

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.39130 of 2014

Arising Out of PS.Case No. -33 Year- 1992 Thana -C.B.I CASE District- MUZAFFARPUR

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Ajay Kumar @ Ajay Kumar Singh son of late Ram Prakash Singh, resident of village - Haibatpur, P.S. Rampur Chauram, District - Arwal, presently posted as an Assistant, Forest and Environment Department, Nepal House, Doranda, Ranchi (Jharkhand)

.... Petitioner/s

Versus

The State of Bihar through the Vigilance

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rana Ishwar Chandra, Adv.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date: 15-11-2017

The present case arises out of a written report dated 23.07.1992 filed by the Additional Superintendent of Police, Vigilance (Investigation Bureau), Patna before the Officer-in-charge, Vigilance Police Station, inter alia, stating therein that an enquiry was made by the said Additional Superintendent of Police, Vigilance (Investigation Bureau), Patna (hereinafter referred to as the informant), regarding the affiliation and appointment of teaching/ non-teaching staff of Maharaja Rameshwar Singh Mithila College, Anandpur (Sahora), Darbhanga and it was found that the said College had applied for affiliation through its Secretary, namely, Sri Baidyanath Chaudhary before the Vice-Chancellor, Lalit Narayan Mithila University, Darbhanga (In short 'L.N.M.U.') and had prayed for inspection of the College by the authority of the University,



whereafter, the Registrar, L.N.M.U., had written a letter dated 8.8.1987 to the Deputy Director, Higher Education, Bihar, Patna for affiliation of the College in the faculty of Art, Science and Commerce up to degree standard since the Secretary of the College had informed that the College was inspected in the year 1973 and the order of the Vice-Chancellor and the Inspection report were sent to the State Government vide letter dated 22.8.1973, but the decision of the State Government had not been communicated. It has further been stated that the Vice-Chancellor along with his letter had sent the report of the year 1973 as well as inspection report dated 27.7.1987 conducted by Dr. D.K. Jha, Principal, C.M. Science College, Darbhanga. The inspection report of the year 1973 has been prepared under the signature of Shri S.K. Mishra, Head of the Department, English, C.M. College, Darbhanga and Shri K.N. Upadhya, Head of the Department, Physics, C.M. College, Darbhanga and the same states that the College has more than 6 acres of land, has 20 big and small rooms, 1000 students are studying therein, 25,000 books are present in the library, 100 teachers are working in the College, there is separate facilities for laboratory and there is facility for games. In the inspection report dated 27.7.1987 it has been stated that the college has more than six acres of land, more than 1500 students are studying therein, there are 20 big and small room, a sum of Rs. 1,65,000/- is in



deposit in the bank account, there are three thousands books in the library, 100 teachers are working in the College, there is separate laboratory and water supply is also adequate.

2. The further case of the informant is that during the course of enquiry by the Vigilance Department it was found that C.R. issue register of the year 1987-88 is not available, hence the veracity of the letter dated 8.8.1987 issued by the Vice- Chancellor could not be substantiated. During the course of enquiry it was also transpired that all the files pertaining to the said college have been made to disappear under a conspiracy. During the course of enquiry the inspection report of the year 1987 was also found forged, though the inspection report dated 27.7.1987 was found to be correct. It is further alleged that the aforesaid two inspection reports were received along with the letter dated 9.9.1987 by the Education Department and Shri Ajay Kumar, Assistant, the petitioner herein, had kept the same in the file on 18.9.1987 and presented the same with his noting. The said Ajay Kumar is said to have also prepared an enquiry letter in his writing and had kept the same in the file. In his noting the said Ajay Kumar, on the basis of the aforesaid inspection report, had recommended for grant of affiliation in certain subjects for three sessions from the present sessions without any financial implication. Thereafter, on the basis of the said noting of Shri Ajay Kumar, the



