

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

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CRM-M-44084-2021
Date of Decision: 23.02.2022

GURREET SINGH KOHLI

....Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. Jashan Singh Sekhon, Advocate and
Ms. Shalini Sharma, Advocate
for the petitioner.

Ms. A.K. Khurana, DAG, Punjab.

VINOD S. BHARDWAJ, J. (Oral)

This case has been taken up through Video Conferencing via Webex facility in the light of Pandemic Covid-19 situation and as per instructions.

2. The instant petition raises vital issue of rights of an accused provided under Article 21 of the Constitution of India, which mandates right to speedy trial and justice, as also the substantive statutory right which accrues in favour of an accused upon expiry of the period of limitation prescribed under Section 468 CrPC for taking cognizance of an offence *viz-a-viz* the absolute right in favour of the complainant to be heard before acceptance/rejection of a cancellation report.

3. Prayer in this petition filed under Section 482 CrPC is for quashing of FIR No. 52 dated 21.04.2008 under Sections 341, 323, 506 and Section 34 IPC registered at Police Station City Rupnagar, District Rupnagar and all the

subsequent proceedings arising therefrom.

4. When the matter came up for hearing on 14.02.2022 and noticing that already a period of 14 years has lapsed since the FIR has been registered, learned State counsel was directed to seek instructions in the matter.

5. On resumed hearing, learned State counsel has furnished a status report by way of affidavit of Ravinder Pal Singh, PPS, Deputy Superintendent of Police, Rupnagar, District Rupnagar, Punjab, wherein it is submitted that a SIT had been constituted in the said matter and an affidavit dated 30.07.2008 sworn by complainant-respondent No.2 was submitted by him to the SIT. By placing reliance on the same, a cancellation report under Section 173 CrPC was furnished. The said cancellation report was approved by the Senior Superintendent of Police and submitted to the Court of Illaqa Magistrate. However, the same was returned by the Illaqa Magistrate by an oral order refusing to receive it in the absence of complainant-respondent No.2. Thereafter, the cancellation report was again presented successively on 31.10.2008, 08.07.2009, 28.07.2020 and lastly on 17.02.2022 before the Illaqa Magistrate for his acceptance. However, every time cancellation report was returned orally without passing any written order by the Illaqa Magistrate, Rupnagar with an oral direction that the complainant-respondent No.2 should be produced along with the cancellation report. It is further stated that the complainant-respondent No.2 has already left for abroad.

6. The service report pertaining to respondent No.2 also reflects that complainant is no more residing at the given address. The same thus corroborates the version of the Investigating agency that the complainant does not reside in India.

7. In order to appreciate the said question that arise for consideration

in the instant petition, the facts as are necessary for adjudication of the questions above, are being referred to as under:-

7.1 The case bearing FIR No.52 was registered under Section 341, 323, 506 and 34 IPC at Police Station City Rupnagar on 21.04.2008 on the statement of one Deepak Handa i.e., complainant-respondent No.2 herein.

7.2 It is stated that on the date of event viz., 20.03.2008, when the complainant was carrying on business as a wholesale dealer of medicines, the petitioner along with other persons entered at Kailash Medical store and the complainant was called repeatedly to present himself at the meeting of the Ropar Medical Association.

7.3 The complainant went to the shop where other members of the Ropar Medical Association were sitting and they are alleged to have threatened the complainant not to do business at Ropar in future and to cancel all the material to be supplied in the market.

7.4 The the complainant did not agree with the petitioners and claimed that being a member of the Ropar Medical Association, he had a right to do business in District Ropar.

7.5 That on the refusal of the complainant, an altercation and scuffle took place, in which the complainant was allegedly slapped by the accused persons and when the complainant tried to ran away, he was forcefully stopped and given beatings.

7.6 The complainant was alleged to have been followed by the assailants to his house and they continued to shout and hurl abuses against the complainant and exhorted to teach him a lesson.

7.7 Even though the incident in question is stated to have taken place on 20.03.2008, however, the said complaint was given to the Police on

01.04.2008, whereupon the FIR was registered on 21.04.2008.

ARGUMENTS:

8. The petitioner argued that the accusations are false and misconceived and that the petitioner himself runs a chemist shop and that the Chemist Association had proposed to hold a protest march along with other chemists. The petitioner has been falsely roped in the matter, in order to teach a lesson to the petitioner for playing a key and active role in organizing the protest march, at the hands of the administration. It is further stated that there was no medico-legal report to substantiate the allegation levelled by the complainant and that the matter had been amicably resolved amongst the parties.

