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CRR-619-2020
Reserved on : 02.09.2024
Pronounced on : 06.09.2024

Versus

State of Haryana ...Respondent

Present: Mr. Ojas Bansal, Advocate for
Mr. S.K. Aggarwal, Advocate
for the petitioner.

Mr. Abhinash Jain, DAG, Haryana.

1. Through the instant appeal, challenge is thrown to the judgment dated 11.02.2020 passed by the learned Appellate Court, on the ground that right to speedy trial of the petitioner has been infringed as the learned Appellate Court concerned, remanded the case for re-trial to the Court of competent jurisdiction, that too after passage of a decade, since filing of the complaint in question, and made a prayer for acquittal.

2. Before this Court could evaluate, whether, the right to speedy trial of the petitioner has been infringed or not, it is also important to ascertain who is responsible for the delay, what factors have contributed towards the said delay and furthermore, what are the attending circumstances, including nature of the offence is also required to be looked into, before granting the asked for relief.



3. Before embarking upon the submissions made by the learned counsel for the petitioner, let us have brief facts, which are essential to adjudicate the issue (supra), raised before this Court.

FACTS

4. The petitioner along with 13 other persons, were arrayed in the area of accused in a criminal complaint/case No.467 of 2013, filed by the State through Drugs Control Officer, Rohtak. The gist of the allegations as culled out by the learned trial Court, Rohtak are read as under :-

“2. The brief facts of this case are that the complainant has been appointed as an Inspector u/s 21 of the Drugs and Cosmeticss Act 19040 vide Haryana Govt. Health Deptt. Gazette Notification No. 5/45/2011-3HB-111 dated 25.03.2013, and has been working as Drugs Control Officer, Rohtak. It is submitted that on dated 26.08.2011, Sh. Rajnish Kumar Dhaniwal the then Drugs Control Officer, Rohtak, a notified Inspector under Section 21 of the Act alongwith Sh. M.P Gupta, Asstt. State Drugs Controller, Haryana visited the premises of the firm accused no. 7 M/s Shirdi Medicos, Medical Mor. Rohtak. Sh. Raj Kumar accused no. 6 active partner of accused no. 7 was found present at the accused firm. Accused no. 7 M/s Shirdi Medicos is a licensed firm having valid retail sale drugs licenses no. 682-OB-RTK-10 on form 20 and 862-RTK-10 on form 21.

2a. After disclosing identity and purpose of visit Sh Dhaniwal conducted inspection of the accused firm M/s Shirdi Medicos in presence of Sh. Gupta and accused no. 6. An inspection note was prepared & signed by inspection team and accused no. 6. Sh. Dhaniwal collected/purchased four (4) samples of following types of drugs vide form-17 was prepared by Sh. Dhaniwal and signed by inspection team and Sh. Raj Kumar accused no. 6, who also gave his



voluntary hand written statement on form-17 itself. The samples as described on form-17 were divided in four portions each, packed separately and sealed effectively by Sh. Dhaniwal with his seal bearing impression 'RKD as per the procedure described in the Act. These sealed samples marked as RKD-RTK-11/42 to RKD-RTK-11/45. These sealed sample portions were signed by inspection team and accused no. 6 Sh. Raj Kumar. Copy of form-17 and one sealed portion of each sample were handed over to Sh. Raj Kumar on the spot against acknowledgement on form-17 itself. Sh. Raj Kumar accused no. 6 issued a credit memo of 2111/- vide no. 4788 dated 26.08.2011 for sampled drugs.

2b. On 29.08.2011, Sh. Dhaniwal sent one sealed sample portion of each sample, to the Govt. Analyst, Haryana alongwith copy of memorandum to Govt. Analyst on form-18 by registered parcel. Sh. Daniwal received test report of sample no. RKD-RTK-11/44 on form 13 in triplicate from Govt. Analyst, Haryana vide test report no. 4658 dated 18.10.2011 declaring the sample of drug 'New Mox 500 capsules' (Cap. Amoxycillin Trihydrate IP) as not of standard quality with the reason given below:-

“Sample does not pass the test for assay as Amoxycillin per capsule is less than the IP

As per result of test or analyses with protocols of test or analyses applied according to IP each capsule contained 355.1 mg of Amoxycillin against claimed 500 mg. meaning thereby active pharmaceutical ingredient found to be 71% only whereas IP limit is 90% to 110%.”

