

(2010) 08 PAT CK 0120
In the Patna High Court

Ajay Kumar Singh

APPELLANT

Vs

The State of Bihar
 Ganauri Singh and Others Vs The
State of Bihar and Ram Autar Sao

RESPONDENT

Date of Decision : 20-08-2010

Acts Referred:

Citation : (2010) 08 PAT CK 0120

Final Decision : Dismissed

Judgement

Rakesh Kumar, J.—In both the cases order under challenge is rejection of discharge petition by an order dated 29.11.2000 passed in Sessions Trial No. 2of 1994/26 of 1996 by the learned Addl. Sessions Judge-I, Aurangabad and, as such, both the petitions were heard together and are being disposed by a common Judgment.

2. It was a case of massacre, in which six innocent persons belonging to weaker section of society were brutally killed in the night by the member of powerful community and means, while they were sleeping in two huts (Palani- shed prepared by straw and bamboos) and at least four persons received injuries. Still the accused persons have succeeded in delaying the commencement of trial for more than 23 years from the date of occurrence. In this case, occurrence had taken place in the night of 20.9.1986.

3. At this juncture this Court is tempted to reproduce certain lines of Hon"ble Supreme Court which was noticed in a case reported in Ganesh Narayan Hegde Vs. S. Bangarappa and Others, which is as follows:

(I) It is common knowledge that currently in our country criminal Courts excel in slow-motion. The procedure is dilatory, the dockets are heavy, even the service of process is delayed and, still more exasperating, there are appeals upon appeals and revisions and supervisory jurisdictions, baffling and baulking speedy termination of prosecutions...." The slow-motion becomes much slow -motion when politically powerful or rich and influential persons figure as accused. F.I.Rs

are quashed. Charges are quashed. Interlocutory orders are interfered with. At every step, there will be revisions and applications for quashing and writ petitions. In short, no progress is ever allowed to be made. And if ever the case reaches the stage of trial after all these interruptions, the time would have taken its own toll: the witnesses are won over; evidence disappears; the prosecution loses interest- the result is an all too familiar one. We are sad to say that repeated admonitions of this Court have not deterred superior Courts from interfering at initial or interlocutory stages of criminal cases. Such interference should be only in exceptional cases where the interests of justice demand it; it cannot be a matter of course.

4. During the investigation materials were collected showing involvement of petitioners of both the cases and thereafter chargesheet was submitted in the month of March, 1989. In between the date of occurrence and submission of chargesheet also, many unhappy things have occurred, which will be succinctly discussed later on. After a long delay when the case reached to the stage of charge, petitions were filed on behalf of accused persons for their discharge u/s 227 of the Code of Criminal Procedure. Yet again though discharge petition was filed on 28.2.1995, the same was kept pending for several years and rejected finally by the learned 1st Addl. Sessions Judge, Aurangabad on 29.11.2000, i.e. after more than five years from the date of filing of the discharge petition. This shows insensitivity of all the concerned, whether it was the Investigating Agency, Prosecuting Agency, Defence or "Someone else", but fact remains that discharge petition in the present case, in which six lives were brutally taken, was kept pending for more than five years. The order of rejection of discharge petition was challenged before this Court by filing the aforesaid petitions. Cr. Misc. No. 2958 of 2001 was filed on 31.01.2001 against the order dated 29.11.2000, which was an order of rejection of discharge petition. The order of rejection of discharge petition was very much clear and the learned 1st Addl. Sessions Judge, while rejecting the petition for discharge, had perused the F.I.R. and statements of witnesses, contained in the case diary and the learned Addl. Sessions Judge was of the view that there were sufficient materials in the case diary to proceed against accused persons. While opposing the petition before the court below, the learned Addl. Public Prosecutor had pointedly referred to paragraph Nos. 4,13,31,36,39,65,66,79,89, 274, 286 of the case diary, which have been referred in the impugned order. On 22.1.2002, while the present case was taken up for hearing at the point of admission, case diary of Aurangabad P.S. Case No. 344 of 1986 (Sessions Trial No. 2 of 1994/26 of 1996) was summoned from the court of learned 1st Addl. Sessions Judge, Aurangabad vide order dated 22.1.2002 and subsequently on 23.4.2000, the petition was admitted for hearing. While admitting the case, this Court directed that during the pendency of this application, further proceeding in Sessions Trial No. 2 of 1994/26 of 1996 pending before the 1st Addl. Sessions Judge, Aurangabad only with respect to five petitioners shall remain stayed. This order was passed in Cr.Misc. No. 2958 of 2001.