9. That upon resolution of the said dispute, a compromise was effected amongst the petitioner and the complainant. An affidavit dated 30.07.2008, in support of the compromise, was given by the complainant specifically stating that he did not intend to pursue any litigation. It is further urged that the complainant thereafter left for abroad and is no more residing in India.

10. It is further argued for the petitioner that despite a lapse of more than 13 years since the registration of the FIR, the final report under Section 173 CrPC has not been submitted. The petitioner argues that on account of mysterious serious ailment of his son and owing to the medical advise to take him abroad for treatment, the petitioner intends to go abroad for treatment of his son, however, the Ministry of External Affairs has rejected the application of the petitioner for issuance of a passport due to the pending FIR. Hence, the petitioner has been compelled to approach this Court.

11. Upon being called to furnish its response to the same, the

respondent-State has filed a status report by way of an affidavit of Deputy Superintendent of Police, Rupnagar, District Rupnagar. The relevant extract of the status report filed by the respondent-State is reproduced hereinafter below:-

“2.That it is respectfully submitted that the FIR No.52 dated 21.04.2008, under Section 341, 323, 506, 34 IPC, was lodged at Police Station City Rupnagar, against the petitioner-Gurpreet Singh Kohli and his two co-accused namely Kailash Ahuja and Topsy, on the basis of complaint moved by the complainant-respondent no.2, wherein it was alleged by the complainant-respondent No.2 that on 20.03.2008 he had come to Rupnagar for supplying medicines and petitioner along with his co-accused and members of other chemist association convened a meeting and directed the complainant-respondent No.2 to not to carry out his business in Rupnagar and further directed him to take back his medicine supplied by him earlier. It was further alleged by the complainant-respondent No.2 that an altercation had taken place, wherein petitioner-Gurpreet Singh Kohli, Kailash Ahuja, and his sons namely Topsy and Mauji given slapped blows to him and during this altercation his gold chain and Rs.12,000/- cash had fallen. The complainant-respondent No.2 further alleged that he was saved by Manjit Singh, owner of Punjab medicine centre and he went to the house of Bhupesh Sharma, however, accused also reached there and then he managed to take bus for his village from bus stand Rupnagar and complainant-respondent No.2 requested to take action against the petitioner and his co-accused.

3.That it is further submitted that the investigation of the case was entrusted to a Special Investigation Team (SIT) headed by Deputy Superintendent of Police, Rupnagar, Incharge Drug Enforcement Unit, Rupnagar and Incharge, Economic Offences Wing, Rupnagar being its members. It is

further submitted that the thorough investigation of the case was carried out by SIT and during investigation the complainant-respondent No.2 presented an affidavit dated 30.07.2008, thereby stating that he had compromised the matter with the petitioner and his co-accused and he further stated that he do not intended to proceed further in the matter. It is further submitted that on the basis of aforementioned affidavit dated 30.07.2008, the SIT recommended to file cancellation report in the case and the said report was duly considered and accepted by the Senior Superintendent of Police, Rupnagar.

4. That it is further submitted that in view of the order of the Senior Superintendent of Police, Rupnagar, the cancellation report of the case was prepared by Station House Officer, Police Station City Rupnagar on 11.09.2008 and the same was sent for approval of the Senior Superintendent of Police, Rupnagar, which was received on 06.10.2008. It is further submitted that on 10.10.2008, the cancellation was marked to ASI Nirmal Singh for presenting the same to the Court of Ld. Illaqa Magistrate, Rupnagar, and the same was presented before the Court of competent jurisdiction, however, the Ld. Illaqa Magistrate, Rupnagar, did not accept the cancellation report without the complainant-respondent No.2 and returned the same to the concerned police office orally and without passing any written order. It is further submitted that complainant-respondent no.2 was also informed several time to appear before the Ld. Illaqa Magistrate, Rupnagar, for presentation of cancellation report, however, the complainant-respondent No.2 also, did not appear before the Ld. Illaqa Magistrate, Rupnagar, therefore, the cancellation report could not be produced before the Ld. Illaqa Magistrate, Rupnagar. It is further submitted that during this period complainant-respondent No.2 left for abroad and cancellation report was again

presented on 31.10.2008, 08.07.2009, 28.07.2020 and lastly on 17.02.2020, before the Ld. Illaqa Magistrate, Rupnagar, for its acceptance in the absence of complainant-respondent No.2, however, every time cancellation report was returned orally without passing any written order by the Ld. Illaqa Magistrate, Rupnagar, with oral directions that the complainant-respondent shall be produced along with the cancellation report.

