

111 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-31535-2017

Date of Decision:07.07.2023

Abhimanu Gilla and Others

...Petitioners

Vs.

State of Punjab and Anr.

...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Ashok Paul Batra, Advocate
for the petitioners.

Mr. Amish Sharma, AAG, Punjab.

Mr. Ajay Pal Singh, Advocate
for respondent No.2.

N.S.Shekhawat J.

1. While issuing notice of motion, a Co-ordinate Bench of this Court
had made the following observations:-

*Prayer in this petition is for quashing the order dated
28.04.2017 (Annexure P3), the report dated 25.03.2017 under
Section 173 Cr.P.C. and the order dated 13.07.2017 (Annexure
P5) vide which the trial Court framed charges against the
petitioners in FIR No.68 dated 10.07.2013 for offence punishable
under Sections 279, 427,506 and 201 IPC.*

*Counsel for the petitioners has submitted that the FIR
in question was registered on 10.07.2013 under the
aforementioned offences and after completion of investigation, the
report under Section 173 Cr.P.C. dated 25.03.2017 was presented
before the trial Court on 28.04.2017 vide order Annexure P3.*

*Counsel for the petitioners has further submitted that, thereafter, charges were framed against the petitioners vide impugned order dated 13.07.2017 (Annexure P5). It is submitted on behalf of the petitioners that Section 468 Cr.P.C. provides a bar for taking cognizance after lapse of period of limitation and as per Section 468(3) Cr.P.C., 03 years limitation is provided if the offences are punishable with imprisonment for a term exceeding 01 year but not exceeding 03 years. Counsel has further submitted that as per the provisions of Section 190(2) Cr.P.C., a Magistrate takes cognizance of an offence when a police report is submitted before the Court and with reference to Section 2(r), it is submitted that the police report is defined as a report submitted by a police officer under Section 173(2) Cr.P.C. It is further submitted that as per the provisions of Section 469(a), which provides commencement of period of limitation, in the instant case will be on the date of offence and as such, the FIR which was registered on 10.07.2013 and the report under Section 173 Cr.P.C. which was presented on 28.04.2017 were barred by limitation for the purpose of taking cognizance by the trial Court. In support thereof, counsel for the petitioners has referred to “**Prasad Shrikant Purohit vs State of Maharashtra and other**”, 2015(3) SCC 138 wherein, para 60 reads as follows:-*

“60. When we read the said Section 173(2)(i) along with Section 190 of Cr.P.C., it can be seen that any Magistrate of the first class or any Magistrate of the second

class specially empowered as provided under subsection (2) of the said Section may take cognizance of any offence upon a police report of such facts. Therefore, reading Section 173(2)(i) along with Section 190(1)(b), a duty is cast upon the officer in-charge of the police station mandatorily to forward to the Magistrate who is empowered to take cognizance of the offence on a police report. Under Section 190(1)(b) any Magistrate of the first class and for that matter any Magistrate of second class who is empowered by the Chief Judicial Magistrate for taking cognizance under sub-Section (1) can take cognizance of any offence based on filing of a police report furnished with the facts as stipulated under Section 173(2)(i) (a to h). A conjoint reading of Section 173(2)(i) and Section 190(1)(b), therefore, makes the position crystal clear that taking of cognizance of any offence by a Magistrate of the First Class or the Second Class subject to empowerment created under sub-Section (2) of Section 190 can take cognizance upon a police report. It can be emphasised here that under Section 190 (1) (b) where the Police Report as stated in Section 173(2) (i) is filed before a Magistrate under Section 190(1) (b), irrespective of the nature of offence, the said Magistrate has been invested with all the powers to take cognizance by applying his judicial mind. To be more precise, once the Police Report is filed before a judicial Magistrate as

prescribed under Section 190(1) (b), who has been invested with the judicial authority to take cognizance of any offence in the first instance, the requirement of taking cognizance gets fulfilled at that very moment. Further the very fact that proceedings pertaining to Parbhani and Jalna were pending before the Magistrate where such proceedings were initiated by the filing of the police report till the occurrence in Malegaon took place itself was sufficient to demonstrate that judicial mind was very much applied to the proceedings based on the police report consequent upon cognizance taken.”

