

Court No. - 52**Case :-** APPLICATION U/S 482 No. - 42189 of 2024**Applicant :-** Nuri Afsa And 3 Others**Opposite Party :-** State Of U.P. Through Its Principal Secretary Home
U.P. Lucknow And Another**Counsel for Applicant :-** Mohammad Sadab Khan**Counsel for Opposite Party :-** G.A.**Hon'ble Mrs. Manju Rani Chauhan,J.**

1. The applicants have preferred instant application under Section 482 Cr.P.C. challenging the proceedings of Case No. 2316 of 2013, State v. Aquila Begum & others, arising out of Case Crime No. 511 of 2006, under Sections 498-A, 323, 504, 506 IPC & 3/4 D.P. Act, Police Station Chakeri, District Kanpur Nagar, pending in the court of Additional Civil Judge (Junior Division) Ist, Kanpur Nagar¹.

2. Earlier, on 03.01.2025, this Court has passed the following order:

"Heard learned counsel for the applicants as well as learned A.G.A. for the State and perused the record.

Relying upon a judgment passed by Co-ordinate Bench of this Court in Application U/S 482 No.4479 of 2005, learned counsel for the applicants has prayed for quashing of the entire proceedings on the ground of delay in trial. He further submits that till date charges have not been framed.

In view of the above, the trial court is directed to send a report regarding the status of the trial and cause for the delay in concluding the trial in Criminal Case No.2316 of 2013, arising out of Case Crime No.511 of 2006, under Sections 498-A, 323, 504, 506 I.P.C. and Section 3/4 D.P. Act, Police Station - Chakeri, District- Kanpur Nagar and also the following details in tabulated form:-

(1) Dates on which chargesheet was filed and the charge was framed.

(2) Number of prosecution witnesses in the chargesheet.

(3) Number and particulars (i.e. name, nature of witness like eye witness and expert witness etc.) of prosecution witnesses proposed to be examined as per the charge sheet.

(4) List of proposed prosecution witnesses/calendar submitted before the trial court for examination during the trial.

1 'Additional Civil Judge'

(5) Names and number of prosecution witnesses who have been examined before the trial court with dates.

(6) Names and number of witnesses who have been summoned but have not attended the trial proceedings on the appointed dates with dates.

(7) Names and number of witnesses against whom coercive measures have been taken out with dates.

Put up this case on 4th February, 2025 as fresh.

A copy of this order be communicated to the concerned court below through the learned District Judge, Kanpur Nagar by the Registrar (Compliance) by FAX forthwith."

3. In compliance of the aforesaid order, a report dated 29.01.2025 from the Additional Civil Judge (Junior Division), Court No. 1, Kanpur Nagar has been placed on record, as is evident from the office report dated 01.02.2025. As per the report 29.01.2025, charge sheet has been filed on 04.01.2007 and charges against the accused were framed on 03.11.2010; number of witnesses in charge-sheet are six; name and particulars of prosecution witnesses to be examined as per charge-sheet are: P.W.-1 Sahana Parveen (eye witness), P.W.-2 Mohd. Taukeer (Primary Witness), P.W.-3 Kosia Khatun (eye witness); P.W.-4 Omkar Yadav (evidence of FIR), P.W.-5 HCP Badan Singh (Investigating Officer-I & P.W.-6 S.I. Rajkumari Tiwari (Investigating Officer-II). In the list of proposed prosecution witnesses submitted before the trial court for examination during the trial, names are: (1) Sahana Parveen, (2) Mohd. Taukeer, (3) Kosia Khatun, (4) Omkar Yadav, (5) HCP Badan Singh and (6) SI Rajkumari Tiwari. No prosecution witness has been examined till date. The report further says that three prosecution witnesses, namely, PW-1 Sahana Parveen, PW-2 Mohd. Taukeer & PW-3 Kosia Khatun have been summoned by the court, they did not appear before the trial court. As regards names and number of witnesses against whom coercive measures have been taken, they are: PW-1 Sahana Parveen, PW-2 Mohd. Taukeer & PW-3 Kosia Khatun, against whom non-bailable warrants have been issued.

4. The aforesaid report further says that process were returned unserved with respect to PW-1, PW-2 & PW-3. It has emerged that PW-1 Sahana Parveen and PW-3 Kosia Khatun are one and same person. It has also been mentioned in the police report that PW-1 Sahana Parveen has died. The report of Additional Civil Judge further shows that the next date fixed for prosecution evidence is 03.03.2025 and the best efforts would be taken by him to conclude the trial expeditiously.

5. Learned counsel for the applicants relying upon a judgement of Coordinate Bench of this Court in the case of **Surya Nath & Another v. State of U.P. & Another**², and the judgements of Supreme Court in the cases of **Pankaj Kumar v. State of Maharashtra & Ors.**³; **Vakil Prasad Singh v. State of Bihar**⁴ and **Sunil Kumar v. State of U.P. & Anr.**⁵, submits that speedy trial is a right of the accused and any delay in conclusion of the trial would hamper the constitutional rights as recognized in Article 21 of the Constitution of India. In the present case, charge-sheet is of the year 2006 and no prosecution witness has been examined till date, therefore, in view of the law settled in the said judgements, entire proceedings are liable to be quashed.

