

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

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**CRM-M-20254-2021
Date of decision: 09.07.2021**

VIKAS WALIA

....Petitioner

Versus

UNION TERRITORY CHANDIGARH AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Ms. Nupur Choudhary, Advocate
for the petitioner.

Mr. Rajeev Anand, Addl. Public Prosecutor
for respondent No.1-U.T. Chandigarh.

Mr. Vivek Goyal, Advocate
for respondents No.2 to 4.

ARUN KUMAR TYAGI, J. (ORAL)

(The case has been taken up for hearing through video conferencing.)

The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 for issuance of directions to the trial Court to frame charges in case FIR No.410 dated 16.10.2015 registered under Sections 420, 467, 468 and 471 at Police Station Sector 17, Chandigarh and expediting and concluding the trial.

Briefly stated the petition has been filed on the averments that the above said FIR was registered on the basis of complaint dated 13.08.2015 made by the petitioner to the DIG of Police, U.T. Chandigarh against Ashok Mittal, Chetna Mittal, Aditi Mittal, Arpit Mittal, Raj Rani Mittal and Vinod Mittal. The police investigated the

case and filed report under Section 173 (2) of the Cr. P.C. against Ashok Mittal, Chetna Mittal and Arpit Mittal-respondents No.2 to 4. The case is pending before Judicial Magistrate First Class, Chandigarh since 19.05.2017 but till date charges have not been framed. Respondents No.2 to 4 also filed applications for discharge on 27.08.2018/25.09.2019. The trial Court has prolonged the proceedings for no valid/sound reason and and granted unnecessary adjournments time and again. Therefore, the trial Court may be directed to proceed with the trial by framing the charges and conclude the trial within reasonable time.

The petition has been opposed by respondent No.1-State and respondents No.2 to 4. However, no written replies have been filed by the respondents.

I have heard learned counsel for the petitioner, learned State counsel and learned counsel for respondents No.2 to 4 and have gone through the relevant material on record.

Learned counsel for the petitioner has submitted that the case is fixed for hearing on charge. Respondents No.2 to 4 have also filed applications for discharge. Applications filed by respondents No.2 to 4 for discharge and the question of framing of charges are not being decided by the trial Court and the trial Court is granting unnecessary adjournments. Therefore, the trial Court may be directed to hear arguments and decide the applications for discharge filed by respondents No.2 to 4 and the question of framing of charges against respondents No.2 to 4.

On the other hand, learned State counsel has submitted that

adjournments were granted on request of the parties and delay in the proceedings cannot be said to be wholly unreasonable. The trial Court cannot be directed to frame charges under the particular Sections specified in the FIR as the question of framing of charges has to be decided by the trial Court on the basis of material on record. Therefore, the petition may be dismissed.

Learned counsel for respondents No.2 to 4 has argued that the petitioner was arrayed as accused in six complaint cases filed under Section 138 of the Negotiable Instruments Act, 1881. The petitioner absconded in those cases and was ultimately convicted in all the six cases. The delay occurred in the case due to mis-conduct on the part of the petitioner who is not entitled to the relief as prayed for. Therefore, the petition may be dismissed.

In the present case, report under Section 173 (2) of the Cr.P.C. was filed on 06.05.2017. Vide order dated 09.04.2018, the case was adjourned for consideration on charge. The applications for discharge were filed by respondents No.2 to 4 on 27.08.2018/25.09.2019. Since then, the matter is pending for consideration on charge/hearing on discharge applications and more than twenty adjournments have been given for the purpose.

It is now well settled that the complainant has fundamental right to access of justice as held in **Imtiyaz Ahmed versus State of Uttar Pradesh and others : 2012 (2) RCR (Criminal) 1** while the accused has fundamental right to speedy trial as held in **Hussainara Khatoon versus Home Secretary, State of Bihar : (1979) 3 SCR 169**. Criminal trial is required to be fair not only to the accused but

also to the complainant as well as to the society at large. Grant of unnecessary adjournments by the trial Court, if not curbed, is bound to defeat the fundamental right of the complainant to access of justice and fundamental right of the accused to speedy trial. In **Abdul Rehman Antulay and others versus R.S. Nayak and another: 1992 (2) RCR (Criminal) 634** it was held by Hon'ble Supreme Court that if there is violation of right of speedy trial the Higher court can direct conclusion of proceedings in a fixed time.

In view of the above referred judicial precedents and facts and circumstances of the case, I am of the Considered view that ends of justice require that the trial Court be directed to go through the relevant material on record, hear learned counsel for the parties and decide the applications for discharge filed by respondents No.2 to 4 and the question of framing of charges against respondents No.2 to 4 in accordance with law within three months from the date of receipt of a copy of this order and in case of framing of charges against all or any of respondents No.2 to 4 to expedite the trial and conclude the same preferably within six months from the date of framing of charges.

In view of the above, the petition is allowed and the trial Court is directed to go through the material on record, hear learned counsel for the parties and decide the applications for discharge filed by respondents No.2 to 4 and the question of framing of charges against respondents No.2 to 4 in accordance with law within three months from the date of receipt of copy of this order. In case the trial Court proceeds to frame charges against all or any of respondents No.2 to 4 in respect of all or any of the offences triable by it, the trial Court shall also

expedite the trial and conclude the same preferably within six months from the date of framing of charges by conducting trial on day to day basis as far as possible and by allocating block of dates for recording of evidence and issuing coercive process for securing presence of the witnesses, if so required.

A copy of this order be sent to the trial Court concerned for requisite compliance.

09.07.2021

Vishal

(ARUN KUMAR TYAGI)
JUDGE

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