5. Cr.Misc. No. 3662 of 2001, which was filed by accused Ajay Kumar Singh, was admitted on 16.7.2003. In this case also order was passed for staying the proceeding in Sessions Trial No. 26 of 1996 and it was directed to list this case along with Cr. Misc. No. 2958 of 2001.

6. Short fact of the case is that on 21.9.1986 at about 9.45 hours (i.e. 9.45 A.M., fardbeyan of one of the injured Ram Autar Sao, resident of Village -Parasdi, Police Station- Aurangabad Headquarter (HQ), District Aurangabad was recorded by Sub-Inspector of Police, Sri Devendra Nath Pathak. It was disclosed by the informant in his fardbeyan that in the preceding night he was sleeping in a hut (Jhala Palani) along with his uncle Jageshwar Sao on a cot. On an another cot his brother Rajaram Sao and Raj Ishwar Sao were sleeping. It was further disclosed that in an another hut near the informant's hut, Rajendra Sao, Binod Sao, Shambhu Sao, Sanjay Sao, Vijay Sao, Chamaru Sao, Doma Sao and Rajdeo Sao were sleeping. It was a full moon-night and there were no cloud in the sky. The informant noticed at about 10.30 p.m.(night) sound of foot steps and thereafter he removed blanket from his face and he noticed that about 15-20 unknown persons were coming towards their hut carrying guns pointing towards the hut and thereafter they started firing. Any how he jumped from his cot and he entered into the vegetable field. In the meanwhile he received fire-arm injury in his right hand finger. After firing indiscriminately in the informant's hut, the accused persons thereafter moved to the hut of Ramapati Sao, which was near to the hut of the informant. The informant heard sound of firing for about few minutes and thereafter all the accused persons fled away. Subsequently, he sent information to the Chowkidar. In the meanwhile, several villagers, after hearing sound of firing, arrived at the place of occurrence and noticed that in the hut of the informant, Rajaram Sao, Raj Ishwar Sao, both brothers of the informant, and Jageshwar Sao (uncle of the informant) were lying dead in the pool of blood. There were several injuries of fire arm and other lethal weapon on the dead bodies of the deceased persons and huge quantity of blood had oozed out. In the hut of Ramapati Sao, Rajendra Sao, Binay Sao, both sons of Ramapati Sao Chamaru Sao S/O of Neman Sao were lying dead on different cots. They had also received several injuries and the blood had oozed out of the dead bodies of the deceased persons. The villagers of the informant also noticed that Binod Sao aged about 12 years S/O Ramapati Sao had received serious injuries of sharp cutting weapon and his leg was virtually amputated. There were number of wounds on his body. Shambhu Sao aged about 10 years S/O Ramapati Sao had also received injury from sharp cutting weapon on his back, head and ribs. Rajendra Sao had also received injuries on his right ear, which was simple in nature. The informant claimed that he had not identified any accused persons. However, he asserted that other injured persons might have identified the accused persons. It was admitted that there was no animosity with the informant. On the basis of fardbeyan of Ram Autar Sao, an F.I.R. vide Aurangabad (Town) P.S. Case No. 344 of 1986 was registered on 21.9.1986 at about 9.55 hours.

7. After registering the F.I.R. the police investigated the case and after collecting

materials showing involvement of the petitioners in both the cases, chargesheet was submitted in the month of March, 1989. After submission of the chargesheet at the stage of charge, petitioners filed petition for their discharge in the year 1995 and the same was rejected by the learned 1st Addl. Sessions Judge, Aurangabad vide its order dated 29.11.2000 in Sessions trial No. 2 of 1994/ 26 of 1996. Even after submission of chargesheet in the year 1989 i.e. after about three years from the date of occurrence in the case committal proceeding had also consumed several years and, as such, after commitment the case was numbered as Sessions Trial No. 2 of 1994. In this case discharge petition was filed on 28.2.1995 and it was rejected on 29.11.2000

8. Aggrieved with the order of rejection of discharge petition, petitioners approached this Court. Cr.Misc. No. 2958 of 2001 was admitted on 23.2.2002 and proceeding in the court below so far five petitioners was stayed. Cr.Misc. No. 3662 of 2001 was admitted on 16.7.2003 and in this case also stay order was passed. The matter remained pending for several years before this Court. When the case reached at the stage of hearing, on few dates none appeared on behalf of the petitioners. However, on 11.8.2010, the case was adjourned for a day and it was recorded in the order sheet that no further adjournment shall be granted and it was directed to list the case on the next day. On the next date also, a prayer was made for adjourning the case. However, this case was passed over. On 13.8.2010 again Sri Surendra Kumar Singh, learned Senior Counsel for the petitioners wanted to defer the hearing of the case. However, the matter was finally heard on the same day.

