

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-M No.24701 of 2015 (O&M)
Decided on: 31.07.2018**

Pritam Singh and another

....Petitioners

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. B.D. Sharma, Advocate
for the petitioners.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for quashing of FIR No.43 dated 27.04.2007 registered under Section 307 read with Section 34 of the Indian Penal Code (in short 'IPC') (Sections 25/27/54/59 of the Arms Act added later) at Police Station Bhogpur, District Jalandhar and the order dated 28.04.2015 (Annexure P5) passed by the trial Court vide which the cancellation report submitted by the police was returned with the remarks that presence of the complainant be procured at the time of submission of the cancellation report.

Brief facts of the case, as per the version given in the FIR, are that on 26.04.2007, the father of the complainant had a fight with Gurmail Singh, Binda and Davinder Singh @ Kala and Lakhwinder

Singh @ Binda sons of Gurmail Singh in his village, in which his father had received injuries and he was admitted at Civil Hospital, Kala Bakra for treatment. On the very next day i.e. 27.04.2007 at about 01:30 PM, Pritam Singh, Jaswant Singh and Kala son of Pritam Singh @ Bhullar one Bolero vehicle along with some other persons came to Civil Hospital, Kala Bakra. Jaswant Singh, Pritam Singh and Kala came out of the vehicle. At that time, the complainant was standing outside the OPD. Thereafter, Pritam Singh after taking out a pistol pointed it at the ear of the complainant with an intention to kill him and threatened him to compromise the matter in respect of the fight which had taken place on 26.04.2007.

Counsel for the petitioners has submitted that, after registration of the FIR, a detailed investigation was carried out by the then Deputy Superintendent of Police, Special Branch, Jalandhar, who submitted a report on 17.09.2007 to the effect that no such incident, as alleged in the complaint, has actually taken place and Kundan Singh son of Jagir Singh, the parental uncle of the complainant, who was cited as a witness in the FIR, has not supported the case during the investigation and had stated that no such incident has taken place.

Counsel for the petitioners has further submitted that it has also come in the investigation that even the respectables of the village have visited the hospital in the shape of Panchayat and tried to explore the possibility of compromise between the two parties but failed to arrive at some amicable settlement and thereafter, the entire Panchayat returned back to the village in a peaceful manner.

Counsel for the petitioners in support of his arguments has

relied upon the report dated 17.09.2007 (Annexure P2) submitted by the Deputy Superintendent of Police, Special Branch, Jalandhar. The operative part of the said report is reproduced as follows:-

“Conclusion Report:- *From a perusal of the case FIR No.43 dated 27.04.2007 under Section 307, 34 IPC registered at Police Station Bhogpur and the statements of the witnesses recorded, I have come to a conclusion that on 26.4.2007 Amarjit Singh son of Jagir Singh resident of village Buttran, Police Station Bhogpur, District Jalandhar had a fight with some persons in the village and Amarjit Singh due to the injuries was admitted at Civil Hospital, Kala Bakra for treatment. On the statement of Amarjit Singh, the police had recorded FIR No.40 dated 26.04.2007 under Section 323, 324, 452, 34 IPC at Police Station Bhogpur. On 27.4.2007 Sarabjit Singh son of Amarjit Singh had gone to Civil Hospital, Kala Bakra for asking the well being of his father. Kundan Singh son of Jagir Singh, younger paternal uncle of Sarabjit Singh had also gone there to find out the well being of his brother. At about 1-1.30 P.M., the respectable of village Buttran had gone to find out the well being of Amarjit Singh, out of which some persons of the other party, on humanitarian grounds had also gone to find out the well being of Amarjit Singh and after enquiring about his well being, they have returned back.*

From the investigation, it is clear that Kundan Singh son of Jagir Singh who has been cited as a witness by the complainant of the case Sarabjit Singh in his statement, has come present before the undersigned and got recorded his statement on 2.7.2007 and thereafter again on 4.9.2007 that on 27.4.2007 no such incident had taken place at Civil Hospital, Kala Bakra. Pritam Singh and his companions being the respectable of the village

had gone to ask about the well being of Amarjit Singh and after enquiring about his well being, had returned back to the village.

