

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION NO. 4934 OF 2015
ALONG WITH
CRIMINAL APPLICATION NO. 701 OF 2015**

Shri.Natubhai Gomanbhai Patel	]	
R/at 31, Yogi Sadan,	]	
Opp Silvassa Police Station,	]	
Silvassa.	]	..Petitioner
V/s.		
1. Union Territory of Dadra & Nagar	]	
Haveli Silvassa	]	
	]	
2. State of Maharashtra	]	.. Respondents

Mr.Mahesh Jethmalani Senior Advocate a/w Ms.Chitra R.
Pawar, for the Petitioner.
Ms.P.J. Kantharia, P.P. for Union Territory.
Ms.A.A. Mane, APP for the Respondent-(CBI)State.

CORAM : RAVINDRA V. GHUGE, J.

DATE : 05th JULY, 2016.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner, by this petition, prays for quashing the trial in R.C.C. No.45/2000 pending before the learned Chief Judicial Magistrate, Dadra and Nagar Haveli, Silvassa on the

ground that the petitioner's right to speedy trial under Article 21 of the Constitution has been infringed. It is prayed, in the alternative, that the petitioner/accused be discharged from the various offences on the ground that the charges are baseless and there is no evidence to prove the offences against the petitioner.

3. The submissions of Shri.Jethmalani, the learned Senior Advocate, for the petitioner, can be summarised as follows :-

(a) On 30-12-1999 an incident took place by which the petitioner, along with other persons, by way of an alleged unlawful assembly have allegedly entered the premises of the complainant's hotel.

(b) An FIR came to be registered vide CR No.294/1999 for offences punishable under Sections 143, 147, 148, 149, 452, 427, 504 and 506 of the Indian Penal Code, on 31-12-1999.

(c) The petitioner who is accused no.4 has not committed any offence and has not caused hurt to the informant.

(d) *It was not a preplanned attack.*

(e) *Chargesshet is filed on 13-04-2000.*

(f) *After 01-09-2003, case RCC No.45/2000 surprisingly went missing, did not appear on board and is believed to have been treated as a dormant case file for reasons unknown to the petitioner.*

(g) *The petitioner is a public figure and has been elected as a member of the parliament in 2009 and again in 2014. Presently, he is a sitting M.P. of the ruling party.*

(h) *The Zilla Parishad and Panchayat Samiti elections were scheduled on 25th October 2015.*

(i) *Case RCC No.45/2000 was surprisingly taken on board after being retrieved from the Dormant file status.*

(j) *On 08-10-2015 after the file was taken on board, a non-bailable warrant (NBW) was issued against all the accused.*

(k) *The petitioner has always been cooperating with the proceedings in the case.*

(l) *It was neither at the instance of the petitioner, nor the petitioner's fault that the file was in Dormant stage.*

(m) *The petitioner, even if it is assumed that the offence could be proved, cannot be said to have committed a grave or serious offence.*

(n) *No hurt was caused to anybody in the incident that took place.*

(o) *The weapon that was carried by the mob and not by the petitioner/accused, was either a cricket stump or an iron rod.*

(p) *The charges which have been reproduced in the memo of the Petition would indicate that there is no serious charge against the petitioner, except under Section 442 of the Indian Penal Code.*

(q) *Reliance has been placed upon the judgment of the Hon'ble Supreme Court in the matter of Santosh De V/s. Archana Guha & Others {1994*

Supp(3) SCC 735}, Pankaj Kumar V/s. State of Maharashtra and Others {(2008) 16 SCC 117} and Vakil Prasad Singh V/s. State of Bihar {AIR 2009 SC 1822}.

(r) The right of the petitioner under Article 21 to a speedy trial has been infringed.

(s) He has a right to speedy trial which cannot be taken away.

(t) The charges were framed on 21-10-2015 and the petitioner approached this Court in Criminal Writ Petition No.4279 of 2015 raising a grievance that the charges have been wrongly framed.

(u) By order dated 28-10-2015, the petitioner/accused succeeded in this Court and the Trial Court was directed to re-frame the charges under orders of this Court.

(v) The delay in the prosecution is not attributed to the conduct of the petitioner.

(w) Nature of offence is neither grave nor serious.

(x) *The case was in Dormant state from 2003 to 2015 for about 12 years and this cannot be attributed to the conduct of the petitioner.*

(y) *The petitioner had prayed for transfer of proceedings by filing Criminal application No.701/2015 before this Court which is pending adjudication.*

(z) *Considering the fact that the concerned Magistrate has now been transferred, Criminal Application No.701/2015 can be disposed of by this Court as being infructuous.*

4. The learned APP, appearing on behalf of the Respondents, has seriously opposed this petition. Her submissions can be summarized as under:-

(a) *It is not known as to why the file was treated as a Dormant file from 2003.*

(b) *The respondents do not have any reason to assign, on the basis of the record, as to why there was no Court hearing in the said matter and as to why the file was not on board before the Court after 01-09-2003.*

(c) The charges leveled against the petitioner cannot be said to be minor charges.

(d) Ever-since the hearing commenced on 8th October 2015, the petitioner who is accused no.4, has consistently remained absent and avoided the trial.

(e) The petitioner has put forth a reason that because he is a member of the parliament for two consecutive terms, he had to attend election campaigning and hence could not remain present.

(f) When the petitioner challenged the framing of charges in this Court in Criminal WP No.4279/2015 which was allowed by this Court on 28-10-2015, the petitioner did not raise a ground of violation of his rights under Article 21 of the Constitution.

(g) The petitioner has been systematically resorting to various acts of avoiding the trial.

(h) The moment his application for adjournment on 10th, 12th and 15th October 2015 was rejected, he applied for transfer of proceedings.

(i) After the said transfer application was rejected, he approached this Court which has not granted him interim relief and infact, by order dated 07-03-2016, it was clarified that the pendency of this petition would not be construed to mean a stay to the proceedings in RCC No.445/2000.

(j) Now that the petitioner makes a statement that the Magistrate, from whose Court the proceedings were sought to be transferred, is now moved out of the said posting, the pending Criminal Application No.701/2015 may be disposed of as being infructuous by recording the statement of the petitioner.

(k) After the charges were framed and the order of re-framing of charges was passed by this Court, the said charges were re-framed on 05-11-2015.

(l) Within a month i.e. on 14-12-2015, the petitioner approached this Court alleging violation of his rights under Article 21. By the order of this Court (Coram: A.V. Nirgude,J) dated 17-12-2015, the proceedings before the Magistrate were

stayed.

(m) The steps taken by the petitioner since October 2015 would indicate that the petitioner never desired to participate in the trial.

(n) Though the petitioner is a member of parliament from 2009 till this date, it would not mean that the pending proceedings should be quashed only because of his status.

(o) The petitioner being a public figure, must behave responsibly and as such no special status can be attributed to him.

(p) The trial can proceed within a time frame.

(q) The charges leveled upon the petitioner are grave and serious as they indicate that a mob had planned to attack the informant and it was only on account of the timely arrival of the police that the said attack was averted and they fled from his premises.

