

Hope that in view of the changing socio-economic trends and political movements of the society, the legislative will bring soon an effective legislation to serve the real purpose of surrogacy through ARTs particularly to safeguard the surrogates and also the well-being of children born through ARTs of the commissioning parents, particularly of those abroad.

#### *Other references:*

1. [www.surrogatemother.com](http://www.surrogatemother.com)
2. [www.surrogate\\_motherhood.com](http://www.surrogate_motherhood.com)
3. [www.indian\\_surrogatemother.com](http://www.indian_surrogatemother.com)
4. <http://www.clraindia.org/include/ART.pdf>

### **GENEROUS ADJOURNMENTS IN CRIMINAL TRIAL : DILATORY TACTICS TO DEFEAT ENDS OF JUSTICE.**

*(A study of provisions and pronouncements on adjournments in criminal trial).*

By

**—Dr. JESU RATNA KUMAR NELATURI**

B.Sc., LL.M, Ph.D

Asst. Director, A.P. Judicial Academy,  
Secunderabad, A.P.

#### ***Introduction :***

Speedy justice is the constitutional mandate within the sweep and content of Article 21 of the Indian Constitution<sup>1</sup>. The Apex Court acknowledged that the Courts have been generously granting adjournments, regardless of the fact that it results in delayed disposal of cases. Frequent adjournments involve loss of public time, increase the financial burden of the litigant, and tarnish the image of the Judiciary<sup>2</sup>. The Supreme Court of India in series of cases opined that lavishness with which adjournments are granted is an ailment and the Courts at every level suffer from this predicament<sup>3</sup>. With this background this article is aimed to study the provisions and

the guiding precedents to cure the menace of frequent adjournments in criminal administration.

#### ***Section 309 of Criminal Procedure Code***

Section 309 of the Code of Criminal Procedure<sup>4</sup> confers power on the trial Court

4. Section 309 in the Code of Criminal Procedure, 1973 : Power to postpone or adjourn proceedings:

- (1) In every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

- (2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody :

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.

1. *Surinder Singh v. State of Punjab*, (2005) 7 SCC 387, AIR 2005 SC 3669; *Hussainara Khatoon and others v. Home Secretary, State of Bihar*, (1980) 1 SCC 81 = AIR 1979 SC 1360; *Abdul Rehman Antulay v. R.S. Nayak*, (1992) 1 SCC 225 = AIR 1992 SC 1701.
2. *Sujata Aggarwal v. Ravi Shankar Agarwal*, CM(M) 1146/2007 dated 16.10.2008
3. *Thana Singh v. Central Bureau of Narcotics*, 2013 Cri. LJ 1262 at 1264

for granting adjournments in criminal proceedings. The conditions lay down by the Legislature for granting such adjournments have been clearly incorporated in the section. The first sub-section mandates on the trial Courts that the proceedings shall be held expeditiously but the words 'as expeditiously as possible' have provided some play at the joints and it is through such play that delay often creeps in the trials. Even so, the next limb of the sub-section sounded for a more vigorous stance to be adopted by the Court at a further advanced stage of the trial. That stage is when examination of witnesses begins<sup>5</sup>.

The Legislature which diluted the vigour of the mandate contained in the initial limb of the sub-section by using the words 'as expeditiously as possible', has chosen to make the requirement for the next stage (when examination of witnesses has started) to be quite stern. Once the case reaches that stage the statutory command is that such

examination shall be continued from day-to-day until all the witnesses in attendance have been examined<sup>6</sup>. The solitary exception to the said stringent rule is, if the Court finds that adjournment beyond the following day to be necessary the same can be granted for which a condition is imposed on the Court that reasons for the same should be recorded. Even this dilution has been taken away when witnesses are in attendance before the Court. In such situation the Court is not given any power to adjourn the case except in the extreme contingency for which the second proviso to sub-section (2) has imposed another condition, provided further that when witnesses are in attendance, no adjournment or postponement shall be granted without examining them, except for social reasons to be recorded in writing<sup>7</sup>.

