

123 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-14576-2024
Date of Decision: 04.04.2024

Himanshu Talwar ...Petitioner

vs.

State of Punjab ...Respondent

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

Present : Mr. Atul Kaushik, Advocate
for the petitioner.

Mr. I.P.S Sabharwal, DAG, Punjab.

N.S.Shekhawat J.

1. The petitioner has filed the present petition under Section 482 Cr. P.C with a prayer to quash the FIR No. 38 dated 28.03.2021, registered under Section 188,269,270 of IPC, Police Station Phase-11, Mohali and all subsequent proceedings arising therefrom.
2. Learned counsel for the petitioner contends that the FIR in the present case was ordered to be registered against the petitioner on the basis of the complaint moved by the ASI Mohan Singh and the same has been reproduced below:-

“To the SHO, Today ASI Mohan Singh No.251/ASI, SAS Nagar, ASI Nirmal Singh No.523, SAS Nagar, Head Constable Nirdosh Singh No.2178/SAS Nagar, C. Narinder Singh No.1098/SAS Nagar, C. Gaurav Verma No.2428/SAS Nagar, PHG Balwinder Kumar No.26438/198 were on private vehicle and were present at light point of Mandi Board, Phase-11. At about 02:15 AM, a secret informer informed that owner of Walking Street Club namely Sajjan Mahajan had opened his club and large number of people had gathered there and Hooka was also being served there. If raid was conducted, they would be apprehended. Since the information is reliable and trustworthy,

therefore, owner of Walking Street Club namely Sajan Mahajan and others have violated the orders issued by Deputy Commissioner and for controlling the Spread of Corona Virus, this action has been initiated under Section 188, 269,270 of IPC. Therefore, ruqa is sent against owner of Walking Street Club Sajan Mahajan and the FIR may registered and is sent through Cons. Gaurav Verma No. 2478,SAS Nagar, Mohali to the Police Station Phase-11, Mohali.

3. Learned counsel for the petitioner contends that in the present case, the offences under Section 269,270 of IPC were ordered to be deleted and after completion of investigation, the final report under Section 188 of IPC has been presented before the Court on 04.09.2023. Learned counsel further contends that the maximum sentence under Section 188 of IPC is punishable with imprisonment or either description for a term which may extend to six months or with fine which may extend to one thousand rupees or both. Consequently, the Trial Court was barred from taking cognizance of the offence in view of the bar contained in Section 468 (2) Cr. P.C. Section 468 (2) Cr. P.C clearly provides that the period of limitation shall be one year, if the offence is punishable with imprisonment for a term not exceeding one year. In the present case, the maximum period of imprisonment was six months, consequently, the period of limitation for taking cognizance was one year. Thus, the trial Court is expressly barred to take cognizance of the offence in the present case. Learned counsel next contends that similarly placed co-accused Gaurav Uppal had filed a case i.e.CRM-M-65175-2023 and vide the judgment dated 05.03.2024 (Annexure P-2), this Court had quashed the present FIR and all subsequent proceedings qua him. The case of the petitioner is also covered by the said judgment.

4. A status report by way of an affidavit of Deputy Superintendent of

Police, City-2, SAS Nagar has been filed on behalf of respondent-State and the same is taken on record.

5. Learned State counsel also submits that in the present case, the offences under Sections 269,270 of IPC were ordered to be deleted from the FIR and the final report under section 188 IPC has been presented before the competent Court on 04.09.2023.

6. 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.

7. 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.'

8. 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) xxxxxx

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.

9. In the present case also, the FIR was ordered to be registered against the petitioner on 28.03.2021 and ultimately, it has been concluded that the petitioner had committed the offence under Section 188 of IPC, which is punishable with imprisonment, which may extend to six months or with fine or with both. Consequently, in view of the provisions contained in section 468 (2) Cr.P.C, the period of limitation for taking cognizance of the Trial Court was one year.

10. Thus, in view of the law laid down by the Hon’ble Supreme Court and in view of the factual discussion, the Trial Court is barred from taking cognizance of the offence in the present case. Even otherwise, the present FIR has already been quashed qua similarly placed co-accused namely Gaurav Uppal vide judgment dated 05.03.2024 (Annexure P-2) passed by this Court. Thus, the impugned FIR No. 38 dated 28.03.2021, registered under Section 188,269,270 of IPC, Police Station Phase-11, Mohali and all subsequent proceedings arising therefrom are hereby ordered to be quashed.

04.04.2024
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(N.S.SHEKHAWAT)
JUDGE

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