5. I have considered the submissions of the learned Advocates as have been recorded herein above.

6. Shri.Jethmalani learned Senior Advocate has specifically contended that in the light of the petitioner's right to speedy trial, which is covered by Article 21, has been violated, the pending trial has to be put to rest and the proceedings deserve to be quashed.

7. The charges, reframed under the orders of this Court, on 05-11-2015 read as under:-

1. That on 30/12/1999 at about 9.00 pm you accused no.1 Dharmesh Jugal Patel, you accused no.4 Nattu Goman Patel, you accused no.5 Kamlesh Goman Patel and one more person in furtherance of your common intention went to the Hotel of the complainant Chetanbhai Gajanan Jadhav situated at Kharpada on Luhari Road in B-Nanki Industrial estate intentionally insulted him by holding his shirt by you accused no.1 Dharmesh and by pushing and pulling him by you all accused. At that time you accused no.1 Dharmesh Jugal Patel abused him and when complainant raised shout you all accused left him and thereby gave provocation to complainant intending or knowing it to be likely that such provocation will cause complainant to break public peace or to commit any other offence and thereby committed an offence punishable under section 504 read with 34 of IPC and within my cognizance.

2. That on same date, time and place you

accused no.1 Dharmesh Jugal Patel, you accused no.4 Natu Goman Patel, you accused no.5 Kamlesh Goman Patel and one more person committed criminal intimidation by threatening complainant with injury to his person with intent to cause alarm to complainant or to cause him to close his hotel business i.e. to omit to do an act which he is legally bound to do and that you all accused have hereby committed an offence punishable under section 506 read with 34 of IPC and within my cognizance.

3. Then on the same date i.e. 30/12/99 at about 9.15 p.m. you all accused and deceased accused no.8 Shailesh Patel and deceased accused no.9 Jugal Surji Patel were member of an unlawful assembly the common object of which was to commit mischief by causing loss or damage to the hotel of the complainant by committing criminal trespass in it and by means of criminal force or show of criminal force to compel complainant to close his hotel business to which he not legally bound to do or to omit to do what he is legally entitled to do and thereby committed an offence punishable under section 143 IPC and within my cognizance.

4. That you accused no. 1 Dharmesh Jugal Patel along with other accused no. 2 to 10 on 30.12.1999 at about 09:15 p.m. in the Hotel of complainant situated at Kharadpada on Luhari road in B-Nanji Industrial Estate were a member of an unlawful assembly and in prosecution of the common object of said assembly namely to commit mischief by causing loss or damage to the Hotel of complainant by committing criminal trespass in it and by means of criminal force or show of criminal force to compel complainant to close his Hotel business to which

he is not legally bound to do or to omit to do what he is legally entitled to do committed an offence of rioting, punishable under section 147, Indian Penal Code and within my cognizance.

5. *That you accused no. 2 Haresh Ramu Patel along with other accused no. 1 and 3 to 10 on 30.12.1999 at about 09:15 p.m. in the Hotel of complainant situated at Kharadpada on Luhari road in B-Nanji Industrial Estate were a member of an unlawful assembly and in prosecution of the common object of said assembly namely to commit mischief by causing loss or damage to the Hotel of complainant by committing criminal trespass in it any by means of criminal force or show of criminal force to compel complainant to close his Hotel business to which he is not legally bound to do or to omit to do what he is legally entitled to do committed an offence of rioting, punishable under section 147, Indian Panel Code and within my cognizance.*

6. *That you accused no. 3 Mahesh Ishwar Patel along with other accuse no. 1, 2 and 4 to 10 on 30.12.1999 at about 09:15 p.m. in the Hotel of complainant situated at Kharadpada on Luhari road in B-Nanji Industrial Estate were a member of an unlawful assembly and in prosecution of the common object of said assembly namely to commit mischief by causing loss or damage to the Hotel of complainant by committing criminal trespass in it and by means of criminal force or show of criminal force to compel complainant to close his Hotel business to which he is not legally bound to do or to omit to do what he is legally entitled to do committed an offence of rioting, punishable under section 147, Indian Penal Code and within my*

cognizance.

7. That you accused no.4 Natu Goman Patel along with other accused no.1 to 3 and 5 to 10 on 30-12-1999 at about 9.15 pm in the hotel of complainant situated at Kharadpada an Luhari Road in B-Nanki Industrial estate were a member of an unlawful assembly and in prosecution of the common object of the said assembly namely to commit mischief by causing loss or damage to the hotel of complainant by committing criminal trespass in it and by means of criminal force or show of criminal force to compel complainant to close his hotel business to which he not legally bound to do or to omit to do what he is legally entitled to do committed an offence of rioting punishable u/s. 147 IPC and within my cognizance.

8. That you accused no. 5 Kamlesh Goman Patel along with other accused no. 1 to 4 and 6 to 10 on 30.12.1999 at about 09:15 p.m. in the Hotel of complainant situated at Kharadpada on Luhari road in B-Nanji Industrial Estate were a member of an unlawful assembly and in prosecution of the common object of said assembly namely to commit mischief by causing loss or damage to the Hotel of complainant by committing criminal trespass in it and by means of criminal force or show of criminal force to compel complainant to close his Hotel business to which he is not legally bound to do or to omit to do what he is legally entitled to do committed an offence of rioting, punishable under section 147, Indian Panel Code and within my cognizance.

9. That you accused no. 6 Anil Mahadu Patel along with other accused no. 1 to 5 and 7 to 10

on 30.12.1999 at about 09:15 p.m. in the Hotel of complainant situated at Kharadpada on Luhari road in B-Nanji Industrial Estate were a member of an unlawful assembly and in prosecution of the common object of said assembly namely to commit mischief by causing loss or damage to the Hotel of complainant by committing criminal trespass in it and by means of criminal force or show of criminal force to compel complainant to close his Hotel business to which he is not legally bound to do or to omit to do what he is legally entitled to do committed an offence of rioting, punishable under section 147, Indian Penal Code and within my cognizance.

10. That you accused no. 7 Dinesh Manilal Patel along with other accused no. 1 to 6 and 8 to 10 on 30.12.1999 at about 09:15 p.m. in the Hotel of complainant situated at Kharadpada on Luhari road in B-Nanji Industrial Estate were a member of an unlawful assembly and in prosecution of the common object of said assembly namely to commit mischief by causing loss or damage to the Hotel of complainant by committing criminal trespass in it and by means of criminal force or show of criminal force to compel complainant to close his Hotel business to which he is not legally bound to do or to omit to do what he is legally entitled to do committed an offence of rioting, punishable under section 147, Indian Penal Code and within my cognizance.

11. That you accused no. 10 Vasant Babar Patel along with other accused no. 1 to 9 and 8 to 10 on 30.12.1999 at about 09:15 p.m. in the Hotel of complainant situated at Kharadpada on Luhari road in B-Nanji Industrial Estate were a

member of an unlawful assembly and in prosecution of the common object of said assembly namely to commit mischief by causing loss or damage to the Hotel of complainant by committing criminal trespass in it and by means of criminal force or show of criminal force to compel complainant to close his Hotel business to which he is not legally bound to do or to omit to do what he is legally entitled to do committed an offence of rioting, punishable under section 147, Indian Penal Code and within my cognizance.

