

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 1770 of 2011

With

CRAN 1/2024

Sital Prasad Shaw @ Gupta & Another

Versus

Ashish Bhattacharya & Another

For the Petitioners : Mr. Sudipto Moitra, Ld. Sr. Adv.
Mr. Ashok Das, Adv.
Mr. Vijay Verma, Adv.
Mr. Dwaipayan Biswas, Adv.

For the Opposite Party No. 1 : Mr. Nandalal Singhanian, Ld. Sr. Adv. (via VC)
Mr. R. Chakraborty, Adv.

Heard on : 21.03.2025

Judgment on : 23.04.2025

Ajay Kumar Gupta, J:

1. This instant Criminal Revisional application has been filed by the petitioners under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 seeking for quashing of the proceeding being Case No. C-472/82 corresponding to Trial No. 63/83 under Section 3(a) of the Railway Property (Unlawful Possession) Act pending before the Court of Learned Magistrate, 5th Court at Barrackpore, North 24-Parganas.

2. The brief facts are relevant for the purpose of disposal of this case as under:

2a. A complaint case was filed before the then Sub-Divisional Judicial Magistrate, Barrackpore, 24 Parganas by the opposite party no. 1 alleging, inter alia, that on 10.07.1982, the complainant along with others conducted a search in the shop -cum- godown of the petitioner no. 1 and seized some railway properties suspected to be stolen or unlawfully obtained and the petitioner no. 2 was present at the time of purported search and seizure. Hence, a case was registered being Case No. C-472/82 corresponding Trial No. 63/83 under Section 3(a) of the Railway Property (Unlawful Possession) Act.

2b. It is the contention of the petitioners that no charge was framed till 1994 therefore, the opposite party no. 1/complainant

violated the specific mandate of the Code of Criminal Procedure as provided under Section 245 (3) of the CrPC as such accused is entitled to be discharged from the proceedings.

2c. The petitioners had filed a petition for discharge on the ground of none framing of charge even after expiry of 4 years on 23.11.1993 but the Learned Trial court rejected their prayer for discharge vide order dated 21.02.1994.

2d. Feeling aggrieved and dissatisfied with, the petitioners challenged the said impugned order dated 21.02.1994 for violation of the mandatory provision as contemplated under Section 245 (3) of the CrPC by filing a Criminal Revisional application being CrI. Rev. No. 1458/94. On 23.06.1994, after hearing, the then Hon'ble Judge issued a rule and further stayed the proceedings.

2e. The said Criminal Revisional application came up for hearing finally before the Hon'ble Justice Alok Kumar Basu (as His Lordship then was). But, due to non-appearance on behalf of the petitioners, the said application was dismissed for default vide order dated 19.12.2003 and the order of stay was also vacated.

2f. The recording of evidence before the charge was closed on 19.04.1993 and, thereafter, date was fixed for framing of charges but no charge was framed on the schedule date. Thereafter, consecutive

dates were fixed for framing of charge but no charge was framed. However, finally charge was framed on 02.05.1994

2g. Even after vacating the stay order passed by the Hon'ble Court on 19.12.2003. The Opposite party no.1 did not take any positive steps to conclude the evidence as such accused is entitled to discharge from the case in terms of Section 245 (3) of the CrPC as such petitioner filed this instant revisional application with a prayer for quashing of the proceedings, Hence, this Criminal Revisional application.

SUBMISSION ON BEHALF OF THE PETITIONERS:

3. Mr. Maitra, learned senior counsel, appearing on behalf of the petitioners vehemently argued and submitted that even the order of stay was vacated by the Hon'ble High Court as far back in the year 2003 till 2010, no evidence after charge was closed by the prosecution. The Learned Magistrate fixed the dates for the High Court's order. Petitioners ultimately got the Xerox certified copy of the said order of dismissal of revisional application in first week of December, 2010 and produced the same before the Learned Magistrate.