9. At the time of hearing, Sri Surendra Kumar Singh, learned Sr. Counsel appearing on behalf of the petitioners in Cr.Misc. No. 2958 of 2001, insisted the Court to examine the entire case diary and placed the same oblivious of the fact that this Court was hearing a petition filed u/s 482 of the Code of Criminal Procedure and not an appeal. Sri Singh learned Senior Counsel for the petitioners virtually referred the entire paragraphs of the case diary, which were referred by the learned Addl. Public Prosecutor before the 1st Addl. Sessions Judge at the time of hearing of discharge petition. It was argued on behalf of the petitioners that on the basis of materials available in the entire case diary, no case was made out against the petitioners. Learned Senior Counsel has also submitted that it was a case of even no grave suspicion. It was emphatically argued that only because of the fact that it was a case of murder of six persons, learned Addl. Sessions Judge has rejected the discharge petition, even though there were no material in the case diary. Sri Surendra Kumar Singh, learned Senior Counsel has relied upon Judgments of the Hon"ble Supreme Court, particularly the Judgment reported in State of Bihar Vs. Ramesh Singh, Learned Senior Counsel has specifically placed paragraph -4 of the Judgment, which is as follows:

4. u/s 226 of the Code while opening the case for the prosecution the prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial

stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either u/s 227 or Section 228 of the Code. If "the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing", as enjoined by Section 227. If, on the other hand, "the Judge is of opinion that there is ground for presuming that the accused has committed an offence which

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused", as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter u/s 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order u/s 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one u/s 228 and not u/s 227.

Learned Counsel has further referred to paragraph 10 of the Judgment of the Hon'ble Supreme Court reported in Union of India (UOI) Vs. Prafulla Kumar Samal and Another, It would be better to quote paragraph-10 of the said Judgment, which is as follows:

10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges u/s 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials place before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction u/s 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basis infirmities appearing in the case and so on. This however does not mean that the judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

Similarly, Learned Senior Counsel for the petitioners has referred to Judgment of the Hon'ble Supreme Court reported in Niranjana Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others,

10. It was submitted that in view of the settled law, it was required on the part of the learned Sessions Judge to allow the discharge petition. As per learned Counsel for the petitioners it was a case of no evidence. On the aforesaid grounds, it was submitted that the petition for discharge was liable to be allowed by the learned Addl. Sessions Judge.

11. In the second case, i.e. Cr. Misc. No. 3662 of 2000 Sri Ashwini Kr. Singh, learned Senior counsel for the petitioner has submitted that so far as the case of accused Ajay Kumar Singh (Petitioner) is concerned, there was no material against him save and except that he was one of the sons of accused Bangali Singh. It was argued by Sri Ashwini Kumar Singh that Bangali Singh was having four sons and one of the witnesses had only asserted that in the crime Bangali

Singh and his son were involved. The petitioner was not put on Test Identification Parade. Even then, the learned Sessions Judge has rejected his discharge petition. It was further submitted that in the case diary, the Investigating Officer had committed an error in recording the word dying declaration of one Binod Sao. Sri Ashwini Kumar Singh, learned Senior Counsel for the petitioner has referred to paragraph No. 79 of the case diary, wherein it was mentioned that the statement before death of injured Binod Sao was recorded by the Magistrate and the Investigating Officer had received photo copy of the same, in which Binod Sao had stated that they were attacked by his villager Bangali Singh, his son and Jamuna Singh. It was further recorded that the injured was not knowing the name of son of Bangali Singh. It was submitted that this statement shows that it was a dying declaration and once it was a dying declaration, there was no occasion to record further statement of the injured Binod Sao, whose dying declaration was recorded by the Magistrate. It was submitted that in paragraph 189 of the case diary, it was mentioned that the Investigating Officer had re-recorded statement of injured Binod Sao in Gaya Medical Hospital. Learned Senior Counsel for the petitioner Ajay Singh has placed both paragraphs, i.e. Paragraph Nos. 79 and 189 of the case diary and it was argued that this contradiction shows that error was committed by the Investigating Officer and even then it was only disclosed that son of Bangali Singh was involved, however name of this petitioner had not come during the investigation. It was submitted that only on this material, the petitioner was chargesheet by the police and on this ground, the petition for discharge was liable to be allowed by the learned Addl. Sessions Judge. Sri Ashwini Kumar Singh, learned Senior Counsel has also submitted that in view of evidence of witnesses cited in the chargesheet no case is made out against the petitioner Ajay Kumar Singh.