5. That it is further submitted that the complainant-respondent No.2 is still residing abroad and at present he is not in India and the answering respondent made vigorous efforts to get the cancellation report accepted before the Ld. Illaqa Magistrate, Rupnagar, however, the same could not be accepted by the Ld. Illaqa Magistrate, Rupnagar, due to non-presence of the complainant-respondent No.2. It is further submitted that the answering respondent further undertake to comply with any order or direction which would be passed in the present petition.”

12. I have heard learned counsel for the parties at length and have gone through the record with their assistance.

ANALYSIS:

13. A perusal of the case shows that a Special Investigating Team was duly constituted to look into the matter and that the complainant had presented an affidavit dated 30th July, 2008 to the SIT that he had compromised the matter with the petitioner and other co-accused and stated that he did not wish to proceed further in the matter. It also remains un-controverted that the SIT recommended a cancellation report to be filed in the matter and that the said cancellation report was duly considered and accepted by the Senior Superintendent of Police, Rupnagar. Thereafter, the Station House Officer, prepared the cancellation report and submitted the same before the Illaqa

Magistrate on 10.10.2008. The Illaqa Magistrate however did not receive the cancellation report and orally ordered return of the same to be presented again along with the complainant/respondent No.2. It is further reflected that as the complainant had left for abroad, the cancellation report was presented again on 31.10.2008, 08.07.2009, 28.07.2020 and lastly on 17.02.2022 without the complainant and that on none of the said occasions, the Illaqa Magistrate received the report and every time returned the same with oral orders to file it again along with the complainant/respondent No.2.

14. The status report reiterates that respondent No.2 is still residing abroad and is not in India and that all efforts on the part of the prosecution to submit the final report under Section 173 CrPC to the Illaqa Magistrate for his cognizance went in vain.

15. Apart therefrom, there is also no denial of the fact that the son of the petitioner suffers from mysterious medical ailment that would require his treatment outside India; the application of the petitioner for seeking passport has been declined by the Ministry of External Affairs on account of pendency of the aforesaid FIR against him. Besides, it is also reported as a current status that the complainant/respondent No.2 is still residing abroad and is not available in India. In view of accrual of various constitutional and statutory rights, this Court has proceeded to examine the case on its own merits without awaiting response from respondent No.2, to secure the ends of justice.

Legal Position Regarding Right to Speedy Trial::

16. Right to speedy trial has been held as inherent under Article 21 of the Constitution of India. The Hon'ble Supreme Court in the matter of **Hussainara Khatoon & Ors Vs. Home Secretary, State of Bihar, 1980 (1)**

SCC 81 held that speedy trial is of essence to administration of criminal justice

and that it is implicit in the broad sweep and content of Article 21 of the Constitution of India. If a person is deprived of his liberty under a procedure which is not 'reasonable, fair and just', such deprivation would be violative of his fundamental right under Article 21 and he would be entitled to enforce such fundamental right and secure his relief. It was, thus, concluded that speedy trial, and by speedy trial to mean reasonably expeditious trial, is an integral and essential right to fundamental right to life and liberty enshrined in Article 21 of the Constitution of India.

17. The aforesaid aspect was reiterated by the Hon'ble Supreme Court in the matter of **Abdul Rehman Antulay & Ors Vs. R.S. Nayak & Anr., 1992(1) SCC 225.** While interpreting the scope of Article 21 of the Constitution of India, the Hon'ble Supreme Court held that every citizen has a right to speedy trial of the case against him. Further, the Constitutional Bench in the matter of **P. Ramachandra Rao Vs. State of Karnataka 2002 (4) SCC 578** observed as under:-

'1. 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 re-trial 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 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.

10. During the course of its judgment also the Constitution Bench made certain observations which need to be extracted and reproduced:-

"But then speedy trial or other expressions conveying the said concept are necessarily relative in nature. One may ask speedy means, how speedy? How long a delay is too long?

We do not think it is possible to lay down any time schedules for conclusion of criminal proceedings. The nature of offence, the number of accused, the number of witnesses, the workload in the particular court, means of communication and several other circumstances have to be kept in mind". (para 83).

