

IN THE HIGH COURT AT CALCUTTA**Criminal Revisional Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.R. No. – 1907 of 2017****With****IA No. CRAN 9 of 2019 (old No. CRAN 4376 of 2019)****+****CRAN 13 of 2022****IN THE MATTER OF****Jiban Krishna Ghosh & Anr.****Vs.****State of West Bengal & Anr.**

**For the Petitioners : Mr. Ayan Bhattacharjee, Adv.,
Mr. Asif Dewan, Adv.,
Mr. Debrata Guha, Adv.,**

**For the Customs Authority: Mr. Vipul Kundalia, Adv.,
Mr. Anurag Roy, Adv.,
Ms. Uneaza Ali, Adv.**

**For the State : Mr. Arijit Ganguly, Adv.,
Ms. Debjani Sahu, Adv.**

Judgment on : 08.06.2023

Subhendu Samanta, J.

This is an application u/s 482 read with Section 197/401 Cr.P.C for quashing a criminal proceeding being Criminal Misc Case no. 02/97 for alleged commission of offence punishable u/s 135 of Customs Act 1962 now pending

before the court of Learned Chief Judicial Magistrate Murshidabad at Behrampur wherein cognizance has been taken vide order dated 14.02.2017 and the prayer of the present petitioners for discharge was turned down on 04.03.2017.

The brief fact of the case is that the present petitioner No.- 1 was posted as ASI no. 678 at GRP, Sealdah in the year 1984 thereafter, in the year 1997 he was transferred GRP, Katwa under Eastern Railway and now he has posted at Barasat Police Station, District North 24 Parganas. Petitioner No.-2 joined arm force as constable in the year 1980, in the year 1994 he was posted at GRP at Katwa, thereafter he was transferred to West Bengal Police in the year 2003. He retired on superannuation on 31.01.2017 while he was posted Champadali TOP under Bhadreswar Police Station District Hooghly.

On 3rd January 1997 Inspector of Customs, Behrampur Customs Preventive Unit apprehended 05 persons from Teesta Torsa train at Kharagpur Rail Station and seized foreign made electronics goods from their possession while they were coming from New Jalpaiguri Station. The present petitioners along with one constable Santosh Kumar karmakar was on duty in Teesta Torsa train at the time from Azimganj Rail Station to Katwa

Railstation. Kharagpur Rail Station is the next stoppage after Azimganj junction. 05 apprehended persons were taken into custody by the Custom Authority vide seizure case no. 1/Imp/CL/BCPU/1997 dated 03.01.1997.

On 20th January 1997 the present petitioner along with Santosh Karmakar were arrested as they were on duty at the relevant point of time in the said train. They were released on bail from the court of the Learned Chief Judicial Magistrate Murshidabad in criminal Misc Case no. 02/1997.

The confiscation proceeding in connection with the seizure was initiated by the Joint Commissioner of Customs (prev) and in the said proceeding confiscated the seizure articles and imposed personal penalty against the 08 persons including the petitioners. Appeal was preferred against the said order before the Commissioner of Customs (W.B.) which was dismissed. The petitioner filed an appeal before the Appellate Tribunal against the said order of appeal whereby the Hon'ble Appellate Tribunal set aside the impugned order of personal penalty and remanded back the matter before the original Adjudicating Authority for de-novo decision. However, de-novo adjudication by the Adjudicating Authority is yet to be initiated.

In the criminal Misc no. 2 of 1997 several adjournments were obtained for submission of final report by the Customs Authority since long thus Learned CJM Murshidabad vide order dated 19.08.2008 passed an order with the effect that the Criminal Misc Case no. 2 of 1997 made file for present against the accused persons/petitioners. The liberty is given to the concerned authority to file P.R as and when some would be ready. The Customs Authority filed the P.R/ final report of 23rd April 2015 on the basis of which Learned CJM took cognizance against the accused persons by passing the impugned order dated 14th February 2017. The petitioner filed one discharged application on 17th November 2010 u/s 167(5) of Cr.P.C. Learned Court below by passing the impugned order dated 4th March 2017 rejected the application of the petitioner praying for discharge and fixed the case on 04.04.2017 for appearance of the all accused persons.

Hence this revision.

Learned Advocate for the petitioner submitted before this court that the allegation made in the complaint or in the final report submitted by the Customs Authority did not constitute offence punishable u/s 135 of Customs Act against the present petitioners.