2. Pursuant to the notice, a reply has been filed on behalf of the respondent No.2. It was averred in the reply that the petitioners avoided their arrest and the investigation was delayed by themselves. It was also mentioned that a SIT was constituted for investigation of the matter after receiving the report and the challan was presented by the police officials with delay, which is beyond the control of respondent No.2. However, the cognizance has been rightly taken by the Learned Trial Court against the petitioners.

3. As per the provisions of Section 468 Cr. PC, there is a bar to take cognizance after the expiry of the period of limitation and the same has been reproduced below:-

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 a 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.

4. Learned counsel for the petitioner contends that in the present case, the charges have been wrongly ordered to be framed against the petitioners under Sections 279, 427, 506 and 201 IPC and the offences were punishable with imprisonment, which could at the most extend up to two years. Consequently, as per the provisions of Section 468-2 c, the period of limitation as provided under Section 468 Cr. PC will be three years. In the present case, the date of commission of offence was 01.07.2013, but the challan itself had been presented on 28.04.2017 and the Judicial Magistrate, Ist Class, Abohar was not competent to take cognizance of the offence on the said day. Even, no prayer under Section 473 Cr.PC was made in the present case and the cognizance was barred. The submissions made by learned counsel for the petitioner could not be controverted legally by learned State counsel as well as learned counsel appearing on behalf of respondent No.2.

5. The Hon'ble Supreme Court has held in the matter of Vakil Prasad Singh Vs. State of Bihar 2009 (3) SCC 355, as follows:-

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.'*

6. It has also been held by the Hon'ble Supreme Court in the matter

of State of Punjab Vs. Sarwan Singh, 1981, 3 SCC, 34 as follows:-

(3) xxxxx

In the instant case as the charge-sheet clearly mentions that the offence was committed on August,22, 1972, the bar of limitation contained in Section 468 (2) Cr.PC clearly applies and the prosecution, therefore, is clearly barred by limitation. Even assuming that so far as, the offender is concerned, the commission of the offence came to knowledge of the officer concerned, it would be so according to charge-sheet on January 5, 1973, the date when the audit report was made, Even if this extreme position is accepted, the prosecution would still be barred by limitation under Section 469 (1) (b) of the Code of Criminal Procedure, 1973. Counsel for the State of Punjab, was unable to assail the point of law delivered by the High Court regarding the interpretation of Section 468. The object of criminal Procedure Code in putting a bar of limitation on prosecutions was clearly to prevent the parties from filing cases after a long time, as a result of which material evidence may disappear and also to prevent abuse of the process of the court by filing vexatious and belated prosecutions must abide by the letter of law or take the risk of the prosecution falling on the ground of limitation. The prosecution against the respondent being barred by limitation the conviction long after the date of the offence. The object which the statutes seek to subserve is clearly in consonance with the concept of fairness of trial as enshrined in Article 21 of the Constitution of India, it is therefore,

of the utmost importance that any prosecution, whether by the State or a private complainant as also the sentence of the respondent as also the entire proceedings culminating in the conviction of the respondent as also the entire proceedings culminating in the conviction of the respondent herein become non est. applicability of Section 468 of the Code of Criminal Procedure has been correctly decided by the Punjab and Haryana High Court. This Court has also taken the same view in a number of decisions. The result is that the appeal fails and is dismissed. The respondent will now be discharged from his bail bonds.

7. In view of the above discussion, and also in view of the law laid down by the Hon'ble Supreme Court in various authoritative pronouncements the orders Annexure P-4 and Annexure P-5 passed by learned Judicial Magistrate, Abohar, whereby the charges were ordered to be framed against the petitioners under sections 279, 427, 506 and 201 of IPC are hereby set aside and the petitioners are ordered to be discharged.

07.07.2023
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(N.S.SHEKHAWAT)
JUDGE

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