".it is neither advisable nor feasible to draw or prescribe an outer time-limit for conclusion of all criminal proceedings. It is not necessary to do so for effectuating the right to speedy trial. We are also not satisfied that without such an outer limit, the right becomes illusory". (SCC pp.268-69, para 83) "even apart from Article 21 courts in this country have been cognizant of undue delays in criminal matters and wherever there was inordinate delay or where the proceedings were pending for too long and any further proceedings were deemed to be oppressive and unwarranted, they were put an end to by making appropriate orders". (SCC p.260, para 65)

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 proceeding cannot continue and must mandatorily be closed followed by an order acquitting or discharging the accused. In conclusion we hold:-

(1)xxxxxxx

(2)xxxxxxx

(3)xxxxxxx

(4)xxxxxx

(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. (Emphasis supplied)

18. The above principles stood reiterated by the Hon'ble Supreme Court in the matter of **Vakil Prasad Singh Vs. State of Bihar 2009 (3) SCC 355**, wherein it has observed as under:-

18. Time and again this Court has emphasized the need for speedy investigations and trial as both are mandated by the letter and spirit of the provisions of the Cr.P.C. (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 Vs. Union of India & Anr.(1978) 1 SCC 248, in Hussainara Khatoon & Ors. Vs. 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 (1978) 1 SCC 248 (1980) 1 SCC 81 reasonably expeditious trial which is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21.

19. The exposition of Article 21 in Hussainara Khatoon's

case (*supra*) was exhaustively considered afresh by the Constitution Bench in *Abdul Rehman Antulay & Ors. Vs. 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, (1992) 1 SCC 225 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.*

24. 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.

25. 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.

26. 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.'

(Emphasis supplied)

19. In view of the afore-stated authoritative pronouncements by the Hon'ble Supreme Court, it is no more *res-integra* that speedy justice is an integral part under Article 21 of the Constitution of India.

20. The matter in hand has remained pending for nearly 14 years, giving rise to a necessity to proceed and examine the statutory rights of the accused.

Bar Under Section 468 CrPC and the Position in Law:

21. The instant case has been registered for offences under Sections 341, 323, 506 read with Section 34 of the IPC. The same are extracted as under:-

Section 341. Punishment for wrongful restraint.—Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one

month, or with fine which may extend to five hundred rupees, or with both.

Section 323. *Punishment for voluntarily causing hurt.—Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.*

Section 506. *Punishment for criminal intimidation.—Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; If threat be to cause death or grievous hurt, etc.—And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or 1[imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.*

Section 34. *Acts done by several persons in furtherance of common intention.—When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.*

22. It would also be necessary to tabulate the sentence provided against each section.

Section	Sentence
341 IPC	Simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both
323 IPC	Imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

506 IPC	Imprisonment of either description for a term which may extend to two years, or with fine, or with both
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23. Section 468 of the Criminal Procedure Code stipulates limitation prescribed for taking cognizance of the offences. The same is extracted as under:-

468. Bar to taking cognizance after lapse of the period of limitation.

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub- section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.]

24. A perusal of the same would show that where an offence is punishable for a sentence of more than 1 years but not more than 03 years, the limitation prescribed under Section 468 CrPC for taking cognizance of the same is 03 years. A bar of limitation against taking cognizance has been held to be mandatory through various authoritative pronouncements of the Hon'ble Supreme Court. The object that the statutory provision seeks to subserve in

consonance with the concept of fairness of trial as enshrined under Article 21 of the Constitution of India. Chapter XXXVI, nowhere vests the Government with power to allow institution of prosecution after the expiry of statutory period of limitation as per the judgment of this Court in **Delhi Bitumen Sales Agency Vs. State of Punjab and Ors, 1989 CrLJ 722 (P&H)**. The object of this Section in putting a bar of limitation on prosecution is to prevent vexatious and belated prosecution. Section 469 CrPC prescribes a time for commencement of the period of limitation and read thus:-

469. Commencement of the period of limitation.

(1) The period of limitation, in relation to an offender, shall commence,-

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded.

25. When considering the said provision in the light of facts of the instant case, the period of limitation in relation to the offence would start running from 20.03.2008 i.e., the date of commission of offence, accordingly, the period of limitation to take cognizance would come to an end on 19.03.2011. It was observed in the matter of **Bharat Damadar Kale & Anr Vs. State of Andhra Pradesh 2003 (8) SCC 559** that the period of limitation

prescribed in Chapter XXXVI is only for the purposes of initiation of the prosecution and not for taking cognizance. The cognizance of an offence cannot be taken after the period of limitation, in view of the judgment of this Court in the matter of **Hakam Singh & Ors. Vs. State of Punjab 1987 CrLJ 1332**. The law permits exclusion of only such time as would fall under Section 470 CrPC. It is not the case of the prosecution that the petitioner had absented himself from India or had avoided arrest by absconding or concealing himself. The Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied that the delay has been properly explained or that it is necessary to do so in the interest of justice. It would be apposite to reproduce Section 473 CrPC hereinbelow:-

473. Extension of period of limitation in certain cases. Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.

26. A conjoint reading of the aforesaid provisions show that the bar under Section 468 CrPC operates against a Court to take cognizance of an offence and that such a bar is absolute, unless for valid reasons and sufficient cause, such period of limitation is condoned. It is undisputed that the delay in the proceedings had not occasioned as a result of any failure on the part of the petitioner, but on account of circumstances not within the control of the petitioner and for no fault on his part.