He further argued that the Learned CJM Murshidabad has committed err- in- law by taking cognizance of the case on 14.02.2014 almost after 20 years from the alleged date of commission of offence. The cognizance taken by the Learned CJM Murshidabad is bad in law and should be set aside.

There is inordinate delay in filing the PR/final report which cause misery and harassment to the accused. Learned Chief Judicial Magistrate considered the prayer of the petitioner and pass an order on 19.08.2018 contending inter alia that the case was filed for present and liberty is given to file P.R when the same is ready. After passing of that order Learned CJM cannot again take cognizance of the offence on the basis of delayed filing of P.R.

The order of the Appellate Tribunal is required to be looked into wherein the personal penalty imposed upon the present petitioner was turned down. He further argued that the alleged commission of offence was hold in the year 1997 now near about 25 years has been elapsed wherein a criminal case is kept pending without framing of charge or initiation of trial. It is the further argument of the Learned Advocate for the petitioner that, with by virtue of the decision passed by the Hon'ble Supreme Court in **AR Antulay Vs. Rs Nayak & Anr.** reported in **(1992) 1 SCR 225**, the accused person has a right

to speedy trial enshrined under Article 21 of the Constitution of India. The right to speedy trial includes the right of the accused in all stage of a criminal proceeding that is the stage of investigation, inquiry, particularly appeal, revision and retrial in this case. The petitioner has suffered immense mental pain and agony during the long pendency of the criminal proceeding. Finally he submitted that the criminal proceeding pending before the present petitioners may be quashed by virtue of the decision of Hon'ble Apex Court passed in **AR Antulay's** case. He also argued if the instant criminal proceeding is allowed to be continued there would be a clear violation of Article 21 of the Constitution and it would be an abuse of process of law.

Learned Advocate appearing on behalf of the opposite party submitted before this court that the present petitioner was on duty of the Teesta Torsa train on 03.01.1997 wherefrom 5 smugglers were apprehended. It would be revealed from the P.R that the present petitioner not only helped the smugglers but they also restrained the Customs Authority to enter into the train. From the entire scenario of the alleged offence it would be proved that the present petitioner is very much involved and had active participation in the alleged commission of offence. The petitioners were actually

harbouring the smugglers for trafficking the smuggle articles. He argued that by virtue of provisions of The Economic Offence (In- applicability of limitation) Act 1947, no period of limitation is applicable as per chapter 36 of the Code of Criminal Procedure 1973 for conduction of investigation under the Customs Act 1962. He further argued that the judgment of **AR Antulay's** case is very much relevant, and the guideline formulated by the Hon'ble Supreme Court in **AR Antulay's** case makes it clear that a particular time limit cannot be framed for conclusion of trial or the investigation of a criminal proceeding. It has been specifically pointed out that if the delay does not prejudiced the accused, such delay cannot be considered to be a ground for relief under the principle of right of speedy trial in favour of the accused persons. He further pointed out that the present petitioner has completed his uninterrupted service and retired on superannuation. He has never been terminated from the service during the pendency of the instant criminal proceeding. The delay for filing PR as envisaged by the petitioners before this court cannot be a ground for quashing the proceeding.

In support of his contention, Learned Advocate for the petitioner cited a decision of **Dilip Kumar Mukherjee Vs.**

Central Bureau of Investigation and Ors reported in **(2007) 4 CHN Page 272.**

He argued that Learned Judge, of this Hon'ble High Court has considered the view of Hon'ble Supreme Court passed in **AR Antulay's** case and quashed a criminal proceeding initiated against the petitioner more than 25 years ago. Hon'ble Co-ordinate Bench of this High Court in the judgment of **Dilip Kumar Mukherjee** has considered the several judgments and quashed the criminal proceeding on the ground that delay is the deadliest form of denial justice and right to speedy justice is an integral component of the right to life as enshrined under Article 21 of the Indian constitution.

Heard the Learned Advocates perused the material on record. I also peruse the judgment laws advanced by the respective parties.

It appears that the instant proceeding was initiated in the year 1997 under the provisions of Customs Act 1962. The investigation of the Customs Authority was concluded and they filed the P.R (final report) on 23.04.2015 the Magistrate took cognizance of the offence and on the basis of the PR/Final report against the present petitioner and issued process. The present petitioner filed an application for discharged u/s 167(5)

Cr.P.C. before the Magistrate which was turned down by passing the impugned order.

The present revision is preferred on the sole ground that there is an inordinate delay by the prosecuting authority in conducting investigation of this case thus the present petitioner was denied his right of speedy trial. He has been suffered immense mental trauma during the long period of pendency of a criminal proceeding. At this juncture it would be improper rather it is illegal by the Learned Magistrate to issue the process after 20 years of the commission of alleged offence.

