

(2019) 05 DEL CK 0168

In the Delhi High Court

Case No : Criminal Miscellaneous Application No. 6377, 7218, 7354 Of 2019 In
Criminal Writ Petition No. 3247, 3248, 3292 Of 2018

Devender Kumar

APPELLANT

Vs

Central Bureau Of Investigation & Ors

RESPONDENT

Date of Decision : 31-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 21, 226, 227

Code Of Civil Procedure, 1908 — Section 151

Indian Penal Code, 1860 — Section 182

Code Of Criminal Procedure, 1973 — Section 173, 258, 309, 311, 362, 367, 369, 401,
424, 482

Code Of Criminal Procedure, 1898 — Section 561A

Citation : (2019) 5 AD(Delhi) 248 : (2019) 176 DRJ 51

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Dayan Krishnan, Vivek Singh, Vikramjeet Banerjee, Prakarsh Airan,
Anupam S. Sharma, Ajay Digpaul, Soumava Karmakar, A. Sharan, Amit Anand
Tiwari, Shashwat Singh, N. Hariharan, Seema Seth, Siddharth S. Yadav, Aditya
Vaibhav, Punya, Varun

Judgement

Mukta Gupta, J

CrI.M.A. No. 6377/2019 in W.P.(CRL) 3247/2018

CrI.M.A. No. 7218/2019 in W.P.(CRL) 3248/2018

CrI.M.A. No. 7354/2019 in W.P.(CRL) 3292/2018

1. By these applications, in the disposed of writ petitions, CBI the respondent seeks extension of time for completing the investigation.

2. A brief background of the case. The petitioners/ non-applicants filed the above-noted writ petitions, inter alia, seeking quashing of FIR bearing RC No. 13(A)/2018/AC-III dated 15th October, 2018 registered with CBI, AC-III, New Delhi against the three petitioners. On hearing the parties this Court vide the

order dated 11th January, 2019 held that the Court was not persuaded that the case warrants quashing of RC No. 13(A)/2018/AC-III dated 15th October, 2018. However, while concluding this Court in the interest of justice held that the investigations must come to an end as soon as practicable and thus the CBI was directed to conclude the investigation in 10 weeks from the date of order i.e. 11th January, 2019. Since the investigation could not be completed in the time frame given, CBI filed the present three applications seeking extension of time to complete the investigation.

3. Learned counsel for the petitioner/ non-applicants objecting to the maintainability of the present applications state that since the order has been passed in a Writ petition Criminal this Court having become functus-officio the earlier order can neither be reviewed nor recalled nor tinkered with. Reliance is placed on the decision of the Hon'ble Supreme Court reported as (2013) 1 SCC 376 Nazma Vs. Javed @ Anju. Since there is no arithmetical or clerical error in the order dated 11th January, 2019, the present application is barred under Section 362 Cr.P.C. as held in (2001) 1 SCC 169 Hari Singh Mann Vs. Harbhajan Singh Bajwa & Ors.

4. Referring to the decision of the Full Bench of this Court in 2011 (125) DRJ 241 C.S. Agarwal Vs. State which has been upheld by the Hon'ble Supreme Court in the decision reported as (2017) 5 SCC 533 Ram Kishan Fauji Vs. State of Haryana & Ors. it is contended that in exercise of Constitutional jurisdiction under Article 226 of the Constitution of India read with Section 482 Cr.P.C., this Court is exercising criminal jurisdiction and neither a Letters Patent Appeal will be maintainable nor the application seeking extension of time. It is contended that permitting extension of time to investigate would amount to reviewing the order passed by this Court. It is further contended that learned Single Judge has already issued a certificate of appeal to the Hon'ble Supreme Court under Section 134(A) of the Constitution of India and petitioner/ non-applicant Devender Kumar has already preferred an appeal before the Hon'ble Supreme Court against the order dated 11th January, 2019.

5. Learned senior counsel for the CBI on the other hand contends that by the present applications, the applicant does not seek review of the order dated 11th January, 2019 but seeks permission to give effect to the judgment wherein in the interest of justice, investigation was expedited. Reliance is placed on the Constitution Bench decision in Shivdev Singh & Ors. Vs. State of Punjab & Ors. AIR 1963 SC 1909 wherein the Hon'ble Supreme Court held that there is nothing in Article 226 of the Constitution to preclude the High Court for exercising power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. He contends that in the present case no error is being sought to be rectified and only to give effect to the judgment that a proper investigation is carried out further time is required which extension of time is being sought by the CBI.

