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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P. (CRL) 1379/2013**

Date of Decision: 30th September, 2013

KAMAL GAIND ..... Petitioner
Through: Mr. Sunil Magon, Advocate

versus

THE STATE & ANR. ..... Respondents
Through: Mr. Rajesh Mahajan, ASC for State with Mr. Rajat Agnihotri, Advocate along with SI Girish Chandra, EOW, Crime Branch.

AND

\+ **W.P.(CRL) 1502/2013**

RAMPHAL BANSAL ..... Petitioner
Through: Mr. A.K. Singla, Sr. Advocate with Mr. Ajay Digpaul and Mr.Rajesh Gupta, Advocates

versus

STATE & ORS. ..... Respondents
Through: Mr. Rajesh Mahajan, ASC for State with Mr. Rajat Agnihotri, Advocate along with SI Girish Chandra, EOW, Crime Branch.

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Vide this common order. I shall dispose of two writ petitions bearing W.P. (Crl) Nos. 1379 of 2013 and 1502 of 2013, inasmuch as, both these petitions have been filed under Articles 21, 226 and 227 of the Constitution of India read with Section 482 Code of Criminal Procedure, 1973 seeking quashing of same FIR No. 119 of 1997 dated 10th March, 1997 registered at Police Station CR Park and charge sheet dated 17th March, 2006.

2. The subject of the FIR relates to a dispute regarding the elections to the Body managing Sree Sanatan Dharam Mandir at Greater Kailash-II, New Delhi. The FIR owns its origin to the disputes between the erstwhile and present incumbents for managing the affairs of Sanatan Dharam Sabha for offences under Sections 201/420/448/468/471/120B Indian Penal Code, 1860 against the petitioner, proforma respondents and three more persons who have died. The petitioner Kamal Gaind, proforma respondents and other persons named in the FIR moved this Court by filing W.P.(Crl) No. 9 of 1998 seeking quashing of FIR

No.119/97 dated 10.03.1997 titled as ***Sh. Prithvi Raj Gulati & Ors. v. State***. Vide order dated 17th October, 1998 the Division Bench of this Court quashed the FIR. Aggrieved by the order of quashing of the FIR, respondent No.2/complainant approached Hon'ble Supreme Court of India by filing Special Leave Petition (Crl) No.4156/1998 registered as Crl. Appeal No.561/1998. Hon'ble Supreme Court of India, vide order dated 19th August, 2004 allowed the appeal and ordered that investigation should proceed further in accordance with law. The Crime Branch of Delhi Police completed its investigation and submitted the charge sheet dated 17th March, 2006 by impleading petitioners as one of the co-accused therein. Acting on the same, the Metropolitan Magistrate, vide order dated 15th September, 2006 summoned the petitioner Kamal Gaind and other accused persons but declined to take cognizance of the offence against the petitioner Ramphal Bansal under Section 201/120B IPC. This order became the subject matter of challenge in the proceedings registered as Crl. R.P. No. 832/2006 while the petitioner Kamal Gaind and proforma respondents also filed Crl. Misc. Main No. 7311-15/06 for quashing of the FIR No.119/1997 and proceedings emanating thereform

besides challenging the summoning order. Vide order dated 17th May, 2010 the Criminal Revision Petition was allowed while Criminal Miscellaneous Main filed under Section 482 Cr.P.C. was dismissed. Pursuant to the said order, petitioner Ramphal Bansal appeared before the Trial Court on 31st May, 2010. It is alleged that in the proceedings before the Trial Court, three of the accused named in the FIR died. Investigation Officer appeared only once on 10th April, 2012 and that too after bailable warrants were ordered to be issued against him. The manner in which prosecution is proceeding with the trial for over last seven years, the offence against petitioners and proforma respondents is not liable to be sustained on facts and in law. Petitioners have right to speedy trial flowing from Article 21 of the Constitution of India which has been infringed, as such criminal proceedings are liable to be quashed.

3. I have heard Mr. A.K. Singla, learned senior counsel for petitioner Sh. Ramphal Bansal, Mr.Sunil Magon, learned counsel for the petitioner Kamal Gaind and Mr. Rajesh Mahajan, learned standing counsel for the respondent/State and have perused the record.