12. That you accused no. 1 Dharmesh Jugal Patel along with other accused no. 2 to 10 on 30.12.1999 at about 09:15 p.m. in the Hotel of complainant situated at Kharadpada on Luhari road in B-Nanji Industrial Estate were a member of an unlawful assembly and were at the time armed with a deadly weapon namely cricket stump or iron bar and thereby committed an offence punishable under section 148 of Indian Penal Code and within my cognizance.

13. That you accused no. 2 Haresh Ramu Patel along with other accused no. 1 and 3 to 10 on 30.12.1999 at about 09:15 p.m. in the Hotel of complainant situated at Kharadpada on Luhari road in B-Nanji Industrial Estate were a member of an unlawful assembly and were at the time armed with a deadly weapon namely cricket stump or iron bar and thereby committed an offence punishable under section 148 of Indian Penal Code and within my cognizance.

14. That you accused no. 3 Mahesh Ishwal Patel along with other accused no. 1, 2 and 4 to 10 on 30.12.1999 at about 09:15 p.m. in the Hotel of complainant situated at Kharadpada on

Luhari road in B-Nanji Industrial Estate were a member of an unlawful assembly and were at the time armed with a deadly weapon namely cricket stump or iron bar and thereby committed an offence punishable under section 148 of Indian Penal Code and within my cognizance.

15. *That you accused no.4 Natu Goman Patel along with other accused no. 1 to 3 and 5 to 10 on 30-12-1999 at about 9.15 pm in the hotel of complainant situated at Kharpada on Luhari Road in B-Nanki Industrial estate were a member of an unlawful assembly and were at the time armed with a deadly weapon namely cricket stump or iron bar and thereby committed an offence punishable of rioting under section 148 IPC and within my cognizance.*

16. *That you accused no. 5 Kamlesh Goman Patel along with other accused no. 1 to 4 and 6 to 10 on 30.12.1999 at about 09:15 p.m. in the Hotel of complainant situated at Kharadpada on Luhari road in B-Nanji Industrial Estate were a member of an unlawful assembly and were at the time armed with a deadly weapon namely cricket stump or iron bar and thereby committed an offence punishable under section 148 of Indian Penal Code and within my cognizance.*

17. *That you accused no. 6 Anil Mahadu Patel along with other accused no. 1 to 5 and 7 to 10 on 30.12.1999 at about 09:15 p.m. in the Hotel of complainant situated at Kharadpada on Luhari road in B-Nanji Industrial Estate were a member of an unlawful assembly and were at the time armed with a deadly weapon namely cricket stump or iron bar and thereby committed an offence punishable under section 148 of*

Indian Penal Code and within my cognizance.

18. That you accused no. 7 Dinesh Manilal Patel along with other accused no. 1 to 6 and 8 to 10 on 30.12.1999 at about 09:15 p.m. in the Hotel of complainant situated at Kharadpada on Luhari road in B-Nanji Industrial Estate were a member of an unlawful assembly and were at the time armed with a deadly weapon namely cricket stump or iron bar and thereby committed an offence punishable under section 148 of Indian Penal Code and within my cognizance.

19. That you accused no. 10 Vasant Babar Patel along with other accused no. 1 to 9 and 8 to 10 on 30.12.1999 at about 09:15 p.m. in the Hotel of complainant situated at Kharadpada on Luhari road in B-Nanji Industrial Estate were a member of an unlawful assembly and were at the time armed with a deadly weapon namely cricket stump or iron bar and thereby committed an offence punishable under section 148 of Indian Penal Code and within my cognizance.

20. That you all accused on 30-12-1999 at about 9.15 pm at Kharadpada in the hotel of complainant situated at Kharpada on Luhari Road in B-Nanji Industrial estate were a member of an unlawful assembly, in prosecution of the common object of said assembly namely to commit mischief by causing loss or damage to the hotel of complainant by committing criminal trespass in it and by means of criminal force or show of criminal force to compel the complainant to close his hotel business to which he is not legally bound to do or to omit to do what he is legally entitled to do and you all accused have caused mischief causing damage to the amount of Rs.18350/- to the hotel of

complainant and then committed house trespass after preparation for hurt, assault or wrongful restrain in the courtyard of house of complainant situated in schoolfaliya, kharadpada which offence you knew to be likely to be committed in prosecution of the common object of the said assembly, and you, being a member of such assembly, at the time of committing that offence, are thereby guilty of an offence punishable under section 149, IPC and within my cognizance.

21. That you all accused on 30-12-1999 at about 9.15 pm in the hotel of complainant situated at Kharpada on Luhari Road in B-Nanji Industrial estate committed mischief by causing wrongful loss or damage to the property of complainant valued at Rs.18350/- (More than Rs.50/-) and thereby committed an offence punishable under section 427 IPC and within my cognizance.

22. That you all accused on 30-12-99 at about 10 pm at schoolfaliya, Kharadpada committed house trespass by entering into the courtyard of house of the complainant and went upto the door of house of complainant, used as a human dwelling or place of worship or as a place of custody of goods having made preparation for causing hurt to or assaulting or wrongfully restraining the said complainant Chetan Gajanand Jadhav or to put him in fear of hurt or of assault or of wrongful restrain and that you all accused have thereby committed an offence punishable u/s 452 IPC and within my cognizance.”

8. Specific reliance has been placed by the petitioner

upon paragraph nos.9, 10, 11 and 12 of the Santosh De judgment (Supra) which read as under:-

“9. This appeal is preferred by the complainant against the order of the Patna High Court quashing the criminal proceedings on the ground that the inordinate delay in proceeding with and concluding the prosecution case against the accused has defeated his fundamental right to speedy trial. A few facts may be noticed.

10. In the occurrence that took place in the village concerned herein, on 9-4-1973, one Nand Kumar Singh received gunshot injuries. First information Report was lodged on the same day. Nand Kumar Singh succumbed to his injuries later whereupon the FIR was converted to one under Section 302 in the place of Section 307. On 25-5-1974, charge-sheet was filed and the case was committed to sessions court on 15-7-1974. No trial took place for a period of six years when on 3-6-1980 the case was transferred to the file of IIIrd Additional Sessions Judge, Siwan. Even here, it took about two years for charges to be framed by the Court. The cross-examination of witnesses began in 1982 and only four witnesses were examined over a period of two years. Thereafter, the prosecution obtained as many as ninety adjournments for producing other witnesses including the Inquiry Officer.

11. The writ petition was filed by the accused persons in the High Court of Patna on 29-08-1986 and it was allowed on 2-3-1987.

12. The State has not chosen to question the

judgment of the High Court. It is only the complainant who has come to this Court. Learned counsel for the appellant, Shri.A.K.Srivastava says that because the offence is of a serious nature involving murder and dacoity and further because the accused was in jail only for a period of two years, this was not a fit case for quashing the charge. He prays that the judgment of the High Court be set aside and the sessions trial be directed to be proceeded with expeditiously.”