6. Referring to the decision of Hon'ble Supreme Court reported as (2014) 14 SCC

222 Surya Baksh Singh Vs. State of Uttar Pradesh it is contended that Section 482 Cr.P.C. preserves the inherent power of the High Court and there is nothing in Cr.P.C. to limit or affect that inherent power of the High Court to make such orders as may be necessary firstly "to give effect to any order under Cr.P.C.", secondly "Section 482 Cr.P.C. does not circumscribe the action available to the High Court to prevent abuse of its process" and thirdly "none of the provisions of the Cr.P.C. can possibly limit the power of the High Court to otherwise secure the ends of justice".

7. Relying to the decision in (2009) 2 SCC 164 K.A. Ansari & Anr. Vs. Indian Airlines Limited it is contended that a party may not be entitled to seek review of a judgment merely for the purposes of re-hearing and a fresh decision of a case, at the same time there is no prohibition of a party applying for a clarification, if the order is not clear and the party against whom it has been made is trying to take advantage because the order is couched in ambiguous or equivocal words. In case no fresh relief is sought, an appropriate application can be filed in the writ petition.

8. In C.S. Agarwal Vs. State (supra) relied on by learned counsels for the petitioners, Full Bench of this Court held:

"30. Likewise, the proceedings under Income Tax Act filed under Article 226 will not involve criminal jurisdiction. The judgment of the Supreme Court in the case of Dr. Vijay Anand Maharaj (supra) demonstrates this. The case arose out of assessment of income tax which was challenged by way of writ petition under Article 226 of the Constitution of India. The said proceedings were held by the Constitutional Bench to be "original special jurisdiction" or "extraordinary original jurisdiction" and cannot be confused with "ordinary civil jurisdiction".

31. For this reason, we are of the opinion that the Division Bench judgment of this Court in the case of Harwinder Singh v. Union of India [1994 (55) DLT 176 : 1994 (29) DRJ 535 (DB)] which dealt with habeas corpus petition is of no assistance to decide the controversy before us. Likewise, the judgment of Punjab and Haryana High Court in the case of Adishwar Jain v. Union of India [2006 CrLJ 3193] holding LPA to be maintainable is also not relevant. Again, that was a case of preventive detention.

32. The test, thus, is whether criminal proceedings are pending or not and the petition under Article 226 of the Constitution is preferred concerning those criminal proceedings which could result in conviction and order of sentence.

33. When viewed from this angle, it is clear that if the FIR is not quashed, it may lead to filing of Challan by the investigating agency; framing of charge; and can result in conviction or order of sentence. Writ of this nature filed under Article 226 of the Constitution. Seeking quashing of such an FIR would therefore be "criminal proceedings" and while dealing with such proceedings, the High Court exercises its "criminal jurisdiction".

34. It would be pertinent to point out that insofar as the present case is concerned, this view of ours becomes more formidable when we peruse the nature of challenge that was laid by the appellant C.S. Agarwal in the writ petition seeking quashing of the FIR. This petition was filed under Article 226 of the Constitution read with Section 482 of the Code of Criminal Procedure. We are conscious of the judgment of the Supreme Court in the case of State of Karnataka v. Pastor P. Raju[(2006) 6 SCC 728] holding that power to quash an FIR is only under Article 226 of the Constitution and not under Section 482 of Code of Criminal Procedure. At the same time, one has also to keep in mind the limited grounds on which challenge can be predicated by filing writ petition under Article 226 of the Constitution to which proceedings are still at the stage of investigation after registration of FIR [State of Haryana v. Bhajan Lal (supra)]."

9. In Ram Kishan Fauji Vs. State of Haryana & Ors (supra) Hon'ble Supreme Court held:

"31. The aforesaid authority makes a clear distinction between a civil proceeding and a criminal proceeding. As far as criminal proceeding is concerned, it clearly stipulates that a criminal proceeding is ordinarily one which, if carried to its conclusion, may result in imposition of (i) sentence, and (ii) it can take within its ambit the larger interest of the State, orders to prevent apprehended breach of peace and orders to bind down persons who are a danger to the maintenance of peace and order. The Court has ruled that the character of the proceeding does not depend upon the nature of the tribunal which is invested with the authority to grant relief but upon the nature of the right violated and the appropriate relief which may be claimed.