4. Learned counsel for the petitioner has placed reliance on ***State of Andhra Pradesh v. P.V. Pavithran*** (1990) 2 SCC 340, ***Pankaj Kumar v. State of Maharashtra and Ors.*** AIR 2008 SC 3077; ***Santosh De v. Archna Guha and Ors.*** AIR 1994 SC 1229; ***P. Ramachandra Rao v. State of Karnataka*** (2002) 4 SCC 578; and ***Seeta Hemchandra Shashittal and Anr. v. State of Maharashtra and Ors.*** (2001) 4 SCC 525 for submitting that although the FIR was registered in the year 1997, during the period 2004-2012 Investigating Officer absented himself from the Trial Court for no good reason. Delay was not attributable to petitioners. Valuable constitutional right of the petitioners to a speedy investigation and trial has been infringed hence criminal proceedings initiated against them are liable to be quashed.

5. It was further submitted that petitioner-Ramphal Bansal is a designated Senior lawyer, over 85 years of age, is unable to pursue with the professional activities for last two years because of his old aged hazards and continued medical treatment, FIR owes its origin to the dispute between the erstwhile and present incumbents for managing the affairs of Sanatan Dharam Sabha, under the circumstances, allowing the

proceedings to continue would be an abuse of the process of Court and ends of justice require that the proceedings against the petitioner are ordered to be quashed. It was further submitted that due to old age and various ailments, it is difficult for the petitioner to attend the hearings on each and every date but the leaned Trial Court has declined to grant exemption to petitioner from personal appearance, which be granted.

6. On the other hand, Mr. Rajesh Mahajan, learned Standing Counsel for the State vehemently opposed the quashing of FIR and referred to the chequered history of the case. It is submitted that the delay is not solely attributable to non-appearance of the Investigating Officer of the case. There were other intervening reasons also as sometimes the file was not available, sometimes Presiding Officer was on leave, during the pendency, three of the accused died and their verification report was called, on some of the dates accused were also absent as such it cannot be said that due to lapse on the part of prosecution the delay has occurred. Moreover, even if there was any dereliction on the part of the Investigation Officer to appear in case, the Court has to come to its conclusion *de hors* his lapses and that cannot be made to be a ground for

quashing of the FIR. It was further submitted that the case is now at a very crucial stage, inasmuch as, the arguments on charge have been partly heard. Written synopsis has already been filed by the Investigating Officer of the case and at this crucial stage present petition has been filed for quashing of FIR which is bereft of merit, as such, the same is liable to be dismissed.

7. We have given our considerable thoughts to the respective submissions of learned counsel for parties and have perused the record.

8. In ***Seeta*** (supra), Hon'ble Supreme Court observed:

> "This Court has emphasised, time and again, the need for speeding up the trial as undue delay in culminating the criminal proceedings is antithesis to the constitutional protection enshrined in Article 21 of the Constitution. Nonetheless the Court has to view it from pragmatic perspectives and the question of delay cannot be considered entirely from an academic angle. In other words, the High Court and this Court, when approached by the accused to quash proceedings on the ground of delay, must consider each case on its own facts. Unfortunately the delay has so permeated our legal system that at all levels tardiness has become the leitmotif. Such a malady has been judicially reprobated and efforts have been made to curtail the delay which has developed as a systemic canker."

9. Reference was made to ***State of Andhra Pradesh v. P.V.Pavithran*,** 2(1990) 2 SCC 340, where delay in completing investigation was recognised as a ground for quashing criminal proceedings. It was observed as under:

> "7. There is no denying the fact that a lethargic and lackadaisical manner of investigation over a prolonged period makes an accused in a criminal proceedings to live every moment under extreme emotional and mental stress and strain and to remain always under a fear psychosis. Therefore, it is imperative that if investigation of a criminal proceedings staggers on with tardy pace due to the indolence or inefficiency of the investigating agency causing unreasonable and substantial delay resulting in grave prejudice or disadvantage to the accused, the court as the protector of the right and personal liberty of the citizen will step in and resort to the drastic remedy of quashing further proceedings in such investigation."

Nonetheless, Hon'ble Judges hastened to add that

> "it is not possible to formulate inflexible guidelines or rigid principles of uniform application for speedy investigation or to stipulate any arbitrary period of limitation within which investigation in a criminal case should be completed."