3a. Admittedly, charge could not be framed till 01.05.1994 and, thereafter, till date no evidence after charge has been completed as

such, the petitioners herein are entitled to discharge from the case only on the sole ground that the charge could not be framed before expiry of 4 years from the date of appearance of the accused or even from the date of amendment of Section 245 of the CrPC came into effect i.e. from 2nd May, 1989. Prosecution had also not taken any step either to produce the order of this Hon'ble High Court or apprised the Court regarding dismissal. Therefore, the instant case falls under the purview of Section 245(3) of the CrPC. There is an embargo to proceed with the case any further.

3b. It was further submitted that under the adversary system of Justice delivery process, the prosecution ought to have shown its interest in prosecuting the petitioners in connection with the impugned proceeding but, the role of the prosecution is unprecedented and as such, all further proceeding would be mere miscarriage of justice. As the case was registered in the year 1982 and already 43 years have been elapsed and delay in disposing of the matter could not be attributed to the accused/petitioners. The order passed by the Learned Magistrate demonstrates the lackadaisical approach of the prosecution that they are not keen to dispose of the matter or to prove the case against the present petitioners. Therefore, the accused/petitioner is entitled to discharge from the aforesaid proceeding on the ground of delay under Section 245(3) of the CrPC.

Finally, he prays for quashing of the proceeding for an abuse of process of law. To bolster his submission, the learned senior counsel has placed reliance on two judgments as under: -

i. Syed Mohammad Hasan Vs. K.C. Das, Deputy Chief Controller of Import & Export¹ particularly paragraph nos. 6, 8, 10 and 11;

ii. Sree Ram Trading and Supply Co. & Anr. Vs. The State & Anr.² particularly paragraph nos. 7, 8, 9, 13 and 15.

3c. In the first judgment, the Hon'ble Calcutta High Court held in paragraph nos. 6, 8, 10 and 11 as under: -

“6. The first point for consideration in this case is whether there was any obligation for the Learned Magistrate to apply the provisions of Sub-section (3) of Section 245 before framing of charge against the accused on 12.12.89. The (West Bengal Amendment) Act, 1988 of the Criminal Procedure Code is extracted below:

GOVERNMENT OF WEST BENGAL

LAW DEPARTMENT

Legislative.

NOTIFICATION.

¹ 1991 C Cr LR (Cal) 99;

² 1993 C Cr LR (Cal) 139

No. 548-L- 14th March, 1989. The following Act of the West Bengal Legislature, having been assented to by the President of India, is hereby published for general information:

*THE CODE OF CRIMINAL PROCEDURE (WEST
BENGAL AMENDMENT) ACT,
1988*

West Bengal Act XXIV of 1988

(Passed by the West Bengal Legislature).

(Assent of the President of India was first published in the Calcutta Gazette, Extraordinary, of the 14th March, 1989).

An act to amend the Code of Criminal Procedure, 1973 in its application to West Bengal.

WHEREAS it is expedient to amend the Code of Criminal Procedure, 1973 (2 of 1974), in its application to West Bengal, for the purposes and in the manner hereinafter appearing;

It is hereby enacted in the Thirty-ninth Year of the Republic of India, by the Legislature of West Bengal as follows:

1. Short title and commencement. --(1) This Act may call the Code of Criminal Procedure (West Bengal Amendment) Act, 1988.

(2) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

2. Application of the Act. --The Code of Criminal Procedure, 1973 (hereinafter referred to as the

principal Act) shall, in its application to West Bengal, be amended for the purposes and in the manner hereinafter provided.

** * * * **

5. Amendment of Sub-section (2), Section 245. --In Section 245 of the principal Act, after Sub-section (2), the following sub-section shall be inserted: -

“(3) If all the evidence referred to in Section 244 are not produced in support of the prosecution within four years from the date of appearance of the accused, the Magistrate shall discharge the accused unless the prosecution satisfies the Magistrate that upon the evidence already produced and for special reasons there is ground for presuming that it shall not be in the interest of justice to discharge the accused.