56. As we find from the decisions of the aforesaid three High Courts, it is evident that there is no disagreement or conflict on the principle that if an appeal is barred under Clause 10 or Clause 15 of the Letters Patent, as the case may be, no appeal will lie. The High Court of Andhra Pradesh, however, has held that when the power is exercised under Article 226 of the Constitution for quashing of a criminal proceeding, there is no exercise of criminal jurisdiction. It has distinguished the proceeding for quashing of the FIR under Section 482 Cr.PC and, in that context, has opined that from such an order, no appeal would lie. On the contrary, the High Courts of Gujarat and Delhi, on the basis of the law laid down by this Court in Ishwarlal Bhagwandas [CIT v. Ishwarlal Bhagwandas, (1966) 1 SCR 190 : AIR 1965 SC 1818] , have laid emphasis on the seed of initiation of criminal proceeding, the consequence of a criminal proceeding and also the nature of relief sought before the Single Judge under Article 226 of the Constitution. The conception of "criminal jurisdiction" as used in Clause 10 of the Letters Patent is not to be construed in the narrow sense. It encompasses in its gamut the inception and the consequence. It is the field in respect of which the jurisdiction is exercised, is relevant. The contention that solely because a writ petition is filed to quash an investigation, it would have room for intra-court appeal and if a petition is filed under inherent jurisdiction under Section 482

Cr.PC, there would be no space for an intra-court appeal, would create an anomalous, unacceptable and inconceivable situation. The provision contained in the Letters Patent does not allow or permit such an interpretation. When we are required to consider a bar or non-permissibility, we have to appreciate the same in true letter and spirit. It confers jurisdiction as regards the subject of controversy or nature of proceeding and that subject is exercise of jurisdiction in criminal matters. It has nothing to do whether the order has been passed in exercise of extraordinary jurisdiction under Article 226 of the Constitution or inherent jurisdiction under Section 482 Cr.PC."

10. On the issue raised that though an application after disposal in a petition under Section 482 or 401 Cr.P.C. or criminal appeal would be barred however no such bar can be imposed in a constitutional remedy under Article 226 of the Constitution of India, learned counsel for the petitioners have relied on the above noted two decisions. In the two decisions the Hon'ble Supreme Court and this Court were considering the issue of maintainability of an intra-court appeal under the letters patent. While dealing with the issue Hon'ble Supreme Court in *Ram Kishan Fauji (supra)* held that the character of the proceedings does not depend upon the nature of the tribunal which is invested with the authority to grant the relief but upon the nature of the right violated and the appropriate relief which may be claimed.

11. In the present case though the petitioners/non-applicants had sought the relief of quashing of the FIR however, the said relief was declined and this Court directed the CBI/applicant to conclude the investigation in a particular time frame which direction was in the nature of a mandamus to the CBI to conclude its administrative act in the time granted.

12. In *Hari Singh Mann Vs. Harbhajan Singh Bajwa & Ors. (supra)* relied upon by learned counsels for the petitioners, the Hon'ble Supreme Court held:

"9. There is no provision in the Code of Criminal Procedure authorising the High Court to review its judgment passed either in exercise of its appellate or revisional or original criminal jurisdiction. Such a power cannot be exercised with the aid or under the cloak of Section 482 of the Code. This Court in *State of Orissa v. Ram Chander Agarwala [(1979) 2 SCC 305 : 1979 SCC (Cri) 462 : AIR 1979 SC 87]* held (SCC p. 315, para 20)

"20. Before concluding we will very briefly refer to cases of this Court cited by counsel on both sides. *Talab Haji Hussain [AIR 1958 SC 376 : 1958 Cri LJ 701 : 1958 SCR 1226]* relates to the power of the High Court to cancel bail.