27. It is well settled proposition of law that a Court is prohibited from taking cognizance of an offence after expiry of the period of limitation as

prescribed under Section 468 CrPC, unless such period is condoned for satisfactory reasons. The same now necessitates the examination as to what would constitute 'cognizance' within the meaning of Section 468 CrPC.

28. 'Cognizance' has ordinarily been perceived as a stage where there is an application of judicial mind by the Court. However, for the purposes of Section 468 CrPC, limitation has been held to be read in reference to filing of the complaint and not with the date of cognizance or issue of process. The Hon'ble Supreme Court has held in the matter of **Japani Sahu Vs. Chandra Sekhar Mohanty, 2003 AIR SC 4560**, that for the purpose of computing the period of limitation, the relevant date must be considered at the time date of filing or initiating criminal proceedings and not date of taking cognizance by Magistrate or issuance of process by a Court. The relevant extract of the same reads as under:-

'47. We are in agreement with the law laid down in Bharat Damodar. In our judgment, the High Court of Bombay was also right in taking into account certain circumstances, such as, filing of complaint by the complainant on the last date of limitation, non availability of Magistrate, or he being busy with other work, paucity of time on the part of the Magistrate/Court in applying mind to the allegations levelled in the complaint, postponement of issuance of process by ordering investigation under sub-section (3) of Section 156 or Section 202 of the Code, no control of complainant or prosecuting agency on taking cognizance or issuing process, etc. To us, two things, namely; (1) filing of complaint or initiation of criminal proceedings; and (2) taking cognizance or issuing process are totally different, distinct and independent.

48. So far as complainant is concerned, as soon as he files a complaint in a competent court of law, he has done

everything which is required to be done by him at that stage. Thereafter, it is for the Magistrate to consider the matter, to apply his mind and to take an appropriate decision of taking cognizance, issuing process or any other action which the law contemplates. The complainant has no control over those proceedings.

49. Because of several reasons (some of them have been referred to in the aforesaid decisions, which are merely illustrative cases and not exhaustive in nature), it may not be possible for the Court or the Magistrate to issue process or take cognizance. But a complainant cannot be penalized for such delay on the part of the Court nor he can be non suited because of failure or omission by the Magistrate in taking appropriate action under the Code. No criminal proceeding can be abruptly terminated when a complainant approaches the Court well within the time prescribed by law. In such cases, the doctrine "actus curiae neminem gravabit" (an act of Court shall prejudice none) would indeed apply. [Vide Alexander Rodger v. Comptoir D'Escompte, (1871) 3 LR PC 465]. One of the first and highest duties of all Courts is to take care that an act of Court does no harm to suitors.

50. The Code imposes an obligation on the aggrieved party to take recourse to appropriate forum within the period provided by law and once he takes such action, it would be wholly unreasonable and inequitable if he is told that his grievance would not be ventilated as the Court had not taken an action within the period of limitation. Such interpretation of law, instead of promoting justice would lead to perpetuate injustice and defeat the primary object of procedural law.

51. The matter can be looked at from different angle also. Once it is accepted (and there is no dispute about it) that it is not within the domain of the complainant or prosecuting agency to take cognizance of an offence or to issue process

and the only thing the former can do is to file a complaint or initiate proceedings in accordance with law. If that action of initiation of proceedings has been taken within the period of limitation, the complainant is not responsible for any delay on the part of the Court or Magistrate in issuing process or taking cognizance of an offence. Now, if he is sought to be penalized because of the omission, default or inaction on the part of the Court or Magistrate, the provision of law may have to be tested on the touchstone of Article 14 of the Constitution. It can possibly be urged that such a provision is totally arbitrary, irrational and unreasonable. It is settled law that a Court of Law would interpret a provision which would help sustaining the validity of law by applying the doctrine of reasonable construction rather than making it vulnerable and unconstitutional by adopting rule of 'litera legis'. Connecting the provision of limitation in Section 468 of the Code with issuing of process or taking of cognizance by the Court may make it unsustainable and ultra vires Article 14 of the Constitution.