9. It needs to be noted that the facts of the case in hand are different. The crime is committed on 30-12-1999 and the charge-sheet is promptly submitted on 13-04-2000 which is within three months and 15 days. The case in Santosh De (Supra) was on board through out and the prosecution took 90 adjournments. In the instant case, the case disappeared from the board on 01-09-2003 and was taken on board by the Magistrate on 08-10-2015. It appears that the said Magistrate may have taken a stock of the pending files and therefore placed RCC No.45/2000 on board and began a day-to-day hearing.

10. It is submitted by Shri.Jethmalani that in the

Santosh De judgment (Supra), the trial had not taken place for a period of six years. It was after eight years that the charges were framed by the Court. The victim had suffered gunshot injuries, who subsequently succumbed to his injuries, whereupon the FIR was converted to one under Section 302 of the Indian Penal Code. It is, therefore, submitted that in this background the Hon'ble Apex Court had quashed the trial and let the accused free. He prays for a similar relief.

11. The petitioner has placed reliance upon paragraph no.4, 11, 14 and 22 to 28 of the Pankaj Kumar judgment which read as under:-

“4. Investigations dragged on for over three years and ultimately on 22-2-1991, a charge-sheet was filed in the Court of the Special Judge, Latur against twelve persons for offences punishable under Sections 120-B, 409, 420, 465, 468, 471, 477-A, 101 and 34 of the Penal Code, 1860 (for short “IPC”) and Sections 5(1) (c),(d) along with Section 5(2) of the Prevention of Corruption Act, 1947. In addition thereto, Sections 13(1)(c),(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 have also been invoked against Accused 1 to 9. The first nine accused were the employees of the government milk plant and the remaining three being the appellant and his father and mother,

arraigned as Accused 11,10 and 12 respectively.

11. Lastly, it was pleaded that the appellant has been deprived of his constitutional right to have a speedy investigation and trial, in as much as the FIR was registered on 12-05-1987 for the offences allegedly committed sometime in the year 1981; charge-sheet was filed on 22-2-1991 but till date not a single witness has been examined by the prosecution. In support, reliance was placed on a decision of this Court in Santosh De V. Archana Guha wherein a delay of eight years in commencing the trial was held to be violative of the right of the accused to a speedy trial and the High Court's decision quashing the criminal proceedings on that ground was affirmed.

14. The scope and ambit of powers of the High Court under Section 482 Cr.P.C. or Article 227 of the Constitution has been enunciated and reiterated by this Court in a series of decisions and several circumstances under which the High Court can exercise jurisdiction in quashing proceedings have been enumerated. Therefore, we consider it unnecessary to burden the judgment by making reference to all the decisions on the point. It would suffice to state 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. (See Janta Dal v. H.S. Choudhary, Kurushetra University v. State of Haryana and State of Haryana V. Bhajan Lal).

22. *It is, therefore, well settled that the right to speedy trial in all criminal prosecutions 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 prosecutions and is not confined to any particular category of cases.*

23. *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.*

24. 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 stands violated. It is common ground that the First Information Report was recorded on 12th May, 1987 for the offences allegedly committed in the year 1981, and after unwarranted prolonged investigations, involving afore-stated three financial irregularities; the chargesheet was submitted in Court on 22nd February, 1991. Nothing happened till April, 1999, when the appellant and his deceased mother filed criminal writ petition seeking quashing of proceedings before the trial court.

25. Though, it is true that the plea with regard to inordinate delay in investigations and trial has been raised before us for the first time but we feel that at this distant point of time, it would be unfair to the appellant to remit the matter back to the High Court for examining the said plea of the appellant. Apart from the fact that it would further protract the already delayed trial, no fruitful purpose would be served as learned Counsel for the State very fairly stated before us that he had no explanation to offer for the delay in investigations and the reason why the trial did not commence for eight long years. Nothing, whatsoever, could be pointed out, far from being established, to show that the delay was in any way attributable to the appellant.

26. Moreover, having regard to the nature of the accusations against the appellant, briefly referred to above, who was a young boy of about eighteen years of age in the year 1981, when the

acts of omission and commission were allegedly committed by the concerns managed by his parents, who have since died, we feel that the extreme mental stress and strain of prolonged investigation by the Anti Corruption Bureau and the sword of damocles hanging perilously over his head for over fifteen years must have wrecked his entire career.

27. Be that as it may, the prosecution has failed to show any exceptional circumstance, which could possibly be taken into consideration for condoning the prolongation of investigation and the trial. The lackadaisical manner of investigation spread over a period of four years in a case of this type and inordinate delay of over eight years (excluding the period when the record of the trial court was in the High Court), is manifestly clear.

28. Thus, on facts in hand, we are convinced that the appellant has been denied his valuable constitutional right to a speedy investigation and trial and, therefore, criminal proceedings initiated against him in the year 1987 and pending in the Court of the Special Judge, Lature, deserve to be quashed on this short ground alone.”

12. It has therefore been argued that since the matter had got delayed, the Apex Court had come to a conclusion that the rights of the petitioner under Article 21 had been violated and hence the quashing of the proceedings could be the only

result in this petition.

13. It is trite law that it has to be seen whether the delay caused in the prosecution/trial in proceedings of such nature, is attributed to the conduct of the accused. It is also to be seen as to whether the constitutional right recognized under Article 21 can be said to be violated on account of the delay in such proceedings.

14. The Hon'ble Apex Court has ruled in the Pankaj Kumar case (Supra), that in every case wherein the right to speedy trial is alleged to have been infringed, the Court will have to perform a balancing act by taking into account, the entire attending circumstances and assess, as to whether such a right appears to have been violated. If the Court, on due circumspection, concludes that quashing of proceedings may not sub-serve the interest of justice, it could pass an equitable order including fixation of time for the conclusion of the trial.

15. The Hon'ble Supreme Court (7 Judges Bench) in the

matter of P. Ramchandrarao V/s. State of Karnataka {(2002) 4-SCC-578} dealt with a similar situation and has laid down the law that the exercise of jurisdiction under section 482 of Cr.P.C. by this Court should be in rarest of rare cases.