The High Court took the view that under Section 561-A of the Code, it had inherent power to cancel the bail, and finding that on the material produced before the Court it would not be safe to permit the appellant to be at large cancelled the bail, distinguishing the decision in *Lala Jairam Das v. King-Emperor [(1944-45) 72 IA 120 : AIR 1945 PC 94 : 46 Cri LJ 662]* and stated that the Privy Council was not called upon to consider the question about the inherent

power of the High Court to cancel bail under Section 561-A. In *Sankatha Singh v. State of U.P.* [AIR 1962 SC 1208 : 1962 Supp (2) SCR 817 : (1962) 2 Cri LJ 288] this Court held that Section 369 read with Section 424 of the Code of Criminal Procedure specifically prohibits the altering or reviewing of its order by a court. The accused applied before a succeeding Sessions Judge for re-hearing of an appeal. The learned Judge was of the view that the appellate court had no power to review or restore an appeal which has been disposed of. The Supreme Court agreed with the view that the appellate court had no power to review or restore an appeal. This Court, expressing its opinion that the Sessions Court had no power to review or restore an appeal observed that a judgment, which does not comply with the requirements of Section 367 of the Code, may be liable to be set aside by a superior court but will not give the appellate court any power to set it aside itself and re-hear the appeal observing that 'Section 369 read with Section 424 of the Code makes it clear that the appellate court is not to alter or review the judgment once signed, except for the purpose of correcting a clerical error'. Reliance was placed on a decision of this Court in *Supdt. and Remembrancer of Legal Affairs, W.B. v. Mohan Singh* [(1975) 3 SCC 706 : 1975 SCC (Cri) 156 : AIR 1975 SC 1002] by Mr Patel, learned counsel for the respondent wherein it was held that rejection of a prior application for quashing is no bar for the High Court entertaining a subsequent application as quashing does not amount to review or revision. This decision instead of supporting the respondent clearly lays down, following *Chopra case* [*U.J.S. Chopra v. State of Bombay*, AIR 1955 SC 633 : 1955 Cri LJ 1410] that once a judgment has been pronounced by a High Court either in exercise of its appellate or revisional jurisdiction, no review or revision can be entertained against that judgment as there is no provision in the Criminal Procedure Code which would enable the High Court to review the same or to exercise revisional jurisdiction. This Court entertained the application for quashing the proceedings on the ground that a subsequent application to quash would not amount to review or revise an order made by the Court. The decision clearly lays down that a judgment of the High Court on appeal or revision cannot be reviewed or revised except in accordance with the provisions of the Criminal Procedure Code. The provisions of Section 561-A of the Code cannot be invoked for exercise of a power which is specifically prohibited by the Code."

10. Section 362 of the Code mandates that no court, when it has signed its judgment or final order disposing of a case shall alter or review the same except to correct a clerical or an arithmetical error. The section is based on an acknowledged principle of law that once a matter is finally disposed of by a court, the said court in the absence of a specific statutory provision becomes *functus officio* and disentitled to entertain a fresh prayer for the same relief unless the former order of final disposal is set aside by a court of competent jurisdiction in a manner prescribed by law. The court becomes *functus officio* the moment the official order disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or an arithmetical error. The reliance of the respondent on *Talab Haji Hussain case* [AIR 1958 SC 376 : 1958 Cri LJ

701 : 1958 SCR 1226] is misconceived. Even in that case it was pointed that inherent powers conferred on High Courts under Section 561-A (Section 482 of the new Code) has to be exercised sparingly, carefully and with caution and only where such exercise is justified by the tests specifically laid down in the section itself. It is not disputed that the petition filed under Section 482 of the Code had been finally disposed of by the High Court on 7-1-1999. The new Section 362 of the Code which was drafted keeping in view the recommendations of the 41st report of the Law Commission and the Joint Select Committees appointed for the purpose, has extended the bar of review not only to the judgment but also to the final orders other than the judgment."

13. In *Nazma* (supra) relied upon by learned counsel for the petitioners/non-applicants Hon'ble Supreme Court following its earlier decision in *Hari Singh Mann* (supra) held that the writ petition having been disposed of, no lis remains pending and the Court had no power to review any criminal matter except carrying out typographical or clerical errors. In the said matter the writ petition was disposed of by the High Court holding that the first respondent therein should not be arrested until the conclusion of the investigation or submission of any report under Section 173 of the Cr.P.C. Despite a closure report having been filed by the investigating agency, the learned Chief Judicial Magistrate took cognizance of the report under Section 173 Cr.P.C. It is thereafter that the High Court entertained an application in the disposed of writ petition and the arrest of the respondent was stayed till the conclusion of the trial. Thus, on the facts of the case the cognizance having been taken by the learned Chief Judicial Magistrate on the closure report filed and summons issued was a fresh cause of action and the High Court in a disposed of writ petition could not have extended the scope and stayed the arrest till the conclusion of trial which remedy was otherwise also not available by filing a miscellaneous application.