10. Reference was also made to ***A.R. Antulay vs R.S. Nayak***, 3(1992)1 SCC 225, wherein it was observed:

> "Now, can it be said that a law which does not provide for a reasonably prompt investigation, trial and conclusion of a criminal case is fair, just and reasonable? It is both in the interest of the accused as well as the society that a criminal case is concluded soon. If the accused is guilty, he ought to be declared so. Social interest lies in punishing the guilty and exoneration of the innocent but this determination (of guilt or innocence) must be arrived at with reasonable despatch - reasonable in all the circumstances of the case. Since it is the accused who is charged with the offence and is also the person whose life and/or liberty is at peril, it is but fair to say that he has a right to be tried speedily. Correspondingly, it is the obligation of the State to respect and ensure this right. It needs no emphasis to say, the very fact of being accused of a crime is cause for concern. It affects the reputation and the standing of the person among his colleagues and in the society. It is a cause for worry and expense. It is more so, if he is arrested. If it is a serious offence, the man may stand to lose his life, liberty, career and all that he cherishes."

11. The Constitution Bench, however, struck a note of caution that a realistic and practical approach should be made regard being had to all attending circumstances, including the nature of the offences, the number of accused and witnesses etc. Each case, therefore, must be considered on its own facts, without being pedantically persuaded merely because delay had occasioned during investigation stage.

12. Dealing with the scope and ambit of powers of the High Court under Section 482 Cr.P.C. it was observed in ***Pankaj Kumar*** (supra) as under*:*

> "10..... that though the powers possessed by the High Courts under the said provisions are very wide but these should be exercised in appropriate cases, *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exist. The inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. The powers have to be exercised sparingly, with circumspection and in the rarest of rare cases, where the court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of the process of the court or that the ends of justice require that the proceedings ought to be quashed. ...
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> 14. Time and again this Court has emphasized the need for speedy investigations and trial as both are mandated by the letter and spirit of the provisions of the CrPC. (in particular, Sections 197, 173, 309, 437(6) and 468 etc.) and the constitutional protection enshrined in Article 21 of the Constitution. Inspired by the broad sweep and content of Article 21 as interpreted by a seven-Judge Bench of this Court in ***Maneka Gandhi v. Union of India and Anr.*** (1978) 1 SCC 248, in ***Hussainara Khatoon and Ors. v. Home Secretary, State of Bihar*** (1980) 1 SCC 81, this Court had said that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except according to procedure established by law; that such procedure is not some semblance of a procedure but the

procedure should be 'reasonable, fair or just'; and therefrom flows, without doubt, the right to speedy trial. It was also observed that no procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21. The Court clarified that speedy trial means reasonably expeditious trial which is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21.

15. The exposition of Article 21 in ***Hussainara Khatoon's*** (supra) case was exhaustively considered afresh by the Constitution Bench in ***Abdul Rehman Antulay and Ors. v. R.S. Nayak and Anr.*** (1992) 1 SCC 225. Referring to a number of decisions of this Court and the American precedents on the Sixth Amendment of their Constitution, making the right to a speedy and public trial a constitutional guarantee, the Court formulated as many as eleven propositions with a note of caution that these were not exhaustive and were meant only to serve as guidelines. For the sake of brevity, we do not propose to reproduce all the said propositions and it would suffice to note the gist thereof. These are: (i) fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily; (ii) right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial; (iii) in every case where the speedy trial is alleged to have been infringed, the first question to be put and answered is - who is responsible for the delay? (iv) while determining whether undue delay has occurred (resulting in violation of right to speedy trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the work-load of the court concerned, prevailing local conditions and so on - what is called, the systemic delays; (v) each and every delay does not

necessarily prejudice the accused. Some delays may indeed work to his advantage. However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case; (vi) ultimately, the court has to balance and weigh several relevant factors - 'balancing test' or 'balancing process' - and determine in each case whether the right to speedy trial has been denied; (vii) Ordinarily speaking, where the court comes to the conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open and having regard to the nature of offence and other circumstances when the court feels that quashing of proceedings cannot be in the interest of justice, it is open to the court to make appropriate orders, including fixing the period for completion of trial; (viii) it is neither advisable nor feasible to prescribe any outer time-limit for conclusion of all criminal proceedings. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint; (ix) an objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in High Court must, however, be disposed of on a priority basis.

