IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
21.01.2020	29.01.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. O.P. NO. 8561 OF 2019

Sachin V. Jain .. Petitioner/Accused

- Vs -

State, by Inspector of Police
CBI, ACB, Chennai. ..Respondent /Complainant

Criminal Revision Case filed u/s 482 of the Code of Criminal Procedure, to call for the records and quash the proceedings in Crime No.RCMA/1/2013/A0028 on the file of the Inspector of Police, CBI/ACB/Chennai, insofar as it relates to the petitioner herein.

For Petitioner : Mr. K.Subramanian, SC, for
Mr. S.Punniyakoti

For Respondent: Mr. K.Srinivasan,
Spl. PP (CBI Cases)

ORDER

The present petition has been preferred to call for the records and quash the proceedings in Crime No.RCMA/1/2013/A0028 on the file of the Inspector of Police, CBI/ACB/Chennai, insofar as it relates to the petitioner herein.

2. The respondent registered a case on 27.6.13 for the offences u/s 120 (B) r/w 420 IPC and 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act against the customs officials and others. The said case relates to import of drugs by the accused without obtaining proper registration certificate and without the requisite drug licence from the concerned authority and, thus caused wrongfull loss to the exchequer and, thereby, made a wrongful gain and enriched themselves. However, the name of the petitioner as also two other persons were not shown as accused in the FIR impugned herein. In the bail application moved before this Court in Crl. O.P. No.22489/14, this Court granted bail to the accused therein on condition of deposit of the

amount of Rs.14,092,000/-, which was deposited by the accused. In anticipation of sanction u/s 19 of the PC Act, charge sheet was laid against public servants, viz., A-4 to A-8 in the said case for the offences mentioned above, but sanction was refused by the Department.

3. In the above scenario, for want of sanction, the Special Court for CBI Cases returned the charge sheet directing the respondent to produce the sanction order along with the charge sheet. Crl. O.P. Nos. 23523, 23530, 23531 and 23533/18 were filed by the State against the said return of the charge sheet and this Court, vide order dated 1.11.18, directed the trial court to consider the charge sheet with regard to the requirement of sanction keeping in mind issue No.2 as formulated in the decision of the Apex Court in L.Narayanasamy - Vs - State of Karnataka & Ors. (2016 (9) SCC 598).

4. Against the said order passed by this Court, one of the accused filed Special Leave Petition in SLP No.2323 of 2018 before the Hon'ble Apex Court and the Apex Court, vide dated 5.4.19 granted stay of the impugned order passed by this Court. In the above backdrop, the petitioner herein, filed an application in I.A. No.119639 of 2019 in the said SLP No.3232 of 2019 praying to implead him as party 2nd respondent, which was allowed on 26.8.19.

5. Once again, the petitioner herein, filed I.A. No.138102 of 2019 in the pending SLP No.3232/19 requesting the Hon'ble Apex Court to issue a direction to this Court to decide the present criminal original petition for quashment without reference to the pendency of the special leave petition before the Apex Court. The Apex Court, vide order dated 9.1.2020, granted the relief as sought for by the petitioner herein and directed this Court to decide the present original petition for quashing the FIR without reference to the pendency of the said Special Leave Petition.

6. In the facts as narrated above, the criminal original petition is listed before this Court to consider quashing the FIR.

7. Mr.K.Subramanian, learned senior counsel appearing for the petitioner submits that though the crime was detected in the year 2009, however, the case was registered only in the year 2013 as against 18 officials of the customs department. However, the name of the petitioner and other two accused did not find place in the FIR and, therefore, petition was filed before this Court by the petitioner for anticipatory bail, which was granted on condition of deposit. Accordingly, the petitioner deposited the amount as ordered by this Court.

8. In the interregnum, for want of sanction for prosecution, charge sheet was returned by the court below against which petition was moved by the State before this Court for a direction to the trial court to accept the charge sheet on file and this Court directed the trial court to consider the charge sheet in the light of issue No.2 as formulated in the decision of the Apex Court in Narayanasamy's case (supra). Against the said order, one of the accused in the crime, moved the Hob'ble Supreme Court and obtained stay of the said order and the petitioner herein, moved an interim application in the said petition for impleading himself as party respondent, which was allowed by the Hon'ble Apex Court.

