



NOTES AND COMMENTS

DELAY IN CRIMINAL JUSTICE ADMINISTRATION — A STUDY THROUGH CASE FILES

DELAY IN administering criminal justice makes the system weak and meek. It has the tendency of making the system less effective in achieving the purpose of criminal law – the prevention of crimes. The very respectability emanating from fear of punishment would be lost if the punishment is not certain and prompt. A punishment imposed after a long time of the commission of offence may not have the impact a punishment promptly imposed generates. It is because of the time factor. It remains a fact that time heals and makes people forget and forgive. A punishment after sometime would therefore be irrelevant, ineffective and meaningless. It is of no consequence to the victim or to the perpetrator of the crime who must have adjusted himself during the time of delay. Nor would it be of any consequence to the society, which must have absorbed its impact in course of time.

It is because of these circumstances that every system strives to avoid delay in criminal justice administration. But very few are successful in this respect. Daunting delay has been haunting the administration of criminal justice not only in India but also elsewhere in the common law world. The reasons for this unhappy state of affairs are manifold and the studies in this area always remained fascinating though the results have been inconclusive.

Our system insists on giving maximum protection to the accused by way of an informed procedure, which unfortunately entails delay. We require him to be proved guilty beyond any reasonable doubt. We want him to be given enough opportunity to discharge this burden. We do not give much leeway to the police if it affects the rights of the accused adversely. Naturally the cooperation of the police would be wanting in avoiding delay. The provisions in our Criminal Procedure Code help at every stage to process the case smoothly but it quite happens that we get bogged down by docket explosion as a result of lack of speed in our procedure. This has invited criticism from every quarter and various studies/measures have been devised to obviate delay. Establishment of fast track courts, lok adalat, plea-bargaining etc. etc. have been tried with a view to avoiding mounting arrears in the courts. Despite all these efforts, it is felt that we are yet to move ahead if any meaningful success is to be achieved.



This realization made the Indian Law Institute to go for a seminar on delay in criminal justice administration and the Hon'ble former President of India suggested to it that an empirical study be conducted on the basis of case files. Representative files from the Supreme Court, high courts and district courts spread in different parts of the country have been studied and the causes of delay identified. Generally speaking, delay is caused not only by the courts but also by other functionaries including the police. In carrying out investigation the police used to spend a lot of time and the district courts apparently have not been insisting upon them to promptly submit the report probably under the impression that it is the area of police prerogative. This impression is, however, not correct. The general scheme of investigation envisaged in the Criminal Procedure Code seems to make the magistrate the pivot of investigation.

In several cases framing of the charges after the police report was received, took a lot of time apparently because of the delay on the part of the trial judge. In fact there is no justification for this delay. During the trial umpteen numbers of adjournments are given by the courts sometimes to suit the convenience of the lawyers or the judges themselves. Witnesses have also not been cooperative with the courts in expediting trials. In some cases delay occurred due to the absconding of the accused after getting bail. There have been cases where the courts took time to write judgments after the trial was over.

Contrary to the popular impression that it is the frequent adjournments, which cause delay, it is felt that usually the police and witnesses cause delay at the district level. And if the district court exercises proper control much of the delay could be obviated.

In the State of Kerala a unique practice is insisted upon. Every district judge is expected to furnish the particulars of the disposal of the case in a form prescribed for the purpose. The whole process of case including the reasons for the delay, if any, are to be furnished. This may inhibit him to cause undue delay.

At the high court level it is seen that the practice followed is disparate. While Delhi and Orissa High Courts follow maintaining order sheet no other high court follow the system. In the absence of such a procedure it is difficult to locate the area wherein delay occurred. The reasons for the delay can also be located in the order sheet if its maintenance is insisted upon.

One of the frequent reasons for the delay has been the non-receipt of trial court records promptly in the high courts and Supreme Court. In fact just because of the absence of such records the appeals came to be dismissed. In many a case the appeals came to be dismissed just because the state did not sustain its interest in prosecuting the appeals after filing them. Such cases were more in the Delhi High Court. In



some cases, as discussed above, the delay was caused because of the non-appearance of the accused released on bail despite the service of summons and warrants for his appearance.

It remains a fact that after a long period the courts do not deal with the offenders harshly. On the contrary, they tend to impose punishment already suffered or a light one signifying that delay tampers the temerity of criminal law.

Delay in high courts and the Supreme Court could, perhaps to an appreciable extent, be reduced by insisting upon the production of the lower court files simultaneously with the filing of appeals. This may be achieved by revising the procedure for filing of appeals in the high court and the Supreme Court. If the records are not received within a specified time the district court/high court may be required to record the reasons thereof. Similarly the registry in the high courts and Supreme Court should record the reasons for adjournments and they should be brought to the notice of the judges hearing the appeal.

The district courts may also be required to record the details of the case including the reasons for delay, if any, in a prescribed form before the case is disposed of by writing the judgment. This may help them to be cautioned about the delay. The unpleasantness involved in explaining the delay, might act as a deterrent in delaying the disposal of the case. If the judge becomes cautious, it is felt that the functionaries including the lawyers might avoid causing delay. The form could have the following format: -

1. Name of the accused
2. Number of the case
3. Substance of the complaint (with FIR No.)
4. Number and date of investigation report
5. Period spent on investigation
6. Reasons for delay, investigation report is after 60 days of commission of offence
7. Offence *prima facie* found by police
8. Offence charged by the court after police report/examination of complaint
9. Commencement of evidence
10. Closure of evidence
11. Period spent on trial
12. Reasons for delay in trial if the period was beyond one month
13. Date of judgment



14. Reason for delay, if judgment was made after one month of closure of evidence
15. Explanation for the delay

District Judge

If the decision is appealed against, the court – whether the district court or the high court — may be required to transmit the record within a period of two weeks of the filing of the appeal. This may help the appellate court to take up the appeals on time.

It is high time for us to prescribe maximum time for disposal of each category of cases and if there is any chance for delay it should be possible for the court to anticipate and obviate them by strictly following a pattern of posting. If the court makes it a practice not to grant frequent adjournments at any cost a message will go to all concerned that delay would not be tolerated.

The present practice of roll calls just to postpone the trials/hearing should be done away with. Instead if the court feels that one or two cases could be tried in a particular week they should alone be taken up and completed. Then only the next case be taken up.

In short, the remedy for the malady of delay lies in the courts rather than in any other agency. There should be more courts. They are to be prompt and vigilant in ensuring speedy justice by overcoming the delay and the impact of docket explosion. Then and then alone shall we have an effective criminal justice administration system

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