Judgment Reserved: 20.10.2020
Judgment Delivered: 23.12.2020

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No.1899 of 2020 (M/S)

Dr. Atul Krishna …Petitioner

Versus

State of Uttarakhand and others ….Respondents

Present: Mr. Shobhit Saharia, Advocate for the petitioner.
Mr. Sudhir Singh, Standing Counsel for the State of Uttarakhand/respondent no.1.

Hon'ble Sharad Kumar Sharma, J.
(Via Video Conferencing)

A very short, but a very controversial controversy, which is engaged, consideration in the present writ petition, wherein the petitioner, who is a complainant of FIR, had registered the FIR, as against the private respondents, being FIR No.133 of 2012, for the alleged commission of offence under Sections 420, 406, 467, 468 and 471 of IPC, which was initially registered at P.S. Jaani, District Meerut, on 14.03.2012. Subsequently, on account of the fact that the major properties and documents, which were subject matter of the complaint in the said FIR and all the documents pertaining to the commission of the said offence, since were falling within the domain of district Dehradun, the investigation of the said offence was transferred to District Dehradun and ultimately on culmination of the investigation, the charge sheet, being Charge Sheet No.72 of 2014, was submitted by the Investigating Officer against the private respondents on 28.06.2014.

2. Grievance which has been raised by the petitioner in the present writ petition, is that as a consequence of the submission of the charge sheet, before the Magistrate concerned, the cognizance was taken and the proceedings by way of Criminal Case No.1973 of 2014, State vs. Manish Verma and others was registered before the court of ACJM IIIrd Dehradun. Arising out of the aforesaid, charge sheet, a C-482 petition being **C-482 Petition No.1528 of 2015** was preferred before this Court which was ultimately adjudicated on 07.12.2015 by the Coordinate Bench of this Court and the following observation was made:-

> "Present petition, thus, stands disposed of with the direction that petitioners shall surrender/appear before the Judicial Magistrate, 2nd Dehradun on or before 15th December, 2015. In the event of moving bail application, same shall be decided by the learned Magistrate without any undue delay keeping in mind the dictum of this Court in the case of **Hari Gupta and another vs. State of Uttarakhand and others** reported in **2013 (2) U.D. 203.**
>
> It goes without saying, if bail application is not decided on the same day or is adjourned for future hearing, petitioners shall be released on furnishing their respective personal bonds to the satisfaction of learned Magistrate till final decision is taken on the bail application."

3. In relation to the same criminal case, the petitioners too have also filed yet another C-482 petition, being **C-482 Petition No.320 of 2015,** by invoking the extra ordinary powers of Court under Section 482 of Cr. P.C., seeking a direction to the court of Additional Chief Judicial Magistrate, Dehradun for an expeditious disposal of the Criminal Case No.1973 of 2014, State vs. Manish Verma and others, and the Court seized with 482 jurisdiction, disposed of the C-482 petition, by the judgment dated 18.03.2015 and after considering the implications of Article 21 of the Constitution of India, which entails a right of complaint as well as accused

to get an expeditious disposal of trial, which was allowed to be granted by Article 21 of the Constitution of India. The 482 petition was disposed of on 18.03.2015 with the following directions:-

> "It is not yet necessary for the Court to issue notice to the private respondents before giving the aforesaid direction, in as much as, it does not lie in one's mouth to say that the decision of judicial proceeding pending before any Court should be delayed or should not be expedited.
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> Application under Section 482 Cr.P.C. is thus summarily disposed of."

4. The grievance of the petitioner in the present writ petition, is that ever since submission of the charge sheet on 28.06.2014, till the disposal of C-482 Petition No.320 of 2015, by the judgment of this Court dated 18.03.2015 and even till date of filing of the present writ petition on 15.10.2020, the proceedings of the Criminal Case No.1973 of 2014, since was being delayed, petitioner filed the present writ petition praying for the following reliefs:-

> It is therefore most respectfully prayed that this Hon'ble Court may be pleased to:-
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> I. Issue order or direction, directing for disposal of criminal case no.1973 of 2014, pending in the court of AJCM-III, Dehradun, titled as State vs. Manish Verma and others, within a specific time period and with directions that no unnecessary adjournments shall be granted on frivolous grounds and without assigning due reasons and by a speaking order.
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> II. Issue any suitable order or direction of any nature which this Hon'ble Court may deem fit and proper in the present circumstances of the case.
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> III. Award the cost of the writ petition in favour of the petitioner."

