

IN THE HIGH COURT AT CALCUTTA**Criminal Revisional Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.R. No. - 2822 of 2018****IN THE MATTER OF****Pankaj Kumar Mondal.****Vs.****State of West Bengal.****For the petitioner : Mr. Abirlal Chakraborti, Adv.,****For the State : Mr. Narayan Prasad Agarwal, Adv.,
Mr. Pratick Bose Adv.****Judgment on : 08.02.2023****Subhendu Samanta, J.**

This is an application u/s 401 and Section 482 of the Code of Criminal Procedure for quashing the Criminal Proceeding being G.R Case No. 3852 of 2000 arising out of Hare Street P.S. Case No. 776 dated 24.11.2000 u/s 120B/420/467/468/471/1420 of IPC. where from arose charge sheet No. 476 of 2004 dated 20.11.2004 u/s 120B/420/467/468/471 of IPC which was initially in the court of Learned Chief Metropolitan Magistrate Calcutta which was subsequently transferred to the court of Learned Metropolitan Magistrate 5th Court Calcutta and is still pending therein.

In a nutshell the allegation levelled in the FIR was that during the petitioner's service as a Police Constable in the year 1993, he had submitted a school certificate where there was an alleged anomaly regarding his date of birth. For the alleged Act of 1983 a First Information Report was lodged in this case in the year 2000 and a charge sheet was submitted in 2004. Although, trial commenced in the year 2005, PW 1 was examined in 2006 and PW 2 was also examined in the same year. Thereafter one witness appeared in the year 2008 since then no one appeared out of 11 charge sheeted witnesses. It is the case of the revisionist before this court that the petitioner had to face agony of pendency of Criminal Trial for an act alleged to be happened in the year 1983. It is the further case of the petitioner that inordinate delay has been caused in the Trial without being fault of the petitioner, thus the proceeding ought to be quashed.

Learned Advocate for the petitioner further submitted that FIR was lodged in the year 2000 and we are now in the year 2023, already 23 years has already been elapsed; trial has not been processed yet so, pendency of the Criminal Litigation has ruined the free living of the present petitioner. He has suffered immense mental agony due to such pendency of Criminal Trial. The approach of the prosecution in respect of the instant Criminal Case is to be looked into. The alleged date of commission is in the year 1983 for which after long 17 years. One FIR was lodged and thereafter 23 years has already been elapsed but no result has yet to get light of this world. He submitted that the pendency of the instant Criminal Proceeding is liable to be quashed because the constitutional right of speedy Criminal Trial of the litigant has been violated in this case.

In support of his contention he has cited two decisions reported in **2000 SCC ONLINE CAL 538 (Smt. Gita Bhowmick vs. State of West Bengal)** and **(2008) 16 Supreme Court Cases 117 (Pankaj Kumar vs. The State of Maharashtra & Ors.)**

In **Smt. Gita Bhowmick's** case our Hon'ble High Court has held that :

The accused has of course a right to speedy trial and this is now considered as a fundamental right under Article 21 of the Constitution of India. Hence continuance of the instant criminal proceeding beyond 28 years past clearly violated Article 21 of the Constitution. Since expeditious trial is a basic right, it cannot be trampled or treated particularly when the petitioner was not responsible for the delay in the trial.

In **Pankaj Kumar's** case the Hon'ble Apex Court in Paragraph 22 and 23 has held that :

22. It is, therefore, well settled that the right to speedy trial in all criminal prosecutions is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in court but also includes within its sweep the preceding police investigations as well. The right to speedy trial extends equally to all criminal prosecutions and is not confined to any particular category of cases.

23. In every case, where the right to speedy trial is alleged to have been infringed, the court has to perform the balancing act upon taking into consideration all the attendant circumstances, enumerated above, and determine in each case whether the right to speedy trial has been denied in a given case.

Where the court comes to the conclusion that the right to speedy trial on an accused has been infringed, the charges or the conviction, as the case may be, may be quashed unless the court feels that having regard to the nature of offence and other relevant circumstances, quashing of proceedings may not be in the interest of justice. In such a situation, it is open to the court to make an appropriate order as it may deem just and equitable including fixation of time for the conclusion of trial.

The principles laid down in **Smt. Gita Bhowmick and Pankaj Kumar** is well accepted proposition of law. At the same time there is no straightjacket formula or limitation for conclusion of the trial of a Criminal Case. In the given cases there were no possibilities for conclusion of the trial in near future. But, in this case the trial may nearly concluded. On the basis of findings of Hon'ble Apex Court in **Pankaj Kumar's** case (Para 23). I feel it necessary to pass an appropriate direction to the Learned Magistrate so that, the trial may be concluded within a very short span.

Heard, the Learned Advocate perused the judgment of Hon'ble high Court as well as the Hon'ble Apex Court. It is true that the right to speedy Trial is considered as a fundamental right under Article 21 of the Constitution of India. At the same time it has to be looked into the finality of the trial of this case has nearly reached its end. The evidence of PW 1 and PW 2 has only been concluded from the rest of other 09 witnesses. The delay is not solely caused due to the sloth approach of the prosecution but there may be some other reasons for which delay may be caused. The finality of litigation can only be arrived after conclusion of Trial. As the Trial of this case has already been initiated. So, at this juncture in my view the quashing of the proceeding u/s 482 of the Code of Criminal Procedure would not be a

justifiable regarding on the other hand the trial Court may be directed to dispose of the matter with a strict time limit.

Hence, I find no merit to entertain the instant Criminal revision and it is dismissed.

The CRR is disposed of with a direction that the Learned Magistrate to conclude the trial of this case strictly within month of April 2023. Learned Magistrate is also directed to intimate the concerned APP for production of C.S witnesses in the time span. If it appears to the Magistrate that the prosecution is not producing the PWs the Magistrate is at liberty to close the evidence of the prosecution and passed the judgment after exhausting the procedure laid down in the law on the basis of the materials on record.

Pending CRAN applications if any, are disposed of.

Any order of stay passed by this court during the continuation of the instant criminal revision is also 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.)