By order of the Governor,

S.N. Mukherjee

Secretary to the Govt, of West Bengal”

8. On a perusal of Section 5 of the above Amendment Act by which a new Sub-section (3) has been inserted after Sub-section (2) of Section 245 we are of the view that it is a provision beneficial to the accused persons. Moreover, is a procedural statute and in view of the well settled principle of interpretation of statute such amended provision whose primary object is to avoid delay in trial and is in consonance with the fundamental rights enshrined in Article 21 of the Constitution will be applicable to all pending Criminal

Proceedings for trial of offences under Chapter 19 of the Criminal Procedure Code for trial of warrant cases instituted otherwise than on police report.

10. We are satisfied that Sub-section (3) of Section 245 of the Criminal Procedure Code which is a procedural enactment enacted for the benefit of the accused would apply to all warrant cases instituted otherwise than on police report on the date when the above provision came into force. Admittedly, on 2nd May, 1989 the charge has not been framed against the accused persons. But on behalf of the respondent, it is contended that as long prior to the date on which the above provision came into force all the evidence before charge have been concluded on 7th February, 1989 then there was no obligation for the learned Magistrate as on 2nd May, 1989 to apply the provision of the Sub-section (3) of Section 245, Criminal Procedure Code because on the date charge had been concluded. There can be no doubt that in order to attract Sub-section (3) of Section 245 the primary condition is that all evidence before charge were not produced in support of the prosecution. There is no doubt as is gathered from the record of the learned Trial Judge that on 7th February, 1989 with the examination of the 26th witness of the prosecution the evidence before charge was concluded and the learned Magistrate fixed a date for consideration of the framing of the appropriate

charges against the accused. However, the record reveals that the said date for consideration of the framing of the proper charges were adjourned from time to time and the charges had admittedly been framed long thereafter that is on 12.12.89. So, it is clear that prior to the date on which Sub-section (3) of Section 245 came into force all the evidence before charge were produced by the prosecution. Mr. Ghosh, however, concedes that fact but he urges that when the Act came into force the learned Magistrate had to apply Sub-section (3) of Section 245 because when the period of four years from the date of appearance of the accused had expired on 26.1.88, all evidence before charge had not been concluded.

11. We are unable to hold that such a contention is acceptable. If that were to be acceptable then we shall have to hold that the Sub-section (3) of Section 245 have been given any retrospective effect. As there is nothing in the Act to suggest that it has been given a retrospective effect then we must hold that the amendment is prospective in nature and the learned Magistrate in the matter of such warrant cases instituted otherwise than on police report has to apply Sub-section (3) of Section 245 if on the date on which the above provision came into force, the period of four years had expired and the evidence before charge had not been concluded on the date on which the above provision came into force. When admittedly in

this case Sub-section (3) came into force on a date before which all evidence before charge had been concluded, we are unable to hold that any right had accrued, to the petitioner in this case to be discharged under Sub-section (3) of Section 245 unless the Magistrate, regard being had to the evidence already produced and for special reasons, decides to continue the proceeding. On the date Sub-section (3) of Section 245 came into force there was no scope for the learned Magistrate to decide that question because evidence on that date had already been concluded and even prior to that date the date had already been fixed for framing of the charge. In that view of the matter, we are unable to accept the first contention raised by the petitioner.”

3d. In the second judgment, the Hon’ble Calcutta High Court held in paragraph nos. 7, 8, 9, 13 and 15 as under: -

“7. Section 245 of the Code has also been amended by the aforesaid Amendment Act by inserting Sub-section (3) after Sub-section (2) in the following manner:

"In Section 245 of the principal Act, after Sub-section (2), the following sub-section shall be inserted: -

(3) If all the evidence referred to in Section 244 are not produced in support of the prosecution within four years from the date of appearance of the accused, the Magistrate

shall discharge the accused unless the prosecution satisfies the Magistrate that upon the evidence already produced and for special reasons there is ground for presuming that it shall not be in the interest of justice to discharge the accused."

8. The aforesaid procedural enactment has clearly been enacted for the benefit for the accused, whose primary object is to avoid delay in trial, in consonance with the fundamental rights guaranteed under Article 21 of the Constitution.