In addition to this, SMO, Civil Hospital, Kala Bakra in his written report dated 30.4.2007 has stated that Sh. Kapil Dev Sharma, Pharmacist and Sh. Ashok Kumar, Pharmacist who were posted in the OPD on 27.4.2007, at Civil Hospital, Kala Bakra have also got recorded that no such incident had taken place on 27.4.2007 at Civil Hospital, Kala Bakra.

Furthermore, the investigating officer SI Gurmail Singh, Police Station Bhogpur in sentence No.3 of zimni No.3 recorded during investigation has found from his open and secret investigation that no such incident had taken place.

At the end, I have come to the conclusion that FIR No.43 dated 27.4.2007 under Section 307, 34 IPC registered at Police Station Bhogpur against Pritam Singh son of Malook Singh, Jaswant Singh, Gurdeep Singh and Tarlocahn Singh @ Kala son of Pritam Singh resident of village Buttran, Police Station Bhogpur, in which the alleged incident has not found to have been taken place and the FIR has been got registered on false facts. It is, therefore, recommended that FIR No.43 dated 27.4.2007 under Section 307, 34 IPC registered at Police Station Bhogpur be cancelled.

Report is accordingly submitted.

*Sd/-
Deputy Superintendent of Police,
Special Branch Jalandhar.
Dated:- 17.9.2007”*

Counsel for the petitioners has further submitted that in pursuance of the investigation carried out by the Deputy Superintendent

of Police, the SHO, Police Station Bhogpur, District Jalandhar has prepared a cancellation report on 10.12.2007 (Annexure P3). The operative part of the cancellation report is reproduced as follows:-

“...On 18.7.2007 the other party Pritam Singh etc. submitted one complaint No.117-PTC regarding their innocence in FIR No.43/07 to the higher officers which was enquired by DSP, Special Branch, who recorded the statement of various persons. At the end it was found by him that FIR No.43/2007 has been falsely registered and therefore, he has recommended that FIR No.43/2007 registered at Police Station Bhogpur against Pritam Singh son of Malook Singh, Jaswant Singh, Tarlochan Singh @ Kala son of Pritam Singh residents of Buttran may be cancelled and forwarded his report to the higher officers. D.A. Legal in his report has also passed an order for cancellation of the present FIR. On this respected SSP, Jalandhar has also passed an order for cancellation of the present FIR. Therefore, on the basis of the above, the cancellation report is being forwarded to this Hon'ble Court and a separate application is being filed for discharge of Pritam Singh, Jaswant Singh and Tarlochan Singh @ Kala in the above mentioned FIR.

*Sd/-
Gurbachan Singh
Inspector/SHO
Police Station Bhogpur
District Jalandhar.”*

Counsel for the petitioners has further argued that for a considerable long time when this report was not submitted, the petitioners moved an application on 30.08.2013 for submitting the cancellation report before the Illaqa Magistrate vide (Annexure P4) and thereafter, when the cancellation report was submitted before the trial

Court and the trial Court passed the impugned order dated 28.04.2015 (Annexure P5) holding that it is appropriate to return the cancellation report to the Police Station with a direction to procure the presence of the complainant first and then present the same in the Court. It is also submitted that the complainant is settled abroad and has never returned to pursue his case.

The reply by way of affidavit of the Deputy Superintendent of Police, Sub-Division Adampur, Jalandhar is filed and it is stated in para 2 of the affidavit that the Deputy Superintendent of Police, Special Branch, Jalandhar in his report dated 17.09.2007 after examining the witnesses of the complainant that the impugned FIR was registered qua the incident which has never taken place and the FIR is registered on false facts and recommended the cancellation. It is also stated that the trial Court vide impugned order dated 28.04.2015 had returned the cancellation report with a direction that the presence of the complainant be procured and the Investigating Officer is trying hard to procure the presence of the complainant in order to file the cancellation report.

Counsel for the State, on instructions from HC Satpal Singh, has submitted that the complainant is residing in Canada and has not returned since long.

