Sheela Barse (Ii) And Ors. vs Union Of India (Uoi) And Ors. on 13 August, 1986

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Bench: P.N. Bhagwati, Ranganath Misra

ORDER

Ranganath Misra, J.

1. We made an Order on 12th July, 1986 issuing various directions in regard to physically and mentally retarded children as also abandoned or destitute children who are lodged in various jails in the country for 'safe custody'. We also directed the Director General of Doordarshan as also the Director General of All India Radio to give publicity seeking cooperation of non-governmental social service organisations in the task of rehabilitation of these children. We were extremely pained and anguished that these children should be kept in jail instead of being properly looked after, given adequate medical treatment and imparted training in various skills which would make them independent and self-reliant. Some years ago we came out with a National Policy for the Welfare of Children which contained the following preambulatory declaration:

> The nation's children are a supremely important asset. Their nurture and solicitude are our responsibility. Children's programme should find a prominent part in our national plans for the development of human resources, so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skill and motivations needed by society. Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our large purpose of reducing inequality and ensuring social justice.
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> If a child is a national asset, it is the duty of the State to look after the child with a view to ensuring full development of its personality. That is why all the statutes dealing with children provide that child shall not be kept in jail. Even apart from this statutory prescription, it is elementary that a jail is hardly a place where a child should be kept. There can be no doubt that incarceration in jail would have the effect of dwarfing the development of the child, exposing him to baneful influences, coarsening his conscience and alienating him from the society. It is a matter of regret that despite statutory provisions and frequent exhortations by social scientists, there

> are still a large number of children in different jails in the country as is now evident from the reports of the survey made by the District Judges pursuant to our order dated 15th April, 1986. Even where children are ac of offences, they must not be kept in jails. It is no answer on the part of the State to say that it has not got enough number of remand homes or observation homes or other places where children can be kept and that is why they are lodged in jails. It is also no answer on the part of the State to urge that the ward in the jail where the children are kept in separate from the ward in which the other prisoners are detained. It is the atmosphere of the jail which has a highly injurious effect on the mind of the child, estranging him from the society and breeding in him aversion bordering on hatred against a system which keeps him in jail. We would therefore like once again to impress upon the State Governments that they must set up necessary remand homes and observation homes where children accused of an offence can be lodged pending investigation and trial. On no account should the children be kept in jail and if a State Government has not got sufficient accommodation in the remand homes or observation homes, the children should be released on bail instead of being subjected to incarceration in jail.

2. The problem of detention of children accused of an offence would become much more easy of solution if the investigation in the police and the trial by the Magistrate could be expedited. The reports of survey made by District Judges show that in some places children have been in jail for quite long periods. We fail to see why investigation into offences alleged to have been committed by children cannot be completed quickly and equally why can the trial not take place within a reasonable time after the filing of the charge-sheet. Really speaking, the trial of children must take place in the Juvenile Courts and not in the regular criminal courts. There are special provisions enacted in various statutes relating to children providing for trial by Juvenile Courts in accordance with a special procedure intended to safeguard the interest and welfare of children, but, we find that in many of the States there are no Juvenile Courts functioning at all and even where there are Juvenile Courts, they are nothing but a replica of the ordinary criminal courts, only the label being changed. The same Magistrate who sits in the ordinary criminal court goes and sits in the Juvenile Court and mechanically tries cases against children. It is absolutely essential, and this is something which we wish to impress upon the State Governments with all the earnestness at our command, that they must set up Juvenile Courts, one in each district, and there must be special cadre of Magistrates who must be suitably trained for dealing with cases against children. They may also do other criminal work, if the work of the Juvenile Court is not sufficient to engage then fully, but they must have proper and adequate training for dealing with cases against Juveniles, because these cases require a different type of procedure and qualitatively a different kind of approach.