16. It would be apposite to reproduce the observations of the Hon'ble Supreme Court in paragraph Nos.1, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 28, 29 and 38 of the P. Ramchandra Rao Judgment (Supra), as under:-

1. No person shall be deprived of his life or his personal liberty except according to procedure established by law declares [Article 21](#) of the Constitution. Life and liberty, the words employed in shaping [Article 21](#), by the Founding Fathers of the Constitution, are not to be read narrowly in the sense drearily dictated by dictionaries; they are organic terms to be construed meaningfully. Embarking upon the interpretation thereof, feeling the heart-throb of the Preamble, deriving strength from the Directive Principles of State Policy and alive to their constitutional obligation, the Courts have allowed [Article 21](#) to stretch its arms as wide as it legitimately can. The mental agony, expense and strain which a person proceeded against in criminal law has to undergo and which, coupled with delay, may result in impairing the capability or ability of the accused to defend himself have persuaded the constitutional courts of the country in holding the right to speedy trial a manifestation of fair, just and reasonable procedure enshrined in [Article 21](#). Speedy trial, again,

would encompass within its sweep all its stages including investigation, inquiry, trial, appeal, revision and re-trial in short everything commencing with an accusation and expiring with the final verdict the two being respectively the terminus a quo and terminus ad quem ___ of the journey which an accused must necessarily undertake once faced with an implication. The constitutional philosophy propounded as right to speedy trial has though grown in age by almost two and a half decades, the goal sought to be achieved is yet a far-off peak. Myriad fact-situations bearing testimony to denial of such fundamental right to the accused persons, on account of failure on the part of prosecuting agencies and executive to act, and their turning an almost blind eye at securing expeditious and speedy trial so as to satisfy the mandate of [Article 21](#) of the Constitution have persuaded this Court in devising solutions which go to the extent of almost enacting by judicial verdict bars of limitation beyond which the trial shall not proceed and the arm of law shall lose its hold. In its zeal to protect the right to speedy trial of an accused, can the Court devise and almost enact such bars of limitation though the Legislature and the Statutes have not chosen to do so ___ is a question of far-reaching implications which has led to the constitution of this Bench of seven-Judge strength.

16. Raj Deo Sharma (I) came up once again for consideration of this Court in Raj Deo Sharma Vs. State of Bihar (1999) 7 SCC 604, hereinafter Raj Deo Sharma (II). This was on an application filed by Central Bureau of Investigation (CBI) for clarification (and also for some modification) in the directions issued. The three-Judge Bench which heard the matter consisted of K.T. Thomas, J. and M. Srinivasan, J. who were also on the Bench issuing directions in Raj Deo Sharma (I) and M.B. Shah, J. who was not on

the Bench in *Raj Deo Sharma (I)*. In the submission of CBI the directions of the Court made in *Raj Deo Sharma (I)* ran counter to A.R. Antulay and did not take into account the time taken by the Court on account of its inability to carry on day to day trial due to pressure of work. The CBI also pleaded for the directions in *Raj Deo Sharma (I)* being made prospective only, i.e., period prior to the date of directions in *Raj Deo Sharma (I)* being excluded from consideration. All the three learned Judges wrote separate judgments. K.T. Thomas, J. by his judgment, to avert 'possibility of miscarriage of justice', added a rider to the directions made in *Raj Deo Sharma (I)* that an additional period of one year can be claimed by the prosecution in respect of prosecutions which were pending on the date of judgment in *Raj Deo Sharma (I)* and the Court concerned would be free to grant such extension if it considered it necessary in the interest of administration of criminal justice. M. Srinivasan, J. in his separate judgment, assigning his own reasons, expressed concurrence with the opinion expressed and the only clarification ordered to be made by K.T. Thomas, J. and placed on record his express disagreement with the opinion recorded by M.B. Shah, J.

17. M.B. Shah, J. in his dissenting judgment noted the most usual causes for delay in delivery of criminal justice as discernible from several reported cases travelling upto this Court and held that the remedy for the causes of delay in disposal of criminal cases lies in effective steps being taken by the Judiciary, the Legislature and the State Governments, all the three. The dangers behind constructing time-limit barriers by judicial dictum beyond which a criminal trial or proceedings could not proceed, in the opinion of M.B. Shah, J., are (i) it would affect the smooth functioning of the society in accordance with law and

finally the Constitution. The victims left without any remedy would resort to taking revenge by unlawful means resulting in further increase in the crimes and criminals. People at large in the society would also feel unsafe and insecure and their confidence in the judicial system would be shaken. Law would lose its deterrent effect on criminals; (ii) with the present strength of Judges and infrastructure available with criminal courts it would be almost impossible for the available criminal courts to dispose of the cases within the prescribed time-limit; (iii) prescribing such time-limits may run counter to the law specifically laid down by Constitution Bench in Antulay's case. In the fore-quoted thinking of M.B. Shah, J. we hear the echo of what Constitution Bench spoke in Kartar Singh Vs. State of Punjab (1994) 3 SCC 569, vide para 351:

“351, "No doubt, liberty of a citizen must be zealously safeguarded by the courts; nonetheless the courts while dispensing justice in cases like the one under the TADA Act, should keep in mind not only the liberty of the accused but also the interest of the victim and their near and dear and above all the collective interest of the community and the safety of the nation so that the public may not lose faith in the system of judicial administration and indulge in private retribution."

18. *At the end M.B. Shah, J. opined that order dated 8.10.1998 made in Raj Deo Sharma (I) requires to be held in abeyance and the State Government and Registrars of the High Courts ought to be directed to come up with specific plans for the setting up of additional courts/special courts (permanent/ad hoc) to cope up with the pending workload on the basis of available figures of pending cases also by taking into consideration the criteria for disposal of criminal cases prescribed by various High*

Courts. In conclusion, the Court directed the application filed by the CBI to be disposed of in terms of the majority opinion.

19. A perception of the causes for delay at the trial and in conclusion of criminal proceedings is necessary so as to appreciate whether setting up bars of limitation entailing termination of trial or proceedings can be justified. The root cause for delay in dispensation of justice in our country is poor judge-population-ratio. Law Commission of India in its 120th Report on Manpower Planning in Judiciary (July 1987), based on its survey, regretted that in spite of [Article 39A](#) added as a major Directive Principle in the Constitution by 42nd Amendment (1976), obliging the State to secure such operation of legal system as promotes justice and to ensure that opportunities for securing justice are not denied to any citizen several reorganisation proposals in the field of administration of justice in India have been basically patch work, ad hoc and unsystematic solutions to the problem. The judge-population-ratio in India (based on 1971 census) was only 10.5 judges per million population while such ratio was 41.6 in Australia, 50.9 in England, 75.2 in Canada and 107 in United States. The Law Commission suggested that India required 107 judges per million of Indian population; however to begin with the judge strength needed to be raised to five-fold, i.e., 50 judges per million population in a period of five years but in any case not going beyond ten years. Touch of sad sarcasm is difficult to hide when the Law Commission observed (in its 120th Report, *ibid*) that adequate reorganisation of the Indian judiciary is at the one and at the same time everybody's concern and, therefore, nobody's concern. There are other factors contributing to the delay at the trial. In *A.R. Antulay's case*, vide para 83, the Constitution Bench

has noted that in spite of having proposed to go on with the trial of a case, five days a week and week after week, it may not be possible to conclude the trial for reasons, viz. (1) non-availability of the counsel, (2) non-availability of the accused, (3) interlocutory proceedings, and (4) other systemic delays. In addition, the Court noted that in certain cases there may be a large number of witnesses and in some offences, by their very nature, the evidence may be lengthy. In *Kartar Singh Vs. State of Punjab* (1994) 3 SCC 569 another Constitution Bench opined that the delay is dependent on the circumstances of each case because reasons for delay will vary, such as (i) delay in investigation on account of the widespread ramifications of crimes and its designed network either nationally or internationally, (ii) the deliberate absence of witness or witnesses, (iii) crowded dockets on the file of the court etc. In *Raj Deo Sharma (II)*, in the dissenting opinion of M.B. Shah, J., the reasons for delay have been summarized as, (1) Dilatory proceedings; (2) Absence of effective steps towards radical simplification and streamlining of criminal procedure; (3) Multi-tier appeals/revision applications and diversion to disposal of interlocutory matters; (4) Heavy dockets; mounting arrears; delayed service of process; and (5) Judiciary, starved by executive by neglect of basic necessities and amenities, enabling smooth functioning.