9. In its plain language, plainly read, Section 245(3) of the Code gives a mandate to the Magistrate (in cases instituted otherwise than on police report) to make an order of discharge of the accused unless the prosecution satisfies the Magistrate that upon the evidence already produced and for special reasons there is ground for presuming that it shall not be in the interest of justice to discharge the accused ; the way the Magistrate is required to make an order stopping further investigation into the offence and discharge the accused unless the officer making investigation satisfies the Magistrate that for special reasons and in the interest of justice the continuation of the investigation beyond the periods mentioned in Sub-section (5) of Section 167 of the Code is necessary, obviously implying that the satisfaction of the Magistrate (in both the cases) must take place

before the expiry of the periods mentioned in the aforesaid provisions.

13. Since the aforesaid Amendment Act of 1988 has been enacted for the benefit of the accused with the primary object to avoid delay in trial in consonance with the fundamental rights enshrined in Article 21 of the Constitution, as indicated above, it must be held in keeping with the aforesaid decisions that the satisfaction of the Magistrate under Section 245(3) of the Code must take place before the expiry of four years from the date of appearance of the accused in respect of cases thereunder. With the aforesaid relevant amended provision of the Code, such as they are, there could be little mistaking that the power that has been given to a Magistrate to permit continuation of further proceedings beyond the period of four years from the date of appearance of the accused in cases instituted otherwise than on police report has to be exercised before the expiry of the said period. Any direction by the Magistrate to continue the proceedings after the aforesaid period without being satisfied by the prosecution that upon the evidence already produced and for special reasons there is ground for presuming that it shall not be in the interest of justice to discharge the accused, in breach of the provisions of Section 245(3), would clearly be without jurisdiction, rendering the subsequent proceedings as well without jurisdiction.

15. Even though the accused is not required to raise any objection in such matter, the obligation to satisfy the learned Magistrate under Section 245(3) solely lying upon the prosecution, a petition appears to have been filed by the accused-petitioners on 14.1.91 before the learned Magistrate under Section 245(3) of the Code praying for their discharge on the failure of the prosecution to examine all the witnesses within four years from the date of their appearance. The said petition had been fixed by the learned Magistrate on 1.4.91 for hearing. A copy of the said petition appears to have been served by the accused-petitioners upon the prosecution. It was only then that wisdom had dawned upon the prosecution who had thereupon summoned the witnesses for their examination/evidence in the case on 1.4.91, though the said date was fixed for hearing of the aforesaid petition filed by the accused-petitioners on 14.1.91, and not for evidence of the prosecution witnesses.”

SUBMISSION ON BEHALF OF THE OPPOSITE PARTY NO. 1:

4. Learned senior counsel Mr. Singhanian appearing through virtual mode on behalf of the opposite party no. 1 vehemently opposed the prayer of the petitioners for discharge and/or quashing of the proceedings and submitted that actually, some railway

properties worth of Rs. 5,000/- were found in the possession of the accused persons but they failed to produce any valid documents. Accordingly, the opposite party no. 1 has filed complaint before the Learned Court below in the year 1982. Evidence before the charge was closed in the year 1993 and charge was framed in the year 1994. Already three prosecution witnesses have been examined after framing of charge. The delay was caused due to stay of the proceeding granted by the Hon'ble High Court in the Criminal Revision application filed by the petitioner before the Hon'ble High Court at Calcutta. Therefore, Section 245 (3) of the CrPC is not at all applicable in the present case. The counting of 4 years starts from the date of charge framed i.e., from 1994. The prosecution has examined three witnesses after the charge. When the delay is actually due to the petitioners/accused, the question of discharge of the accused or quashing of the proceeding does not and cannot arise. To support of his contention, he also relied a judgment passed in the case of **Santosh De and Anr. Vs. Archana Guha and Ors.**³ particularly paragraph nos. 7 and 15 thereof where the Hon'ble Supreme Court held as under:

“7. In this case, the accused appeared in the court for the first time on November 5, 1977. All the evidence

³ (1994) 2 SCC 420

on behalf of the complainant-prosecution has admittedly not been adduced within four years therefrom. But it must be remembered, sub-section (3) was not on the statute book in the years 1981 or 1982. It was inserted only in the year 1988. We shall assume for the purpose of this case that the four years' period prescribed by Section 245(3) must be deemed to have expired on the date the said sub-section was inserted and deal with the appellants' submissions on that basis.