then Section Officer, had recommended the said proposal by endorsing the said noting of Shri Ajay Kumar, whereafter the Deputy Director, Higher Education by his noting dated 21.9.1987 had written to the Director, Higher Education, expressing his doubt about 1973 inspection report and had proposed for calling for a fresh recommendation from the University on the basis of the present situation, however, the Director, Higher Education, namely, Shri B.N. Ojha, deliberately disregarded the said noting and on the basis of the inspection report dated 27.7.1987 recommended for grant of affiliation for three sessions. It was further approved by the Deputy Director, Shri Ramashankar Prasad and then the order of the then Minister, Human Resources and Development Department, was obtained and Shri Ramashankar Prasad, under his signature, had issued letter dated 13.11.1987 informing the Vice Chancellor, L.N.M.U, regarding the said affiliation, whereafter the information was given to the Principal of the college and others. Thereafter, Shri Baidyanath Choudhary, the Secretary of the said College, under a conspiracy, by his letter dated 20.11.1987 written to the Vice-Chancellor, L.N.M.U. had projected that the said college was running from the year 1972-73 and its teachers, who were working since then, would become deprived from becoming permanent. The said letter of the Secretary of the College was forwarded by the Vice-Chancellor



by his letter dated 26.11.1989 to the Deputy Director, Higher Education, which was received in the Education Department on 1.12.1987, wherein recommendation was made for granting affiliation to the said college with retrospective effect since the said College had been established in the year 1972-73. The said two letters were kept in the file by Shri Ajay Kumar, Assistant and by his noting dated 4.12.1987, he had given a proposal for granting affiliation from retrospective effect from the date of its establishment as has been done in the case of R. Lal College. The Deputy Director, had then made a noting that in the case of one Pranav Mukherjee College, Buxar, an adverse order has been received from the level of the then Minister, hence the Deputy Director had returned the file on 10.1.1988 with the said noting, however Shri Ajay Kumar, Assistant had then kept the file with himself. Thereafter, again on 22.8.1988, the Incharge Principal of the said College had written a letter to the Education Department, containing misleading facts and the same was again put up in the file by Shri Ajay Kumar, Assistant, and was directly sent to the Director, Higher Education on 9.9.1988, whereafter the Director, Higher Education, had made a noting in the file to the effect that the file should be routed to him through the Section Officer or the Deputy Director. Thereafter, the file was sent through Section Officer and the Deputy Director and the Director had



recommended for grant of affiliation up to the inter level for two sessions, and order was obtained from the Minister on 22.9.1988, whereafter the information was given to the Vice-Chancellor by letter dated 22.9.1988. In this manner, the Secretary and others of the aforesaid College, falsely showing that the College was established in the year 1973, had conspired to obtain affiliation and had been engaging in writing letters and were successful in obtaining temporary affiliation with the active role of the Vice-Chancellor. However, during the course of enquiry it was found that the letter of the Vice-Chancellor was forged. Again a forged letter, purported to have been written by the Vice-Chancellor dated 26.10.1989, was sent to the Education Department along with the inspection report. This letter of the Vice Chancellor was found to be forged by the Vigilance Department and the signature of the Vice-Chancellor was also fabricated as well as the inspection report dated 13.12.1988 was also found to be forged, however, the Assistant Shri Ajay Kumar, in his noting had stated that the College was fulfilling all the criteria for being granted affiliation. Thereafter, the Deputy Director had also endorsed the said noting of the petitioner and the file was sent to the Director whereafter, the proposal for granting affiliation for the year 1988-89 was approved by the Minister and the information was sent to the Vice-Chancellor vide letter dated 18.1.1990. Thus, the aforesaid



college was successful in getting affiliation for this year, and was also successful in getting the proposal moved in the Education Department, with regard to creation of post, however, the order could not be issued, though the order was received from the departmental minister, since in the meantime, officers had changed and enquiry was made with regard to various issues and ultimately, the State Government had decided to get the entire matter investigated by the Vigilance Department. The Secretary of the College had then filed his representation dated 13.8.1991 before the Vigilance Department, trying to justify the illegalities.