5. When the writ petition was taken up for hearing on admission, a question was raised to the counsel for the petitioner that once there already happens to be an order of expeditious disposal, as was rendered in C-482 Petition No.320 of 2015; whether there could be a subsequent writ petition invoking Article 227 of the Constitution of India, for seeking an identical direction for the court of Additional Chief Judicial Magistrate, for deciding the aforesaid criminal case, expeditiously. In response to it, the counsel for the petitioner had submitted that the direction given by the Coordinate Bench in C-482 Petition on 18.03.2015 and then non-compliance of the directions of this Court by the Magistrate seized with the criminal case, will still not create any embargo for the petitioner to re-approach the Court, for seeking an identical direction by invoking the provisions contained under Article 227 of the Constitution of India for an order of expeditious disposal of a case. In its exercise of supervisory jurisdiction over the subordinate court and couple with the fact, that the petitioner, who was a complainant of the said FIR, has got all the right provided to him under Article 21 of the Constitution of India, to ensure an expeditious disposal of the criminal case and hence, he submits that the same would be still maintainable though being a second attempt for the same relief before the High Court.

6. In support of his contention, the learned counsel for the petitioner has placed reliance on a judgment reported in **(2002) 4 Supreme Court Cases, 578 P. Ramchandra Rao vs. State of Karnataka**, wherein the Constitution Bench, while considering the implications of Article 21,

32, 141 and 142, as per the majority decision of the Hon'ble Supreme Court, it was provided that the constitutional courts, cannot fix any time limits, for the purposes of conducting the trial, but still the trial court cannot be permitted to take the liberty to continue the trial for a prolong period, thereby entailing the accused to be acquitted on the ground of delay, it infers that the prescription of stipulated time limit for conducting the trial would may also amount to be a judicial directions, which is not permissible, however an exception was carved out by Hon'ble Apex Court, that in these cases where the trial continued for a longer period, the bail could be considered. The majority view of the Constitutional Bench of the Hon'ble Apex Court, in its judgment in para 23 and 28, has held that the power of limiting the proceedings of trial, by a judicial order prescribing time period, is to provide a solution in order to avoid any complications in the proceedings of the trial but however in the ratio propounded in para 28 of the said judgment, which has been quoted herein below, it was still left open to the conscious of the Court, which was seized with the investigation or the trial depending, upon the circumstances of each cases, it was that attempt is to be made to avoid an inordinate delay in conducting the trial. The identical view was observed by the Constitutional Bench in para 29 of the said judgment, which is quoted hereunder:-

> "**29.** For all the foregoing reasons, we are of the opinion that in Common Cause case (I) (as modified in Common Cause (II) and Raj Deo Sharma (I) and (II) , the Court could not have prescribed periods of limitation beyond which the trial of a criminal case or a criminal proceedings cannot continue and must mandatorily be closed followed by an order acquitting or discharging the accused. In conclusion we hold:-
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> (1) The dictum in A.R. Antulays' case 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. Antulays' case , adequately take care of right to speedy trial. We uphold and re-affirm the said propositions.

(3) The guidelines laid down in A.R. Antulay's case are not exhaustive but only illustrative. They are not intended to operate as hard and fast rules or to be applied like a strait-jacket 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 can 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), Raj Deo Sharma (I) and Raj Deo Sharma (II) 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 uncommon Cause Case (I), Raj Deo Sharma case (I) and (II) . 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's case and decided 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 Code of Criminal Procedure to effectuate the right to speedy trial. A watchful and diligent trial judge can prove to be better protector of such right than any guidelines. In appropriate cases jurisdiction of High Court under Section 482 of Cr.P.C. and Articles 226 and 227 of 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."

7. The Hon'ble Apex Court has held that prescribing a specified time period for the trial courts, for conducting the trial would always act as a reminder and would persuade the trial court, not to apply the judicious mind and consciously act or conduct a case, before taking into consideration various vital factors, which are essential for adjudication and conducting a fair trial, and hence, a direction for expeditious trial should not be casually directed except in exceptional cases and that is why the basis fabric of the judgment, which was considered therein, was under the circumstances, taken by the trial court dealt with in para 1 of the said judgment, which is quoted hereunder:-

> "1. No person shall be deprived of his life or his personal liberty except according to procedure established by law- declares Article 21of 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 sort 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."

8. The argument of the counsel for the petitioner from the perspective that inspite of there being an order of disposal of the case by the High Court, while exercising its power under C-482, the existence of the said judgment will still not obstruct the invocation of the writ jurisdiction under Article 227 of the Constitution of India is not accepted by this Court for the reasons being.

(i) For an identical relief the petitioner had already earlier approached the Criminal Court under Section C-482 Cr.P.C. and if the provisions contained under Section C-482 Cr. P.C. is taken into consideration, which is quoted hereunder:-

> "**482. Saving of inherent powers of High Court.-**Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

9. Even otherwise also as per the opinion of this Court where the legislature provides different judicial platforms where a person can approach for the redressal of his grievance, it does not mean that he would

be concurrently invoking all the Forums, which are available to him, under law, once the cause of action which made him for approaching the Court, which he has invoked and which has decided the matter, subsequently recurringly he cannot be permitted to chose, an another platform though might have been available under the law but if the said liberty is permitted to be carried, it will amount to be an abuse where a person according to his own choice and wisdom would be hunting Forums for redressal of his grievance, which cannot be the intention of law. For example in the instant case, the provisions of Section 482 of the Code or Criminal Procedure is an inherent power, which has been given to the High Court, for passing an appropriate orders to meet the ends of dispensation of justice, which was admittedly invoked by the petitioner and it has been decided and rather granted to the petitioner by this Court.

