

CRR 2204 of 2000

**Narendra Mansata
Vs.
The State of W. B.**

**Smt. Sreeparna Das
Ms. Ritu Das**

.....For the Petitioner

**Mr. Avisekh Sinha
Mr. Arkadeb Bhattacharya**

.....For the State

1. In this application as filed under Section 482 of the Code of Criminal Procedure, the petitioner before this court who is the accused before the learned trial court has prayed for quashing of the proceeding being G. R. Case No. 1671 of 1986 pending before the learned Metropolitan Magistrate, 14th Court, Calcutta.
2. Ms. Das, learned advocate for the accused/petitioner at the very outset draws attention of this court to the photocopy of the formal F.I.R. as lodged in connection with the aforementioned case as well as the photocopy of the orders as passed in G. R. Case no. 1671 of 1986.
3. It is submitted by Ms. Das, learned advocate for the petitioner that on perusal of the aforesaid ordersheets it would reveal that though on July 24, 1989 charges were framed against the accused under Sections 63 and 68A of the Copy Right Act, 1957 and the plea of the accused was recorded but subsequent thereto there occurred inordinate delay in conducting the trial on account of the

inaction of the prosecution in producing the prosecution witnesses before the learned trial court though it would reveal from the said ordersheets that almost in each and every occasion the accused who is the petitioner before this court was present before the learned trial court.

4. It is further argued that it is the mandate of the legislature that such criminal proceedings are to be completed within two years but for the latches on the part of the prosecution inordinate delay occurred in conclusion of the trial as pending before the learned trial court which affects the fundamental right of the present petitioner as envisaged under Article 21 of the Constitution of India.
5. Ms. Das in course of her submission places reliance upon a reported decision **(Dilip Kumar Mukherjee Vs. Central Bureau of Investigation & Ors.) reported in 2007 (4) CHN 278**. It is argued on behalf of the petitioner that in the reported decision of Dilip Kumar Mukherjee (supra) a Coordinate Bench after considering the inordinate delay in the criminal proceeding held that on account of long pendency, the accused had suffered terrible mental agony which cannot be brushed aside and considering such aspect, the proceeding of the said trial was found to be vitiated and quashed.
6. It is submitted by Ms. Das, learned advocate for the petitioner that the present petitioner who is the accused before the learned trial court stands on the same footing

and thus the proposition of law as enshrined in the reported decision of Dilip Kumar Mukherjee (supra) may also be applied in this case and the instant application for quashing of the proceeding may be allowed.

7. Mr. Bhattacharya, learned advocate for the State per contra draws the attention of this court to the F. I. R. as lodged in connection with the case as pending before the learned trial court. It is submitted by Mr. Bhattacharya, learned advocate for the State that the offence alleged to have been committed by the accused/petitioner is grave in nature and prima facie materials have been placed to substantiate such allegation which is why charges under the above sections have been framed by the trial court.
8. Mr. Bhattacharya, learned advocate for the State in course of his argument has handed over a list of dates. It is submitted by Mr. Bhattacharya that from the list of dates as well as from the photocopies of the entire ordersheets of G. R. Case 1671 of 1986 it would reveal that the trial before the learned trial court was delayed on account of non-cooperation and absence of the accused and even on account of his abscondance. It is further submitted that liberty available under Section 317 of the Code of Criminal Procedure was granted to the accused/petitioner but such liberty was also misused on the part of the accused/petitioner.
9. In course of his argument Mr. Bhattacharya places

reliance upon a reported decision **(P. Ramachandra Rao Vs. State of Karnataka) reported in (2002) 4 SCC 578.**

It is submitted by Mr. Bhattacharya, learned advocate for the State that in the reported decision of P. Ramachandra Rao (supra) it has been held by the Hon'ble Supreme Court that the time limits or bars of limitation prescribed in several directions of the courts are not good law and the criminal courts are not obliged to terminate trial of the criminal proceedings merely on account of lapse of time. Mr. Bhattacharya submits that is a fit case for dismissal of the instant case.

10. This court has meticulously gone through the entire materials as placed before this court. This court has given its anxious consideration over the submissions of the learned advocates for the contending parties. This court has also perused the entire ordersheets of G. R. Case no. 1671 of 1986.
11. On perusal of the said ordersheets of the learned trial court it appears to this court that after framing of charge by the learned trial court some prosecution witnesses have been examined and at that stage the accused was permitted to remain absent subject to the provision of Section 317 of the Code of Criminal Procedure. It appears from the ordersheets that in the year 1990-1991 though several dates have been fixed, the prosecution was successful to examine only one witness out of several

chargsheeted witnesses though almost on all occasions the accused was found to be either present or was found to be absent by filing the petition under Section 317 of the Code of Criminal Procedure.

12. Admittedly in the month of September, 1991 the present petitioner carried the proceeding of the learned trial court before this court and obtained an order of stay and for which the proceeding of G. R. Case No. 1671 of 1986 remained stayed till 26.03.1998 since the criminal revision no. 1739 of 1991 as filed by the present petitioner was dismissed for non-prosecution. It thus appears to this court that for the aforesaid period from 15.09.1991 to 26.03.1998 that is for seven years or more the prosecution cannot be held to be liable for the delay caused in the trial.
13. Be that as it may, the trial proceeded further but for the reason best known to the accused/petitioner, he absconded thereafter. However subsequently on his appearance he was enlarged on bail and thereafter the learned trial court proceeded further by recording evidence of P. W.2 and some documents have also been exhibited.
14. From the aforesaid discussion it thus appears to this court that from the chronology of dates and events, by no stretch of imagination it can be said that it is prosecution which alone is responsible for delay in the trial of G. R.

Case No. 1671 of 1986.

15. Considering the entire aspects, this court is of considered view that the accused who is before this court cannot take advantage of his own flaws by saying that his fundamental right under Article 21 of the Constitution of India is vitiated on account of delay in trial. In view of such, this court finds no merit in the instant revision and accordingly CRR 2204 of 2000 is dismissed.
16. However, considering the fact that the accused is now 86 years old, learned trial court is hereby directed to proceed with the trial of G. R. Case No. 1671 of 1986 preferably in de-die-diam manner and shall conclude the hearing of G. R. Case No. 1671 of 1986 positively within a period of six months from the date of communication of the order. The prosecution is directed to produce the chargesheeted witnesses positively on the dates fixed by the learned trial court and learned trial court shall ensure that examination-in-chief and cross-examination for such prosecution witnesses are being done in the same day.
17. Considering the advanced age of the present petitioner, liberty is given to the present petitioner to file appropriate application under Section 317 of the Code of Criminal Procedure before the learned trial court and upon filing of such application, the learned trial court is directed to dispose of such application on his own merit, however keeping in mind the advance age of the petitioner.

18. With the aforesaid observation CRR 2204 of 2000 is disposed of.
19. Department is hereby directed to forward a copy of this judgement to the Joint Commissioner of Police (Crime), Kolkata Police, Lalbazar with a direction to him that the order as passed by this court with regard to the production of the persecution witnesses is being followed by its letter and spirit.
20. Liberty is also given to the learned trial court to close the evidence of the chargesheeted witnesses if they fail to appear despite service of summons.

(Partha Sarathi Sen, J.)