3. The informant has further averred that during the course of enquiry by the Vigilance Department it has been found that firstly the inspection report of the year 1973 is fabricated, the inspection report dated 27.7.1987 is false inasmuch as the actual position with regard to the facilities available in the College was found to be contrary to the report, no advertisement has ever been issued with regard to employment of the teaching/ non-teaching staff and the Secretary of the College had legally appointed 73 teaching and 96 non-teaching staff by antedating their date of joining showing them to have joined from a prior date as well as by antedating the acceptance of the joining of the said staff and in exchange Rs. 50,000/- is said to have been taken, for appointment, from each



teacher and Rs. 30,000/- from each non-teaching staff in the name of donation for establishing the College and in the process, some money was deposited in the bank account while the rest of the amount, running into lacs, was swindled and defalcated. It was further alleged that the Secretary of the College had defalcated huge of money and in the entire conspiracy, the Secretary Shri Baidyanath Choudhary, the Principal of the College and other employees of the said college were part of the aforesaid scam, which is going on since last 20 years. In such view of the matter, the informant had found that a prima facie case was made out against 14 named persons, including the petitioner herein and other connected persons.

4. On the basis of the aforesaid written report of the informant dated 23.7.1992, an FIR bearing Vigilance P.S. Case No. 33 of 1992 dated 24.7.1992 was instituted under Sections 120B, 420, 467, 468, 471, 477(A) and 109 of the Indian Penal Code and under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 and amended Section 13(2) read with 13(1)(d) and 15 of the Prevention of Corruption Act, 1988.

5. It is a matter of record that the charge sheet was filed in the aforesaid case and thereafter, a supplementary charge sheet dated 17.7.2003 along with the case diary and sanction order was filed against the accused Satish Narayan Dhar and the petitioner herein on



17.7.2003 and thereafter, the learned court of Special Judge (Vigilance), North Bihar, Muzaffarpur, by an order dated 28.8.2003 has been pleased to take cognizance against the petitioner herein under Sections 120(B), 420, 467, 468, 471, 477(A), and 109 of the Indian Penal Code and Section 13(2) read with 13(1)(d) and 15 of the Prevention of Corruption Act.

6. The aforesaid order dated 28.8.2003 passed by the learned Special Judge (Vigilance), North Bihar, Muzaffarpur in Special Case No. 183 of 2002 is under challenge in the present petition.

7. The learned counsel for the petitioner submits that a bare perusal of the FIR would show that no case is made out against the petitioner herein as he had only forwarded the application before the concerned authority while discharging his official duty. It is further submitted that the petitioner was appointed in the year 1987 and was working as Assistant in the department of H.R.D. Department, Bihar, Patna, whereafter upon division of the State of Bihar and Jharkhand the petitioner was allotted the cadre of Jharkhand. It is also contended that the FIR was instituted by the Vigilance officials in the year 1992 for the occurrence which had taken place in between the year 1987-88 and up to the filing of the FIR, whereafter, the case has been lingering and a charge sheet has



been submitted on 17.7.2003 mechanically without providing any opportunity to the petitioner to clear his stand. It has also been argued that the petitioner has got no role to play in the affiliation or disaffiliation of the College and it is the University which has to conduct an enquiry and submits its report to the State Government along with its recommendation, thereafter the Government has to pass order relying upon the report submitted by the University. It is also submitted that there is no material on record to show that the petitioner has received pecuniary advantage from the alleged scam and the fact is that the said College is enjoying the privilege of permanent affiliation till date.

8. Finally it has been urged on behalf of the petitioner that the sword of prosecution is hanging on the petitioner since the year 1992 and about 25 years have elapsed without any finality of the said proceedings.

9. Per contra, the learned counsel for the opposite party has submitted that the petitioner has been prima facie found instrumental in initiating and forwarding the said file with his logic and recommendation in connivance with the education mafia with a view to deceive his superior officers by incorporating non-existent facts for oblique motives and has in the process abused his official position, hence the quashing petition is devoid of merits and is fit to



be dismissed.