12. So far as the Judgments referred by Sri Surendra Kumar Singh, learned Senior Counsel appearing on behalf of the petitioners are concerned, I am of the view that the Hon"ble Supreme Court has categorically held that even on the basis of strong submission, charges can be framed. In none of the aforesaid Judgments, the Hon"ble Supreme Court has given contrary findings. This Court is of the view that the case laws cited by Sri Surendra Kumar Singh, learned Senior Counsel for the petitioners goes against the petitioners" case. Fact remains that this Court has also perused the entire case diary. After going through the case diary, I am of the view that the learned Addl. Sessions Judge, while rejecting the discharge petition filed on behalf of the petitioners in both the cases has committed no error. The order of rejection of discharge petition is on the basis of a prima facie case against the petitioners. For appreciating the present case, it would be appropriate to first examine the provisions contained in Sections 227 and 228 of the Code of Criminal Procedure, which are as follows:

227. Discharge. - If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the

accused and record his reasons for so doing.

228. Framing of charge: (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-----

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused

(2) Where the Judge frames any charge under Clause (b) of Sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads of the offence charged or claims to be tried.

13. Perusal of the aforesaid two provisions makes two things clear that firstly at the time of rejection of discharge petition, the Court is not required to assign reasons. However, if the Court considers to discharge an accused, it is mandatory on his part to assign reasons. Secondly, for the purposes of framing of charge, if in the opinion of the Court, there is a ground for presuming that accused has committed offence, then charges shall be framed. Meaning thereby that for the purposes of framing of charge, even presumption for commission of offence is enough. This proposition has been beautifully clarified by the Hon'ble Supreme Court in a case reported in 1996 Cri.L.J. 2449 State of Maharashtra v. Som Nath Thapa. I cannot do better than to quote only two paragraphs i.e. 30 and 32 of the Judgment in Som Nath Thapa's case (Supra), which are as follows:

30. In R.S. Nayak Vs. A.R. Antulay and Another, , C.J., opined, after noting the difference in the language of the three pairs of section, that despite the difference there is no scope for doubt that at the stage at which the Court is required to consider the question of framing of charge, the test of "prima facie" case has to be applied. According to Shri Jethmalani, a prima facie case can be said to have been made out when the evidence, unless rebutted, would make the accused liable to conviction. In our view, better and clearer statement of law would be that if there is ground for presuming that the accused has committed the offence, a Court can justifiably say that a prima facie case against him exists, and so, frame charge against him for committing that offence.

32. The aforesaid shows that if on the basis of materials on record, a Court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the Court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of

charge, probative value of the materials on record cannot be gone into; the materials bought on record by the prosecution has to be accepted as true at that stage.

14. Of course, for the purposes of deciding the present case, it was not required to discuss the materials showing involvement of the petitioners in the case diary, while hearing and deciding the present two petitions, which have been filed u/s 482 of the Code of Criminal Procedure, since learned Senior Counsel in both the cases insisted the Court to examine the entire case diary I consider that if I do not refer few facts to show the complicity of the petitioners, I may not do justice with the contention of both the learned Senior Counsels. On perusal of the case diary, it has been noticed that one of the witnesses, who had received serious injuries and who was virtually on death bed, gave his statement before the Magistrate, which has been mentioned in paragraph Nos. 31, 79 and 189 of the case diary. In paragraph 31 of the case diary, the Investigating Officer of the present case has recorded that the Sub Inspector of Police, Sri Rang Nath Sharma came and disclosed that injured Binod Kumar Sao in his statement recorded after death before the Magistrate has named Bangali Singh, his son and Jamuna Singh among the assailants and accordingly, the Dy. Inspector General of Police, Magadh Range, Gaya had directed them to immediately arrest the accused. In paragraph 79 of the case diary, the Investigating Officer has reproduced the statement of injured Binod Kumar Sao, in which the word has been mentioned statement before death. In paragraph 189 of the case diary, the Investigating Officer has stated that re-statement of Binod Sao was recorded in Gaya Medical Hospital. It has been recorded in the said paragraph that the injured in his re-statement has reiterated his statement, which he had given on his death bed on 19.12.1996. While reiterating, the injured had stated that amongst accused persons, Bangali Singh was armed with rifle, his second son who was younger than Bijay Singh was carrying a big weapon. It was clarified by him that he was not knowing the name of said accused. He described that the accused persons had opened indiscriminate firing. On going through the case diary, in paragraph 198, it was clarified that the name of second son of Bangali Singh was Ajay Singh, who is petitioner in the second case. In respect of other accused persons, there are sufficient materials at least to create a strong suspicion for their involvement in the crime. So far as submission of Sri Singh, learned Senior Counsel that on the basis of evidence of witnesses cited in the chargesheet case cannot be proved is concerned, I am of the view that such submission is to be noticed only for its rejection. Firstly one of the chargesheeted witness injured Binod Sao has made specific statement against the petitioner, which has further been corroborated during investigation. Secondly, those witnesses whose statement was recorded during investigation or any other persons can be examined as prosecution witness even though not named as witness in the chargesheet.