14. Even in *Hari Singh Mann* (supra) a petition under Section 482 Cr.P.C. was disposed of by the High Court directing the S.S.P. concerned to look into the allegations and if some cognizable offence was made out, to register the FIR otherwise initiate action against the respondent therein under Section 182 IPC. By the miscellaneous application this order of initiating action against the respondent therein was recalled without notice to any of the parties, hence the Hon'ble Supreme Court held that the same amounted to reviewing its order in a disposed of petition which was impermissible.

15. By the present application the CBI is neither seeking review nor recall of the orders of this Court passed on 11th January, 2019 directing it to conclude the investigation in 10 weeks from the said date. Claim of learned Additional Solicitor General for the CBI is that vide order passed on 11th January, 2019 the Court directed that in the interest of justice, the investigation must come to an end as soon as practicable and fixed a time limit of 10 weeks. According to learned Additional Solicitor General it is necessary to give effect to the order of this Court dated 11th January, 2019 and to conclude investigation in a proper manner and

thus extension of time to conclude the investigation is required.

16. In *Surya Baksh Singh Vs. State of Uttar Pradesh* (supra) Hon'ble Supreme Court held:

"7. Last, but not the least in our appreciation of the law, Section 482 Cr.PC stands in solitary splendour. It preserves the inherent power of the High Court. It enunciates that nothing in Cr.PC shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary, firstly, to "give effect to any order under Cr.PC", words which are not to be found in the Code of Civil Procedure, 1908 (hereafter referred to as "CPC"). Ergo, the High Court can, while exercising inherent powers in its criminal jurisdiction, take all necessary steps for enforcing compliance with its orders. For salutary reason Section 482 Cr.PC makes the criminal court much more effective and all pervasive than the civil court insofar as ensuring obedience of its orders is concerned. Secondly, Section 482 clarifies that Cr.PC does not circumscribe the actions available to the High Court to prevent abuse of its process, from the inception of proceedings till their culmination. Judicial process includes compelling a respondent to appear before it. When the Court encounters a recalcitrant appellant/convict who shows negligible interest in prosecuting his appeal, none of the sections in Chapter XXIX Cr.PC dealing with appeals, precludes or dissuades it from dismissing the appeals. It seems to us that passing such orders would eventually make it clear to all that intentional and repeated failure to prosecute the appeal would inexorably lead not merely to incarceration but more importantly to the confirmation of the conviction and sentence consequent on the dismissal of the appeal. Thirdly, none of the provisions of Cr.PC can possibly limit the power of the High Court to otherwise secure the ends of justice. While it is not possible to define the concept of "justice", suffice it to say that it encompasses not just the rights of the convict, but also of the victims of crime as well as of the law abiding section of society who look towards the courts as vital instruments for preservation of peace and the curtailment or containment of crime by punishing those who transgress the law. If the convicts can circumvent the consequence of their conviction, peace, tranquillity and harmony in society will be reduced to a chimera. Section 482 emblazons the difference between preventing the abuse of the jural process on the one hand and securing of the ends of justice on the other. It appears to us that Section 482 Cr.PC has not been given due importance in combating the rampant malpractice of filing appeals only for scotching sentences imposed by criminal courts.

17. The criminal justice delivery system is being held to ransom by convicts who have developed the devious and dishonest practice of escaping punishment or sentence by filing appeals, obtaining bail or suspension of sentence and thereafter disappearing beyond the reach of the arms of the law. The inherent powers under Section 482 Cr.PC, which the Supreme Court has on several occasions expounded to have existed from time immemorial, predating the

present as well as the previous Cr.PC, must be pressed into action lest the already fragile policing and prosecuting branches of governance are rendered redundant. Since Section 482 Cr.PC was not considered by either of the three-Judge Benches of this Court, we have not found it necessary to resort to recommending the matter for being laid before a larger Bench. The facts and pronouncement in Bani Singh [Bani Singh v. State of U.P., (1996) 4 SCC 720 : 1996 SCC (Cri) 848 : AIR 1996 SC 2439] cannot be extrapolated to the factual matrix before us. On the contrary the opinion in Ram Naresh Yadav [Ram Naresh Yadav v. State of Bihar, (2014) 14 SCC 238 : AIR 1987 SC 1500 : 1987 Cri LJ 1856] as well as in Kishan Singh [Kishan Singh v. State of U.P., (1996) 9 SCC 372 : 1996 SCC (Cri) 1010 : 1992 Supp (2) SCR 305] are available to us to ensure that preventive action is devised to combat the abuse of court process so that facilitative steps are taken to secure the ends of justice.