10. I have heard the parties and perused the materials on record. I find that the FIR was lodged in the year 1992 and since then the investigation was pending and ultimately in the year 2003, after a lapse of about 11 years charge sheet was filed and cognizance was taken, however, till date, no further action has been taken. In any view of the matter, even if the FIR is considered on its face value and the contents of the written complaint is perused, the allegations levelled against the petitioner herein does not seem to be very serious and he appears to have been made a scapegoat inasmuch he is neither the competent authority to grant sanction with regard to affiliation of a college nor he is a person of authority, whereas on the contrary the petitioner herein is a simple Assistant in the office of the Higher Education Department. Nonetheless, the fact is that there has been an inordinate delay of more than two decades in conducting investigation and the trial, which cannot be attributed to the petitioner herein by any stretch of imagination.

11. It is a trite law that Article 21 of the Constitution of India creates a right in the accused to a speedy trial, the right to speedy trial flowing from Article 21 of the Constitution encompasses all the stages namely the stage of investigation, inquiry, trial, appeal, revision and retrial, in every case where the speedy trial is alleged to



have been infringed, the first question to be put and answered is as to who is responsible for the delay, the prosecution should not be allowed to become a persecution and in case of infringement of the right to speedy trial of an accused, the criminal proceedings shall be liable to be quashed. It is equally a well settled law that in cases where the proceedings or trial has remained pending for a great length of time, such inordinate delay can legitimately be called oppressive and unwarranted. In this regard, reference be had to a judgment of 7 Judges Bench of the Hon'ble Supreme Court, reported in (2002) 4 SCC 578 in the case of **P. Ramachandra Rao v. State of Karnataka**, relevant paragraphs whereof are being reproduced herein below:-

“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 retrial — 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 ~~588~~ agencies and the 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.

28. The other reason why the bars of limitation enacted in *Common Cause (I)*³, *Common Cause (II)*⁴ and *Raj Deo Sharma (I)*¹ and *Raj Deo Sharma (II)*² cannot be sustained is that these decisions, though two-or three-Judge Bench decisions, run counter to that extent to the dictum of the Constitution Bench in *A.R. Antulay case*⁵ 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 crystallised 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 case*⁵. 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 up to 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*⁵. In *Kartar Singh case*⁸ 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:

"92. 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." (SCC pp. 639-40, para 92)

29. For all the foregoing reasons, we are of the opinion that in *Common Cause case (I)*³ [as modified in *Common Cause (II)*⁴] and *Raj Deo Sharma (I)*¹ and *(II)*² 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 case*⁵ 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 case*⁵ adequately take care of right to speedy trial. We uphold and reaffirm the said propositions.

(3) The guidelines laid down in *A.R. Antulay case*⁵ are not exhaustive but only illustrative. They are not intended to operate as hard-and-fast rules or to be applied like a straitjacket 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)*³, *Raj Deo Sharma (I)*¹ and *Raj Deo Sharma (II)*² 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)*³, *Raj Deo Sharma case (I)*¹ and *(II)*². 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 case*⁵ 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 the Code of Criminal Procedure to effectuate the right to speedy trial. A watchful and diligent trial Judge can prove to be a better protector of such right than any guidelines. 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.”

12. Considering the law laid down in the aforesaid case of **P. Ramachandra Rao** (supra) as also the law laid down by the Hon’ble Apex Court in the case of **Abdul Rehman Antulay and others vs. R.S. Nayak and another** (1992) 1 SCC 225, the Hon’ble Apex Court, by a judgment reported in (2009)3 SCC 355 (**Vakil Prasad Singh v. State of Bihar**), has held that the delay in investigation and trial violates the constitutional guarantee of a speedy investigation and trial under Article 21 of the Constitution of India, as such further continuance of criminal proceedings in such cases where inordinate delay has taken place, deserves to be quashed, though the allegations levelled against the accused may be quite



serious. It may be relevant to quote the relevant paragraphs of the judgment rendered by the Hon'ble Apex Court in the case of **Vakil Prasad Singh** (supra) herein below:-

"14. Before advertng to the core issue viz. whether under the given circumstances the appellant was entitled to approach the High Court for getting the entire criminal proceedings against him quashed, it would be appropriate to notice the circumstances and the parameters enunciated and reiterated by this Court in a series of decisions under which the High Court can exercise its inherent powers under Section 482 CrPC to prevent abuse of process of any court or otherwise to secure the ends of justice.