15. *The facts of this case impel us to say how easy it has become today to delay the trial of criminal cases. An accused so minded can stall the proceedings for decades together, if he has the means to do so. Any and every single interlocutory is challenged in the superior courts and the superior courts, we are pained to say, are falling prey to their stratagems. We expect the superior courts to resist all such attempts. Unless a grave illegality is committed, the superior courts should not interfere. They should allow the court which is seized of the matter to go on with it. There is always an appellate court to correct the errors. One should keep in mind the principle behind Section 465 CrPC. Any and every irregularity or infraction of a procedural provision cannot constitute a ground for interference by a superior court unless such irregularity or infraction has caused irreparable prejudice to the party and requires to be*

corrected at that stage itself. Such frequent interference by superior courts at the interlocutory stages tends to defeat the ends of justice instead of serving those ends. It should not be that a man with enough means is able to keep the law at bay. That would mean the failure of the very system.”

DISCUSSION AND FINDINGS BY THIS COURT:

5. Heard the arguments and submissions made by the learned counsels appearing on behalf of the parties and upon perusal of the entire order sheet of the Learned Trial Court, it appears that a case was initiated against the two accused persons, namely, Sital Prasad Shaw @ Gupta and Kesab Prasad Shaw @ Gupta by filing Court complaint on 10.07.1982 under Section 3(a) of the Railway Property (Unlawful Possession) Act.

6. This Criminal Revisional application filed by the petitioners for quashing of the proceeding on the ground that the Learned Trial Court did not discharge the accused persons despite the prosecution / Opposite Party No. 1 could not complete the evidence before charge within a period of four years from the date of appearance of the accused and by the reason of failure to produce all evidence, the accused persons are entitled to be discharged in terms of the amended Section 245(3) of the CrPC of the West Bengal.

7. During pendency of this instant Criminal Revisional application, one of the accused persons, Kesab Prasad Shaw expired and date of his expiry reveals as 12.07.2016 from the report submitted by the Officer-in-Charge of the concerned police station. Death certificate also enclosed with the report shows that he expired on 12.07.2016. therefore, his case gets abated. Now, Sital Prasad Shaw @ Gupta remains as an accused/petitioner herein who seeks quashing of the proceeding on the ground set forth as aforesaid.

8. Before dealing/entering into the arguments advanced by the parties, it would be appropriate and convenience to refer the Section 245(3) of the CrPC for ready reference and proper adjudication of this case as under: -

"In Section 245 of the principal Act, after Sub-section (2), the following sub-section shall be inserted: -

(3) If the evidence referred to in Section 244 are not produced in support of the prosecution within four years from the date of appearance of the accused, the Magistrate shall discharge the accused unless the prosecution satisfies the Magistrate that upon the evidence already produced and for special reasons there is ground for presuming that it shall not be in the interest of justice to discharge the accused. (Vide W.B. Act 24 of 1988, S. 4 (w.e.f. the notified date))"

9. From the perusal of the aforesaid provision, it is clear that Section 245(3) of the CrPC gives mandate to the Magistrate in the cases instituted otherwise than on police report to make an order of discharge of the accused unless the prosecution satisfies the Magistrate that upon the evidence already produced and for special reasons there is ground for presumption that it shall not be in the interest of justice to discharge the accused.

10. The Magistrate is required to make an order stopping further investigation into the offence and discharged the accused. The aforesaid amendment has been made for the benefit of the accused, whose primary approach is to avoid delay in trial in consonance with the fundamental right guaranteed under Article 21 of the Constitution.