18. Section 482 Cr.PC is of singular and seminal significance. The statutory provision which immediately comes to mind is Section 151 CPC because to a great extent the language is identical. We are juxtaposing the two sections for the facility of reference:

Section 482 Cr.PC

Section 151 CPC

"482.Saving of inherent powers of High Court.-Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice."

"151.Saving of inherent powers of court.-Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court."

It is at once obvious that whereas Section 482 Cr.PC is available only to the High Courts, Section 151 can be resorted to at any stage of civil judicial proceedings in any of the hierarchical tiers. Secondly, the use of the word "otherwise" in Section 482 has the avowed effect of boundlessly broadening the boundaries of inherent powers of the High Court in exercise of its criminal jurisdiction. Thirdly, Section 482 can be employed to ensure obedience of any order passed by the Court because of the phrase "to give effect to any order under this Code".

17. In K.A. Ansari & Anr. Vs. Indian Airlines Limited (supra) Hon'ble Supreme Court held:

"17. It is trite that a party is not entitled to seek a review of a judgment merely for the purpose of rehearing and a fresh decision of the case. It needs little emphasis that when the proceedings stand terminated by final disposal of the writ petition, it is not open to the court to reopen the proceedings by means of

miscellaneous application in respect of a matter which provides fresh cause of action. If this principle is not followed, there would be confusion and chaos and the finality of proceedings would cease to have any meaning. (See State of U.P. v. Brahm Datt Sharma [(1987) 2 SCC 179 : (1987) 3 ATC 319], SCC p. 188, para 10.) At the same time, there is no prohibition on a party applying for clarification, if the order is not clear and the party against whom it has been made is trying to take advantage because the order is couched in ambiguous or equivocal words.

21. In our opinion, in the miscellaneous application, no fresh relief, on the basis of a new cause of action, had been sought. It was an application filed for pursuing and getting implemented the relief granted in the writ petition, namely, placement in appropriate grade in which he was placed at the time when letter dated 23-4-2003, was issued. This was precisely done by the learned Single Judge vide his order dated 4-3-2005."

18. As noted above, in K.A. Ansari (supra) in case by way of the present application a fresh relief on the basis of a new cause of action is sought or the scope of the writ petition is sought to be extended or in view of the earlier decisions of the Hon'ble Supreme Court review of the earlier order or recall of the earlier order dated 11th January, 2019 is sought then the present application would not be maintainable. However, in this case the respondent CBI/applicant seeks further time to conclude the investigation and as noted in the order dated 11th January, 2019 this Court was of the view that the interest of justice demanded investigation must come to an end as soon as practicable and fixed the time period of 10 weeks which was insufficient.

19. At this stage, it would also be appropriate to note the decision of the seven judge bench of the Hon'ble Supreme Court reported as (2002) 4 SCC 478 P. Ramachandra Rao v. State of Karnataka while dealing with speedy trial in criminal proceedings wherein it was held:

"9. The Constitution Bench, in A.R. Antulay case [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] , heard elaborate arguments. 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 retrial; (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: (SCC pp. 272-73, para 86)

"(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 a 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."

10. During the course of its judgment also, the Constitution Bench made certain observations which need to be extracted and reproduced:

"83. But then speedy trial or other expressions conveying the said concept - are necessarily relative in nature. One may ask - speedy means, how speedy? How long a delay is too long? We do not think it is possible to lay down any time schedules for conclusion of criminal proceedings. The nature of offence, the number of accused, the number of witnesses, the workload in the particular court, means of communication and several other circumstances have to be kept in mind. ... it is neither advisable nor feasible to draw or prescribe an outer time-limit for conclusion of all criminal proceedings. It is not necessary to do so for effectuating the right to speedy trial. We are also not satisfied that without such an outer limit, the right becomes illusory." (SCC pp. 268-69, para 83)