52. In view of the above, we hold that for the purpose of computing the period of limitation, the relevant date must be considered as the date of filing of complaint or initiating criminal proceedings and not the date of taking cognizance by a Magistrate or issuance of process by a Court. We, therefore, overrule all decisions in which it has been held that the crucial date for computing the period of limitation is taking of cognizance by the Magistrate/Court and not of filing of complaint or initiation of criminal proceedings.

29. A perusal of the above judgment establishes that Section 468 CrPC would come into play on the date on which the conditions requisite for initiation of proceedings in terms of Chapter XIV of the Criminal Procedure Code are put in motion as the said Chapter deals with initiation of proceedings.

Insofar as, the institution of complaints are concerned, the same would be governed in terms of Chapter XV of the Criminal Procedure Code for the purposes of assuming cognizance under Section 468 CrPC. The proceedings initiated under Chapter XII of the Criminal Procedure Code relate to Police and its powers to investigate and the same would not amount to initiation of proceedings as prescribed under Chapter XXXVI of the Criminal Procedure Code.

30. The bar under Section 468 CrPC has to be read against the Court and not against the power of the investigating agency to investigate. The facts of the present case display that even if the final report is considered at this stage, the bar under Section 468 would operate against the Court and prohibits it from taking cognizance. In the absence of anything to suggest that the delay of proceedings had occurred as a result of lapse or omission on the part of the petitioner, the accused cannot be deprived of his accrued constitutional/statutory rights due to failure attributed to the agencies and instrumentalities of the State. There does not seem to exist any circumstances as would justify extension of time for taking cognizance especially when there is no reason to believe that the complainant did wish to pursue the proceedings or to support continuation thereof against the petitioner. The complainant is also not residing in the Country. It is also not very likely that he would prefer to come to the Court only to depose against the prosecution.

Rights of Complainant: Protest Petition:-

31. Now addressing to the question of right of the complainant to file a protest petition, insofar as, the right of the complainant/victim to file a protest petition on a final report is concerned, the same is a right extended to the complainant under the Criminal Procedure Code through judicial

pronouncements by the Hon'ble Supreme Court in the matter of **Bhagwant Singh Vs. Commissioner of Police and Another, 1985 (2) SCC 537** . It has been held that a Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of a report where pursuant to the report under Section 173(2) CrPC, a Magistrate decides not to take cognizance. The relevant extract of the said judgment is reproduced hereinbelow:-

'4.Now, when the report forwarded by the officer-in charge of a police station to the Magistrate under sub-section (2)(i) of Section 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things: (1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceeding or (3) he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156. Where, in either of these two situations, the Magistrate decides to take cognizance of the offence and to issue process, the informant is not prejudicially affected nor is the injured or in case of death, any relative of the deceased aggrieved, because

cognizance of the offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the First Information Report, the informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose, wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the First Information Report lodged by him is clearly recognised by the provisions contained in sub-section (2) of Section 154, sub-section (2) of Section 157 and sub-section (2)(ii) of Section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the First Information Report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2)(i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the magistrate to whom a report is forwarded under sub-section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the

report. It was urged before us on behalf of the respondents that if in such a case notice is required to be given to the informant, it might result in unnecessary delay on account of the difficulty of effecting service of the notice on the informant. But we do not think this can be regarded as a valid objection against the view we are taking, because in any case the action taken by the police on the First Information Report has to be communicated to the informant and a copy of the report has to be supplied to him under sub-section (2) (i) of Section 173 if that be so, we do not see any reason why it should be difficult to serve notice of the consideration of the report on the informant. Moreover, in any event, the difficulty of service of notice on the informant cannot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate.'

32. A perusal of the same would show that the aforesaid principle of law emerged as an equitable relief so that the person injured is offered an opportunity to make his submissions and to persuade the Magistrate to take cognizance. It would also be necessary to refer to the extract of the judgment of the Hon'ble Supreme Court in the matter of **Sanjay Bansal & Anr Vs. Jawaharla Vats & Ors., 2007 (13) SCC 71:-**

6. There is no provision in the Code of Criminal Procedure, 1973 (in short the Code) to file a protest petition by the informant who lodged the first information report. But this has been the practice. Absence of a provision in the Code relating to filing of a protest petition has been considered. This Court in Bhagwant Singh v. Commissioner of Police and Another (AIR 1985 SC 1285), stressed on the desirability of intimation being given to the informant when a report made under Section 173 (2) is under consideration. The Court held as follows:

....There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under Sub-Section (2)(i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submission to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the Magistrate to whom a report is forwarded under Sub-section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report...