It may be relevant to observe that vide order dated 22.08.2016, the record of the trial Court was requisitioned by this Court and in that response, the Judicial Magistrate Ist Class, Jalandhar has submitted a report that, in fact, no record is available with the Court as the same was returned in original to the concerned SHO/SI, at the time of passing of the order dated 28.04.2015.

In reply, counsel for the petitioners has relied upon the judgment **“Lokesh Kumar Jain vs State of Rajasthan”, 2013(3) RCR (Criminal) 763**, wherein the Hon'ble Supreme Court while discussing the right of speedy investigation and trial under Article 21 of the Constitution of India, had quashed the FIR, in which the investigation was pending for the last 13 years. The operative part of the judgment reads as under:-

“32. During the investigation inspite of several requests made by the Investigating Agency (Police), the records in respect of allegation were not produced. No evidence came against the appellant-Lokesh Kumar Jain, from the file of the education department. As the case was pending since long and there was no possibility of availability of record in the near future, FR No. 67/2000 against the appellant was filed before the CJM, Dausa. The CJM, Dausa by his order dated 18th November, 2000 on perusal of Final Report, in exercise of power conferred under Section 156(3) Criminal Procedure Code directed the SHO, Dausa to re-investigate the case with the assistance of complainant and to procure the original records. Inspite of order dated 18th November, 2000, for nine years, records were not made available, as apparent from the Inquiry Report dated 15th December, 2008.

33. There is nothing on the record, even by way of counter affidavit filed before this Court to show that record has now been traced to make it available to the Investigating Agency. There is no probability of finding out original documents or evidence mentioned in the counter affidavit. Though, delay has been alleged on the part of the appellant, there is nothing on the record to suggest that the appellant caused delay in the matter of investigation. On the other hand, the silence on the part of

the respondent regarding availability of the original record or other evidence before the Investigating Agency shows that the delay caused due to inaction on the part of the respondent. Therefore, in our view, keeping investigation pending for further period will be futile as the respondent including Directorate for the State Literacy Programme is not sure whether original records can be procured for investigation and to bring home the charges. Considering the fact that delay in the present case is caused by the respondent, the constitutional guarantee of a speedy investigation and trial under Article 21 of the Constitution is thereby violated and as the appellant has already been exonerated in the departmental proceedings for identical charges, keeping the case pending against the appellant for investigation, is unwarranted, the FIR deserves to be quashed.

34. *In the result, the appeal is allowed and the FIR No. 10/2000 lodged in Police Station, Dausa as against the appellant is hereby quashed.*

Appeal allowed.”

Counsel for the petitioners has further relied upon the judgment **“Vakil Prasad Singh vs State of Bihar”, 2009(1) RCR (Criminal) 802**, in which the Hon'ble Supreme Court had quashed the charge-sheet submitted after a huge delay of 27 years. The operative part of the said judgment reads as follows:-

“12. *Time and again this Court has emphasised the need for speedy investigations and trial as both are mandated by the letter and spirit of the provisions of the Criminal Procedure Code (In particular, Sections 197, 173, 309, 437 (6) and 468 etc.) and the constitutional protection enshrined in Article 21 of the Constitution. Inspired by the broad sweep and content of Article 21 as*

*interpreted by a seven-Judge Bench of this Court in **Maneka Gandhi v. Union of India & Anr., (1978)1 SCC 248** in **Hussainara Khatoon & Ors. v. Home Secretary, State of Bihar, (1980)1 SCC 81** this Court had observed that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except according to procedure established by law; that such procedure is not some semblance of a procedure but the procedure should be 'reasonable, fair and just'; and therefrom flows, without doubt, the right to speedy trial. It was also observed that no procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21. The Court clarified that speedy trial means reasonably expeditious trial which is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21.*

*13. The exposition of Article 21 in Hussainara Khatoon's case (supra) was exhaustively considered afresh by the Constitution Bench in **Abdul Rehman Antulay & Ors. v. R.S. Nayak & Anr., (1992)1 SCC 225**. 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. 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: (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 ?; (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 work-load 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 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.

