

ILF-Nepal

The International Legal Foundation – Nepal

CASE NOTES – NOVEMBER 2008

Santosh Nepali v. Government of Nepal, ILF-Nepal (1)

On October 31, 2008, the Appellate Court in Patan held that the petitioner's right to a speedy trial had been violated when the Kavre District Court failed to reach a decision within 12 months of the answer to the indictment (charge sheet).

The facts of the case were simple. Mr. Nepali was charged with murder arising out of the bombing of a police station in 2062/4/23 (2005/8/7). He was arrested on 2062/5/9 (2005/8/25). The charge sheet was filed on 2062/10/19 (2006/2/1) and petitioner ordered to remain in custody. When ILF-Nepal was asked to handle the case in August 2008 (2065), Mr. Nepali had been detained for 33 months. On appeal, ILF-Nepal Advocate Surya Pandey, argued that under Section 24(9) of the Interim Constitution guaranteeing a "fair trial," and Section 14 of the Court Management, requiring the district court to issue a decision within twelve months of the response to the charge sheet, the Court had denied Mr. Nepali his right to a speedy trial. The charges had to be dismissed and Mr. Nepali released. The Appellate Court in Patan agreed that the Kavre District Court had violated Mr. Nepali's right to a speedy trial and remanded the case to the District Court for further proceeding, specifying that the case should be given high priority and decided urgently.

The Appellate Court wrote that at a bail/jail hearing held on 2062/11/10 (2006/2/22), petitioner was placed in custody by order of the district court. The case has not been decided as required by Court Management section 14 (requiring a decision to be made within twelve months of the answer to the indictment) and that the procedures set forth in Court Management section 15 (specifying the manner in which a district court must proceed to get an extension of time) were not followed. Citing the Interim Constitution 24(9)(guaranteeing a right to a fair trial) and Court Management section 122 (dealing with the absence of co-defendants), the Appellate Court stated that the District Court had violated these provisions.

Prabesh, called Sujan, Rai v. Government of Nepal, ILF-Nepal (2); Kamala Pun Magar v. Government of Nepal (3)

On November 12, 2008, in these two companion cases, Prabesh Rai, an appeal from an order of the CDO (Chief District Officer) – ILF-Nepal Advocate Pawan Jaisawal – and Kamala Pun – an appeal from a decision of the Kathmandu District Court – ILF-Nepal Advocate Shyam Bishwokarma, the Appellate Court in Patan found that the practice of the Appellate Court

Registrar, requiring petitions filed under Court Management Rule 17 to be filed by the petitioner through the detention center and refusing to accept petitions filed by counsel of record was “incorrect” and from now on the Registrar had to accept such petitions according to the law.

Manoj Khadka v. Government of Nepal, ILF-Nepal (4)

A petition, pursuant to Court Management Rule 17, was filed challenging an order of the CDO. On November 5, 2008, the Appellate Court in Patan ordered the CDO to show cause but the CDO never answered. ILF-Nepal Advocate Shyam Bishwokarma argued that Court Management Rule 17 gave the Appellate Court the authority to set a date certain within 15 days for the opponent to show cause.

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