"[E]ven apart from Article 21 courts in this country have been cognizant of undue

delays in criminal matters and wherever there was inordinate delay or where the proceedings were pending for too long and any further proceedings were deemed to be oppressive and unwarranted, they were put an end to by making appropriate orders." (SCC p. 260, para 65)

29. For all the foregoing reasons, we are of the opinion that in Common Cause case (I) [(1996) 4 SCC 33 : 1996 SCC (Cri) 589] [as modified in Common Cause (II) [(1996) 6 SCC 775 : 1997 SCC (Cri) 42]] and Raj Deo Sharma (I) [(1998) 7 SCC 507 : 1998 SCC (Cri) 1692] and (II) [(1999) 7 SCC 604 : 1999 SCC (Cri) 1324] the Court could not have prescribed periods of limitation beyond which the trial of a criminal case or a criminal proceeding cannot continue and must mandatorily be closed followed by an order acquitting or discharging the accused. In conclusion we hold:

(1) The dictum in A.R. Antulay case [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] is correct and still holds the field.

(2) The propositions emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down as guidelines in A.R. Antulay case [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] adequately take care of right to speedy trial. We uphold and reaffirm the said propositions.

(3) The guidelines laid down in A.R. Antulay case [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] are not exhaustive but only illustrative. They are not intended to operate as hard-and-fast rules or to be applied like a straitjacket formula. Their applicability would depend on the fact situation of each case. It is difficult to foresee all situations and no generalization can be made.

(4) It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. The time-limits or bars of limitation prescribed in the several directions made in Common Cause (I) [(1996) 4 SCC 33 : 1996 SCC (Cri) 589] , Raj Deo Sharma (I) [(1998) 7 SCC 507 : 1998 SCC (Cri) 1692] and Raj Deo Sharma (II) [(1999) 7 SCC 604 : 1999 SCC (Cri) 1324] could not have been so prescribed or drawn and are not good law. The criminal courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of time, as prescribed by the directions made in Common Cause case (I) [(1996) 4 SCC 33 : 1996 SCC (Cri) 589] , Raj Deo Sharma case (I) [(1998) 7 SCC 507 : 1998 SCC (Cri) 1692] and (II) [(1999) 7 SCC 604 : 1999 SCC (Cri) 1324] . At the most the periods of time prescribed in those decisions can be taken by the courts seized of the trial or proceedings to act as reminders when they may be persuaded to apply their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration the several relevant factors as pointed out in A.R. Antulay case [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time-limits cannot and will not by themselves be treated by any court as a bar to further continuance of the trial or proceedings and as

mandatorily obliging the court to terminate the same and acquit or discharge the accused.

(5) The criminal courts should exercise their available powers, such as those under Sections 309, 311 and 258 of the Code of Criminal Procedure to effectuate the right to speedy trial. A watchful and diligent trial Judge can prove to be a better protector of such right than any guidelines. In appropriate cases, jurisdiction of the High Court under Section 482 Cr.PC and Articles 226 and 227 of the Constitution can be invoked seeking appropriate relief or suitable directions.

(6) This is an appropriate occasion to remind the Union of India and the State Governments of their constitutional obligation to strengthen the judiciary - quantitatively and qualitatively - by providing requisite funds, manpower and infrastructure. We hope and trust that the Governments shall act. "

20. As held by the Hon'ble Supreme Court in P. Ramachandra Rao (supra) a fair, just and reasonable procedure implicit in Article 21 of the Constitution of India creates a right for the accused to be tried speedily and the right to speedy trial encompasses all the stages including the stage of investigation. However, the courts cannot prescribe periods of limitation beyond what is prescribed and such time limits cannot and will not be treated by themselves by the courts as a bar to further continuance of the trial or proceeding, mandatorily obliging the courts to terminate the same and acquit or discharge the accused. Similarly, an incomplete investigation can also have the effect of terminating the proceedings and it would be thus in the interest of justice to grant further time for investigation.

21. In view of the discussion as aforesaid and as the respondent CBI is neither seeking review nor recall of the earlier order but seeking further time to conclude the investigation thereby giving effect to the order dated 11th January, 2019 passed by this Court, this Court deems it fit to allow the three applications filed by the CBI. CBI is granted four months' further time to conclude the investigation.

22. Applications are disposed of. Order dasti.