20. Several cases coming to our notice while hearing appeals, petitions and miscellaneous petitions (such as for bail and quashing of proceedings) reveal, apart from inadequate judge strength, other factors contributing to the delay at the trial. Generally speaking, these are: (i) absence of, or delay in appointment of, public prosecutors proportionate with the number of courts/cases; (ii) absence of or belated service of summons and warrants on the

accused/witnesses;

(iii) non-production of under trial prisoners in the Court; (iv) presiding Judges proceeding on leave, though the cases are fixed for trial; (v) strikes by members of Bar; and (vi) counsel engaged by the accused suddenly declining to appear or seeking an adjournment for personal reasons or personal inconvenience. It is common knowledge that appointments of public prosecutors are politicized. By convention, government advocates and public prosecutors were appointed by the executive on the recommendation of or in consultation with the head of judicial administration at the relevant level but gradually the executive has started bypassing the merit based recommendations of, or process of consultation with, District and Sessions Judges. For non- service of summons/orders and non-production of undertrial prisoners, the usual reasons assigned are shortage of police personnel and police people being busy in VIP duties or law and order duties. These can hardly be valid reasons for not making the requisite police personnel available for assisting the Courts in expediting the trial. The members of the Bar shall also have to realize and remind themselves of their professional obligation — legal and ethical, that having accepted a brief for an accused they have no justification to decline or avoid appearing at the trial when the case is taken up for hearing by the Court. All these factors demonstrate that the goal of speedy justice can be achieved by a combined and result-oriented collective thinking and action on the part of the Legislature, the Judiciary, the Executive and representative bodies of members of Bar.

21. Is it at all necessary to have limitation bars terminating trials and proceedings? Is there no effective mechanisms available for achieving the same end? The [Criminal Procedure Code](#), as it stands,

incorporates a few provisions to which resort can be had for protecting the interest of the accused and saving him from unreasonable prolixity or laxity at the trial amounting to oppression. [Section 309](#), dealing with power to postpone or adjourn proceedings, provides generally for every inquiry or trial, being proceeded with as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same to 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. Explanation-2 to [Section 309](#) confers power on the Court to impose costs to be paid by the prosecution or the accused, in appropriate cases, and putting the parties on terms while granting an adjournment or postponing of proceedings. This power to impose costs is rarely exercised by the Courts. [Section 258](#), in Chapter XX of [Cr.P.C.](#), on Trial of Summons- cases, empowers the Magistrate trying summons cases instituted otherwise than upon complaint, for reasons to be recorded by him, to stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, to pronounce a judgment of acquittal, and in any other case, release the accused, having effect of discharge. This provision is almost never used by the Courts. In appropriate cases, inherent power of the High Court, under [Section 482](#) can be invoked to make such orders, as may be necessary, to give effect to any order under [the Code](#) of Criminal Procedure or to prevent abuse of the process of any Court, or otherwise, to secure the ends of justice. The power is wide and, if judiciously and consciously exercised, can take care of almost all the situations where interference by the High Court becomes necessary on account of delay in proceedings or for any other reason amounting to oppression or

harassment in any trial, inquiry or proceedings. In appropriate cases, the High Courts have exercised their jurisdiction under [Section 482](#) of Cr.P.C. for quashing of first information report and investigation, and terminating criminal proceedings if the case of abuse of process of law was clearly made out. Such power can certainly be exercised on a case being made out of breach of fundamental right conferred by [Article 21](#) of the Constitution. The Constitution Bench in A.R. Antulay's case referred to such power, vesting in the High Court (vide paras 62 and 65 of its judgment) and held that it was clear that even apart from [Article 21](#), the Courts can take care of undue or inordinate delays in criminal matters or proceedings if they remain pending for too long and putting to an end, by making appropriate orders, to further proceedings when they are found to be oppressive and unwarranted.

22. Legislation is that source of law which consists in the declaration of legal rules by a competent authority. When judges by judicial decisions lay down a new principle of general application of the nature specifically reserved for legislature they may be said to have legislated, and not merely declared the law. Salmond on Principles of Jurisprudence (12th Edition) goes on to say "we must distinguish law-making by legislators from law-making by the courts. Legislators can lay down rules purely for the future and without reference to any actual dispute; the courts, insofar as they create law, can do so only in application to the cases before them and only insofar as is necessary for their solution. Judicial law-making is incidental to the solving of legal disputes; legislative law-making is the central function of the legislator" (page 115). It is not difficult to perceive the dividing line between permissible legislation by judicial directives and enacting law the field exclusively

reserved for legislature. We are concerned here to determine whether in prescribing various periods of limitation, adverted to above, the Court transgressed the limit of judicial legislation.

23. *Bars of limitation, judicially engrafted, are, no doubt, meant to provide a solution to the aforementioned problems. But a solution of this nature gives rise to greater problems like scuttling a trial without adjudication, stultifying access to justice and giving easy exit from the portals of justice. Such general remedial measures cannot be said to be apt solutions. For two reasons we hold such bars of limitation uncalled for and impermissible : first, because it tantamounts to impermissible legislation an activity beyond the power which the Constitution confers on judiciary, and secondly, because such bars of limitation fly in the face of law laid down by Constitution Bench in A.R. Antulay's case and, therefore, run counter to the doctrine of precedents and their binding efficacy.*

25. *The primary function of judiciary is to interpret the law. It may lay down principles, guidelines and exhibit creativity in the field left open and unoccupied by Legislation. Patrick Devlin in 'The Judge' (1979) refers to the role of the Judge as lawmaker and states that there is no doubt that historically judges did make law, at least in the sense of formulating it. Even now when they are against innovation, they have never formally abrogated their powers; their attitude is: 'We could if we would but we think it better not.' But as a matter of history did the English judges of the golden age make law? They decided cases which worked up into principles. The judges, as Lord Wright once put it in an unexpectedly picturesque phrase, proceeded 'from case to case, like the ancient Mediterranean mariners, hugging the coast from*

point to point and avoiding the dangers of the open sea of system and science'. The golden age judges were not rationalisers and, except in the devising of procedures, they were not innovators. They did not design a new machine capable of speeding ahead; they struggled with the aid of fictions and bits of procedural string to keep the machine on the road.