3. We would also direct that where a complaint is filed or first information report is lodged against a child below the age of 16 years for an offence punishable with imprisonment of not more than 7 years, the investigation shall be completed within a period of three months from the date of filing of the complaint or lodging of the First Information Report and if the investigation is not completed within this time, the case against the child must be treated as closed. If within three months, the chargesheet is filed against the child in case of an offence punishable with imprisonment of not more than 7 years, the case must be tried and disposed of within a further period of 6 months at the

outside and this period should be inclusive of the time taken up in committal proceedings, if any. We have already held in Hussainara Khatoon and Ors. v. Home Secretary, State of Bihar that the right to speedy trial is a fundamental right implicit in Article 21 of the Constitution. If an accused is not tried speedily and his case remains pending before the Magistrate or the Sessions Court for an unreasonable length of time, it is clear that his fundamental right to speedy trial would be violated unless, of course, the trial is held up on account of some interim order passed by a superior court or the accused is responsible for the delay in the trial of the case. The consequence of 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 the fundamental right. One of the primary reasons why trial of criminal cases is delayed in the courts of Magistrates and Additional Sessions Judges is the total inadequacy of judge-strength and lack of satisfactory working conditions for Magistrates and Additional Sessions Judges. There are courts of Magistrates and Additional Sessions Judges where the workload is so heavy that it is just not possible to cope with the workload, unless there is increase in the strength of Magistrates and Additional Sessions Judges. There are instances where appointments of Magistrates and Additional Sessions Judges are held up for years and the courts have to work with depleted strength and this affects speedy trial of criminal cases. The Magistrates and Additional Sessions Judges are often not provided adequate staff and other facilities which would help improve their disposal of cases. We are, therefore, firmly of the view that every State Government must take necessary measures for the purpose of setting up adequate number of courts, appointing requisite number of Judges and providing them the necessary facilities. It is also necessary to set up an Institute or Academy for training of Judicial Officers so that their efficiency may be improved and they may be able to regulate and control the flow of cases in their respective courts. The problem of arrears of criminal cases in the courts of Magistrates and Additional Sessions Judges has assumed rather disturbing proportions and it is a matter of grave urgency to which no State Government can afford to be oblivious. But, here, we are not concerned with the question of speedy trial for an accused who is not a child below the age of 16 years. That is a question which may have to be considered in some other case where this Court may be called upon to examine as to what is reasonable length of time for trial beyond which the court would regard the right to speedy trial as violated. So far as a child-accused of an offence punishable with imprisonment of not more than 7 years is concerned, we would regard a period of 3 months from the date of filing of the complaint or lodging of the First Information Report as the maximum time permissible for investigation and a period of 6 months from the filing of the charge sheet as a reasonable period within which the trial of the child must be completed. If that is not done, the prosecution against the child would be liable to be quashed. We would direct every State Government to give effect to this principle or norm laid down by us in so far as any future cases are concerned, but so far as concerns pending cases relating to offences punishable with imprisonment of not more than 7 years, we would direct every State Government to complete the investigation within a period of 3 months from today if the investigation has not already resulted in filing of chargesheet and if a chargesheet has been filed, the trial shall be completed within a period of 6 months from today and if it is not, the prosecution shall be quashed.

4. We have by our Order dated 5th August 1986 called upon the State Government to bring into force and to implement vigorously the provisions of the Children's Acts enacted in the various States. But we would suggest that instead of each State having its own Children's Act in other States,

it would be desirable if the Central Government initiates Parliamentary Legislation on the subject, so that there is complete uniformity in regard to the various provisions relating to children in the entire territory of the country. The Children's Act which may be enacted by Parliament should contain not only provisions for investigation and trial of offences against children below the age of 16 years but should also contain mandatory provisions for ensuring social, economic and psychological rehabilitation of the children who are either accused of offences or are abandoned or destitute or lost. Moreover, it is not enough merely to have legislation on the subject, but it is equally, if not more, important to ensure that such legislation is implemented in all earnestness and mere lip sympathy is not paid such legislation and justification for non-implementation is not pleaded on ground of lack of finances on the part of the State. The greatest recompense which the State can get for expenditure on children is the building up of a powerful human resource ready to take its place in the forward march of the nation.

5. We have already given various directions by our Orders dated 12th July 1986 and 5th August 1986. We have also in the meantime received reports of survey made by several District Judges. We shall take up these matters for consideration at the next hearing of the writ petition which shall take place on 1.9.1986.