2c. On 2.11.2011. Sh. Dhaniwal issued a show cause notice alongwith original test report of the drug in question vide letter no. DCO-RTK-11/291 dated 2.11.2011 to accused firm no. 7 M/s Shirdi Medicos for disclosing name and other particulars of the persons from whom he



acquired this drug in question. Sh. Raj Kumar accused no. 6 replied vide letter dated 30.11.2011 that he had purchased this drug in question from accused no. 9 M/s Jivan Gyan Life Care, Rohtak vide its invoice no. J-989 dated 6.08.2011. On 14.12.2011 Sh. Dhaniwal issued a show cause notice to DCO-RTK-11/416 dated 14.12.201 to accused no. 9 M/s Jivan Gyan Life Care, Rohtak for disclosing name and other particulars of the persons from whom they acquired this drug in question. The accused no. 9 M/s Jivan Gyan Life Care, Rohtak replied vide letter dated 19.12.2011 that he had purchased this drug in question from accused no. 11 M/s VVM Pharma, Rewari vide its invoice no. 7439 dated 8.07.2011.

2d. On 27.12.2011, Sh. Dhaniwal issued a show cause notice no. DCO-RTK-11/440 dated 27.12.2011 to accused firm no. 11 M/s VVM Pharma, Rewari for disclosing name and other particulars of the persons from whom he acquired this drug in question. It is submitted that accused firm no. 11 M/s VVM Pharma, Rewari replied vide letter dated 11.01.2012 that he had purchased this drug in question from accused no. 13 M/s Shree Balaji Distributor, Panipat vide its invoice no. SBD-395 dated 8.06.2011. On 20.01.2012, Sh. Dhaniwal issued a show cause notice no. DCO-RTK-12/18 dated 20.01.2012 to accused firm no. 13 M/s Shree Balaji Distributor, Panipat for disclosing name and other particulars of the persons from whom he acquired this drug in question. It is submitted that accused firm no. 13 M/s Shree Balaji Distributor, Panipat replied vide letter dated 25.02.2012 that he had purchased this drug in question from manufacturer of the drug in question accused no. 5 M/s Jorker Pharmaceuticals Pvt. Ltd. Rai, Distt. Sonapat vide its invoice no. 199 dated 4.03.2011.

2e. On 20.01.2012, Sh. Dhaniwal issued a show cause notice no. DCO-RTK-12/101 dated 10.04.2012 to manufacturing firm accused no. 5 M/s Jorker



Pharmaceuticals Pvt. Ltd. Rai, Distt. Sonapat alongwith a copy of original Test Report us 25(2) of the Act and 3rd sealed sample portion of the drug in question with all seals intact u/s 23(4) (iii) of the Act. The accused firm no. 5 M/s Jorker Pharmaceuticals Pvt. Ltd. Rai, Distt. Sonapat vide its reply dated 30.04.2012 received in this office by speed post, shown inability to submit required records and also did not intend to adduce evidence in controversion of the Test report no. 4658 dated 18.10.2011 of Govt. Analyst, Haryana. The report of Govt. Analyst Haryana mentioned ibid is conclusive evidence as it has been challenged by any of the accused.

2f. Sh. Dhaniwal referred the matter to State Drugs Controller, Haryana vide this office letter no. FDA/DCO/RTK/2012/201 dated 11.06.2012 and asked the permission to launch the prosecution against the accused. The State Drugs Controller, Haryana vide his letter no. 24/50-lidrug-1-2012/6079 dated 16.07.2012 granted the permission to launch the prosecution against the accused. With these assertions, the complainant has averred that the accused persons have contravened the various provisions of the Act and Rules, and they should be punished accordingly.”