16. Notwithstanding elaborate enunciation of Article 21 of the Constitution in ***Abdul Rehman Antulay*** (supra), and rejection of the fervent plea of proponents of right to speedy

trial for laying down time-limits as bar beyond which a criminal trial shall not proceed pronouncements of this Court in ***"Common Cause" A Registered Society v. Union of India (UOI) and Ors.*** (1996) 4 SCC 33, ***"Common Cause", A Registered Society v. Union of India and Ors.*** (1996) 6 SCC 775, ***Raj Deo Sharma v. State of Bihar*** (1998) 7 SCC 507 and ***Raj Deo Sharma II v. State of Bihar*** (1999) 7 SCC 604 gave rise to some confusion on the question whether an outer time limit for conclusion of criminal proceedings could be prescribed whereafter the trial court would be obliged to terminate the proceedings and necessarily acquit or discharge the accused. The confusion on the issue was set at rest by a seven-Judge Bench of this Court in ***P. Ramachandra Rao v. State of Karnataka*** (2002) 4 SCC 578. Speaking for the majority, R.C. Lahoti, J. (as his Lordship then was) while affirming that the dictum in ***A.R. Antulay's case*** (supra) is correct and still holds the field and the propositions emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down as guidelines in the said case adequately take care of right to speedy trial, it was held that guidelines laid down in the ***A.R. Antulay's case*** (supra) are not exhaustive but only illustrative. They are not intended to operate as hard and fast rules or to be applied like a strait-jacket formula. Their applicability would depend on the fact-situation of each case as it is difficult to foresee all situations and no generalization can be made. It has also been held that it is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. Nonetheless, the criminal courts should exercise their available powers such as those under Sections 309, 311 and 258 of CrPC to effectuate the right to speedy trial. In appropriate cases, jurisdiction of the High Court under Section 482 CrPC and Articles 226 and 227 of the Constitution can be invoked seeking appropriate relief or suitable directions. The outer limits or power of limitation

> expounded in the aforenoted judgments were held to be not in consonance with the legislative intent.
> 17. It is, therefore, well settled that the right to speedy trial in all criminal persecutions is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in court but also includes within its sweep the preceding police investigations as well. The right to speedy trial extends equally to all criminal persecutions and is not confined to any particular category of cases. In every case, where the right to speedy trial is alleged to have been infringed, the court has to perform the balancing act upon taking into consideration all the attendant circumstances, enumerated above, and determine in each case whether the right to speedy trial has been denied in a given case. Where the court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction, as the case may be, may be quashed unless the court feels that having regard to the nature of offence and other relevant circumstances, quashing of proceedings may not be in the interest of justice. In such a situation, it is open to the court to make an appropriate order as it may deem just and equitable including fixation of time for conclusion of trial."

13. Tested on the touchstone of the broad principles, enumerated above, we are of the opinion that in the instant case, appellant's constitutional right recognised under Article 21 of the Constitution is not violated in view of the factual matrix of the case which reflects that it has a chequered history and the undisputed facts are as follows:

(i) FIR No. 119 of 1997 was registered at CR Park, New Delhi under Sections 201/420/448/468/471/120B on 10th March, 1997 relating to dispute regarding the elections of Body which managed Shri Sanatan Dharam Mandir at Greater Kailash-II, New Delhi.

(ii) Petitioner Kamal Gaind along with other accused persons moved this Court by filing a Writ Petition (Criminal) 3/1998 seeking quashing of FIR No. 119 of 1997 titled as Prithvi Raj Gulati & Ors. v. State. Vide order dated 17th October, 1998 the Division Bench of this Court quashed the FIR.

(iii) Complainant/respondent No.2 aggrieved of the order of quashing of FIR approached Hon'ble Supreme Court of India by filing Special Leave Petition (Criminal) No. 4156/1998 registered as Crl. A. No. 561/1998.

(iv) Vide order dated 19th August, 2004, Hon'ble Supreme Court allowed the appeal and directed that investigation should proceed further in accordance with law.

(v) Crime Branch, Delhi Police, completed its investigation and submitted its charge sheet dated 17th March, 2006.

(vi) Vide order dated 15th September, 2006, learned Metropolitan Magistrate summoned the petitioner and other accused persons and declined to take cognizance of the offence against the petitioner Ramphal Bansal under Section 201 read with Section 120B IPC.

(vii) Aggrieved by the summoning order the petitioner and other accused persons moved this Court in Crl. M.C. No. 7311-15/06 for quashing of FIR and proceedings emanating there from, besides challenging the summoning order dated 15th September, 2006 passed by learned Metropolitan Magistrate.

(vii) Criminal Revision Petition No. 832 of 2006 was filed by respondent No.2/complainant challenging the order of learned Metropolitan Magistrate vide which he declined to take cognizance of the offence against the petitioner Ramphal Bansal.

(ix) Vide common order dated 17th May, 2010 this Court dismissed Crl.M.C.No.7311-15/06 filed by petitioner Kamal Gaind and other co-accused persons and allowed the revision petition No.832/2006 filed by complainant and directed Ramphal Bansal to appear before the Court.