9. Learned senior counsel drew the attention of this Court to the decision in Narayanaswamy's case (supra) and submitted that the ratio laid down in the said case has been referred to a Larger Bench in Manju Surana - Vs - Sunil Arora & Ors. (2018 (5) SCC 557). It is the submission of the learned senior counsel that since the ratio laid down in Narayanaswamy's case (supra) stands referred to a Larger Bench, the ratio can no longer said to be res integra and binding on the court. Therefore, the decision of this Court following the ratio laid down in Narayanaswamy's case (supra) is not sustainable one, which was considered by the Apex Court while granting stay. It is the vehement submission of the learned senior counsel for the petitioner that the guarantees enshrined in the Constitution under Article 21 and Section 309 Cr.P.C., cannot be diluted by following a decision, which stands referred to the Larger Bench.

10. It is the further submission of the learned senior counsel that though the crime was detected in the year 2009, however, the case was registered only in the year 2013 and charge sheet was laid only in the year 2015. The delay in filing the charge sheet vitiates the entire prosecution case. In support of the said submission, learned senior counsel placed reliance on the following decisions :-

i) Pankaj Kumar - Vs - State of Maharashtra (2008 (16) SCC 117);

ii) Abdul Rehman Antulay & Ors. - Vs - R.S.Nayak (1992 (1) SCC 225); and

iii) P.Ramachandra Rao - Vs - State of Karnataka (2002 (4) SCC 578)

11. Therefore, it is the submission of the learned senior counsel that the name of the petitioner not being in the FIR and that there being delay in the laying of the charge sheet, which vitiates the prosecution, the FIR as against the petitioner requires to be quashed.

12. Per contra, Mr. Srinivasan, learned Special Public Prosecutor appearing for the respondent submits that the respondent is not disputing the facts as narrated by the petitioner. However, it is the submission of the learned Special Public Prosecutor that the delay does not vitiate the case, as there cannot be said to be a delay. The crime was detected in the year 2009 and that investigation led to the registration of the case in the year 2013 and the charge sheet was initially laid in the year 2015 itself, but the same was returned by the trial court for want of sanction which necessitated the respondent to approach this Court and ultimately the order passed by this Court stood stayed by the Apex Court. The judicial process as also the administrative process has consumed the time and, therefore, there cannot be said to be delay in laying the charge sheet.

13. It is the further submission of the learned Special Public Prosecutor that the name of the petitioner, though does not figure as an accused in the FIR, only after the charge sheet is taken on record, whether the petitioner is shown as an accused or not would come to light and, therefore, without the charge sheet being taken on file, it is not open to the petitioner to seek quashment of the charge sheet at this point of time. It is submitted that the FIR would stand merged with the charge sheet once the charge sheet is taken on file and only at that point, the culpability of the petitioner in the commission of the offence would be clear and, therefore, the petitioner cannot seek quashment of the crime on the file of the respondent at this point of time.

14. This Court gave its anxious consideration to the submissions advanced by the learned senior counsel for the petitioner as also the learned Special Public Prosecutor appearing for the respondent and perused the materials on record as also the decisions on which reliance was placed by the learned counsel for the parties.

15. It is not in dispute, as pointed out by the learned senior counsel for the petitioner, that the crime was detected in the year 2009 for which a case was registered in the year 2013 and a charge sheet was laid before the jurisdictional court in the year 2015. However, the charge sheet not having been accompanied with the required sanction as required under the Prevention of Corruption Act, the trial court returned the charge sheet for the same to be presented along with the requisite sanction. Thereafter, the litigation started between the parties ultimately culminating in the stay granted by the Supreme Court.

16. It is not in dispute that the decision in Narayanaswamy's case (supra) has been referred to a Larger Bench by the Hon'ble Apex Court. Hence, at this point of time, on the said issue relating to sanction, it would not be proper for this Court to render any opinion as that would be against the judicial ethics and that it would also adversely affect the parties in the pending litigation. Hence, this Court, on the above issue, refrains itself from giving an answer and the said issue has to await the outcome of the decision of the Hon'ble Apex Court.

17. The next issue relates to the delay in filing the charge sheet and that the said delay vitiates the prosecution. At the risk of repetition, it is to be stated that the crime was detected in the year 2009 and investigation led to the registration of the case in the year 2013. After collecting all the materials the charge sheet was laid before the trial court in the year 2015.

18. It is the submission of the learned senior counsel for the petitioner that six years between the detection of the crime and laying of the charge sheet vitiates the prosecution and in this regard, reliance was placed on the decisions of the Apex Court, which this Court will advert to now.