14. *Notwithstanding elaborate enunciation of Article 21 of the Constitution in Abdul Rehman Antulay (supra), and rejection of the fervent plea of proponents of 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 (UOI) & Ors., 1996(2) RCR(Criminal) 419 : (1996)4 SCC 33, "**Common Cause**", A Registered Society v. Union of India & Ors., (1996) 6 SCC 775, **Raj Deo Sharma v. State of Bihar**, 1998(4) RCR(Criminal) 396 : (1998)7 SCC 507 and **Raj Deo Sharma v. State of Bihar**, 1999(4) RCR(Criminal) 206 : (1999)7 SCC 604 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**, 2002(2) RCR(Criminal) 553 : (2002)4 SCC 578. Speaking for the majority, R.C. Lahoti, J. (as his Lordship then was) while affirming that the dictum in A.R. Antulay's case (supra) 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 right to speedy trial, it was held that guidelines laid down in the A.R. Antulay's case (supra) are not exhaustive but only illustrative. They are not intended to operate as hard and fast rules or to be applied as a strait-jacket formula. Their applicability would depend on the fact-situation of each case as it is difficult to foresee all situations and no generalisation can be made. It has also been held that it is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. Nonetheless, the criminal courts should exercise their available powers such as those under Sections 309, 311 and 258 of Criminal Procedure Code to effectuate the right to speedy trial. In appropriate cases, jurisdiction of the High Court under Section 482 Criminal Procedure Code 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.

15. 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 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. 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 frame for conclusion of trial.

16. Tested on the touchstone of the broad principles enumerated above, we are convinced that in the present case appellant's constitutional right recognised under Article 21 of the Constitution stands violated. 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 7th September, 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 27th February, 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 1st May, 2007. 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. We have no hesitation in holding that at least for the period from 7th December, 1990 till 28th February, 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. Thus, on 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 Special Judge, Muzaffarpur, is unwarranted and despite the fact that allegations against him are quite serious, they deserve to be quashed.

17. Consequently, the appeal is allowed and the proceedings pending against the appellant in Special Case No. 29 of 1987 are hereby quashed.

Appeal allowed.”

After hearing the counsel for the parties, I find merit in the present petition. Admittedly, the FIR was registered on 27.04.2007 and thereafter, after due enquiry, the Deputy Superintendent of Police as per his report dated 17.09.2007 (Annexure P2) has held that, in fact, no such incident has taken place and recommended cancellation of the FIR. Thereafter, the SHO of the Police Station Bhogpur, has prepared a cancellation report dated 10.12.2007 (Annexure P3). It is also not

disputed that the cancellation report was not submitted before the trial Court till the petitioners moved an application dated 30.08.2013 (Annexure P4) and only thereafter, the cancellation report was submitted, which was returned by the Illaqa Magistrate vide impugned order dated 28.04.2015 with a direction to the SHO to procure the presence of the complainant and as such, it is an admitted position of the fact that the cancellation report was prepared way back 11 years ago and in the intervening period, the complainant has not shown any inclination to prosecute the petitioners or challenge the cancellation report, in any manner and rather as per the affidavit filed by the Deputy Superintendent of Police, Sub-Division Adampur, Jalandhar and as per the Investigating Officer, the complainant is residing abroad for the last so many years.

In view of the judgment *Lokesh Kumar Jain's case (supra)* and *Vakil Prasad Singh's case (supra)*, I hold that the pendency of the FIR against the petitioners despite the fact that the cancellation report has already been prepared and not accepted by the trial Court on technical ground that the complainant is not present and later on, the presence of the complainant could not be procured by the Investigating Officer for the last more than 10 years, the continuation of criminal proceedings on the basis of aforesaid FIR lodged at the instance of the complainant would be nothing but abuse and misuse of process of law.

In view of what has been discussed hereinbefore, this petition is allowed, the order dated 28.04.2015 (Annexure P5) passed by the trial Court is set-aside and the FIR No.43 dated 27.04.2007

registered under Section 307 read with Section 34 IPC (Sections 25/27/54/59 of the Arms Act added later) at Police Station Bhogpur, District Jalandhar is ordered to be quashed qua the petitioners.

31.07.2018
yakub

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No