27. Prescribing periods of limitation at the end of which the trial court would be obliged to terminate the proceedings and necessarily acquit or discharge the accused, and further, making such directions applicable to all the cases in the present and for the future amounts to legislation, which, in our opinion, cannot be done by judicial directives and within the arena of the judicial law-making power available to constitutional courts, howsoever liberally we may interpret Articles 32, 21, 141 and 142 of the Constitution. The dividing line is fine but perceptible. Courts can declare the law, they can interpret the law, they can remove obvious lacunae and fill the gaps but they cannot entrench upon in the field of legislation properly meant for the legislature. Binding directions can be issued for enforcing the law and appropriate directions may issue, including laying down of time limits or chalking out a calendar for proceedings to follow, to redeem the injustice done or for taking care of rights violated, in a given case or set of cases, depending on facts brought to the notice of Court. This is permissible for judiciary to do. But it may not, like legislature, enact a provision akin to or on the lines of Chapter XXXVI of the Code of Criminal Procedure, 1973.

28. The other reason why the bars of limitation enacted in Common Cause (I), Common Cause (II) and Raj Deo Sharma (I) and Raj Deo Sharma (II) cannot be sustained is that these decisions though two

or three-judge Bench decisions run counter to that extent to the dictum of Constitution Bench in A.R. Antulay's case and therefore cannot be said to be good law to the extent they are in breach of the doctrine of precedents. The well settled principle of precedents which has crystalised into a rule of law is that a bench of lesser strength is bound by the view expressed by a bench of larger strength and cannot take a view in departure or in conflict therefrom. We have in the earlier part of this judgment extracted and reproduced passages from A.R. Antulay's case. The Constitution Bench turned down the fervent plea of proponents of right to speedy trial for laying down time-limits as bar beyond which a criminal proceeding or trial shall not proceed and expressly ruled that it was neither advisable nor practicable (and hence not judicially feasible) to fix any time-limit for trial of offences. Having placed on record the exposition of law as to right to speedy trial flowing from [Article 21](#) of the Constitution this Court held that it was necessary to leave the rule as elastic and not to fix it in the frame of defined and rigid rules. It must be left to the judicious discretion of the court seized of an individual case to find out from the totality of circumstances of a given case if the quantum of time consumed upto a given point of time amounted to violation of [Article 21](#), and if so, then to terminate the particular proceedings, and if not, then to proceed ahead. The test is whether the proceedings or trial has remained pending for such a length of time that the inordinate delay can legitimately be called oppressive and unwarranted, as suggested in A.R. Antulay. In Kartar Singh's case (*supra*) the Constitution Bench while recognising the principle that the denial of an accused's right of speedy trial may result in a decision to dismiss the indictment or in reversing of a conviction, went on to state, "Of course, no length of time is *per se* too long to pass scrutiny under this principle nor the accused is called

upon to show the actual prejudice by delay of disposal of cases. On the other hand, the court has to adopt a balancing approach by taking note of the possible prejudices and disadvantages to be suffered by the accused by avoidable delay and to determine whether the accused in a criminal proceeding has been deprived of his right of having speedy trial with unreasonable delay which could be identified by the factors (1) length of delay, (2) the justification for the delay, (3) the accused's assertion of his right to speedy trial, and (4) prejudice caused to the accused by such delay." (para 92).

29. For all the foregoing reasons, we are of the opinion that in Common Cause case (I) (as modified in Common Cause (II)) and Raj Deo Sharma (I) and (II), the Court could not have prescribed periods of limitation beyond which the trial of a criminal case or a criminal proceeding cannot continue and must mandatorily be closed followed by an order acquitting or discharging the accused. In conclusion we hold:-

(1) The dictum in A.R. Antulay's case is correct and still holds the field.

(2) The propositions emerging from [Article 21](#) of the Constitution and expounding the right to speedy trial laid down as guidelines in A.R. Antulay's case, adequately take care of right to speedy trial. We uphold and re-affirm the said propositions.

(3) The guidelines laid down in A.R. Antulay's case 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. It is difficult to foresee all situations and no generalization can be made.

(4) It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. The time-limits or bars of limitation prescribed in the several directions made in Common Cause (I), Raj Deo Sharma (I) and

Raj Deo Sharma (II) could not have been so prescribed or drawn and are not good law. The criminal courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of time, as prescribed by the directions made in Common Cause Case (I), Raj Deo Sharma case (I) and (II). At the most the periods of time prescribed in those decisions can be taken by the courts seized of the trial or proceedings to act as reminders when they may be persuaded to apply their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration the several relevant factors as pointed out in A.R. Antulay's case and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time-limits cannot and will not by themselves be treated by any Court as a bar to further continuance of the trial or proceedings and as mandatorily obliging the court to terminate the same and acquit or discharge the accused.

(5) The Criminal Courts should exercise their available powers, such as those under [Sections 309, 311 and 258](#) of Code of Criminal Procedure to effectuate the right to speedy trial. A watchful and diligent trial judge can prove to be better protector of such right than any guidelines. In appropriate cases jurisdiction of High Court under [Section 482](#) of Cr.P.C. and Articles 226 and 227 of Constitution can be invoked seeking appropriate relief or suitable directions.

(6) This is an appropriate occasion to remind the Union of India and the State Governments of their constitutional obligation to strengthen the judiciary-quantitatively and qualitatively by providing requisite funds, manpower and infrastructure. We hope and trust that the Governments shall act.

We answer the questions posed in the orders of reference dated September 19, 2000 and April 26, 2001 in the abovesaid terms.

38. *It is not only difficult but impossible to foresee and enumerate all possible situations arising, to provide in advance solutions with any hard-and-fast rules of universal application for all times to come. It*

is well known that where there is right, there should be a remedy. In what exceptional cases, not normally visualized or anticipated by law, what type of an extraordinary remedy must be devised or designed to solve the issue arising would invariably depend upon the gravity of the situation, nature of violation and efficacy as well as utility of the existing machinery and the imperative need or necessity to find a solution even outside the ordinary framework or avenue of remedies to avert any resultant damage beyond repair or redemption, to any person. Apparently, in my view, alive to such possibilities only even this Court in A.R. Antulay case has chosen to decline the request for fixation of any period of time-limit for trial of offences not on any total want or lack of jurisdiction in this Court, but for the reason that it is 'neither advisable or practicable' to fix any such time-limit and that the non-fixation does not ineffectuate the grantee of right to speedy trial. The prospects and scope to achieve the desired object of a speedy trial even within the available procedural safeguards and avenues provided for obtaining relief, have also been indicated in the said decision as well as in the judgment prepared by learned Brother R.C.Lahoti, J. I am of the firm opinion that this Court should never venture to disown its own jurisdiction on any area or in respect of any matter or over any one authority or person, when the Constitution is found to be at stake and the fundamental rights of citizens/persons are under fire, to restore them to their position and uphold the Constitution and the rule of law – for which this Court has been established and constituted with due primacy and necessary powers, authority and jurisdiction, both express and implied.

17. In the light of the law as above, the following factors need to be considered:-

- (a) Seriousness of the charges.*
- (b) Whether the prosecution or the petitioner have delayed the trial ?*
- (c) Whether the petitioner accused asserted his right to speedy trial ?*

18. I have gone through the charges which have been framed by the Magistrate after this Court directed it to re-frame them.