19. In A.R.Antulay's case (supra), the right of an accused to a speedy trial has been dealt with by the Constitution Bench of the Supreme Court and in that context, the Supreme Court held as under :-

> "43. In third Hussainara Khatoon case [Hussainara Khatoon (IV) v. Home Secretary, State of Bihar, (1980) 1 SCC 98 : 1980 SCC (Cri) 40 : (1979) 3 SCR 532] Bhagwati, J. observed :
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> "The State cannot avoid its constitutional obligation to provide speedy trial to the accused by pleading financial or administrative inability. The State is under a constitutional mandate to ensure speedy trial and whatever is necessary for this purpose has to be done by the State. It is also the constitutional obligation of this Court, as the guardian of the fundamental rights of the people, as a sentinel on the qui vive, to enforce the fundamental right of the accused to speedy trial by issuing the necessary directions to the State which may include taking of positive action, such as augmenting and strengthening the investigative machinery, setting up new courts, building new court houses, providing

more staff and equipment to the courts, appointment of additional judges and other measures calculated to ensure speedy trial.”

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57. Similarly, in Srinivas Gopal v. Union Territory of Arunachal Pradesh (now State) [(1988) 4 SCC 36 : 1988 SCC (Cri) 889 : 1988 Supp 1 SCR 477], the Court quashed the proceedings against the appellant on the ground of delay in investigation and commencement of trial. In this case, investigation commenced in November 1976 and the case was registered on completion of the investigation in September 1977. Cognizance was taken by the Court in March 1986. These facts were held sufficient to quash the proceedings particularly when the offence charged was a minor one namely, Section 304-A read with 338 of the Penal Code, 1860.

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60. In State of A.P. v. P.V. Pavithran [(1990) 2 SCC 340 : 1991 SCC (Cri) 7] this Court upheld the decision of the High Court quashing the FIR on the ground of inordinate delay in completing the investigation. The respondent was an IPS officer against whom an offence under Section 5 (2) read with Section 5(1)(e) of the Prevention of Corruption Act was registered in March 1984. He was placed under suspension but then it was revoked in September 1984 and he was reinstated in service. In July 1985, the government cancelled its earlier order and called upon the respondent to show cause why he should not be retired from service. The respondent challenged the said notice before the Central Administrative Tribunal which was upheld. The special leave petition presented to this Court was dismissed in view of the fact that respondent had already retired from service on attaining the age of superannuation. After all this, the Anti-corruption Bureau re-started the criminal proceedings in 1987-88 whereupon the respondent approached the High Court for quashing the said proceedings on the ground of delay. The High Court quashed the same accepting the ground urged. This Court affirmed. Of course, while doing so, it took care to observe that while examining the plea of delay in completing the investigation, the Court should have regard to all the relevant circumstances and that it is not

possible to formulate any inflexible guidelines or rigid principles of uniform application for speedy investigation nor is it possible to stipulate any arbitrary period of limitation for completing the investigation. In short, the principle of Raghubir Singh [(1986) 4 SCC 481 : 1986 SCC (Cri) 511 : (1986) 3 SCR 802] was reiterated."

(Emphasis supplied)

20. Yet again, another Constitution Bench of the Supreme Court in Ramachandra Rao's case (supra), while affirming the law laid down in A.R.Antulay's case (supra), on the question of right to speedy trial engrafted in the Constitution, held as under :-

> 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 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.

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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 the judiciary, and secondly, because such bars of limitation fly in the face of law laid down by the Constitution Bench in A.R. Antulay case [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] and, therefore, run counter to the doctrine of precedents and their binding efficacy.

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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 the court. This is permissible for the judiciary to do. But it may not, like the legislature, enact a provision akin to or on the lines of Chapter XXXVI of the Code of Criminal Procedure, 1973.

28. .... 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 [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] . In Kartar Singh case [(1994) 3 SCC 569 : 1994 SCC (Cri) 899] 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."

29. ....

(1) The dictum in A.R. Antulay case [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] 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 [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] 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 [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] 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) [(1996) 4 SCC 33 : 1996 SCC (Cri) 589], Raj Deo Sharma (I) [(1998) 7 SCC 507 : 1998 SCC (Cri) 1692] and Raj Deo Sharma (II) [(1999) 7 SCC 604 : 1999 SCC (Cri) 1324] 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) [(1996) 4 SCC 33 : 1996 SCC (Cri) 589], Raj Deo Sharma case (I) [(1998) 7 SCC 507 : 1998 SCC (Cri) 1692] and (II) [(1999) 7 SCC 604 : 1999 SCC (Cri) 1324] . 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 [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] 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.

(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."

