Ali O. S. D. for Advocate-General for Respondent.

Date of hearing : 26th January 1959.