The judgment of Hon'ble Supreme Court passed in **AR Antulay's** (supra) case and the guideline for the purpose of principle for providing relief to the accused to his right to speedy trial need be looked into in its true later and spirit. Paragraph 86 of the judgment of **AR Antulay's** case is set out hereinunder:

86. In view of the above discussion, the following propositions emerge, meant to serve as guidelines. We must forewarn that these propositions are not exhaustive. It is difficult to foresee all situations. Nor is it possible to lay down any hard and fast rules. These propositions are:

(1) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any the less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the

accused is determined as quickly as possible in the circumstances.

(2) Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial. That is how, this court has understood this right and there is no reason to take a restricted view.

(3) The concerns underlying the right to speedy trial from the point of view of the accused are:

- (a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;*
- (b) the worry, anxiety expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and*
- (c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of*

It has been warned by the Hon'ble Apex Court by the said guidelines that these propositions are not exhaustive and these are not hard and fast rule to determine the right to speedy trial as enumerated under Article 21 of Indian Constitution.

In the case of **Dilip Kumar Mukherjee & Ors** it appears that the criminal proceeding which was set in motion 25 years ago instead, not proceeded significantly. Considering the guidelines of **AR Antulay's** case Hon'ble Coordinate Bench of this court has quashed the criminal proceeding.

In the present case the charge is yet to be framed though we have passed more than 25 years. The peculiar

question arose to determine in this case is that- when the P.R disclosed sufficient materials against the present petitioners to proceed; and fact goes to show that the criminal proceeding has not proceeded at all though it has been pending since 25 years, is it justifiable for this revisional court to quash proceeding on the sole ground that the accused has denied his right to speedy trial.

The revisional court has the power to quash the proceeding if it appears that there are no sufficient materials to proceed further or if it appears that the continuation of the criminal proceeding would amount to abuse of process of court.

In considering the right of the accused of speedy trial in my view the test is whether the personal life or liberty of the present petitioners was at all infringed by the pendency of the criminal proceeding since long. If it appears that the present petitioner has had suffered immense and his life and personal liberty was jeopardy during the entire period for the pendency of the criminal proceeding then the relief on the ground of right to speedy trial guaranteed by the Indian Constitution under Article 21 must be established. But if it appears that no hindrance has caused to petitioner during the entire period or his day to day life was not disrupted due to the pendency of the criminal proceeding then the right enshrined under Article 21

need not necessarily be come into play. In considering the entire scenario it appears to me that the present petitioners were arrested in connection with this case and on the same day they were released on bail by the concerned Magistrate. During their entire period of service they never terminated due to the pendency of this criminal proceeding nor they anyway disturbed in performing their service. After successful completion of service period they retired on superannuation. Fair enough, the Criminal Misc. Case no. 2 of 1997 was order to be filed for present by the Learned Magistrate on 19.08.2008 against the present petitioners. Since then they never approached before the court and their life and personal liberty had never been infringed at all till filing of the P.R. They only appear before the Learned Magistrate after filing the P.R and when process was issued upon them.

Considering the entire scenario it appears to me that the personal life and liberty of the present petitioner was never been infringed due to the pendency of the instant criminal proceeding.

The fact of the case of **Dilip Kumar Mukherjee** (supra) is distinguished of this case to the effect that in the case of **Dilip Kumar Mukherjee** the accused/petitioner had to appear before the court for long 25 years till then no significant progress was

made in that case; but in the present case the present petitioner had rarely visited the court.

Following the principles of Hon'ble Apex Court passed in **AR Antulay's** judgment I am of the considered view that the nature of offence of its particular case under the given circumstances, the quashing of the instant criminal proceeding is not the only option open.

Considering the entire materials on record and considering the facts and circumstances of this case I am of a view that the petitioners claim for right to speedy trial cannot be entertained of this case as there are sufficient materials against the present petitioner in the P.R. I find no justification to entertain the present petitioner to quash the criminal proceeding.

In result thereof the instant criminal revision is dismissed being devoid of merit.

In considering the entire facts and circumstances of this case the Learned Chief Judicial Magistrate is directed to conclude proceeding within one year from the date of receipt of this order positively.

CRR is disposed of.

Pending CRAN applications if any, are also disposed of.

Any order of stay passed during the continuation of the instant criminal revision is hereby vacated.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)