5. In the instant matter, the petitioner caused appearance in pursuance to the notice, as issued in the instant complaint, and he was admitted to bail on dated 19.08.2014. The accused mentioned in the complaint at serial No.2 to 5 were declared as a proclaimed persons vide order dated 02.01.2018. After the prosecution examined as many as three witnesses in order to substantiate the charges framed against the accused persons, the learned trial Court concerned vide judgment dated 02.02.2019, held the petitioner guilty for commission of offence punishable under Section 17 read

and Cosmetics Act, 1940, under Section 18-A under Section 3(b) punishable under Section 28 of the Drugs and Cosmetics Act, Section 22(3) of the Act. The petitioner was finally sentenced vide order of sentence dated 04.02.2019 for the offences as under :-

Sr. No.	Offence under which convict has been sentenced	Period of imprisonment	Amount of fine imposed	Imprisonment in default of payment of fine
1.	Section 17 read with Section 18 (a) (i) and Section 16 (i) (a) punishable under Section 27 (d) of the Drugs and Cosmetics Act, 1940	Simple imprisonment for 01 year	Rs.20,000/-	Simple imprisonment for 10 days
2.	Section 18-A under Section 3(b) punishable under Section 28 of the Act	Simple imprisonment for 01 year	Rs.20,000/-	-do-
3.	Section 18-B punishable under Section 28-A of the Act	Simple imprisonment for 01 year	Rs.20,000/-	-do-
4.	Section 22(3) of the Act	Simple imprisonment for 01 year	-	-do-

6. The judgment of conviction and order of sentence (supra), caused grievance to the petitioner, and propelled him to file a statutory appeal before the Court of Sessions Judge, Rohtak. The prime submission of learned counsel for the petitioner before the learned Appellate Court concerned, was that the Court of Judicial Magistrate Ist Class concerned, was not a Court of competent jurisdiction, to try the offence under which the petitioner has been convicted. The learned Appellate Court concerned, accepted the submissions of the present petitioner, and finally conclude that the Court of Chief Judicial Magistrate concerned, was not competent Court of law, to try the accused. Accordingly, the judgment of conviction and order of sentence, was set aside by the learned Appellate Court. However, the learned Appellate Court



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concerned, also directed the petitioner to cause appearance before the competent Court of jurisdiction i.e. Additional Sessions Judge-II, Rohtak, to try the petitioner under the Drugs and Cosmetics Act, 1940.

SUBMISSION BY LEARNED COUNSEL FOR THE PETITIONER

7. Learned counsel for the petitioner on asking for the relief (supra), submits that there is no fault of the petitioner, that he was tried by a Court, having no jurisdiction. The prosecution has filed the instant criminal complaint before the Court, which has no subject jurisdiction, and even the charges were framed for the offences which could only be tried by a Special Court. Despite that, the prosecution seen nowhere made a request for transfer, or committal, of the instant complaint to the Court of competent jurisdiction.

8. He further submits that the instant complaint is pending since 2011, and the petitioner has suffered a mental agony of a protracted trial for about a decade, and sending the petitioner again for a *denovo* trial, is in fact, a violation of his right of speedy justice as enshrined under Article 21 of the Constitution of India. In order to lend vigour to his argument, learned counsel has placed reliance upon the judgment '***Rajan Bhardwaj and others vs. State of Haryana***' 2018 (2) R.C.R. (Criminal), passed by a co-ordinate Bench of this Court wherein, in the similar circumstances, the judgment of remand of the First Appellate Court concerned, was set aside, and the petitioner was acquitted from the charges on account of delay. The relevant extract of the judgment reads as under :-

"17. The question that now arises for determination is the relief to which the petitioners are entitled. Learned Senior counsel for the petitioners has contended that the complaint pertains to the year 2007 and eleven years have elapsed since the institution of the complaint. The petitioners have suffered immense mental tension and



*trauma on account of the protracted trial and thus, prosecution should not be permitted to continue any longer. Reliance has been placed upon the judgment of Hon'ble Supreme Court in '**Chandrawati v. Ramji Tiwari, 2011 (5) RCR (CrL) 95**' in support of his contention. In that case, the Hon'ble Supreme Court had held that the trial was vitiated on account of non-framing of relevant charge, and the request of the prosecution for remand was turned down on the ground that a long period had elapsed since the inception of the trial."*

SUBMISSION BY LEARNED STATE COUNSEL

9. Learned counsel for the State has opposed the submissions made by learned counsel for the petitioner. He submits that the learned Appellate Court concerned, has perfectly and legally remanded the case to the Court of competent jurisdiction, and there is no prejudice caused to the present petitioner.