7. Therefore, there is no shadow of doubt that the informant is entitled to a notice and an opportunity to be heard at the time of consideration of the report. This Court further held that the position is different so far as an injured person or a relative of the deceased, who is not an informant, is concerned. They are not entitled to any notice. This Court felt that the question relating to issue of notice and grant of opportunity as afore-described was of general importance and directed that copies of the judgment be sent to the High Courts in all the States so that the High Courts in their turn may circulate the same among the Magistrates within their respective jurisdictions.

9. xxxxxxxxxxxx. Therefore, this Court indicated in Bhagwant Singhs case (supra) that where the Magistrate decides not to take cognizance and to drop the proceeding or takes a view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information

Report, notice to the informant and grant of opportunity of being heard in the matter becomes mandatory. As indicated above, there is no provision in the Code for issue of a notice in that regard.

33. The said right created in favour of a victim having been created by judicial pronouncements while examining the scope of Section 173 CrPC, would be subject to Section 468 CrPC. The bar under Section 468 CrPC operates notwithstanding anything else contained in Criminal Procedure Code, hence, the right conferred on a complainant to be heard, in event of a cancellation, shall be deemed to be subject to the limitation so prescribed under the Criminal Procedure Code. It was for the said reason that the Hon'ble Supreme Court quashed the proceedings in the case of **Prem Lata And Another Vs. State of Rajasthan And Another, (2015) 14 SCC 677**, where the cognizance was taken after a delay of nearly 12 years. The Hon'ble Supreme Court, while quashing the proceedings took note of the fact that the complainant remained a fence-sitter and did not take adequate and appropriate steps as would be expected of a vigilant and watchful complainant. Relevant extract of the said judgment is as under:-

'3. The matter was reported to the police by the complainant and after due investigations, the police file a closure report on 29.06.1996. Against the closure report, the complainant filed a protest petition and it appears that he did not pursue the protest petition for a considerable period of time and did not examine any witness. Eventually it is only on 23.08.2008 that the Magistrate took cognizance of the complaint. In other words, cognizance of the complaint was taken after a gap of more than 12 years.

4. xxxxxxxx

5. Our attention has been drawn to Section 468 of the Code

of Criminal Procedure which provides that for an offence which is punishable with imprisonment exceeding one year but not exceeding three years, the period of limitation for taking cognizance of an offence is three years. In the present case, cognizance was taken by the Magistrate after more than 12 years. Under the circumstances, we are of the opinion that the Magistrate could not have taken cognizance of the complaint since it was barred by time. The High Court was clearly in error in dismissing the revision petition filed by the appellants challenging the cognizance order.'

34. A perusal of the said judgment shows that the right of the complainant to file a protest petition is enshrined as a part of equitable right under the aegis of the Criminal Procedure Code and that the same cannot be interpreted to defeat the statutory bar imposed under Section 468 CrPC for taking cognizance of the offence. Even though the complainant may, in a given case, urge that he was never afforded an opportunity to file a protest petition, however, the Court cannot remain oblivious of the fact that the complainant has chosen not to press for his right, if any, for a period of nearly 14 years, since the commission of offence. The status report filed by the Police shows that a compromise had been effected and an affidavit in this regard dated 30.07.2008 was furnished by the complainant, in support thereof. The circumstances lead this Court to assume that the compromise was valid and effective and it is for the said reason that the complainant/respondent No.2 has chosen not to pursue the instant case.

Powers of High Court under Section 482 CrPC:

35. The powers of the High Court under 482 CrPC are intended to be invoked as extra-ordinary powers in the absence of any specific statutory provision and the same need to be activated in order to secure the ends of

justice. The same has been so held in the judgment of M/s Zandu Pharmaceutical Works Ltd. Vs. Md. Sharaful Haque, 2004 (4) RCR (Criminal) 937. The relevant part of the judgment is extracted hereinbelow:-

'7. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid

down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

8. In R. P. Kapur v. State of Punjab (AIR 1960 SC 866) this Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings.

- (i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;*
- (ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;*
- (iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.'*

(Emphasis supplied)

36. Further the Hon'ble Supreme Court in the matter of **Inder Mohan Goswami And Another Vs. State of Uttaranchal And Ors, 2007 (12) SCC 1**

held as under:-

23. *This court in a number of cases has laid down the scope and ambit of courts powers under section 482 Cr.P.C. **Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court.** Inherent power under section 482 Cr.P.C. can be exercised:*

- (i) to give effect to an order under the Code;*
- (ii) to prevent abuse of the process of court, and*
- (iii) to otherwise secure the ends of justice.*

27. *The powers possessed by the High Court under section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage.*

28. *This court in State of Karnataka v. L. Muniswamy & Others (1977) 2 SCC 699 observed that the wholesome power under section 482 Cr.P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A*

court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. The court observed in this case that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. This case has been followed in a large number of subsequent cases of this court and other courts.