19. It cannot be ignored that after the proceedings came on board of the learned Magistrate on 09-10-2015, the petitioner had promptly moved an application for seeking transfer of proceedings. This was his attempt to delay the trial. During the pendency of the said proceedings, the charges came to be framed and the petitioner therefore, approached this Court making out a grievance that it was a fit case for directing re-framing of the charges. This was his second visit to this Court. The moment this Court directed re-framing of the charges and which were re-framed on 05th November 2015, the petitioner rushed to this Court on 14-12-2015 seeking the

quashing of the proceedings.

20. The entire issue therefore, turns upon the conduct of the petitioner. It is quite obvious as to why the petitioner did not move the learned Magistrate after 01-09-2003 when according to him, the file went missing from the board and was said to be treated as a Dormant case file. For 12 years the petitioner has not even whispered, much less, put in efforts to make a grievance that he had a right for a speedy trial. For 12 years, neither did he move the learned Magistrate for a speedy trial, nor did he take any other step which can be said to be a bonafide act so as to seek a speedy trial. Even before this Court, in the two Criminal petitions, that he had filed, he never raised any issue of 'delayed trial' or denial of a 'speedy trial'.

21. The rojnama in RCC No.45/2000 has been placed on record which reflects as under:-

The petitioner/accused was absent in the proceedings on the following dates:-

20th June 2001, 11th September 2001, 07th November 2001, 28th December 2001, 18th April 2002, 29th April

2002, 20th June 2003 and 01st September 2003 (after which the file went missing).

22. After the matter came on board on 08-10-2012, the rojnama reveals as under:-

08-10-2012 :- Petitioner/accused no.4 filed application for exemption and it is granted.

09-10-2015 :- Petitioner filed application for cancellation of non-bailable warrant, which is granted.

12-10-2015 :-} Application of the petitioner for
} exemption is rejected.

12-10-2015 :-} Immediately application is filed by
} petitioner to stay the proceedings.

13-10-2015 :-} Petitioner is absent. Application for
} exemption is rejected.

13-10-2015 :-} Application for discharge is
} immediately filed by petitioner.

14-10-2015 :- Petitioner is absent. NBW against the petitioner returned as unexecuted.

15-10-2015 :- Petitioner is present, undertakes to remain present on each date.

19-10-2015 :- Petitioner is present.

- 21-10-2015 :-** Charge framed and matter is kept for evidence.
- 23-10-2015 :-** Petitioner is absent. His application for exemption is granted. Prosecution witness no.1 is examined.
- 24-10-2015 :-** Petitioner is absent. His application for exemption is granted.
- 26-10-2015 :-** Petitioner is absent. His application for exemption is granted.
- 27-10-2015 :-** Petitioner is absent. His application for exemption is granted.
- 28-10-2015 :-** Petitioner is absent. His application for exemption is granted.
- 05-11-2015 :-** Charges are re-framed by the Learned Magistrate under the order of this Court. Petitioner remained absent.
- 19-11-2015 :-** Petitioner remained absent. His application for exemption is allowed.
- 26-11-2015 :-** Petitioner is absent. His application for exemption is allowed.
- 03-12-2015 :-** Petitioner is absent. His application for exemption is allowed.

28-12-2015 :- Petitioner is absent. His application for exemption is allowed.

01-02-2016 :- (Considering that the Court had stayed the proceedings), Petitioner is absent. Application for exemption is allowed.

15-02-2016 :- Petitioner is absent. His application for exemption is allowed.

25-02-2016 :- Petitioner is absent. His application for exemption is allowed.

21-03-2016 :- Petitioner is absent. His application for exemption is allowed.

It is therefore, apparent that barring about three appearances, the petitioner did not participate in the proceedings for all the above dates mentioned.

23. In the light of the above and on considering the conduct of the petitioner, I am of the view that the petitioner who had approached this Court on two occasions, initially for seeking transfer of proceedings and thereafter for seeking re-framing of the charges, had not expressed any grievance about the delay in the trial. The fact that the petitioner was before

this Court seeking transfer of proceedings would indicate that the petitioner did not feel aggrieved by the purported delayed trial at that stage.

24. When he approached this Court for seeking re-framing of the charges, it was a clear indication that the petitioner desired to participate in the trial and was aggrieved by the incorrect framing of charges. Considering his contentions and at his instance, this Court had directed re-framing of the charges and which was so done on 05-11-2015. The learned Magistrate was therefore justified in proceeding with the trial from 05-11-2015 on 'day to day' basis. On every occasion the petitioner thereafter remained absent and on each of such occasions his application for exemption was granted.

25. Considering the above, though the learned advocates have been unable to explain why the file was not on board and landed in a Dormant stage for about 12 years, it is apparent that during the trial that had commenced in 2000 and even thereafter, the conduct of the petitioner as is evident from

the rojnama, indicates that he consistently remained absent from 2000 to 2003 and then from 2015 onwards. He tried to delay the trial, in as much as, he did not assert his right to speedy trial (read paragraph 28 of P.Ramchandra Rao judgment).

26. With regard to the prayer for discharge, by the assistance of the learned advocates, I have gone through the charges framed against the petitioner and the other accused. The petitioner who is accused no.4 was a member of the mob which had entered in the hotel of the complainant that led to a scuffle. The complainant was abused, insulted and was assaulted. He was threatened to close down his hotel failing which he would be assaulted. His furniture was badly damaged. On 30-12-1999 they had caused damage to the hotel and committed criminal trespass. The re-framed charges would indicate the role played by the petitioner.

27. I am therefore unable to accept the contention that the petitioner being a member of the parliament for two terms

and considering the passage of time, the trial deserves to be quashed, keeping in view that the petitioner had, by conduct, expressed his intention of participating in the trial by praying for re-framing of the charges. The above facts of this case are therefore distinguishable from the reports cited by Shri.Jethmalani.

28. Upon considering the entire facts of this case and the ratio laid down by the Hon'ble Apex Court (7 Judges) in P.Ramchandra Rao (supra), I am of the view that the law as is laid down in paragraph 27 and 28 of the said judgment (supra) would apply to this case. Quashing the trial in this case would amount to scuttling a trial without adjudication. It would amount to giving an easy exit to the petitioner from the portals of justice.

29. In the light of the above, I therefore, do not deem it proper to cause any interference in the pending proceedings. Since there is material on record making out offences against the petitioner, his prayer for discharge cannot be accepted. This

petition is therefore dismissed.

Rule is discharged.

30. By the consent of the parties, Criminal Application No.701 of 2015 seeking transfer of proceedings, is taken on board and is disposed of as being infructuous.

31. The Learned Advocate for the petitioner prays for a stay to the order of this Court for a period of six weeks. Learned APP opposes. Considering the fact that this Court (Coram: A.V. Nirgude, J) had, by an order dated 17-12-2015, stayed the proceedings before the learned Magistrate, the said order shall continue for a period of five weeks from today.

(RAVINDRA V. GHUGE, J.)