14. It is the case of the petitioners that while Crl. Misc. Main No. 7311-15/06 for quashing of FIR and Crl. R.P. No. 832/2006 were pending before this Court, the proceedings of the trial Court were never stayed. The Investigating Officer absented himself from the Court from the year 2006 and appeared only on 10th April, 2012 when bailable warrants were issued against him. As such, there is no justification for non-appearance

of the Investigating Officer for a period of six years and therefore due to delay in trial, the FIR is liable to be quashed. If the Investigating Officer was avoiding appearance before the Court, his presence could have been secured by coercive measures. Moreover, fate of the case cannot be made to depend upon the Investigating Officer of the case. Further, as held by Hon'ble Supreme Court in ***Ram Bihari Yadav v. State of Bihar***, AIR 1998 SC 1850 and reiterated in ***C. Muniappan and Others v. State of Tamilnadu***, 2010 IX AD(SC)317, if primacy is given to the omissions or lapses by perfunctory investigation by the investigating agency, the faith and confidence of people would be shaken not only in law enforcing agency, but also in the administration of justice. If there has been negligence on the part of investigating agency or omissions etc. which resulted in defective investigation, there is a legal obligation on the part of Court to examine the prosecution case *de hors* such lapses carefully to find out as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. Although, these observations were made regarding defective investigation but it is equally applicable in the case of

delay in investigation. The petitioner has also filed order sheets of the learned Trial Court which reflects that delay cannot be attributable solely to the non-appearance of the Investigating Officer. There were other intervening circumstances such as file not traceable, Presiding Officer on leave, non-appearance of the accused, death of three of the accused resulting in getting verification, as such, merely because of some delay in trial of the case, FIR is not liable to be quashed.

15. As regards the submission of learned counsel for petitioner Sh. Ramphal Bansal that the whole case is based on a letter dated 19th February, 1998 wherein Sh. Ramphal Bansal, Senior Advocate had informed that the documents are not traceable due to office renovation and shifting of files, no observation is required to be made, inasmuch as, learned Additional Standing Counsel has referred to the order passed by this Court in Criminal Miscellaneous Case No. 7311-15/06 and Crl. R.P. No. 832/2006 wherein various observations were made by this Court directing the summoning of petitioner Sh. Ramphal Bansal. Sh. Ramphal Bansal had also filed Special Leave Petition before Hon'ble Supreme Court which was dismissed. It is pertinent to note that now arguments on

charge are being addressed before the learned Trial Court. Investigating Officer of the case has filed written synopsis. It will be open to the learned Metropolitan Magistrate to arrive at a conclusion whether prima facie there are sufficient grounds for framing charge or not. Merits of the case are not required to be gone into in these proceedings, lest it may have reflection on the case.

16. In all the cases relied upon by learned counsel for petitioners, FIR was quashed on peculiar circumstances of the case. In ***Seeta***(supra), period of four years taken in conducting investigation and period of two years taken by government in according sanction for prosecution of public servant in case of alleged offence u/s 5(2) of Prevention of Corruption Act against appellant public servant was held not unreasonably long so as to violate Article 21 of the Constitution, however, offence of abetting public servant to commit offence u/s 13(2) of prevention of Corruption Act alleged against two old ladies aged 80 and 81 years was quashed.

17. In ***Santosh De.*** (supra) prosecution was pending for the last fourteen years. Not a single witness was examined. The delay was

entirely on account of fault of prosecution, as such, due to inordinate delay in commencing trial and non-explanation of delay by prosecution, the FIR was quashed.

18. In ***P.V. Pavithran*** (supra) again due to inordinate delay on the part of the investigating agency in completing the investigation FIR was quashed by High Court and Hon'ble Supreme Court refused to interfere with the same.

19. In ***Pankaj Kumar*** (supra) there was delay of over eight years which was not attributable to appellant, as such the criminal proceedings initiated against him were quashed.

20. The facts and circumstances of the case narrated above clearly reflects that the criminal prosecution cannot be quashed merely on the ground of delay highlighted by the petitioners. As such, both the petitions are dismissed.

21. As regards prayer of petitioner Shri R.P.Bansal for permanent exemption, a perusal of main petition goes to show that no such relief has been claimed. However, keeping in view the submissions of learned Senior Advocate for the petitioner, it will be open to the learned Trial

Court to sympathetically consider the request on such an application being moved, keeping in view his old age.

SUNITA GUPTA
(JUDGE)

SEPTEMBER 30, 2013
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