33. This court in Janata Dal v. H. S. Chowdhary & Others (1992) 4 SCC 305 observed thus:

132. The criminal courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. The powers possessed by the High Court under section 482 of the Code are very wide and the very plentitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles.'

CONCLUSION:

37. The aforesaid authoritative pronouncements establish that the powers under Section 482 CrPC of the High Court are very wide and be exercised to prevent an abuse of the process of the Court and to secure the ends of justice. The said power cannot be made subject to hard and fast compliance of rules and procedure. Needless to mention that the law is well settled to the effect that rules of procedure are handmaiden of justice and cannot be used as a tool of oppression or denial of justice. Besides, it also needs no repetition that where the compliance of procedural rule is only an empty formality and would not further the interest of justice and would rather delay dispensation of justice,

the High Court may, if it so satisfied and to secure the ends of justice, pass such appropriate orders as it may deem fit and proper. The present case showcases that extending an opportunity of hearing to the respondent No.2 may not be a viable option and would rather extend the agony of the petitioner.

38. The rights of an individual cannot be kept as hostage for period beyond what law prescribes as a sufficient period to bring an end to the agony of an accused.

39. A conjoint reading of the authoritative pronouncement referred to above shows that a Court of law can apply its judicial mind and proceed further in matter brought before it only when cognizance of such a matter is taken within the prescribed period of limitation i.e., 03 years in the instant case. The FIR in the present case happened to be registered on 21.04.2008 although the incident is of 20.03.2008, hence by any stretch the limitation prescribed for taking cognizance of the offence was 19.03.2011. A period of more than 10 years have elapsed beyond the outer limit prescribed for taking cognizance.

40. Even otherwise, as an academic exercise, the grant of opportunity of hearing to the complainant would be an exercise in futility as the prescribed period of limitation under Section 468 CrPC cannot be extended. The prohibition being absolute and compulsory, the delay of the proceedings to await the respondent No.2/complainant to make submission would only aggravate the agony of the petitioner/accused and would trample on the rights of the accused to speedy justice enshrined under Article 21 of the Constitution of India. The petitioner/accused cannot be held to ransom despite law prohibiting cognizance of the offence, even if the final report is submitted before the Court today. The right of file protest petition cannot be stretched to a limit where the same is extended to cause injustice to an accused and to

continue the sword hanging on the accused.

41. The circumstances which thus emerge from consideration of the case are culled out as under:-

(i) The SIT had been given an affidavit by the complainant about his unwillingness to prosecute the FIR;

(ii) The complainant never chose to pursue the proceedings with said FIR even though a period of nearly 14 years has elapsed since the registration of the FIR;

(iii) Service report of respondent No.2 as well as the reply of the Police supplement that the complainant is no more residing in India and is still living in abroad and it may not actually serve any purpose to secure his presence and to file his objections.

(iv) The cognizance of the FIR would now be barred under Section 468 CrPC;

(v) The urgency of the petitioner to travel abroad for treatment of his son;

(vi) The delay of 14 years, that has already occurred in submission of the final report for the offences under which a maximum sentence of 2 years is prescribed;

(vii) The presumption as regards genuineness of the affidavit submitted by the complainant to the SIT regarding the compromise, and his confirmation to not proceed in the case.

(viii) Accrual of a statutory right against being prosecuted after expiry of period of limitation under Section 468 CrPC.

(ix) Right of speedy trial and justice guaranteed under Article 21 of the Constitution of India.

(x) Absence of any justifiable grounds to condone the delay or to attribute the delay to the petitioner in order to extend limitation.

(xi) Right to file protest petition being a right under the Criminal Procedure Code would be governed by the prohibition and limitation prescribed under the Criminal Procedure Code.

(xii) Prohibition against taking cognizance of offence beyond limitation having been imposed on Court.

(xiii) Necessity to strike a balance between conflicting rights of individuals.

42. In the light of the facts and position in law noticed above, I deem it appropriate to allow the instant petition and to quash the FIR No. 52 dated 21.04.2008 under Sections 341, 323, 506 and Section 34 of the IPC registered at Police Station City Rupnagar, District Rupnagar and all other consequential proceedings arising therefrom to secure the ends of justice.

Petition is allowed.

(VINOD S. BHARDWAJ)
JUDGE

February 23, 2022

S.Sharma(syr)

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>