ANALYSIS

10. This Court has considered the rival submissions made by learned counsel for the parties concerned, and has gone through the entire case file.

11. The Constitution Bench of Hon'ble Supreme Court in '**Abdul Rehman Antulay and others vs. R.S. Nayak and another**' (1992) 1 SCC 225, has recognized the right to speedy trial as a fundamental right enshrined under Article 21 of the Constitution of India. The ratio of **Abdul Rehman Antulay's case (supra)** was subsequently followed by Hon'ble Supreme Court in '**P. Ramachandra Rao vs. State of Karnataka**' (2018) 1 SCC 196 wherein it is held that the mental agony, expense and the strain which a person proceeded against in criminal law has to undergo and which coupled with the delay, may result in impairing the capabilities or ability of the accused to defend himself. The relevant extract from the judgment



P. Ramachandra Rao (*supra*) reads as under :-

“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.”

12. The Constitution Bench in ***Abdul Rehman Antulay’s case (supra)*** has formulated certain propositions. The relevant proposition was subsequently considered in ***P. Ramachandra Rao (supra)*** which reads as under :-

The Court, in its pronouncement, formulated certain propositions, 11 in number, meant to serve as guidelines. It is not necessary for our purpose to reproduce all those propositions. Suffice it to state that in the opinion of the Constitution Bench (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 re-trial; (iii) who is responsible for the delay and what factors have contributed towards delay are relevant factors. Attendant circumstances, including nature of the offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on what is called the systemic delays must be kept in view; (iv) each and every delay does not necessarily prejudice the accused as some delays indeed work to his



advantage. Guidelines 8, 9, 10 and 11 are relevant for our purpose and hence are extracted and reproduced hereunder:-

"(8) Ultimately, the court has to balance and weigh the several relevant factors 'balancing test' or 'balancing process' and determine in each case whether the right to speedy trial has been denied in a given case.

(9) Ordinarily speaking, where the court comes to the 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. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded as may be deemed just and equitable in the circumstances of the case.

(10) It is neither advisable nor practicable to fix any time-limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution.

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. The Supreme Court of USA too has repeatedly refused to fix any such outer time-limit in spite of the Sixth Amendment. Nor do we think that not fixing any such outer limit ineffectuates the guarantee of right to speedy trial.

(11) 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 High Court must, however, be disposed of on a priority basis.

13. On the aforesaid principles, as laid down by Hon'ble Supreme Court, this Court has examined the submissions made by learned counsel for the parties concerned. In the instant case, the complaint was lodged in the year 2011, and petitioner caused appearance in pursuance to the summoning order, in the year 2014. The petitioner was finally convicted after the protracted trial of about five years. Finally, the learned Appellate Court concerned, vide its judgment dated 11.02.2020, set aside the judgment of conviction and order of sentence passed by the learned trial Court and directed the petitioner to cause appearance before the Court of competent jurisdiction for *denovo* trial. Even the instant revision petition is pending before this Court for the last two years, therefore, this Court can safely conclude that the petitioner till date is facing agony of protracted trial for the last more than a decade. There is no fault on the part of the petitioner in causing delay in conclusion of the trial. The petitioner was tried by a Court, which was not of a competent jurisdiction. The offences for which the petitioner has been charged, the maximum sentence is prescribed is of three years. Even the petitioner was convicted in all the offences for only one year by the learned trial Court concerned, which order was subsequently set aside by the learned Appellate Court concerned.

DECISION

14. Keeping in view the above facts and circumstances, and the legal proposition, this Court can safely conclude that sending the petitioner to face

the *denovo* trial, is in fact, a direct infringement of his right to speedy trial.

15. In view of the above, the judgment of the learned Appellate Court concerned, requires interference by this Court, therefore, the instant revision petition is ***accepted***. Resultantly, impugned judgment of the learned Appellate Court is set aside to the extent of remanding the case to the Court of competent jurisdiction for *denovo* trial. Consequently, the petitioner is ordered to be **acquitted** from the charges framed against him.

(KULDEEP TIWARI)
JUDGE

Pronounced on : September 06th, 2024
Manpreet

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