15. The power possessed by the High Court under the said provision is undoubtedly very wide but it has to 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. It is trite to state that the said powers have to be exercised sparingly and with circumspection only 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 *Kurukshetra University v. State of Haryana*¹, *Janata Dal v. H.S. Chowdhary*² and *State of Haryana v. Bhajan Lal*³.)

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19. The exposition of Article 21 in *Hussainara Khatoon (1) case*⁵ was exhaustively considered afresh by the Constitution Bench in *Abdul Rehman Antulay v. R.S. Nayak*⁶. 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.

20. 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: (*A.R. Antulay case*⁶, SCC pp. 270-73, para 86)

(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?;

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(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 workload 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 the 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 a 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 the High Court must, however, be disposed of on a priority basis.

21. Notwithstanding elaborate enunciation of Article 21 of the Constitution in *Abdul Rehman Antulay case*⁶ and rejection of the fervent plea of proponents of the 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*⁷, “*Common Cause*”, *A Registered Society v. Union of India*⁸, *Raj Deo Sharma v. State of Bihar*⁹ and *Raj Deo Sharma (II) v. State of Bihar*¹⁰ 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*¹¹.

22. Speaking for the majority in *P. Ramachandra Rao*¹¹, R.C. Lahoti, J. (as His Lordship then was) while affirming that the dictum in *A.R. Antulay case*⁶ as correct and the one which 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 the right to speedy trial, it was held that: (*P. Ramachandra case*¹¹, SCC p. 603, para 29)

“(3) ... guidelines laid down in *A.R. Antulay case*⁶ are not exhaustive but only illustrative. They are not intended to operate as hard-and-fast rules or to be applied [as] a straitjacket formula. Their applicability would depend on the fact situation of each case [as] [i]t is difficult to foresee all situations and no generalisation can be made.”

23. It has also been held that: (*P. Ramachandra case*¹¹, SCC p. 603, para 29)

“(4) It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings.”

Nonetheless,

“(5) [t]he criminal courts should exercise their available powers, such as those under Sections 309, 311 and 258 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 aforementioned judgments were held to be not in consonance with the legislative intent.

24. It is, therefore, well settled that the right to speedy trial in all criminal persecutions (*sic* 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. 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.

25. 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 ³⁶⁴ 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-frame for conclusion of trial.

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.”

13. Having regard to the facts and circumstances of the case, more particularly the fact that there has been an inordinate delay in the ongoing criminal proceeding, pending against the petitioner, inasmuch as the aforesaid criminal case is pending since more than two decades, permitting the prosecution to continue any longer would be a travesty of justice and amount to infringement of invaluable right of the petitioner under Article 21 of the Constitution of India.

14. In view of the aforesaid as also in the light of the law laid down by the Hon’ble Apex Court, this is a fit case where further



continuance of criminal proceedings, pending against the petitioner herein, in the court of learned Special Judge (Vigilance), North Bihar, Muzaffarpur, being unwarranted, is liable to be quashed.

15. Consequently, the present petition is allowed and the order dated 28.8.2003 passed by the learned Special Judge (Vigilance), North Bihar, Muzaffarpur in Special Case No. 183 of 2002 (arising out of Vigilance P.S. Case No. 33 of 1992) is hereby set aside, as far as the petitioner herein is concerned. It is made clear that the present judgment may not be construed to be a precedent, as far as the other accused persons are concerned.

(Mohit Kumar Shah, J)

BTiwary/-

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