

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

+ **CRL.MC 1338/2011**

% Reserved on: July 14, 2016

Decided on: July 25, 2016

D R SHARMA

..... Petitioner

Through: Mr. Harpreet Singh, Sr. Standing
Counsel.

versus

GAUTAM CABLE INDUSTRIES & ORS.

..... Respondents

Through: Mr. Rajat Aneja, Ms. Chandrika
Gupta, Advs.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. The present petition challenges the order dated 10th May, 2010 passed by learned Trial Court dismissing the application of the petitioner under Section 311 Cr.P.C.
2. The matter was listed for final hearing before the learned Trial Court on 3rd November, 2010 however after the present petition was filed, the proceedings before the learned Trial Court could not take place as this Court was pleased to summon the trial Court record vide order dated 4th October, 2012.
3. A perusal of the order sheets of learned Trial Court would reveal that summons were issued on the complaint on 9th June, 2000 for offences punishable under Sections 9 and 9AA of Central Excise Act. Finally all the accused appeared before the learned Trial Court and case was fixed for pre-charge evidence on 4th July, 2001 when no witness of the petitioner was present. Again on 6th December, 2001, no witness was present. On 15th March, 2002 one witness was present whose statement was recorded as PW-

1 however no other witness was present. Same was the situation on 28th August, 2002 and 8th January, 2003 when no witness of the prosecution was present. On 4th June, 2003 one witness D.K. Sharma was present however learned Spl.P.P stated that the said witness had been wrongly summoned as his evidence was already recorded, thus the witness was discharged. After partly recording statement of PW-2 on 30th October, 2003, no witness was present on 9th March, 2004. On 10th August, 2004 and 27th January, 2005 PW-3 was examined. On 27th July, 2005 PW-2 was present however the original documents were not produced by the department. On 10th January, 2006 the learned Trial Court held that the proceedings qua accused No.5 abated as he had passed away and listed the matter for remaining prosecution evidence on 18th February, 2007. Again on that date, no witness was present and thus last and final opportunity was granted to the petitioner to lead evidence on 23rd November, 2007, subject to payment of cost of ₹2000/-. On 23rd November, 2007 neither the cost was deposited nor the person authorized on behalf of the petitioner/complainant appeared. Thus, show cause notice was issued to the Joint Commissioner, Excise with direction to appear and to show cause why the witnesses were not being examined and why there was no appearance on behalf of the Spl.P.P. On 15th February, 2008, two witnesses were present and partly examined however their examination-in-chief was required to be deferred as original documents were not placed on record.

4. Since the petitioner challenged the order dated 23rd November, 2007 passed by learned ACMM imposing cost of ₹2,000/-, the file was sent to learned Sessions Court which dismissed the revision petition and sent back the file. Thus on 14th May, 2008 the matter had to be adjourned for this

reason. An application was filed by the petitioner seeking marking of presence of witness S.K. Behl in the order dated 23rd November, 2007 and withdrawal of notice to the Joint Commissioner, Excise. Vide order dated 10th December, 2007 the Court noted that when the case was called out, there was no appearance on behalf of the department, thus the presence of Mr. S.K. Behl cannot be noted, however the show cause notice to Joint Commissioner, Excise was withdrawn. Again on 4th September, 2008 none was present on behalf of the petitioner nor was any witness present. Thus, the evidence of the petitioner was closed.

5. An application under Section 311 Cr.P.C was filed by the petitioner seeking recalling of the witnesses. The same was dismissed by the impugned order. As noted above, the orders passed by the learned Trial Court clearly reflect that there has been continuous non-appearance on behalf of the petitioner and despite opportunities no efforts were made to bring the witnesses. Despite having issued show cause notice to the Joint Commissioner, Excise, no serious effort was made to examine the witnesses. Though the complainant/petitioner pressed an application for withdrawal of show cause notice to Joint Commissioner, Excise but did not bother to examine the witnesses. The petitioner was more concerned about the waiver of the cost imposed and exemption of the Joint Commissioner from personal appearance.

6. It is bounded duty of the Court to ensure speedy trial. The complaint was pending for pre-charge evidence for more than 7 years and out of 13 witnesses only 5 witnesses were examined and that too partly. The impugned order passed by the learned Trial Court is in conformity with the

mandate of the Supreme Court in the decision reported as 2002 (4) SCC 578 P. Ramachandra Rao vs. State of Karnataka wherein it was held as under:

21... The Criminal Procedure Code, as it stands, incorporates a few provisions to which resort can be had for protecting the interest off 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 Code of Criminal Procedure 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 Code of Criminal Procedure 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.

29. For all the foregoing reasons, we are of the opinion that the Court could not have prescribed periods of limitation beyond which the trial of a criminal case or a criminal proceedings cannot continue and must mandatorily be closed followed by an order acquitting or discharging the accused. In conclusion we hold:

(1)....

(2)....

(3)....

4)....

(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 Code of Criminal Procedure and Articles 226 and 227 of Constitution can be invoked seeking appropriate relief or suitable directions.

7. The decision of the 7 Judges Bench of the Supreme Court in P. Ramachandra Rao (supra) though holds that no time frame for conclusion of the trial can be fixed however the same does not take away the power of the Trial Court to close the evidence if the facts and circumstances of the case warrant. The decision in P. Ramachandra Rao (supra) and Abdul Rehman Antulay Vs. R.S. Nayak AIR 1992 SC 1701 preserve the right of an accused for a speedy trial. Thus if despite repeated opportunities witnesses are not brought by the prosecution or defense and the Trial Court closes its evidence, it commits no illegality.

8. During the course of arguments this Court raised a query to the learned counsel for the petitioner as to whether he was in a position to produce all its witnesses expeditiously on one or two dates, when the learned counsel for petitioner was clueless as it was not even known as to how many witnesses are now available for examination. Considering the conduct of the complainant during trial, I find no infirmity in the impugned order dismissing the application of the petitioner under Section 311 Cr.P.C.

9. Petition is dismissed. Trial Court record be sent back forthwith with directions to proceed with the matter in accordance with law.

(MUKTA GUPTA)
JUDGE

JULY 25, 2016
‘v mittal’