11. For the aforesaid reason, certain provision of the CrPC including Section 245 of the CrPC has been amended by the Code of Criminal Procedure (West Bengal Amendment) Act, 1988. The assent of the President was first published in the Calcutta Gazette Extraordinary Part 3, No. 548-L, dated 14.03.89. The aforesaid amendment Act had come into force on and from 2nd May, 1989

under the relevant Notification issued by the Government to that effect.

12. Upon perusal of the aforesaid judgments relied upon by the petitioner, the Hon'ble Court held that as there is nothing in the Act to suggest that the said amendment has been given retrospective effect, therefore, it can be safely held that the amendment is prospective in nature and the Magistrate in the matter of such warrant case instituted otherwise than police report to apply sub-section (3) of Section 245.

13. It is found that in the pending proceedings, the evidence before charge have not been concluded within 4 years calculated from the date on 2nd May, 1989. Magistrate should have decided the fate of accused persons if all the evidence referred to Section 244 are not produced in support of the prosecution within 4 years from the date of amendment of section given effect. The Magistrate shall decide the case unless the prosecution satisfies the Magistrate upon production and for special reason there is ground for presumption that it shall not be interest of justice to discharge the accused. Be that as it may, the Magistrate has rejected the prayer for discharge of the accused person without assigning any reasons.

14. Being aggrieved with the said rejection of the said discharge prayer, the petitioner came before this Court.

15. Upon careful perusal of the copy of the orders of the Learned Trial Court on record, it is clearly indicated that the accused, Sital Prasad Shaw surrendered before the Learned Trial Court after obtaining anticipatory bail on 28.08.1982. It further reveals that the charge was framed on 2nd May, 1994 if we calculate the period for completion of evidence before charge, it took 5 years even after the date on which date of the amended Section was came into effect i.e. from 2nd May, 1989, 5 years have taken over prior to framing of charge. Considering the aforesaid facts, it appears it took more than 4 years.

16. In addition, the evidence after framing of charge has not been completed on the part of prosecution as yet. It already expired more than four decades. It is apparent from the face of record that the accused is lacing the trial for about 43 years. Orders of the trial court clearly indicates it does not able to glean any good or sufficient cause which stood in the way of trial being expedited in the manner it ought to have been completed. It itself is a violation of Article 21 of the Constitution of India. The Petitioners had filed a Revisional application earlier and in that proceeding, a stay order of the

proceeding was granted for a period from 23.06.1994 to 19.12.2003 and subsequently, stay was vacated on 19.12.2003. Even if this Court gives discount that period then also the accused is suffering without any sufficient cause for more than three decades and that is highly considerable period. Therefore, the application has a good merit. That being the situation, this Court constrains to hold that the proceeding is a sheer abuse of process of law. Therefore, this prosecution can no longer be allowed to continue and must quashed by this court utilising the extraordinary power granted under Section 482 of the CrPC to prevent from abuse of process of law and to secure the ends of justice. Section 482 confers very wide power on the court to do justice and to ensure that the process of the court is not permitted to be abused.

17. The contention of the learned senior counsel appearing on behalf of the opposite party no. 1 with regard to delay actually caused due to accused persons are not at all convincing and acceptable.

18. Accordingly, **CRR No. 1770 of 2011** is **allowed**.

19. In view of the disposal of the main application, connected application being **CRAN 1 of 2024** is also, thus, disposed of by allowing the application by directing the department to substitute the

name of Mr. Manas Kumar Mishra in place of opposite party no.1, Ashish Bhattacharya (since deceased).

20. Consequently, proceeding being Case No. C-472/82 corresponding Trial No. 63/83 under Section 3(a) of the Railway Property (Unlawful Possession) Act pending before the Court of Learned Magistrate, 5th Court at Barrackpore, North 24-Parganas is hereby quashed insofar as the petitioner, Sital Prasad Shaw @ Gupta is concerned and the accused shall stand discharged.

21. Let a copy of this Judgment be sent to the Learned Trial Court for information.

22. Interim order, if any, stands vacated.

23. Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)