10. Subsequently, approaching the writ jurisdiction under Article 227 of the Constitution of India for the same relief and for the same cause of action, at a belated stage, may not be available because apart from the fact that it intends to over ride the effect of the probable implications of Section 20 of the Contempt of Courts Act, in case if the petitioner files a contempt due to non compliance of the judgment already rendered in 482 proceedings that cannot be over ridden by filing a subsequent petition where the Court exercises its supervisory jurisdiction over the subordinate courts under Article 227 of the Constitution of India by seeking the same relief of an expeditious disposal, which may not be interpreted to be a

rightful Forum, which could be concurrently invoked by the petitioner for the redressal of his grievance, for an expeditious disposal of the case.

11. The said aspect has also been taken into consideration from the view point that there cannot be any dispute that the High Courts do have a power and where in an appropriate, it can pass an order directing the subordinate courts, in its exercise of supervisory jurisdiction, to decide the matter in a particular time bound manner; but I am of the view that the said powers should be exceptionally and sparingly exercised by this Court, because it sometimes carries an inherent judicial vices while deciding the matter by the subordinate courts where the subordinate courts in pursuance to the directions issued by the High Court for expeditious disposal, often resort to the short cut methods to decide the matters in order to satisfy the conditions of the directions given by the High Court for expeditious disposal.

12. This Court is also conscious of the fact that the High Court, has been invariably entertaining such type of writ petition, without even venturing into the matter as to what are the circumstance? As to under what circumstances the expeditious disposal is to be directed? What is the dereliction, which had been procedurally caused by the Judicial Officer in deciding the matter etc.? The Courts have been passing the orders to decide the matters expeditiously.

13. The aftermath of such a direction is that, in all those cases where there happens to be a direction of the High Court, for deciding the matter expeditiously, it creates a psychological pressure on the Presiding Officers of the subordinate courts, to take up those matters by giving them a procedural preference in consideration, as compared to the other much older pending cases, of the other litigants, whose cases are of much older age, than that in which the direction for expeditious disposal has been passed.

14. Apart from it, the other vices of expeditious disposal, direction is that these directions have also been acting as a method of short circuiting the process of deciding the matters on its merit, as shortcut method are being adopted by the courts at times, in order to, comply the directions issued by the High Court with the time period provided by it, for deciding the case within the specified time frame. Normally, it should be avoided, because the High Court in its exercise of supervisory jurisdiction no doubt has power to issue directions for an expeditious disposal of the case, but should not regulate the roster or the procedure of a subordinate courts, because that is falling in an exclusive domain of the Presiding Officer, holding the court and the High Court cannot and rather should not issue such directions for expeditious disposal without considering the merit and demerits of an order of expeditious disposal.

15. It is the provision which has been laid down by the legislation enabling the High Court to exercise in its inherent power to make such order which may be necessary, in the interest of justice and to meet the ends

of justice, and once the Coordinate Bench of the High Court has exercised its inherent power under Section 482 of Cr.P.C., which in paramateria provisions, as intended by Article 226 or 227 of the Constitution of India, has the same legislative intent as contemplated under Article 227 of the Constitution of India for the exercise of an extra ordinary supervisory jurisdiction, it cannot be said to be having an overriding effect of exercising its jurisdiction in a matters where the directions have already been issued by the Court under Section 482 of Cr.P.C. The powers of the provisions contained under Article 227 of the Constitution of India, which is supervisory in its nature, exclusively vested with the High Court, over every subordinate court or tribunal but does not include within its ambit, a power to issue an additional direction in supersession to the directions which had already been given under Section 482 of Cr.P.C. which is yet again had been issued in its inherent exercise of powers with High Court and that too by the court of an identical strength.

16. Hence, I am of the view that once, the High Court while exercising its powers under Section 482 of Cr.P.C. in its inherent jurisdiction has already directed the trial court for deciding the proceedings of the criminal case as per the directions contained in the judgment of 18.03.2015, the subsequent writ petition for the same relief cannot be invoked; may be that it was invoked, in its exercise of supervisory jurisdiction under Article 227 of the Constitution of India, which as per the opinion of this Court is paramateria provisions and carrying the same legislative intent and competence of the High Court. Hence, the writ

petition lacks merit and the same is accordingly dismissed. However, the dismissal of this writ petition will not preclude the petitioner to carry out his remedies as available to him under law.

(Sharad Kumar Sharma, J.)
23.12.2020

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