6. Learned A.G.A. appearing for the State, on the other, hand submits that the judgements as relied upon by learned counsel for the applicants are not applicable in the facts of present case. Details about the status of trial proceedings have been mentioned in the report of the concerned Additional Civil Judge, which have been mentioned in preceding paragraphs. Charges have already been framed, coercive action has been taken against the prosecution witnesses. Against three prosecution witnesses non-bailable warrants have been issued. The next date in the trial is fixed as 03.03.2025 and the Judicial Officer

2 Application U/s 482 No. 4479 of 2005, decided on 01.12.2011

3 (2008) 16 SCC 117 : Criminal Appeal No. 1067 of 2008, decided on 11.07.2008

4 (2009) 3 SCC 355 : Criminal Appeal No. 138 of 2009, decided on 23.01.2009

5 (2023) 8 SCC 481 : Criminal Appeal No. 2255 of 2023, decided on 03.08.2023.

concerned has extended assurance that the trial will be concluded expeditiously.

7. Even otherwise, in the judgement of **Surya Nath (supra)** as relied upon by learned counsel for the applicants, the principle as laid down by the Apex Court in several judgements and the facts of present case are different. In the said case, nature of offence was with respect to embezzlement of meagre amount of Rs.3,000/- relating to occurrence in 1982, wherein even charge-sheet had been submitted in the year 1993, whereas in the present case the FIR was lodged on 26.09.2006 and the charge sheet has been submitted on 05.12.2006.

8. As regards the judgement in **Vakil Prasad Singh (supra)**, learned counsel for the applicants has relied on the observations and directions mentioned in following paragraphs of the said judgement:

“26. Tested on the touchstone of the broad principles enumerated above, we are convinced that in the present case the appellant's constitutional right recognised under Article 21 of the Constitution stands violated.

27. It is manifest from the facts narrated above that in the first instance investigations were conducted by an officer, who had no jurisdiction to do so and the appellant cannot be accused of delaying the trial merely because he successfully exercised his right to challenge an illegal investigation. Be that as it may, admittedly the High Court vide its order dated 7-9-1990 had directed the prosecution to complete the investigation within a period of three months from the date of the said order but nothing happened till 27-2-2007 when, after receipt of notice in the second petition preferred by the appellant complaining about delay in investigation, the Superintendent of Police, Muzaffarpur directed the Deputy Superintendent of Police to complete the investigation. It was only thereafter that a fresh charge-sheet is stated to have been filed on 1-5-2007.

28. It is also pertinent to note that even till date, learned counsel for the State is not sure whether a sanction for prosecuting the appellant is required and if so, whether it has been granted or not.

29. We have no hesitation in holding that at least for the period from 7-12-1990 till 28-2-2007 there is no explanation whatsoever for the delay in investigation. Even the direction issued by the High Court seems to have had no effect on the prosecution and they slept over the matter for almost seventeen years. Nothing could be pointed out by the State, far from being established to show that the delay in investigation or trial was in any way attributable to the appellant. The

prosecution has failed to show any exceptional circumstance which could possibly be taken into consideration for condoning a callous and inordinate delay of more than two decades in investigations and the trial. The said delay cannot, in any way, be said to be arising from any default on the part of the appellant.

30. Thus, on the facts in hand, in our opinion, the stated delay clearly violates the constitutional guarantee of a speedy investigation and trial under Article 21 of the Constitution. We feel that under these circumstances, further continuance of criminal proceedings, pending against the appellant in the Court of the Special Judge, Muzaffarpur, is unwarranted and despite the fact that allegations against him are quite serious, they deserve to be quashed.”

9. The aforesaid case is also not applicable in the facts of present case as the offences in the said case was under Sections 109, 120B IPC & 5(2) of the Prevention of Corruption act, 1947 and the present case is with respect to matrimonial dispute. In **Vakil Prasad Singh (supra)** the investigation of the first incident was conducted by an officer who had no jurisdiction to do so, which is quite different from the facts of present case, due to the reasons mentioned above.

10. The judgement in the case of **Pankaj Kumar (supra)** is also not applicable in the facts of present case due to reasons stated above.

11. Taking into consideration the guidelines as laid down by the Apex Court that the right to speedy trial in all criminal persecutions is a inalienable right under Article 21 of the Constitution of India. This right is applicable not only to actual proceedings in court but also includes speedy proceeding in police investigations as well. Thus, the right to speedy trial extends equally to all criminal prosecutions and is not confined to any particular category of cases. 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 the present case as per the report, details of facts of the case and the status of trial, taking into

consideration the facts of the case, the status of trial as per the report, the prayer made, no ground is made out for quashing the proceedings.

12. Accordingly, the application is rejected.

Order Date :- 11.2.2025

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