15. After going through the case diary, the Court is of the opinion that even the Investigating Officer, who was the Officer Incharge of Aurangabad Town Police

Station at the relevant time had not acted in fair and impartial manner, rather he was instrumental in protecting the culprits in the present case. In this case, the occurrence had taken place at about 10.30 in the night of 20.9.1987. The Police Station was about 20 Km away. In the next morning, the Sub-Inspector of Police, namely, Sri D.N. Pathak, who was posted in Aurangabad Town Police Station, arrived at the place of occurrence and at about 9.45 hours (morning) on 21.9.1986 he recorded fardbeyan of the informant and started investigation. After recording fardbeyan, he recorded statement of number of witnesses. He found that injured Binod Sao due to injury had become unconscious. He noted in the case diary that steps shall be taken to get the statement of injured Binod Sao recorded after he regains his consciousness. He even prepared the inquest reports and the last inquest report was prepared in respect of dead body of Chamru Sao, at 13.45 hours, i.e. 1.45 P.M. Only thereafter the Officer Incharge, Sri Hriday Narayan Singh arrived at the place of occurrence and he took up investigation of the case as per the direction of the Dy. Supdt. of Police (Town). In a case, where massacre had taken place, in which six persons were killed and four had received serious injuries, to the reasons best known to the Officer Incharge, he arrived at the place of occurrence after lapse of several hours. The mischievous role played by the Investigating Officer was even noticed by the Dy. Supdt. of Police (Town) while supervising the case. Perusal of the case diary makes it clear that the Investigating Officer, namely, Hriday Narayan Singh had not obeyed the direction of the Superintendent of Police and due to that reason, the Dy. Supdt. of Police had recorded in paragraph 194(8) of the case diary for issuance of show cause against the Investigating Officer, Hriday Narayan Singh. After quite considerable time, he was transferred from Aurangabad Town Police Station and thereafter a new Investigating Officer had taken charge of the case diary and immediately thereafter he had collected several materials during the investigation. The diary shows that time and again the Investigating Officer, Sri Hriday Narayan Singh had recorded that he had searched the injured Binod Sao. However fact remains that Binod Sao had got such serious injuries that he was referred to Gaya Medical Hospital and thereafter he was admitted there. This shows that to the reasons best known to Sri Hriday Narayan Singh, the then Investigating Officer, he was not taking any step either to record statement of the injured Binod Sao or to take track on his whereabouts. This depicts many untold stories in the case right from the very beginning. It was a case of informant that about 15-20 persons variously armed with deadly weapons had arrived at the place of occurrence and committed crime. However, in the case after such a delay, chargesheet was submitted only against eight accused persons.

16. On the basis of materials in the case diary, which I have minutely perused, I do not think that the learned Sessions Judge, while rejecting the discharge petition, has committed any error and, accordingly, the petitions are liable to be rejected and the same are hereby rejected.

17. In view of rejection of the aforesaid two petitions, interim order of stay dated

23.4.2002 passed in Cr. Misc. No. 2958 of 2001 and interim order of stay dated 16.7.2003 passed in Cr.Misc. No. 3662 of 2000 stand automatically vacated.

18. Keeping in view the fact that the matter is an old one, since in the case occurrence had taken place in the month of September, 1986, it is desirable to direct the court below to immediately proceed with the case and take all steps, so that charge may be finalized within a period of two months from the date of receipt of a copy of this order and there after it is directed to conclude the trial within a period of eight months. The trial Court is further directed to take up the case at least thrice in a week and it is expected that while proceeding with the case, the learned trial court will not grant any unnecessary adjournment. The Superintendent of Police, Aurangabad is directed to render full assistance to the trial court and ensure that this order may not be frustrated due to non appearance of witnesses during the trial.

19. With the above observation and direction, both the petitions stand rejected.

20. Let a copy of this order be sent to the court below and the Superintendent of Police, Aurangabad.