### **Judicial Pronouncements :**

Judiciary has been deprecating irresponsible approach of the Courts granting numerous and unnecessary adjournments in the strongest terms. Prosecuting agency whether it is CBI or Law and Order enforcing police is immaterial for adjournment<sup>8</sup>. In *Shambhu Nath*<sup>9</sup> the trial Court adjourn the matter several times, when it was coming for cross-examination of PW1. PW1 failed to attend the trial and an application for adjournment was filed. The said petition was dismissed and the Court closed the prosecution evidence.

### **Parties and their Counsel used to collude during trial for seeking adjournment.**

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing :

1[Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show-cause against the sentence proposed to be imposed on him.]

*Explanation 1.*—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

*Explanation 2.*—The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused.

*Criminal Rules of Practice, Rule 61 :* Every time an inquiry or trial is adjourned, an order of the Court in writing giving the reasons therefor shall be recorded. The reason for which an adjournment can be granted may be either the absence of a witness or any other reasonable cause as stated in Section 309 of the Code. Adjournment shall not ordinarily be granted in order to give time to the advocates to prepare their address to the Court as this will lead to unnecessary delay in the disposal of cases.

5. *State of U.P. v. Shambhu Nath Singh and others*, AIR 2001 SC 1405 at 1405-6.

6. *Raj Deo Sharma v. State of Bihar*, AIR 1999 SC 3524 at 3535.

7. *Supra* Note 5 at 1405-6.

8. *Chandra Sain Jain and others v. The State*, 1982 Cri. LJ NOC 86 (All.)

9. The honourable Court after careful consideration of the facts in *Shambhu Nath* case held that when PW1 was examined in chief the Court should have posted the case to the next working day for completion of cross-examination of that witnesses. (*Supra* Note 5 at 1403-1404).

Honorable Court in *Shambhu Nath* opined that if the Trial Judge succumbed to the collusive tactics of the parties, public confidence in the efficacy of the administration of criminal justice would be further drained considerably. When the witness of a party are present, the Court should make every possible endeavour to record their evidence and they should not be called back again<sup>10</sup>. Repeatedly summoning the witness leads to vexation and possibility of independent witnesses turned hostile and ultimately justice will be the causality. The honourable Supreme Court expressed sympathy on the witnesses stating that Sessions Court engaged in adjourning and again adjourning the case at long intervals in spite of the presence of eye-witnesses willing to be examined fully. If the trial Court thought it fit to close the evidence on a day when the witness could not be present, the accused would have had the last laugh.

The Court considered the plight of the witnesses, who attend the Court by spending their valuable time and money after keeping aside their own avocation. Certainly they incur suffering and loss of income. Meager amount of Bhatta (Allowance) is only a poor solace. The witness stand at the doorstep from morning till evening only to be told at the end of the day that the case is adjourned to another day. Considering the above circumstances, the Court observed:

This primitive practice must be reformed by presiding officers of the trial Courts and it can be reformed by everyone provided the presiding officer concerned has a commitment to duty. No sadistic pleasure in seeing how other persons summoned by him as witnesses are stranded on account of the dimension of his judicial powers can be a persuading factor for granting such adjournments lavishly, that too in a casual manner<sup>11</sup>.

Section 309(1) enjoins expeditious holding of the proceedings and continuous examination of witnesses from day-to-day. This provision enables the trial Court to close the prosecution, if the prosecution is unable to produce its witnesses in spite of repeated opportunities. The Supreme Court in *Rajdeo Sharma*<sup>12</sup> held that Section 309 Cr.P.C. also provides for recording reasons for adjourning the case beyond the following day<sup>13</sup>.

In *Rajdeo Sharma (II)*<sup>14</sup> the Supreme Court pointed out that the trial Court cannot be permitted to flout the mandate of Parliament under Section 309 Cr.P.C. unless the Court has very cogent and strong reasons and no Court has permission to adjourn examination of witnesses who are in attendance beyond the next working day. In *Rajdeo Sharma II* the Apex Court requested all the High Courts to remind all the Trial Judges of the need to comply with Section 309 of the Code and to take administrative action in case of violation. The Court opined that if the trial Court adhered to the mandate prescribed under Section 309 Cr.P.C. there is every chance of the parties co-operate with the Courts for achieving the desired objects and it would relieve the agony which witnesses summoned are now suffering on account of their non-examination for days<sup>15</sup>. The Apex Court directed that no NDPS Court would grant adjournments at the request of a party except where the circumstances are beyond the control of the party<sup>16</sup>. The honourable Court cautioned that this exception must be treated as an exception, and must not be allowed to swallow the generic rule against grant of adjournments.