(Emphasis supplied)

21. In Pankaj Kumar's case (supra), the Supreme Court has laid down that right to speedy trial in all criminal prosecutions is an inalienable right under Article 21 of the Constitution and following the ration laid in A.R.Antulay's case and Ramachandra Rao's case (supra), the Supreme Court held as under :-

> “20. 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) 4 SCC 578 : 2002 SCC (Cri) 830] . Speaking for the majority, R.C. Lahoti, J. (as His Lordship then was) while affirming that the dictum in A.R. Antulay case [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] is correct and 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 guidelines laid down in A.R. Antulay case [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] 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 as it is difficult to foresee all situations and no generalisation can be made.
>
> 21. 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 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 aforenoted judgments were held not to be in consonance with the legislative intent.
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> 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 the conclusion of trial.

22. From the above ratio propounded by the Supreme Court, it is manifestly and unambiguously clear that the right to speedy trial engrafted in Article 21 of the Constitution, though is a guarantee, however, the same should not be applied lika a straitjacket formula, but that their applicability would depend on the fact situation in each case, as it would be difficult to foresee all the situations and no generalizations can be made.

23. Keeping the above proposition of law, as postulated by the Supreme Court in mind, an analysis of the materials available on record reveals that though the crime was detected in the year 2009 leading to preliminary investigation, which ultimately culminated into the registering of the FIR in the year 2013, from 2013, when investigation took a serious turn, the charge sheet was laid before the trial court by 2015, i.e., within a period of two years from the registration of the FIR. However, the non-grant of sanction precluded the trial court from proceeding further, which resulted in delay and further delays occasioned due to proceedings initiated by one or the other party to the lis.

24. Admittedly, the petitioner is not an accused in the present impugned crime as reflected in the FIR, which in the strictest sense would only mean that the petitioner has no grievance and is technically not an aggrieved person. However, in the charge sheet the petitioner herein is arrayed as an accused and, therefore, definitely a right would accrue on the petitioner to question the same. However, that stage is not before this Court at this point of time.

25. Now the issue before this Court is the delay in filing the charge sheet, which is said to vitiate the prosecution. As pointed out above, the impugned crime was registered in the year 2013 leading to the laying of the charge sheet in the year 2015. The time lapse between the registration of the case and the laying of the charge sheet before the trial court is about two years. Considering the gravity of the offence, the stakeholders involved in the said offence and there being an international angle, relating to import of the drugs and consequently the resultant foreign exchange involved, definitely, the issue cannot be said to be a miniscule one to be probed within a short span of time.

26. As held by the Supreme Court in A.R.antulay's case (supra), the Court is to take into consideration the disadvantages that are likely to be suffered by the accused, viz., the length of delay, the justification for the delay, the accused's assertion of his right to speedy trial, and prejudice caused to the accused by such delay. All the above factors are to be kept in mind before coming to the conclusion that there is infringement of the right of the accused on account of the delay. The attendant circumstances, as narrated above, could in no way term the period of two years for laying the charge sheet to be unreasonable so as to impute an allegation on the respondent that the cause for the delay is only due to the investigative lapse, thereby putting the accused in a vulnerable position and, thereby, infringing his right guaranteed by the Constitution.

27. On an overall consideration of the entire gamut of facts, as narrated above,this Court is of the considered view that the period of two years between the registration of the FIR and the laying of the charge sheet cannot be said to be an unjustified one, warranting quashment of the charges. In the decisions relied on by the learned senior counsel on the point of delay, the Supreme Court has categorically held that the facts and circumstances in each and every case has to be taken into account while determining the delay which has infringed on the rights of the accused. In the case on hand, it cannot be said that the delay has in anyway caused any infringement of the right of the petitioner, more so, when the charge sheet is yet to be taken on file by the trial court, though the charge sheet has been laid by the respondent.

28. Therefore, the present petition for quashment of the proceedings in the crime cannot be acceded to at the present point of time, more so, when the ratio laid down in Narayanaswamy's case (supra), is pending before a Larger Bench of the Hon'ble Apex Court for testing the correctness or

otherwise of the said decision. The petitioner, having not been shown as an accused in the FIR, but has subsequently been added as an accused in the charge sheet, which charge sheet has been assailed before the Hon'ble Apex Court in SLP No.3232 of 2019, this Court would not be justified in deciding the issue of quashment at the present point of time, more so when the Special Leave Petition is pending before the Hon'ble Apex Court. However, the petitioner may agitate his rights and work out his remedies after the disposal of the above Special Leave Petition by the Hon'ble Apex Court.

29. For the reasons aforesaid, this petition to quash the crime on the file of the respondent is liable to be dismissed and, accordingly, the same is dismissed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

GLN
To
1. The Inspector of Police
   CBI, ACB, Chennai.

2. The Public Prosecutor
   High Court
   Madras.

+1 CC to Mr.S. Punniyakotti, Advocate sr 6370.

CRL.O.P.NO. 8561 OF 2019

PP(CO)
SP(26/02/2020)