

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1074 OF 2017

Garvit Chopra

....Petitioner

V/s.

State of Maharashtra

....Respondent

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Mr. P. Janardhanan a/w. Mr. Rohan Janardhanan and
Mr. Mahendra Jawale i/by. Rex Legalis, Advocate for the
petitioner.

Mrs. M.H. Mhatre, APP for the respondent, State.

CORAM :-

R.M. SAVANT &

SANDEEP K. SHINDE, JJ.

DATE :-

8TH SEPTEMBER, 2017.

P.C. :-

1. The petitioner seeks the relief of quashing the Criminal Case No. 957/P/1996 pending on the file of 44th Court of Metropolitan Magistrate at Andheri (East), Mumbai. It appears, that on 15th February, 1996 Crime No. 48 of 1996 was registered under Section 379, 427 of

the Indian Penal Code against the petitioner and another person for having allegedly stolen a car stereo by breaking the glass window of the car. It is the petitioner's case that, in the year 1996, he was a student and he left India for higher studies to U.S. and presently settled over there. Eventually, he holds a passport and his wife also holds another passport which is linked to his passport. It is his case that, since 1996, he did not hear and/or receive any process in respect of the case registered against him. However, in 2006 when he was in India, he came to know that a non-bailable warrant was issued by the Court and was pending for execution. Thereupon, he approached the concerned Court which was the Railway Mobile Court, Andheri and got the warrant cancelled. He was released on bail in the sum of Rs.5,000/- and upon imposing penalty of Rs.1,000/-. It is his case, when he enquired about the subject case, he was told that the papers are not traceable. He was advised, as and when, the papers are traced out, he would be summoned by the concerned

Court. It is his case that, he followed up with his lawyer for a few years. He was, however, informed that the papers were not traceable. In the year 2016, when his wife had applied for the Visa, which was eventually linked with his passport, he was informed that the Visa could not be issued unless the case pending against the petitioner is resolved. On the backdrop of these facts, he again approached the concerned police station who informed him that the 44th Metropolitan Magistrate's Court is now taking up the matters under Section 138 of the Negotiable Instruments Act and all cases pending with the said Court are transferred to the Railway Mobile Court. In the circumstances, the petitioner again approached the Additional Chief Metropolitan Magistrate, Andheri and made a grievance about the non-availability of the papers. After lot of efforts, the petitioner could receive the certified copy of the order passed by the 44th Metropolitan Magistrate's Court, Andheri dated 4th July, 2003 which he has placed on record at Exhibit-C. It appears from the

said order that another accused in C.C. No. 957/P/1996, by name, Jeetendra @ Rinku G. Arora was acquitted by the Learned Metropolitan Magistrate, 44th Court, by judgment and order dated 4th July, 2003 passed under Section 355 of the Criminal Procedure Code. It is the petitioner's case that, the order aforesaid refers to the fact that the complainant in the said case was not available. It also refers to a fact that, the subject property of the theft could not be produced in the Court. The witness were not traceable and even the Investigation Officer though summoned had not appeared in the case. It further appears from the order dated 4th July, 2003 that, only one witness, P.W.1 Gautam Paasi, the alleged receiver of the stolen property was examined, but he did not support the prosecution case. On these circumstances, co-accused Jeetendra @ Rinku G. Arora was acquitted by the Learned Metropolitan Magistrate.

2. The Learned Counsel appearing for the petitioner, Mr. Janardhanan, would contend that, the case is of 1996 and the papers of the said case are not available either with the 44th Metropolitan Magistrate's Court or with the Court where the cases are transferred. He would submit that, inspite of the efforts made by the petitioner to trace the papers, they could not be traced. He would submit that, even otherwise the original complainant/informant was also not available in the year 2003 when the co-accused was tried. He would submit that, the alleged receiver of the stolen property had turned hostile. He would, therefore submit that there is no propriety in keeping the case alive and therefore the same may be quashed.

3. The Learned APP, on instructions, submitted a report from the Meghwadi Police Station where the original crime was registered. The report refers to the facts of the case but admits the fact that the case papers

in Crime No. 48 of 1996 including the chargesheets filed therein are not available. He made a reference to the correspondence with the 22nd Metropolitan Magistrate, Andheri and with Additional Chief Metropolitan Magistrate, 2nd Court, Shirali. In the report, he submitted that the case papers in the subject Crime No. 48 of 1996 are not available.

4. That after taking note of the facts of the present case, it is clear that, down the line eleven years, in 1996 the subject crime was registered against the petitioner. However, till date, he has not received any process in relation to the said case. The documents placed before us, makes it clear that the case papers in the said case are not traceable. The question therefore arises, whether right of a speedy trial of an accused has been infringed and as such this Court is empowered to quash the said proceedings.

5. The very issue has been dealt and answered in

the case of **Pankaj Kumar v. State of Maharashtra & Ors.** reported in **AIR 2008 Supreme Court 3077**. In para-17 it has been observed thus :-

“17. It is, therefore, well settled that the right to speedy trial in all criminal persecutions is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in Court but also includes within its sweep the preceding police investigations as well. The right to speedy trial extends equally to all criminal persecutions and is not confined to any particular category of cases. In every case, where the right to speedy trial is alleged to have been infringed, the court has to perform the balancing act upon taking into consideration all the attendant circumstances, enumerated above, and determine in each case whether the right to speedy trial has been denied in a given case. Where the court comes to the conclusion that the right to speedy trial 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.”

6. Thus on the touchstone of the broad principles enumerated hereinabove, we have to answer, as to whether the right of speedy trial of the petitioner-accused herein has been infringed. We have perused the material placed, on record which indeed discloses that the case was registered in the year 1996 under Section 379 of the Indian Penal Code for theft of car tape-recorder. The record shows that, the case papers in the subject case are not available and this fact is also fortified by the report dated 8th September, 2017 submitted by the Senior Inspector of Police, Meghwadi Police Station. The judgment of acquittal passed by the Learned Metropolitan Magistrate in the year 2003 under Section 355 of the Criminal Procedure Code discloses the fact that, prosecution could not make the witness available nor could produce the stolen property before the Court. Besides, one witness, who was examined also did not support the prosecution's case. Thus, in the given set of

facts coupled with the fact that, the papers are not traceable, in our view, the petitioner's constitutional right recognised under Article 21 stands violated. Considering the facts of the case, we feel that, it would be unfair if the petitioner is relegated to the trial Court for taking appropriate steps seeking a discharge as suggested by the Learned APP. We do not see any propriety to relegate the petitioner to the trial Court for the simple reason that the papers in the subject case are not traceable and further that re-construction of the case papers also may not be possible. We cannot overlook the fact that, the case is of 1996 and the witnesses in the case would not be available, as they were not available in the year 2003 when the co-accused was tried. The stolen property is also not available with prosecution. Furthermore, receiver of the stolen property had also turned hostile when co-accused was tried. Moreover, the Investigating Officer, did not respond to summons when co-accused was tried. In view of this, possibility of trial, in the given case is bleak and

we see no propriety in keeping the subject case pending. In these peculiar set of facts and having regard to the nature of accusations made against the petitioner, briefly referred to above, we feel and we are convinced that the petitioner has been denied his constitutional right to a speedy trial and therefore the criminal proceedings initiated against him in the year 1996 and pending in the Court of Metropolitan Magistrate, Railway Mobile Court bearing Case No. 957/P/1996 deserve to be quashed and are accordingly quashed and set aside. That for the aforesaid reasons, the petition is allowed and made absolute in terms of prayer clause (b).

(SANDEEP K. SHINDE, J)

(R.M. SAVANT, J)