Section 309 Cr.P.C. is a legislative mandate. In *Shambhu Nath* the Supreme

10. *The State v. Bilal Rai and others*, 1985 Cri. LJ NOC 38 (Del.)

11. Supra Note 5.

12. *Rajdeo Sharma v. State of Bihar*, 1998 (7) SCC 507 = 1998 AIR SCW 3208

13. Ibid.

14. *Rajdeo Sharma (II) v. State of Bihar*, 1999 (7) SCC 604.

15. Supra Note 5 at 1407.

16. Supra Note 3 at 1265.

Court opined that framing of schedule in Sessions cases<sup>17</sup> is one method of complying with the mandate under Section 309 Cr.P.C. Apex Court held that there is no justification to glide on any alibi by blaming the infrastructure for skirting the legislative mandates. The Court also advised High Courts to classify criminal appeals pending before it into different tracks on the same lines. It is most expedient that the trial before the Court of Sessions should proceed and be dealt with continuously from its inception to its finish. Sessions Cases must not be tried piecemeal<sup>18</sup>.

In *Salem Advocates Bar Association*<sup>19</sup> case the Supreme Court classified<sup>20</sup> criminal cases into five tracks for the purpose of fixing the period of disposal with a view to render speedy justice. The said classification is based on offence, sentence and whether the accused is on bail or in jail. The endeavour should be to complete track I cases within a period of nine months, track II and track III cases within twelve months and track IV within fifteen months. The intention of the Code of Criminal Procedure is that a trial before a Court of Sessions should proceed and be dealt with continuously from its inception of its finish<sup>21</sup>. The Supreme Court of India made all possible efforts to control undue adjournments.

### ***Power of the Court to close the evidence of the parties in case of undue delay***

In *Lugnani*<sup>22</sup> the Additional Sessions Judge had closed prosecution evidence rejecting the prayer of the prosecution for adjournment considering the fact that the case is one of the oldest matters and found no justification in adjournment for examination of witnesses. The Supreme Court in *Lugnani* considering the fact that the prosecution has taken four years before committing the Court to examine three witnesses and had taken fifteen months to produce 14 witnesses. *Lugnani* demonstrates the prosecution must be aware that it has to take all possible steps for speedy trial by producing witnesses without procrastination. Trial Courts are justified in closing evidence in case of unnecessary delay in producing witnesses.

### ***Conclusion***

The above discussed judicial pronouncements manifest that the failure of the trial Court to comply with the mandatory directions contained in the provisions of Criminal Procedure Code for expeditious trial amounts to miscarriage of justice. The institutionalization of generous adjournments in administration of justice amounts to withdrawing from administering justice.

17. In some States a system is evolved for framing a schedule of consecutive working days for examination of witnesses in each sessions trial to be followed. Such schedule is fixed by the Court well in advance after ascertaining the convenience of the Counsel on both sides. Summons or process would then be handed over to the Public Prosecutor in charge of the case to cause them to be served on the witnesses. Once the schedule is so fixed and witnesses are summoned the trial invariably proceeds from day-to-day. This is one method of complying with the mandates of the law.

18. *Lt. Col. S.J. Chaudhary v. State (Delhi Administration)*, 1984 (1) SCC 722 = AIR 1984 SC 618.

19. *Salem Advocates Bar Association, Tamil Nadu v. Union of India*, 2005 AIR SCW 3827.

20. Capital punishment, rape and cases involving sexual offences or dowry deaths should be kept in Track I. Other cases where the accused is not granted bail and is in jail should be kept in Track II. Cases which affect a large number of persons such as cases of mass cheating, economic offences, illicit liquor tragedy and food adulteration cases, etc., should be kept in Track III. Offences which are tried by special Courts such as POTA, TADA, NDPS, Prevention of Corruption Act, etc., should be kept in Track IV. Track V all other offences. *Salem Advocates Bar Association, TN v. Union of India*.

21. *Badri Prasad v. Emperor*, (1912) 13 Cri. IJ 861

22. *State (Delhi Administration) v. Vishwanath Lugnani*, 1981 Cri. IJ 745